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Chapter CXXVIII.

VOTING BY TELLERS AND BY BALLOT.

5985. Tellers may be ordered by the Speaker, if he is in doubt, or by one-fifth of a quorum.—Section 5 of Rule I[5] provides as to the vote by tellers:

He shall * * * put questions in this form, to wit: "As many as are in favor (as the question may be), say aye;" and after the affirmative voice is expressed, "As many as are opposed, say no;" if he doubts, or a division is called for, the House shall divide; those in the affirmative of the question shall first rise from their seats, and then those in the negative; if he still doubts, or a count is required by at least one-fifth of a quorum, he shall name one from each side of the question, to tell the Members in the affirmative and negative; which being reported, he shall rise and state the decision.

5986. In Committee of the Whole twenty, one-fifth of the quorum of one hundred, are required to order tellers.—On May 16, 1890,[6] during consideration of the tariff bill (H. R. 9416) in the Committee of the Whole House on the state of the Union, a question arose on a point of order raised by Mr. Benton McMillin, of Tennessee, as to the number required to order tellers in Committee of the Whole, and the Chairman[7] ruled:

The Chair will state that in the rules of the House the following is the only provision in regard to tellers: "If he, "referring to the Speaker, under Rule I, "still doubts or a count is required by at

[1] A demand for tellers held dilatory. (Secs. 5735, 5736 of this volume.)
[2] Delegates appointed as tellem. (Secs. 1302, 1303 of Vol. II.)
[3] As to the Journal record of a vote by ballot. (Sec. 232 of Vol. I.)
[4] Proceedings in balloting for President of the United States—
In 1801. (Sec. 1983 of Vol. III.)
In 1825. (Sec. 1994 of Vol. III.)
Voting by ballot for managers of an impeachment. (Secs. 2368, 2417 of Vol. III.)
[5] For history of this rule, see section 1311 of Vol. II of this work.
[6] First session Fifty-first Congress, Record, pp. 4784, 4786.
[7] Charles H. Grosvenor, of Ohio, Chairman.

least one-fifth of a quorum, he shall name one from each side of the question to tell the Members in the affirmative and negative."

The rule applies literally to the House, and one-fifth of a quorum would, in the present case, be thirty-four gentlemen rising. The rules state that these rules shall be applicable to the Committee of the Whole where applicable. Unless that rule does apply in the Committee of the Whole, then there would be no rule that would designate any number that would be sufficient to demand a vote by tellers. So that the Chair will hold that a quorum of the Committee of the Whole being 100, a demand of 20 is sufficient to order tellers.[1]

5987. It is the duty of the Member to serve as teller when appointed by the Chair.—On June 26, 1882,[2] on a question of order in Committee of the Whole, the Chairman [3] overruled a point of order made by Mr. Philip B. Thompson, jr., of Kentucky. Mr. Thompson having appealed and tellers being ordered on the appeal, the Chairman appointed Mr. Thompson one of the tellers.

Mr. Thompson declined to serve.

Then the Chairman turned to Mr. S. S. Cox, of New York, an old Member, and asked him if he would serve as teller.

Mr. Cox replied:

With the greatest pleasure, sir; it is my duty. [Applause.]

5988. After gentlemen favoring an amendment had declined to act as teller for a pending vote the Chair appointed the second teller from those opposed.—On March 1, 1907,[4] the House was in Committee of the Whole, when tellers were ordered on an amendment to the bill (S. 529) to promote the national defense, etc., known as the ship-subsidy bill, offered by Mr. William Sulzer, of New York. The Chairman [5] appointed as tellers Mr. Lucius N. Littauer, of New York, and Mr. Sulzer.

Mr. Sulzer declined to serve as teller.

The Chairman thereupon appointed Mr. Swager Sherley, of Kentucky.

Mr. Sherley declined to serve.

Thereupon the Chairman asked if any gentleman who favored the amendment would serve as teller.

No one responding, the Chairman appointed Mr. Sereno E. Payne, of New York, who was an opponent of the amendment, to act with Mr. Littauer, who was also an opponent.

5989. Two members of the minority party having successively declined to act as tellers, the Speaker directed the Member who had been appointed teller for the majority party to count the vote.—On March 29, 1894,[6] the House was considering an order proposed by Mr. Josiah Patterson, of Tennessee, that the Sergeant-at-Arms take into custody absent Members, the order to continue in force beyond the adjournment of the session for the day and until the further order of the House.

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[1] See also Record, p. 1785, first session Fifty-first Congress, for similar ruling.

[2] First session Forty-seventh Congress, Record, p. 5376.

[3] John H. Camp, of New York, Chairman.

[4] Second session Fifty-ninth Congress, Record, p. 4371.

[5] Frank D. Currier, of New Hampshire, Chairman.

[6] Second session Fifty-third Congress, Record, p. 3340; Journal, pp. 284, 286, 287.

The yeas and nays having been demanded, Mr. Sereno E. Payne, of New York, a member of the minority party in the House, demanded that the vote on ordering the yeas and nays be taken by tellers, and tellers were ordered.

The Speaker appointed Mr. Payne and Mr. Patterson as tellers.

Mr. Payne declined to act as teller.

The Speaker thereupon appointed Mr. Thomas B. Reed, of Maine, another member of the minority, who also declined to act.

The Speaker [1] then directed the other teller [Mr. Patterson] to count the vote on ordering the yeas and nays.

5990. When in the House a vote by tellers fails for lack of a quorum and motions relating to a call of the House interrupt, the vote by tellers is taken anew rather than by a count additional to the first vote.—On February 27, 1893,[2] Mr. George D. Wise, of Virginia, moved that the rules be suspended, and that the House agree to the amendments of the Senate to the bill (H. R. 9350) to promote the safety of employees and travelers upon railroads, by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes.

A second having been demanded by Mr. James D. Richardson, of Tennessee, and no quorum appearing on the question of seconding the motion,

Mr. Richardson moved that there be a call of the House, which motion was disagreed to.

The tellers, being still in their places, proceeded to count additional votes in favor of seconding the motion of Mr. Wise.

Mr. C. B. Kilgore, of Texas, made the point of order that inasmuch as the motion for a call of the House had been entertained and voted upon since the previous report of the tellers was made, the vote on seconding the motion of Mr. Wise must be taken de novo.

The Speaker [1] sustained the point of order.

5991. The count by tellers becoming uncertain by reason of confusion, the Chair ordered the vote taken again.—On June 24, 1882,[3] in a case wherein on a vote by tellers, Messrs. William D. Kelley, of Pennsylvania, and Samuel J. Randall, of Pennsylvania, being tellers, the committee divided amid great confusion, and after the vote was completed the Chairman [4] of the Committee of the Whole announced the vote as, ayes 99, noes 103. Mr. Randall at once challenged this, declaring that his count showed 103 in the affirmative; Mr. Kelley stated that his count made it less. The Chairman ruled that as the tellers disagreed, a new count should be had, and it was so ordered.

On February 21, 1905,[5] the House had resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the Philippine tariff bill (H. R. 18967).

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

[2] Second session Fifty-second Congress, Journal, p. 117–1 Record, p. 2240.

[3] First session Forty-seventh Congress, Record, p. 5319.

[4] John H. Camp, of New York, Chairman.

[5] Third session Fifty-eighth Congress, Record, p. 3001.

In the course of the consideration thereof, Mr. E. Y. Webb, of North Carolina, offered an amendment, and, after a division, Mr. Webb asked tellers; tellers were ordered, and the Chair appointed Mr. Sereno E. Payne, of New York, and Mr. Webb.

The committee again divided.

The tellers having announced several additions to the affirmative and negative votes, and there being some confusion in the count, producing uncertainty, the Chairman [1] said:

The Chair would say that this vote has become so confused that it is impossible to announce the exact result. The vote will therefore be taken again.

The committee again divided, and the tellers reported ayes 88, noes 98.

The Chairman announced:

The tellers announce ayes 88, noes 98. Accordingly, the amendment is rejected.

5992. Before the Chairman had declared the result of a vote by tellers, a question arose as to the count, and by unanimous consent the vote was taken again.—On February 23, 1904,[2] the House being in Committee of the Whole House on the state of the Union for the consideration of the naval appropriation bill, a vote was taken by tellers and a question arose as to the count, and there was a misunderstanding between the tellers as to the result.

Mr. Alston G. Dayton, of West Virginia, asked unanimous consent that the vote be taken again.

There was no objection, and it was so ordered.

5993. A vote by tellers having been taken and the result announced, a recount may be had only by unanimous consent.—On September 27, 1850,[3] while the general appropriation bill was under consideration in Committee of the Whole House on the state of the Union, an appeal was taken from a decision of the Chair, and the vote was taken by tellers. On this vote the tellers reported in favor of sustaining the Chair 67, and opposed 59. The tellers also reported that they were informed by several Members that they had voted under a misapprehension and desired a recount.

The Chairman [4] said that he knew of no means by which a recount could be had except by unanimous consent.

5994. On May 12, 1852,[5] in Committee of the Whole House on the state of the Union, a vote had been taken by tellers on an appeal from the decision of the Chair.

The result of the vote having been announced as ayes 63, noes 64, Mr. Edward Stanly, of North Carolina, made the point of order that a number of names were included in the count after the tellers had reported and that the confusion had been so great that there had been no fair count.

Objection being made to a recount, the Chairman [6] said:

The Chair is of opinion that after a vote has been taken, and the decision announced, there can not be a recount except by unanimous consent.

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[1] Charles F. Scott, of Kansas, Chairman.

[2] Second session Fifty-eighth Congress, Record, p. 2280.

[3] First session Thirty-first Congress, Globe, p. 1990.

[4] Armistead Burt, of South Carolina, Chairman.

[5] First session Thirty-second Congress, Globe, p. 1348.

[6] Harry Hibbard, of New Hampshire, Chairman.

An appeal being taken, the decision of the Chair was sustained, ayes 80, noes 63.

5995. After the Chair had announced the result of a vote by tellers, he proposed, because of confusion during the voting, to order the vote taken again, but the Committee of the Whole, on appeal, decided against the proposed action.—On February 9, 1846,[1] the House was in Committee of the Whole House on the state of the Union considering the joint resolution giving notice to Great Britain of the termination of the convention regarding the Oregon territory. Upon a vote by tellers on an amendment declaring that the differences with Great Britain should be adjusted by honorable negotiation, the vote was announced as 102 ayes, and then as 101 ayes, to 99 noes.

There was some dissatisfaction, and Mr. Stephen A. Douglas, of Illinois, one of the tellers, was understood to say that as Members passed through rapidly a mistake might have occurred, but he entertained no doubt that the vote as reported was correct.

The Chairman thereupon ordered another count.

Mr. Robert B. Rhett, of South Carolina, said that as the Chairman had declared the amendment agreed to he should object to the vote being retaken.

The Chairman[2] admitted that he had declared the amendment adopted, but as difficulty had arisen and some mistake might have occurred he would order a new vote. Thereupon he appointed tellers again, and they were proceeding to take their places when Mr. Robert C. Schenck, of Ohio, appealed from the decision of the Chair, holding that one of the tellers had stated his belief that the count was accurate, although there had been confusion. A vote being taken on the appeal, the decision of the Chair was reversed by a vote of 108 to 90. So the vote was not taken anew.

5996. The Chair may be counted on a vote by tellers.—On February 14, 1901[3] while the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, a vote was taken on an amendment proposed by Mr. James D. Richardson, of Tennessee, and relating to certain payments on account of the old custom-house in New York City.

On a division, there being ayes 75, noes 75, Mr. Richardson demanded tellers, which were ordered.

Before the announcement of the vote by tellers the Chairman[4] announced that he would like to be considered as having gone between the tellers. Thereupon he announced the result, ayes 92, noes 92, and that the amendment was lost.

5997. On February 18, 1904,[5] the fortifications appropriation bill was under consideration in Committee of the Whole House on the state of Union when Mr. Choice B. Randell, of Texas, proposed an amendment and a vote thereon was ordered by tellers.

The tellers reported ayes 79, noes 78.

Thereupon the Chairman[6] announced that he voted in the negative, that the ayes were 79 and noes 79, and that the amendment was disagreed to.

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[1] First session Twenty-ninth Congress, Globe, p. 347.

[2] John W. Tibbatts, of Kentucky, Chairman.

[3] Second session Fifty-sixth Congress, Record, p. 2434.

[4] Henry S. Boutelle, of Illinois, Chairman.

[5] Second session Fifty-eighth Congress, Record, p. 2049.

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

5998. A demand for tellers is not precluded or set aside by the fact that the yeas and nays are demanded and refused.—On May 26, 1906,[1] Mr. Robert Adams, jr., of Pennsylvania, moved to close general debate in Committee of the Whole House on the state of the Union on the pending consular and diplomatic appropriation bill, and the Speaker announced the result of a division, ayes 100, noes 93.

Mr. James Breck Perkins, of New York, demanded tellers.

Mr. De Alva S. Alexander, of New York, demanded the yeas and nays.

The yeas and nays were refused.

Mr. Lemuel P. Padgett, of Tennessee, called attention to the pending demand for tellers.

Mr. Adams made the point of order that after the refusal of the yeas and nays it was too late to demand or order tellers.

The Speaker[2] held:

The Chair, after inquiry, does not find that this question is controlled or enlightened by a precedent. There may be precedents in the premises, but, if so, they can not be found after hasty examination. Now, the gentleman demanded tellers. Pending that demand the yeas and nays were demanded and the yeas and nays were refused. It does seem to the Chair that the demand for tellers, not having been disposed of, might be regarded as pending, because, perchance, the Chair may have miscounted, the vote being close, or, perchance, gentlemen may have changed their judgment between the time the count was made by the Chair and the present time. As many as are in favor of ordering tellers will rise and stand until counted.

5999. The right to demand tellers as a further evidence of the vote is not waived by the fact that a question has been raised as to the presence of a quorum on the division, and the Chair has counted the House.—On April 26, 1890,[3] the House was considering the legislative, executive, and judicial appropriation bill, and the question being on the motion of Mr. Benjamin Butterworth, of Ohio, that the previous question be ordered on the bill and amendments, there were, on division, ayes 136, noes 10.

Mr. William D. Bynum, of Indiana, made the point of order that no quorum had voted, and the further point that no quorum was present.

The Speaker pro tempore overruled the first point of order and proceeded to count the House.

After completing the count the Speaker pro tempore stated that 167 Members, more than a quorum, were present.

Mr. Bynum demanded tellers upon the vote.

Mr. Lewis E. Payson, of Illinois, made the point of order that the demand was not in order after the count by the Speaker pro tempore.

After debate on the point of order, the Speaker pro tempore[4] said:

This question comes up under the motion of the gentleman from Ohio for the previous question on the bill and amendments. That question was put to the House and the Chair declared the ayes seemed to have it, whereupon a division was demanded, and the vote on division was declared to be 136 in the affirmative and 10 in the negative. Thereupon the gentleman from Indiana made the point

[1] First session Fifty-ninth Congress, Record, p. 7473.

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

[3] First session Fifty-first Congress, Journal, pp. 528, 529; Record, p. 3911.

[4] Julius C. Burrows, of Michigan, Speaker pro tempore.

that no quorum had voted and that no quorum was present. The Chair overruled the point of order that no quorum had voted, and to ascertain whether a quorum was present proceeded to count the House. Upon counting the House the Chair found 167 Members present and overruled the second point of order. Thereupon the gentleman from Indiana demanded tellers. Against this demand the gentleman from Illinois makes the point of order that the demand comes too late and that the right to demand tellers has been waived.

The Chair thinks the point of order is not well taken. Upon the division, a quorum not having voted, it was the right of any Member to make the point that a quorum was not present and arrest all proceedings until that fact could be ascertained. Upon the ascertainment of that fact, and a quorum found to present, it was the right of the House to have either tellers or the yeas and nays on the pending motion for the previous question.

The Chair therefore overrules the point of order.

6000. On March 29, 1906,[1] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a vote was taken viva voce on an amendment specifying the qualifications of a law clerk provided for one of the Departments.

The Chair having announced that the noes appeared to have it, Mr. Charles L. Bartlett, of Georgia, called for a division.

On division there appeared ayes 20, noes 43.

Mr. Charles L. Bartlett made the point that no quorum was present

The Chair, after counting, announced 106 gentlemen present—a quorum.

Mr. Bartlett, rising to a parliamentary inquiry, asked if it was too late to demand tellers.

The Chairman[2] referring to a precedent quoted in the Manual, decided it in order to demand tellers.

6001. Tellers having been ordered and appointed in Committee of the Whole, it is not in order to move that the committee rise pending the taking of the vote.[3]—On January 13, 1898,[4] during the consideration of the agricultural appropriation bill in Committee of the Whole, Mr. Sereno E. Payne, of New York, called for tellers after a vote by division had been taken on an amendment.

Tellers were ordered, and Messrs. Champ Clark, of Missouri, and Payne were appointed.

Thereupon Mr. James W. Wadsworth, of New York, moved that the committee rise.

Mr. Clark made the point of order that the motion was not in order while the committee was dividing.

The Chairman[5] held:

Tellers having been ordered, it is not in order, as the Chair understands, to move that the committee rise pending the taking of the vote. The tellers will take their places.

6002. Before the adoption of rules, while the House was acting under the general parliamentary law, it was held that the right to demand tellers did not exist.

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[1] First session Fifty-ninth Congress, Record, p. 4462.

[2] Marlin E. Olmsted, of Pennsylvania, Chairman.

[3] See also sections 4771–4773 of Vol. IV of this work.

[4] Second session Fifty-fifth Congress, Record, p. 605.

[5] John A. T. Hull, of Iowa, Chairman.

The rules of one House of Representatives are not binding on a succeeding House, directly or indirectly, unless adopted by the latter House.

The right of appeal insures the House against the arbitrary control of the Speaker, and can not be taken away from the House.

One of the suppositions on which the parliamentary law is founded is that the Speaker will not betray his duty to make an honest count on a division.

On January 21, 1890,[1] before rules had been adopted and while the House was proceeding under general parliamentary law, a division was had on the motion of Mr. Richard P. Bland, of Missouri, to amend the Journal, and the Speaker declared that the noes had it and that the motion was lost.

Mr. Bland demanded tellers.

The Speaker[2] held that there was no rule requiring or authorizing the appointment of tellers and declined to appoint tellers on the said motion.[3]

Mr. Bland having appealed, the appeal was debated at length, and the Speaker, in submitting the question to the House, said:

The Chair desires to state the pending matter to the House.

The Chair has always been unable to see how it was possible for a House which had passed out of existence to bind by rules and regulations a House which was to come into existence in the future. The recent decisions by the Speaker of the House have been to the effect that the rules of the last House (did not become the rules of the present House directly.[4] The Chair is unable to see how they can become the rules of the present House indirectly.

The very fact that they have been made as rules shows clearly the necessity for their special enactment. If they became by any indirection the rules of the next House it would not become necessary to reenact them.

This House, then, is governed by the general parliamentary law such as has been established in the same manner that the common law of England was established, by repeated decisions and the general acquiescence of the people in a system which governs all ordinary assemblies.

The United States is filled with a people unusually devoted to public meetings. These public meetings have to be governed by a system of rules or principles which have been both designated and acted upon by various meetings in great numbers to such an extent that a well-defined parliamentary law has been established.

The suggestion which has been made during this debate that the matter of the control of the House is under the exclusive control of the occupant of the chair is at this very moment receiving a negative, because an appeal is pending in this case, as has been or might be in many others, against the decision of the Chair. All decisions from the Chair by appeals, which are made under proper circumstances and in good faith, are subject to revision by the majority of the House. Consequently there is not and can not be any arbitrary control of this body against its will. The Speaker, for the time being and as a matter of convenience arising from the nature of his office, makes a ruling upon the subject which is before the House. That ruling is always subject to revision by the House itself, and no one can take away that right on the part of the House.

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[1] First session Fifty-first Congress, Journal, p. 144; Record, pp. 741–749.

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

[3] For rule of the House relating to tellers see section 5985 of this chapter.

[4] At the beginning of the Government it was assumed that the rules ceased to be effective when the House ceased; and in the Second Congress the House by resolution adopted the rules of the House in the First Congress. (First session Second Congress, Journal, p. 439; Annals, p. 143.) See also debate of May 15, 1797 (first session Fifth Congress, Annals, p. 51), where the view was taken that the rules of a former House were not binding on its successor. (See also secs. 6743–6755 of this volume.)

The present occupant of the chair has frequently ordered tellers since the beginning of this session of Congress on demand of the Members of the House and is not in any way unwilling to do so; but the question has come up now as a matter of right, and whatever the wishes of the present occupant of the chair may be, he is obliged to decide in accordance with what he regards as the unmistakable parliamentary law.

It has been stated that tellers are usual in the British Parliament. That is true. It is one of their customs. But the taking of a vote by tellers there is different from the taking of a vote by tellers here. It requires those who occupy a certain attitude toward the question to go out into the lobby and to be counted, while the others are counted in another place, a proceeding entirely unlike that adopted in this country. It is a method of division.

Some fears have been expressed as to what would be the result if the occupant of the chair desired to wrest from the Members their control. All parliamentary law must be based upon the supposition that a man who it elected to preside over the deliberations of a body will be an honest official—honestly perform his duty.

It has been suggested here also that the Speaker might, on a question of yeas and nays, miscount, and that if tellers can be ordered, as under the rules of the last House, that miscount might be corrected; but it is necessary in order to have tellers to have one-fifth of a quorum, and under the rules of the last House the Speaker himself counts that one-fifth. Ultimately, the House will perceive, the Speaker is the counting officer, and the supposition that he would betray his duties is not a supposition upon which parliamentary law is founded, or the rules of the last House. Finding parliamentary law to be what I conceived it to be, that a division may be had whereby the Speaker may count, first, by sound of voice, and, second, by Members rising in their places, and that the division as recorded may be corrected under the constitutional rights for the yeas and nays, I have been compelled to make the decision that I have made; and the question is, Shall the judgment of the Chair stand as the judgment of the House?

On motion of Mr. Joseph G. Cannon, of Illinois, the appeal was laid on the table by a vote of 149 yeas to 137 nays, and so the decision of the Chair was sustained.

6003. The rule provides that on an election by ballot a majority shall be required to elect, and, if necessary, ballots shall be repeated until a majority be obtained.

In balloting in early years of the House there was uncertainty as to treatment of blanks, but later a rule established the principle that they should not be considered as votes.

Present form and history of Rule XL.

Rule XL provides:

In all other cases of ballot[1] than for committees a majority of the votes given shall be necessary to an election, and where there shall not be such a majority on the first ballot[2] the ballots shall be repeated until a majority be obtained; and in all balloting blanks shall be rejected and not taken into the count in enumeration of votes or reported by the tellers.

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[1] July 20, 1629, the newly arrived emigrants at Salem, Mass., chose their pastor and teacher, "the vote being taken by each one's writing in a note the name of his choice. Such is the origin of the use of the ballot on this continent." History of United States, Bancroft, Vol. I, pp. 271, 272.

[2] Where each ballot cast contains several names some curious results may be produced.

Thus, in choosing a committee of three, twenty ballots (each evidently containing the names of three candidates) produced for the five candidates, A, B, C, D, and E, the following result:

A	16
B	15
C	12
D	11
E	6
	60

This is the exact form reported in the revision of 1880.[1] It was formerly Rule No. 12, and dated from April 7, 1789, and September 15, 1837.

The portion adopted in 1789[2] was as follows:

In all other cases of ballot than for committees, a majority of the votes given shall be necessary to an election; and where there shall not be such a majority on the first ballot, the ballots shall be repeated until a majority be obtained.

The rule immediately preceding this provided that all committees consisting of more than three members should be chosen by ballot, and provided for the con

(Footnote—Continued.)

Thus four, instead of three, had the required majority, eleven being a majority of twenty. This paradox is not only possible, but is capable of taking forms still more troublesome.

Thus there might have been either of the following results:

A	20	16	12
B	17	11	12
C	11	11	12
D	11	11	12
E	1	11	12
	60	60	60

And had the twenty persons (each voting for three) divided their votes among six persons instead of five the result might have been as follows:

A	11	16
B	11	14
C	11	14
D	11	14
E	11	1
F	5	1
	60	60

Thus in each case more than three have the majority number, eleven.

It will be noticed also that if the number voted for be reduced to four the possibilities of the complication greatly increase:

A	15	20
B	15	18
C	15	11
D	15	11
	60	60

If the votes are so divided that each of the number of persons to be chosen has of votes as many as or more than a majority of the ballots (not votes) cast, and no one else has a number of votes as large as that majority of the ballots, the result may be said to be determined satisfactorily.

Thus either of the following results would be satisfactory for the election of a committee of three by a club of twenty where six persons were voled for:

A	11	13
B	11	12
C	11	11
D	9	10
E	9	9
F	9	5
	60	60

[1] Second session Forty-sixth Congress, Record, p. 207.

[2] First session First Congress, Journal, p. 10.

tingency of several ballots and plurality elections in case the members required should not each receive a majority.

(Footnote—Continued.)

When, under conditions otherwise the same, the number voted for should be five the results as follows would be satisfactory:

A	14	15	18
B	13	14	12
C	13	13	11
D	10	9	10
E	10	9	9
	60	60	60

Where, under conditions otherwise the same, four persons are voted for the following results would be satisfactory:

A	20	17	17	20
B	19	17	17	19
C	11	17	16	11
D	10	9	10	10
	60	60	60	60

If, now, under the same conditions, the votes are divided among eight persons instead of four these results would be satisfactory:

A	11	13	20
B	11	12	19
C	11	11	11
D	7	10	6
E	5	9	1
F	5	2	1
G	5	2	1
H	5	1	1
	60	60	60

It is evident that the liability to produce majorities for more than the required number increases as the number of persons voted for diminishes, and vice versa.

It seems impossible to evolve any formula that will enable a ballot to be tested on strict mathematical principles.

The experiences of various bodies have, however, evolved satisfactory solutions. The United States House of Representatives once had a rule governing balloting for committees. That rule, adopted first on April 7, 1789 (Journal of House, first session First Congress, p. 10), and continued until the revision of 1880, when it was apparently dropped because the House had ceased to elect committees (Journal, first session Forty-sixth Congress, p. 624), provided for certain contingencies:

"If upon such ballot the number required shall not be elected by a majority of the votes given, the House shall proceed to a second ballot, in which a plurality of votes shall prevail; and in case a greater number than are required to compose or complete the committee shall have an equal number of votes, the House shall proceed to a further ballot or ballots."

Under this rule those who had a majority on the first ballot were considered elected, and the second ballot was taken for selection of the remaining members. But this rule might not have been satisfactory under certain conditions.

It is a wrong principle under these circumstances to have a ballot vote hampered by an unqualified majority requirement. The rule provided in the statutes of Maine and Massachusetts, and established in the latter State as early as 1836, seems on the whole the best:

"And if a number greater than is required to be chosen receive a majority of said whole number, the number so required of those who have the greatest excess in votes over such majority shall be declared elected."

Later the rule was changed to provide that all committees should be appointed by the Speaker;[1] but the phraseology of the rule relating to the ballot has remained in its first form.

A question was arising frequently for which the rule in this form gave no answer. On December 10, 1821,[2] at the election of Chaplain of the House, the tellers reported a blank ballot. It did not, however, affect the result. On February 10, 1829,[3] in the election of printer of the House, 2 blanks were counted in determining the total vote and the number needed for a choice, but they did not affect the result, and no question seems to have been raised.

On February 14 and 15, 1833,[4] 14 ballots were taken for the election of a printer to the House, and on every one of these ballotings but 2 blanks were cast and reported by the tellers. On the eighth ballot 4 blanks were thrown, and the number of votes required for a choice was 99. F. P. Blair had 98. If the 4 blanks had been rejected the number required for a choice would have been 97, and Mr. Blair would have been elected. On the fourteenth ballot Gales & Seaton were elected. No question seems to have been made as to counting the blanks.

Again, on December 3, 1833,[5] on the second ballot for Clerk the result was Clarke 112, Franklin 114, blanks 2. It being considered that no one had a majority, a third ballot was had.

On June 2, 1834,[6] at the election of Speaker to succeed Mr. Speaker Stevenson, who had resigned, 6 blanks were cast on the ninth ballot. Counting these blanks the total votes was 211, and 106 was necessary to a choice. John Bell, of Tennessee, had 104, and under the system of counting blanks as votes, was not elected. So the House proceeded to another ballot. Not counting the 6 blanks the total vote would have been 205, necessary to choice 103, and Mr. Bell would have been elected on the ninth ballot.

In the Senate, also, on June 28, 1834,[7] in electing a President pro tempore, on the first ballot 2 blanks were counted, making the total vote 42, necessary to a choice 22. Mr. Poindexter having 21, was not elected, although 21 would have been just enough to elect had the blanks been rejected. No question was raised.

These precedents do not, however, represent a fixed practice that blanks should be counted, as was shown in no less an instance than the balloting for a President of the United States in the House of Representatives.[8]

Probably because of the uncertainties in the practice, on September 15, 1837,[9] Mr. Levi Lincoln, of Massachusetts, suggested this addition to the rule, which was adopted:

> And in all balloting blanks shall be rejected and not taken into the count in enumeration of votes or reported by the tellers.

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[1] See section 4448 of Vol. IV of this work.

[2] First session Seventeenth Congress, Annals, p. 533.

[3] Second session Twentieth Congress, Journal, p. 271.

[4] Second session Twenty-second Congress, Debates, pp. 1725, 1726.

[5] First session Twenty-third Congress, Debates, p. 2137.

[6] First session Twenty-third Congress, Debates, p. 4372.

[7] First session Twenty-third Congress, Debates, p. 2122.

[8] See section 6008 of this chapter.

[9] First session Twenty-fifth Congress, Journal, p. 64; Globe, p. 35.

The ballot has long been unused in the House.[1] Officers are elected viva voce, and the committees are appointed by the Speaker.

6004. The rule in relation to election by ballot does not require that method of voting.

It being proposed to elect an officer of the House, an amendment prescribing viva voce election is in order.

On December 3, 1838[2] the House was considering a motion to proceed to the election of a Clerk, and Mr. George C. Dromgoole, of Virginia, had moved an amendment "that the election be made viva voce."

Objection was made, especially by Mr. John Quincy Adams, of Massachusetts, that such a motion would conflict with the rule of the House requiring election by ballot.

The Speaker[3] said that there was no such rule, the only one having reference to that point merely providing what should be done in case of election by ballot.

The Speaker also held that such a motion was in order in connection with the motion to proceed to the election of Clerk.

6005. On December 10, 1838,[4] Mr. George C. Dromgoole, of Virginia, proposed the following rule:

> In all cases of election by the House the vote shall be taken viva voce.

Mr. Dromgoole urged the rule as necessary to carry out the great Democratic doctrine of accountability. Viva voce voting prevailed at the elections in his State. The rule was opposed on the ground that it was inconvenient, an innovation on the practice of fifty years in the House, and destructive of independent voting.

The rule was agreed to, yeas 124, nays 84.

After the adoption of the rule, Mr. John Quincy Adams, of Massachusetts, raised the question that the rule was unconstitutional, since the Constitution provided that elections by the House should be by ballot.[5]

The rule was thereupon amended by inserting after the word "House" the words "of its officers."

6006. It being ordered that a majority of the ballots cast shall elect, it is not in order at the conclusion of a ballot to move that the person having a plurality only shall be declared elected.—On March 1, 1827,[6] the Senate having agreed to a resolution that on a ballot for public printer a majority of those voting should be required to elect the ballot was taken, and of a total of 47 votes, Duff Green had 22.

Mr. John Henry Eaton, of Tennessee, offered a resolution that, as Duff Green had a plurality of votes, he was duly elected printer.

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[1] See, however, the chapter on "Impeachments," of which the managers have in many cases been elected by ballot. As late as 1868 the managers of the impeachment of the President were chosen by ballot. (See section 24117 of Vol. III.)

[2] Third session Twenty-fifth Congress, Journal, p. 8; Globe, pp. 1, 2.

[3] Ames K. Polk, of Tennessee, Speaker.

[4] Third session Twenty-fifth Congress, Journal, p. 49; Globe, pp. 19, 20.

[5] The reference is to Article XII of the Constitution, which requires that the House shall vote for a President of the United States by ballot.

[6] Second session Nineteenth Congress, Debates, p. 499. John C. Calhoun, Vice-President.

The Chair decided that the resolution was not in order, and another ballot was then taken.

6007. After the tellers have begun to count the ballots it is too late for a Member to offer his vote.—On December 5, 1831,[1] the House, having been called to order by the Clerk, and the presence of a quorum having been ascertained and announced, proceeded without further motion to the election of a Speaker by ballot.

After the tellers had commenced counting the votes, Mr. Eleutheros Cooke, of Ohio, who had been out of the Hall when the ballot boxes were passed around, offered his ballot to the tellers.

The tellers hesitated as to receiving it, a question of the regularity of such proceeding being raised, and Mr. Cooke refrained from pressing his claim to vote.

The count being completed, the tellers announced that 195 votes had been cast, and that 98 votes were necessary to a choice. Mr. Andrew Stevenson, of Virginia, having just 98 votes, was therefore elected.

6008. Early precedents as to blank ballots in the elections of a Speaker and a President of the United States.—On May 22, 1809,[2] a quorum being present, the House proceeded by ballot to the choice of a Speaker.

Tellers having been appointed, and the ballot[3] having been taken, one of the tellers reported the following result:

For Joseph B. Varnum, 60; Nathaniel Macon, 36; Timothy Pitkin, jr., 20; Roger Nelson, 1; C. W. Goldsborough, 1; blank ballots, 2.

Mr. Varnum. having 60 votes, it was submitted to the decision of the House by the tellers whether the blank ballots should be considered as votes; if not, there being but 118 votes, Mr. Varnum, having 60, had a majority.

Discussion arising, Mr. Macon, of North Carolina, who was second in the ballot, expressed the opinion that blank ballots could not be counted, and hoped that Mr. Varnum would be conducted to the Chair. He recalled the blank ballots cast in the Presidential election of 1801 as a precedent.[4]

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[1] First session Twenty-second Congress, Debates, p. 1420. The Journal (p. 7) merely announces that the House proceeded to ballot and that upon the examination of the first ballot it appeared, etc.

[2] First session Eleventh Congress, Journal, p. 5 (Gales & Seaton, ed.); Annals, pp. 54–56.

[3] Speakers are no longer elected by ballot.

[4] The facts as to those blanks were as follows (Journal, second session Sixth Congress, pp. 801, 803, Gales & Seaton ed.): On the eighth ballot there were eight States for Jefferson, six for Burr, and two divided, i. e., the ballot in the State delegation showed a tie, and so the vote was reported "divided" under the rule. The same result continued until the thirty-sixth ballot, where they were ten States for Jefferson, four for Burr, and the votes of two States "given in blank."

From a footnote in the Annals (p. 1033) it appears that the States voting in blank were Delaware and South Carolina. Delaware had one Member. The States reported divided in the earlier ballots were Vermont and Maryland. In the final ballot these went to Jefferson. Maryland did it in this wise: She had formerly thrown four votes for Jefferson and four for Burr, but in the final ballot the four supporters of Burr threw four blanks. This made the vote four for Jefferson and four blank. Query.—If a blank is a ballot should not Maryland have continued to be reported divided? The rule under which the election was held provided: "In case the vote of the State be for one person, then the name of that person shall be written on each of the duplicates; and in case the ballots of the State be equally divided, then the word 'divided' shall be written on each duplicate."

Mr. John Randolph, of Virginia, opposed this view strenuously. He said the House had not elected their Speaker. A Member should not consent to take the Chair on the vote of a minority. He hoped the House would elect their Speaker "more majorum, after the manner of their ancestors."

Mr. Randolph then moved that they proceed to ballot a second time for Speaker, which motion was carried, 67 ayes, to 43 noes. On the next ballot Mr. Varnum had a majority of votes, 65 out of a total of 119. On the next day the entry in the Journal simply stated that a majority of the votes were for Mr. Varnum. Thereupon Mr. Randolph moved to amend the Journal so as to show the facts in regard to the two ballots. After a discussion [1] of the decision of the previous day and its analogy to the precedent of 1801, Mr. Randolph's motion was agreed to.

In the amended form the Journal states: "Sixty-five votes, being a majority of the whole number of members present, were found in favor of Joseph B. Varnum." The Journal nowhere states, however, that all present voted. The can of the roll by States records 126 responding on the call by States, just preceding the election of Speaker. Although only 119 voted on the second ballot, the 65 for Mr. Varnum were a majority of all present as well as of all voting.

6009. On August 21, 1852,[2] a select committee of the Senate reported on the contested case of Yulee *v.* Mallory, from Florida, where the joint convention of the legislature had voted under the concurrent order:

Resolved, That a majority of all the members-elect, composing the two houses of general assembly shall be necessary to determine all elections devolving upon that body.

At the voting the following occurred:

The president of the senate presided, and upon a call of the roll, a poll viva voce was taken of the members, pursuant to the requirements of the constitution of the State, and twenty-nine responded David L. Yulee, and twenty-nine blank, whereupon the presiding officer declared that no choice had been made; they then proceeded to a second and third vote, with substantially the same result. On the 15th of January they again met in convention for the same purpose, and upon a call of the roll thirty-one members responded R. S. Mallory, and twenty-seven votes for Mr. Yulee and others; whereupon the president declared Mr. Mallory to be duly elected.

The committee found that the legislature had proceeded in accordance with a valid order, and that Mr. Mallory was elected. The Senate concurred in the report.

6010. On a ballot to elect managers for an impeachment, ballots on which the names were doubtful were not counted.—On January 2, 1804 [3] the House was balloting for 11 managers of the impeachment of Judge Pickering, when several votes given for Messrs. Randolph, Mitchell, Campbell, and Clay were not counted owings to there being other gentlemen of similar names in the House. Messrs. J. Randolph, S. L. Mitchell, G. W. Campbell, and J. Clay were leading candidates, all of whom were elected. It does not appear that nominations were made preceding the balloting.

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[1] The Annals (pp. 57, 58) do not give this discussion.

[2] First session Thirty-second Congress, 1 Bartlett, p. 611.

[3] First session Eighth Congress, Annals, p. 796.