A HANDBOOK ON PARLIAMENTARY PRACTICE

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PREFACE.

The law of order in deliberative assemblies is not dependent upon arbitrary rules and meaningless forms, as has been supposed, but it is founded upon reason and established precedent. This book proceeds upon the recognition of the law as a science, and the application of its principles as an art.

The manipulation of business, by means of motions, constitutes almost entirely what is known as parliamentary law. Attempting to reduce it to system *so that questions may be readily solved on principle*, I have made a new classification of motions, arranging them in sets according to their character, and suggesting the reasons that underlie them; and I have sought to present the general subject in a natural order, conducive to simplicity and certainty.

The plan does not seek to disturb the present methods of doing business. The purpose is to treat those methods in a simple yet thorough way; enable the learner to acquire knowledge of them easily, and aid the parliamentarian to handle his implements skillfully.

Though no innovations upon established usages have been made or designed, disagreements with preceding writers have been unavoidable, owing to differences in plan and theory. Their works are mainly based upon the adopted rules of particular assemblies.

Almost every legislative body in the country has a compilation embracing its own special regulations and the rulings thereon, with valuable documentary matter, but constituting no system and furnishing no means for determining new questions as they arise from time to

time. The legislator, supplied with such necessary information thus collected, is like the member of a society holding its constitution and by-laws in his hand: neither has any key for the solution of problems, new and complicated, as they arise in the course of parliamentary procedure.

The citation of precedents has been avoided herein for the reasons stated in §§ 204, 206, and because, in a work confined to the practice, I could not have given the origin and history of established usages without making the book too long, and somewhat impairing its unity. By omitting topics not strictly pertinent, I have been enabled to give more space than has been usual to the subject of practice.

There is repetition, owing to the catechetical review at the end of each chapter; but, should students or others prefer that form of presentation, and find it helpful, perhaps the more critical reader will withhold objection. The list of exceptional motions may prove convenient for reference. I have not endeavored, by the preparation of tables and other mechanical appliances, to obviate the necessity for study. I aim to help—by methodizing—by making simple; but not to open any "royal road." The advantages of a competent knowledge of parliamentary science are so great, and its acquisition comparatively so easy, that every citizen ought to give the subject his attention; yet there is, perhaps, no other of equal importance which is so much neglected by educated men.

For further explanations, especially with reference to the importance given herein to parliamentary common law and its applicability to all deliberative bodies whatever, the reader is referred to the fifteenth chapter.

R. W.

Ann Arbor, Mich.

PREFACE TO THE SECOND EDITION.

Eighteen years have passed since this book was first published. During this time there has been a large correspondence on the subject of it, and many questions have been asked and answered; yet no one has pointed out any error in the work. Some explanations, however, seem advisable, and some additional matter desirable. This book now introduces its subject more gradually than it did before, presenting first the elementary principles. A new chapter is added, covering several topics and attempting to correct some misleading notions.

The book could hardly be more simple and yet be thorough. It is hoped that the new edition will not prove less valuable than the old to schools, deliberative bodies, and to readers.

Many testimonials have been received from teachers attesting the adaptability of the work to their purpose. New questions are readily answered by the application of the principles evolved. Wherever other manuals differ with each other, it is easy to determine which is right by such application. No other adopts the method of this, or claims like result. There is no competition in this respect; the *Handbook of Parliamentary Practice* stands alone.

No novelty in the law and usages of deliberative bodies is introduced or attempted; on the contrary, the merit claimed is that of rendering rules of order *plain, certain* and *readily applied.*

R. W.

Ann Arbor, Mich.

CONTENTS.

Note.—The indices at the head of each chapter refer to the sections—not to the questions. The latter are numbered for convenience in referring to them—not to make them correspond with the sections. Such correspondence is unnecessary, since answers immediately follow the questions.

CLASSIFICATION OF MOTIONS.

MOTIONS

- **PRINCIPAL ...**
  - **Ordinary** ..... — All motions of a general character which are not entitled to preference.
  - **Privileged** .....
    - Motion to fix the day to which to adjourn, when necessary.
    - " to adjourn.
    - " raising a question of privilege { Affecting the body. / Affecting a member.
    - " raising a privileged question.
    - " necessitous or urgent in character.
- **SUBSIDIARY ..**
  - **Declinatory** ..... { Question of consideration. / Motion to postpone indefinitely.
  - **Amendatory** .....
    - Motion to amend a principal motion { By addition. / By elimination. / By substitution.
    - " to amend an amendment thereto.
    - " to amend another subsidiary motion.
  - **Dilatory** .....
    - Motion to commit { To a standing committee. / To a select committee.
    - " to postpone to a certain day { Special order. / General order.
    - " to lay on the table { Subject to call. / Without qualification.
  - **Complemental.. ..**
    - Motion to fill a blank in a skeleton resolution with a name.
    - " " " " " " number.
    - " " " " " " sum.
  - **Incidental** .....
    - Motion to suspend rules.
    - " to withdraw a motion.
    - " to divide a resolution.
    - " to read a paper { Paper under consideration. / Paper not under consideration.
    - " to dispose of a question of order. { Raising the question. / Appealing from decision.
  - **Relative to Voting.**
    - Motion for the previous question { To order the main question to vote. / To order a subsidiary question to vote. / To order a series to vote.
    - " to order the method of voting { By division. / By yeas and nays. / By voice. / By ballot.
    - " to reconsider a vote.

REFERENCE LIST OF EXCEPTIONAL MOTIONS.

KEY.

1. Amended, cannot be.
2. Committed, cannot be.
3. Debated, cannot be.
4. Divided, cannot be.
5. Entered without moving in session, may be.
6. Indefinitely postponed, cannot be.
7. Journalized, need not be.
8. Moved while another has the floor, may be.
9. Moved when another question is under debate, may be.
10. Notice necessary.
11. Opens debate on the main question.
12. Postponed to a certain day cannot be.
13. Prequestioned, cannot be.
14. Question of consideration inapplicable.
15. Quorum, may be moved without.
16. Reconsidered, cannot be.
17. Seconded, need not be.
18. Tabled, cannot be.
19. Two-thirds required.
20. Unanimous consent required.
21. Withdrawn by the mover, cannot be.
22. Yeas and nays cannot be ordered.

Note.—The numbers in the Key correspond with those in the list below. H. refers to the practice in U. S. House of Representatives; S. refers to special rules usual in societies.

Generally speaking, all motions may be amended, committed, debated, postponed, tabled, prequestioned, reconsidered, etc., but the following list presents the exceptions and indicates answers to over 2000 questions.

LIST.

Accept a report, motion to, 1, 2, 4, 6, 12.
Adhere to amendment, bill, etc., motion to (H. 1, 2, 4, 6, 12).
Adjourn, motion to, 1, 2, 3, 4, 6, 9, 12, 13, 14, 15, 16, 18.
Adjourn to a certain time, motion to, 2, 4, 6, 12, 16.
Agree to a Senate amendment, motion to (H. 1, 2, 4, 6, 12).
Amend, motion to, 6, 9.
Amend an amendment, motion to, 1, 6.
Amend rules, motion to (H. 10, 19); (S. 10, 19).
Amend, after debate is closed, motion to, 3, 6.
Amended motion, 21.

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LIST—*Continued.*

Amendment entire reported from the Committee of the Whole (H. 4).
Amendment from the Senate (H. 4).
Appeal, 1, 2, 4, 13.
Appeal relating to a breach of order, 1, 2, 8
Appeal on a question of order taken after the previous question is moved, 3.
Appeal decided after the passage of a bill to which it relates (H. 16).
Appoint the next meeting, privileged motion to, 2, 3, 4, 9, 12, 13, 14, 15, 18.
Appoint the next meeting, ordinary motion to, 4, 12.
Bill on first reading (H. 1, 3).
Bill upon its passage (H. 1, 14).
Bill introduced on call of States and Territories, motion to refer (H. 2, 3, 6, 12).
Business priority, motion relating to (H. 2, 3, 6, 12).
Call to order, 1, 2, 3, 8, 17.
Call of the House (H. 15).
Change a rule, motion to (H. 10, 19); (S. 10, 19).
Close debate, motion to, 1, 2, 3, 4, 6, 12, 13 (H. 19); (S. 19).
Close "the five minutes debate," motion to (H. 1, 2, 3, 4, 6, 12, 13).
Commit, motion to, 2, 6, 9, 11, 12, 18.
Commit with instructions, motion to, 2, 4, 6, 11, 12, 18.
Committee of the Whole, motion in (H. 2, 13, 16, 18, 22).

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LIST—*Continued.*

Order of the day, motion to take up (H. 1, 2, 3, 4, 6, 8, 12, 17).
Order of the day, motion to take up out of due order (H. 20).
Petition (H. 5).
Postpone to a certain day, motion to, 2, 4, 6, 9, 12, 18.
Previous question, motion for, 1, 2, 3, 4, 6, 9, 12, 13, 14, 18 (S. 19).
Question of consideration, 1, 2, 3, 4, 6, 12, 13, 14, 16, 17, 18 (S. 19).
Question of privilege, 5, 8.
Question of order on an undebatable question, 3, 17.
Question of order arising after the previous question has been moved, 3, 17.
Question on the title of a bill (H. 17).
Reading papers under consideration, motion or call for, 1, 2, 3, 4, 6, 7, 12, 13, 16, 17, 18.
Reading papers not under consideration, motion for, 1, 2, 3, 12.
Receive a report, motion to, 1, 2, 3, 4, 6, 12, 13.
Recede from amendment (conference report), motion to (H. 3).
Recede from amendment, under previous question, motion to (H. 3).
Recede from disagreement to a Senate amendment, motion to (H. 3).
Recess, motion for, 2, 3, 4, 6, 9, 12, 13, 15.

RANK OF MOTIONS.

Motions supersede each other in the following order, and are brought to the question in the reverse order. Incidental motions may intervene at any stage. Subsidiaries are printed in italics.

1. The ordinary main motion or proposition. (*Objection to consideration* requires immediate vote.)
2. { Motion to *postpone indefinitely.*
   { *To amend.*
3. *To amend in the second degree.*
4. *To refer to a select committee.*
5. *To refer to a standing committee.*
6. *To amend the motion to commit.*
7. *To amend in the second degree the motion to commit.*
8. *To postpone to a certain day.*
9. *To amend the motion to postpone to a certain day.*
10. *To amend above motion in the second degree.*
11. *For the previous question.*
12. *To lay on the table.*
13. The privileged main motion.
14. Applicable subsidiaries in the above order.
15. A question of privilege affecting a member.
16. Applicable subsidiaries in the above order.
17. A question of privilege affecting the body.
18. Applicable subsidiaries in the above order.
19. Motion to take a recess.
20. Motion to adjourn.
21. Motion to fix the day to which to adjourn, when privileged by necessity or by special rule.

PARLIAMENTARY PRACTICE

CHAPTER I.

Elementary Principles.

I. Simple Forms of Procedure.

1. Definitions and Divisions. Parliamentary Law is the rule of order in legislative and other deliberative bodies, embracing the principles on which such bodies are constituted and governed.

Parliamentary Practice is the art of doing business according to this rule.

The law, with the practice, is divided into *common* and *special.*

The common consists of approved usages and rests upon reason. It is of universal application except so far as modified by the special.

Special parliamentary law consists of rules confined to the particular body adopting them. They override the common rule when they con-

flict with it, though the latter governs in such body in all matters upon which the special rules are silent.*

In practice, both the common and special laws of order are applied to business by means of *motions.*

Motions are divided into *main* and *subsidiary.*

Main motions are divided into *ordinary* and *privileged.*

The ordinary motion is an original proposition entitled to no preference by reason of its nature.

The privileged is an original proposition so urgent as to require immediate attention, and therefore it has preference over any other business.

Subsidiary motions always relate to motions already before the house; they are minor propositions; their office is to affect main motions, (either ordinary or privileged) or antecedent subsidiaries; they are tools for the manipulation of business. They are well known as motions to amend, postpone, commit, table, pre-question, reconsider, and the like.

When a main motion is adopted, the result is a *resolution;* if the resolution is a command, it is called an *order.* Before adoption, such motion is a proposed resolution or order.

A subsidiary motion, when carried, is an order making disposition of that to which it is applied.

Whatever is immediately pending to be voted upon is called *the question.*

2. First Steps; Recognition by the Chair. Organization necessarily precedes the transaction of general business, but the writer prefers

*See Chapter XV.

to relegate it to a future chapter* that he may now present simple forms and principles of procedure. Though generally known, it is necessary to call attention to them before advancing to matters less understood by the public. Much business is done, in various meetings, without going beyond the adoption or rejection of ordinary main motions.

When a meeting has been organized, and the chair has stated its object, any member may rise and claim the floor. The chair, seeing or hearing him and being respectfully addressed, must accord him the right. His recognition is not optional but imperative. If the chairman has really seen or heard the member who has risen in order, and yet affects not to recognize him as entitled to the floor, he would render himself liable to censure or removal. Members have equal rights.†

The chair has discretion, however, when two or more rise simultaneously and all address it at once. The selection of one of them should be prompt, since hesitation and indecision would delay business.

Only one can be entitled to the floor at the same time. He may yield it temporarily, but cannot share it with another. The reason is that if two or more should have the privilege in common, confusion would result and business could not be done in an orderly way.

3. Moving, Seconding and Stating. The member, having the floor, introduces business by moving that something be done, *i. e.*, by making a proposition. The motion must be respectful and consonant with the character and

*See Chapter XII. †*Post*, § 227.

objects of the meeting, for otherwise it would be out of order. The chair or a member may require an original proposition to be reduced to writing. Such proposition may be written in the form of a resolution. If not seconded, the motion is as though never made. Seconding is required, because a measure which has not at least two supporters should not be permitted to occupy the time of the assembly. The seconder, respectfully addressing the chair and being recognized, orally expresses his support of the motion.

The president must state the motion upon its being seconded; repeating, reading or having the secretary read it. The question is thus presented whether the motion shall be adopted. When stated, the proposition is beyond the control of the mover, in possession of the assembly and subject to its action.

4. Order of Motions. The first motion thus made is necessarily a main one, since there is then no other pending to which a subsidiary can be applied. It may be either ordinary or privileged, but usually it is the former. No other like motion can compete with this, now before the house. The chair cannot entertain others, hold them in abeyance while this is pending and afterwards call them up in the order of their presentation. However insignificant the pending ordinary motion may be, it cannot be superseded by another of its class, by reason of the greater importance of the latter. It may be for the appropriation of a dollar, while the other is for that of a million, yet it only is in order. When it has been carried or lost, or other disposition has been made of it,

the way is open for the introduction of another original proposition.

Temporary suspension of the ordinary motion occurs when a privileged one is introduced. This is not because the latter is more important but because it is *urgent*, requiring immediate action,* and rendering it necessary not only that the pending ordinary main motion should give way, but that any subsidiary adhering to it should also be put in abeyance for the time being.

Subsidiaries apply to both ordinary and privileged motions, superseding them in voting, *i. e.*, any main one may be temporarily removed from consideration by the intervention of an applicable subsidiary. For instance, when a main motion is pending, a motion to postpone it is in order; and this shifts the question from adoption to postponement.

When disposition has been made of the intruding motion, the original proposition regains its place, and the question recurs on its adoption—unless the subsidiary has permanently displaced it, as in case of indefinite postponement.

5. Universal Rule. The cardinal principle: *One thing at a time*—that is, one *question* at a time—is the most important of all parliamentary rules. It is absolutely essential to the orderly conduct of business in all deliberative bodies. One question in order and all others out of order should be hung as the governing motto in every legislative and society hall. By strictly observing it, the presiding officer will be saved from much perplexity, error and con-

*See Chapter XI, for Privileged Motions.

fusion, and the members will find plain passage through all the seeming labyrinths of parliamentary law and practice.

The question may shift very rapidly from that of the adoption of the main motion to that of the temporary disposition of it; from one subsidiary to another of a higher grade; but only one question is before the house to be voted upon, at any one time.

In the midst of discussion on the one thing before the house, a point of order may be raised (as it is privileged): immediately the question is upon that, and some disposition must be made of it before the displaced matter can come again upon the carpet.

The rule, one question at a time, is very simple. Its observance is order; its non-observance is bedlam.

To this rule, there is no exception. The seeming departures from it will be found in line, if we view them with a correct eye.

5a. Resolutions in Series. There is no violation of this cardinal principle when a string of resolutions on one general subject is introduced, and a motion made to adopt. Only one question is presented.

If the resolutions, by the adoption of an incidental order, are to be taken up serially, the first comes before the house for action while the others await their turn; there is but one question under immediate consideration, open to debate and subject to vote. When disposition has been made of that, the second resolution of the series is called up, and the question is upon its adoption or rejection. And this question attaches to each, in due course.

It is usual in considering a proposed constitution, or a code of by-laws, or special rules, to take up the articles *seriatim;* but there is only one question before the assembly at any one time, and that relates to the article under immediate consideration.

6. Substitute. When a substitute for a pending proposition is offered (which is a form of amendment) the question: "Shall the substitution be made?" calls for the first action. If the vote is in the affirmative, the new form of the resolution supplants the old; if in the negative, the old remains, and the question recurs to it. There are not two co-existent questions in this process. Neither form of resolution has been adopted by this vote; the question of adoption still pends.

As a substitute must be germane to the resolution it would displace, it offers no mode of getting new matter before the house in lieu of that which has been already introduced. It may give the proposition a new dress, but it must not change it substantially so as to convert it to a different resolution brought into the house without coming up regularly. It will be seen therefore that when the question recurs on the adoption of the main motion, it is substantially identical with the original question.

7. Reference under Rule. When, by special rule, a committee on resolutions is constituted, to which all original propositions are to be referred, there is no departure from the rule: *One thing at a time.* Each motion comes separately before the house and is disposed of by the reference under the rule before another can be entertained. When reported back for

further action, the resolutions come separately before the assembly in the order reported.

In the absence of such special rule, resolutions may be separately referred (or otherwise removed from immediate considerarion) as fast as they are offered and stated, but this is by motion in each case. There is no exception, by either method, to the universal rule that only one question can be pending before the house, for action, at the same time.

When there is a special rule designating the hour when certain things shall be taken up, the matter in hand is immediately suspended on the arrival of that time, and awaits action till the specified business has been disposed of, and then it regains its place as before. The chair calls it up, without motion, as a matter of course. In such proceeding, there is only one question immediately before the house, at the same time.

Though there be no standing special rule of the kind above mentioned, there may have been an order made that a certain resolution or other matter of business shall be taken up at a given future time; a motion may have been postponed to a certain hour on a designated day. When the time comes, the chair must call the matter up, and the business in hand must give way till the coast is clear for it to resume its place, and then the chair must announce the identical question that was superseded by the special order.

7a. Order to Print. A main motion may be long, complicated or written illegibly; it may be for the adoption of a resolution that ought to be circulated among the members for their study: in such cases a motion to print it would be an incidental subsidiary, which, result-

ing in an order, would remove the resolution from immediate consideration as effectually as though it were referred to a committee. Meanwhile, it would be in order to introduce any new main motion. The question on the adoption of the first would not be affected except that it would be put in abeyance, while that on the second resolution would become the only one immediately before the house.

7b. Renewal. A motion made out of order cannot afterwards be renewed. It is nothing. The subject of it—the very words of it—may constitute a new motion to be introduced in order, at the proper time, but that is not a *renewal* in parliamental language. It has no advantage over any other new resolution by reason of the mover's former abortive attempt to give it place. It must be seconded, as the former seconding of the like proposition when out of order counts for nothing. It must now be stated, (this not having been done before, if the president knew his business); if previously done erroneously, the question must now be stated in order.

7c. Informal Action. The formality of moving and seconding is often omitted in matters of routine, and those in which assent is generally accorded. When the journal of a previous day has been read, it is usual for the chair to call for objections, and, in the absence of response, to say: "As there are no objections, the minutes are approved." If a member ask leave to withdraw himself temporarily from the meeting, the chair may grant the request when no one objects. When a committee asks leave to report (no question being before the

assembly) the chair may assent, and the report may be received in the absence of any objections after call for them has been made. In all these and similar cases of routine, motions may be made and votes taken, but the practice is to dispense with them for the purpose of expediting business.

7d. Explanatory Note. The office of subsidiaries is, generally speaking, to aid the foregoing proposition to which they are applied, and therefore most of them do not permanently remove it from the house. These auxiliaries will be treated in the five chapters immediately following. In this, a class of subsidiaries designed to destroy the antecedent motions to which they are applied, will be considered.

If adopted, they effect their object; if not, the motion assailed goes on its course as though such subsidiaries had never been introduced.

8. Classification of Subsidiaries. When any main motion has been stated and subjected to the action of the assembly, it may have subsidiary motions applied to it. Objection to its consideration, under special rules, may be made; or its indefinite postponement may be moved. The questions thus raised are for the purpose of declining the main question, and may therefore be classed as *Declinatory*.

If the assembly does not wish to decline the consideration of the main motion, but wishes to improve it, a motion to amend may be applied, and that may be followed by a motion to amend the amendment. These, with other like motions hereafter to be treated, should be styled *Amendatory*.

Delay is frequently requisite; and motions to

commit, to defer definitely and to lay upon the table are for the ostensible purpose of delaying present action, and may be properly classified as *Dilatory.*

Motions to complete skeleton resolutions by filling blanks with names, sums and numbers, differ so essentially from amendments that they should be treated as a separate class, and styled *Complemental.*

Motions to suspend rules, withdraw motions, divide resolutions, read papers, dispose of questions of order, etc., have long been known as *Incidental.*

Motions having reference to voting, such as that for the previous question, the call for the *yeas* and *nays*, the motion to reconsider, and all motions fixing the method of voting, because of their kindred peculiarities, should be classified together; and they may be properly called *Motions Relative to Voting.*

The above classification is conducive to a clear understanding of parliamentary methods, and does not interfere with the present established practice in the least degree.

II. Declinatory Motions.

8a. Objection to a Motion. Objection to entertaining a main motion after it has been duly moved, seconded and stated must be raised, if at all, before debate and before any subsidiary motion has been offered. A proposition may be of such a nature as to be unworthy of consideration; it may be puerile or absurd; it may tend to cause scandal, unjustly

reflect upon character or expose confidential matters; and for any such reason, though without stating any at all, a member may raise the question of consideration, when it is allowed by special rules.

Such question is not debatable, since it is raised to suppress instantly what ought not to be debated; and it could not be discussed without involving the merits of the motion sought to be suppressed. The question is only in order after the statement of the motion to which it is applied, and before discussion thereon, and before any subsidiary motion relating to the original proposition.

In the U. S. House of Representatives, "when any motion or proposition is made, the question *Will the House now consider it?* shall not be put unless demanded by a member."

The House does not confine the raising of the question to original propositions, but allows the objection to be made against a report, even when a question of privilege is involved. If, after the offering of a resolution, bill or report, and after its statement by the chair, adjournment immediately follows, the question of consideration will be in order when such resolution, bill or report comes up as unfinished business. But, in all cases, such question is out of order if there has been discussion or any action on the measure to which it is sought to be applied.

8b. Special Rule. This declinatory method can only be employed when authorized by special rule, because there is no reason for allowing one objector to forestall the two supporters which a stated proposition necessarily has, so

far as to reverse the order of voting—the question of consideration virtually causing the negative side of the original proposition to vote first. If societies and other deliberative bodies choose to authorize the method, two or more objectors ought to be made requisite, and a two-thirds vote might reasonably be required to decline a proposition summarily before discussion or any action. There are other methods of universal use and well grounded in the common law of parliamentary procedure—laying on the table and the previous question—which will always be found adequate to suppress discussion and to dispose summarily of a measure. But these subsidiaries are not declinatory. They belong to other classes having different functions.

9. Indefinite Postponement. After a measure has come under discussion, its further consideration may be declined, but not by the method above presented. The second method differs from the first in being debatable, though it involves the merits of the proposition to which it relates. Either is in order before the proposition has been discussed, but only the second is allowable after discussion has been had. The latter is known as the motion to postpone indefinitely. Its name is a misnomer, since the motion is not really to postpone but to defeat the pending measure altogether by declining its further consideration. Its real character must be kept in mind if we would avoid the misunderstanding and confusion that would be otherwise likely to follow. It should not be classified with dilatory motions, since,

being never employed for delay, its office is wholly different from theirs. Its only office is to suppress the pending measure for the general session, and indeed forever, since a measure indefinitely postponed can be brought up at a subsequent general session only as new business. It is governed by rules different from those controlling the motions to commit, to postpone to a certain day and to lay on the table, and should be classified as one of the declinatory motions.

9a. When in Order. One of the first of the good results to spring from the treatment of this motion according to its character and not its false name, is the settlement of the vexed question of its relative rank among subsidiary motions. The contrary positions taken by different writers is illustrated by the practice of the two houses of Congress: the Senate giving this motion higher rank than that of the motion to postpone definitely, to commit and to amend, placing it next to the motion to table, while the House of Representatives puts it below all those motions.

The best usage, and (it may be said without much qualification) the established practice, is in accord with that of the House of Representatives, so far as its rule will work. But it cannot be made to work when the motion to amend competes with that to postpone indefinitely. Those motions must necessarily be operated under the rule, *First made, first put.* When the motion to postpone indefinitely is under consideration, the motion to amend the main motion cannot supersede it, for the latter motion would be superfluous while the proposed declination by perpetual postponement should be before the

House. So, when the motion to amend is under consideration, the motion to postpone indefinitely cannot supersede it, for the latter is not of higher grade.

In practice, the House of Representatives treats these two motions as of equal grade, does not allow either to supersede the other, and strictly observes the order, *First made, first put*, though it properly allows both to be superseded by subsidiaries of higher grade; and such is the practice from the very nature of the case, notwithstanding the scale of rank adopted by House Rule xvi, 4. Most of the later manuals adopt that scale. The general practice is to treat the two motions as of equal grade.

It may be convenient for the Senate to adopt a different usage because it does not employ the motion ordering the main question. For whatever cause, it gives the motions to commit and definitely postpone lower rank, and specially provides that the motion to postpone indefinitely shall supersede both them and amendatory motions. Such use, however, is neither necessary nor prevalent in deliberative bodies generally. It may be received as a law of order, in the absence of a special regulation to the contrary, that indefinite postponement cannot be moved while an amendatory or dilatory motion is pending—a law founded not only upon the best usage, but also upon reason.

9b. Not Amendable. When an ordinary main motion has been duly made, seconded and stated, it is superseded as the question under consideration if a motion to postpone it indefinitely is made and seconded. The latter becomes the only motion under immediate consideration.

It can have no amendatory or other subsidiary motion applied to it, though it may be superseded and put in abeyance by dilatory motions applied to the main ordinary motion.

Those who claim that the motion to postpone indefinitely may be amended, seem to lose sight of the fact that it is entirely declinatory in character.

That the motion to postpone indefinitely is not amendable is now generally conceded, though it has been said by a writer that it may be amended by striking out "indefinitely" and inserting a certain time. The effect of this would be to change it to a motion to postpone definitely, thus elevating it two degrees in rank; or, if the Senate's gradation be adopted, lowering it one degree. Rather, it would be destroying indefinite postponement altogether and substituting definite postponement in its place. It would be exchanging a declinatory motion for a dilatory one.

Since the sole object of indefinite postponement is to destroy, why amend? If successful, it destroys the main motion as effectually as defeat upon a final, direct vote could do. It cannot, therefore, be amended so as to do less or more.

10. Effect on the Main Motion. If the motion to postpone indefinitely is carried, further consideration of the main question is declined, and the proposition is virtually lost, since it is removed from consideration for the remainder of the general session and cannot be renewed. But, if this declinatory motion is not carried, the main question resumes its former

position as the only immediately pending business.

A tie vote on this declinatory question would fail to defeat the main proposition, though the reverse result would ensue from a tie upon the main question: it is, therefore, unwise for the opponents of the main proposition to resort to this declinatory method when the assembly is equally divided upon the question to which it is applicable.

When this method is employed, the motion must be made unqualifiedly: "I move that the question be indefinitely postponed," or equivalent words. It is never employed to aid the main proposition, while all the dilatory motions always are, ostensibly at least, so employed.

The further discussion of the question whether this motion is amendable, and also that of its rank, may be profitably deferred till amendatory and dilatory motions shall have been treated.

ANALYSIS No. 1.

1. What is necessary in making a motion?

The mover must be a member of the assembly, must address the chair, must be recognized by the chair, and must be respectful; his proposition must be appropriate to the purposes of the assembly, and must be presented when there is no other motion pending of an equal or higher grade. Moving.

2. How does the chair recognize him?

By returning the address, calling his name or by a nod of recognition.

3. Should all motions be in writing?

Yes, except upon matters of mere routine,

though oral motions are allowable when reduction to writing is not demanded.

4. Should the chair call for a seconder?

Seconding. That is not his duty. If a motion is not seconded, it forms no part of the assembly's transactions, and no notice of it is to be taken.

5. After a motion has been made, in whose control is it?

In that of the mover, till it has been stated: so he may amend or withdraw it at his pleasure, at this stage.

6. How is a motion seconded?

By a member's obtaining the floor and expressing to the chair his support of the motion.

7. May only a part of a motion be seconded?

The seconding must be unqualified, even though the motion be susceptible of division.

8. Why must a motion be seconded?

To assure the assembly that it has more than one supporter and may therefore be worthy of consideration; and to create the presumption that there are others who favor it.

9. Are there no exceptions to the requiring of a second?

In mere matters of course, and of routine, the chair does not always wait for the seconding but takes the assent of all for granted, after inquiring whether there are objections.

10. How may the presumption created in favor of a measure by the moving and seconding of it, be rebutted?

By objection to the consideration of the question being sustained, when this method is allowed by special rule.

11. What is the duty of the President when a motion has been duly made and seconded?

Stating questions. He must state the question, accurately repeating the proposed resolution or order, or reading it, or causing the Secretary to read it.

12. When stated, is the motion still under the control of the mover?

It is then in possession of the assembly, and

cannot be modified or withdrawn by the mover without the consent of the house.

13. May a motion be made while another is pending?

No, unless it is of a different grade, or relates to the motion pending.

14. How are motions classified? Classification.

Into *Main* and *Subsidiary*.

15. What is a Main Motion? Main motion.

It is an original and independent proffer or proposition.

16. How are Main Motions divided?

Into *Ordinary* and *Privileged*.

17. What is an Ordinary Main Motion?

It is an original, independent proposition, not of a privileged character.

18. What is a Privileged Main Motion?

It is an original, independent proposition having preference over ordinary main motions because of the importance and urgency of its nature—as the motion to adjourn, to take a recess, to adopt minutes, etc., and motions affecting the privileges of an assembly, or of its members.

19. What is a Subsidiary Motion?

It is a proposition relating to a main or some other foregoing motion.

20. How are Subsidiary Motions divided? Subsidiary motions.

Into Declinatory, Amendatory, Dilatory, Complemental, Incidental and Motions Relative to Voting.

21. What is a Declinatory Motion? Declinatory.

It is a motion to decline the entertaining of a proposition, or to decline its further consideration after having been entertained.

22. What are examples of the Declinatory Motion?

That of raising objection to a motion when first made, and that to postpone it indefinitely.

23. What is an Amendatory Motion? Amendatory.

It is one to amend a foregoing proposition, or to amend an amendment, or to amend a subsidiary motion.

24. What is a Dilatory Motion? Dilatory.

It is one to delay a foregoing proposition.

25. What are examples of this class of motions?

Motions to Refer to a Committee, to Postpone to a certain time, and to Lay on the Table.

Complemental.

26. What is a Complemental Motion?

It is a motion to fill a blank in a skeleton resolution with a name, or to fill it with a number.

Incidental.

27. What is an Incidental Motion?

It is a side proposition, allowable while another is pending; such as a motion to withdraw a previous motion, to divide a resolution, to read a paper, to suspend a rule, etc. Incidental motions on questions of order belong to this class.

Relative to voting.

28. What is a Motion Relative to Voting?

It is a call for the Previous Question, a call for the *yeas* and *nays*, a motion to fix the mode of voting, or a motion for the Reconsideration of a vote.

Declinatory motions. Question of consideration.

29. When may an assembly decline to entertain a motion?

After it has been stated, but before discussion, the offer of amendment or the making of any other subsidiary motion; but the question of consideration cannot be raised unless authorized by special rules.

30. For what purpose are motions sometimes thus declined?

To avoid profitless questions of a delicate nature.

31. Is the motion to decline to entertain a proposition, or the question when raised by mere objection, debatable?

No, for the object of this declinatory action is to avoid the subject altogether.

32. Ought the question "Will the house now consider the resolution" be put by the chair, when no objection has been made to it?

It can only be put on demand of a member, by the rules of the U. S. House of Represen-

tatives. In other bodies, the practice must be regulated by special rule.

33. May further consideration be declined after the assembly has indulged in debate? **Indefinite postponement.**

Yes; before or after, by the motion to postpone indefinitely.

34. May indefinite postponement be moved after some other subsidiary motion has been moved and seconded?

By the better practice, it cannot; though by the special rules of some assemblies, it can. By those of the U. S. House of Representatives, it cannot.

35. Is it debatable? **Debatable**

Yes; even the merits of the original motion may be discussed, because indefinite postponement would defeat that motion.

36. Is it the object of this declinatory motion to postpone the one to which it is applied?

No; and the name of it is therefore false and misleading.

37. May the motion to postpone indefinitely be amended? **Not amendable.**

It cannot, for the only amendment conceivable is to make postponement less than indefinite, and that would totally change its character from a declinatory to a dilatory motion, would change its rank by two degrees, and render it useless for the purpose for which it is employed.

38. May it have any other subsidiary motion applied to it? **Relative to other motions.**

No; but it may be superseded by dilatory motions applied to the main question.

39. May it be superseded by an amendatory motion applied to the main question?

No; for since its office is to destroy the main motion, the amendment of the latter would be superfluous at this stage; and also because an amendatory motion does not outrank that to postpone indefinitely, if the latter is first made.

40. What is the effect of the adoption of this declinatory motion?

The main question is removed from consideration for the general session, and is virtually lost.

41. What if the motion be lost?

The main question regains its position as the one subject under consideration.

CHAPTER II.

Amendatory Motions.

I. To Amend the Main Motion.

11. When in Order. It is in order to move an amendment as soon as the main motion has been stated by the chair, provided that motion is amendable.

It is not in order, if a declinatory motion, such as that to postpone indefinitely, has been interposed, for the reason that there is no utility in perfecting a proposition if its consideration is to be declined. But should the declinatory motion be lost, and the ordinary main motion thus regain its position as the only thing under consideration, amendment would be in order.

It is not in order when a motion to commit, to definitely postpone, or to table the main question, is pending, nor when any other subsidiary one is pending, for the reason that any proposed

disposition of the main motion may preclude the necessity of amendment, and for the further conclusive reason that the house can entertain but one question at a time. But, should anyone or all of these be made and lost before amendment is offered, a motion to amend the main question would be in order.

Should an amendatory motion be made before the offering of a dilatory or incidental one, or one ordering the vote, or a privileged main motion, it would be superseded and put in abeyance by the introduction of any of them.

12. Its Proper Use. The proper use of the amendatory motion is to aid and perfect that to which it is applied; to befriend the antecedent proposition and render it more worthy of support and adoption. The legitimate office of the subsequent and minor proposition is to improve the anterior and major one by becoming incorporated into it. But this form of motion is frequently abused in practice to accomplish the very opposite result, being wielded by an unfriendly hand, and designed to destroy rather than perfect the original proposition. It will be found convenient to consider first the proper use of the motion, and to notice its abuse afterwards.

13. Amendment by Addition. There are three ways of amending: Addition, elimination and substitution.

Addition is when something is inserted. A motion to amend a resolution or bill by inserting words, phrases, sentences, sections, etc., seeks to complete it by supplying what the mover believes to be wanting. An addition should be carefully prepared before being offered, since,

if adopted, it cannot be afterwards made the subject of a motion to strike it out, and can only be reached by a motion to reconsider; so, if ill-advised, it may serve to burden the original proposition, though offered in the most friendly spirit. The reason why, after its adoption, it must stand as a part of the proposition is, that the assembly, having passed upon it as an amendment, cannot pass upon it again in that character under a motion to strike it out. If rejected, the precise amendment cannot be reoffered.

14. By Elimination. Elimination is when something is stricken out. A motion to amend a resolution by striking some part of it out, seeks to improve it by removing superfluous, unpopular, or otherwise objectionable matter. Should a motion to strike out be lost, it cannot be renewed, because it is entitled to be passed upon but once in its form as an amendment. A motion, however, to strike out more or less than that which has been thus passed upon would present a different question; for members might favor or oppose the latter upon considerations different from those influencing them when voting upon the former.

If a motion to eliminate be carried, the result is final so far as amendment is concerned; the rejected part cannot afterwards be restored in the same form in which it was rejected. Only by reconsideration of the motion to strike out can the lost matter be restored by way of amendment.

15. By Substitution. Substitution is effected by a motion to strike out and insert. Its proper use is to strike out some part of a pend-

ing proposition and to insert something better in lieu thereof. Its abuse consists in substituting something worse, to cripple the proposition; or to strike out all but the resolutory word or enacting phrase, to effect its destruction. Considering now only the legitimate office of substitution, the reader will perceive that it combines both the above mentioned forms of amendment. Whether, in any case, it should be treated as two propositions, and should be put to vote, first, upon the elimination and, secondly, upon the addition, depends entirely upon the nature of the motion to amend by substitution. If the amendatory proposition preserves unity, the vote upon striking out and inserting must be put as one question. If the amendatory proposition is divisible, the vote must first be taken upon striking out, and, secondly, upon inserting; that is to say, if the amendment is of such a character that some members might reasonably desire that the elimination should take place, yet not desire that the gap be filled by the insertion proposed, then the question may be divided.

16. Divisibility of Substitutions. Whether or not the question upon striking out and inserting may be divided depends, as above stated, upon its nature, whether it really embraces two or more propositions, or is a question of unity; and, in this respect, it is precisely like any other resolution. Unity is the characteristic when the substitution of one thing for another is the only idea of the amendatory motion, so that striking out without inserting would be absurd. Divisibility is the characteristic when two or more distinct ideas are included in the motion, each of which may properly be voted upon

separately. This distinction is made with reference to the proper use of amendatory motions; but when considering allowable abuses, it will be seen that division may be parliamentarily in order, in some cases, even though involving absurdity and tending to the defeat of the main proposition.

In the lower house of Congress, a motion to strike out and insert is held indivisible (Rule xvi, 7), but, in the absence of a special rule, divisibility should depend upon the character of the proposition, as above stated.

17. Putting the Question. The better practice, in taking the vote upon a motion to strike out and insert, is to put it as a whole, unless division is asked and ordered; and, when ordered, to put the question upon striking out in the form in which it is made, and not whether the original words shall stand as a part of the resolution. The latter method was formerly much used, and it is now employed in some assemblies, and is stated as the proper usage by some writers; but the former is in accord with the motion to strike out; and, for that reason, and also because it rightly gives the opponents of elimination the advantage of a tie vote, it should be preferred.

The general law is that all motions must be stated by the chair and put to vote precisely in the form in which they are offered; and there seems to be no reason why a motion to strike out, or to strike out and insert, should create an exception. It is not analogous to an appeal from a decision of the chair on a point of order when the form is, "Shall the decision of the chair be sustained?" or, "Shall the decision of

the chair stand as the sense of the House?" for in all appeals from decisions, as in those from judgments of courts, the question is upon their being sustained. An appeal is not a motion, and therefore it is no criterion for the putting of motions.

If the putting of the vote in the form indicated by the motion is not the universal practice, it is the better practice; and, in this country, it has grown into great favor and extensive use, and is certainly based upon reason.

18. Relevancy. The relevancy of amendatory motions to the proposition sought to be amended should be maintained within reasonable though liberal bounds, if such motions are to be properly used and not abused. The reason is found in the legitimate purpose of emendation: the making of the proposition better. Practically, however, great latitude is allowed, and palpable abuses tolerated, as will soon be shown; but there are limits, and they are first to be marked.

When there is total absence of congruity between the proposed amendment and the main motion, so that the amendment is a new proposition, upon a different subject, the motion should be ruled out of order for irrelevancy. The reason why it should be so ruled, is that while there is a proposition lawfully before the house, no new proposition on a different subject can be entertained; and what cannot be done directly cannot be rightly done indirectly by disguising the intruder with the mask of an amendatory motion, and fraudulently giving it the favored position of a subsidiary, for the

purpose of having it supersede the proposition already legitimately under consideration as the one topic before the assembly. The dishonesty of supplanting a main motion by another of really the same grade, but clothed with the garb of a preference motion, is clearly apparent when previous notice is required; for, though the main motion would be subjected to such requirement, the supplanting motion, coming in the guise of an amendment, would be introduced in violation of the spirit of the rule. If such indirect practice is to be tolerated, all the benefits of gaining the floor, giving due notice, making the original motion in due order and at the proper time, obtaining a seconder, having the motion stated and observing the maxim, "One thing at a time," would be lost. If one foreign proposition may thus supplant a main motion regularly before the assembly, others may don like disguise and intrude themselves in turn, and the whole system of parliamentary order may be deranged.

19. Amendments not Germane. The U. S. House of Representatives has adopted the only true, reasonable and logical rule on this subject: "No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment." (Rule xvi, 7.)

The Senate has a similar rule with respect to amendments to general appropriation bills (R. 29), but is silent upon the relevancy of amendments in general. The House rule expresses what ought to be the general law upon the subject, and what therefore is the general law

unless it can be shown that there is reasonable established practice to the contrary.

This rule, readopted recently, has long been in use by the House, and the precedents set by that body have been generally in accord. Those to the contrary may be accounted for from the fact that appeals from a Speaker's decision are too frequently decided rather under influence of partizan bias than upon conviction as to the merits of a point of order.

20. Inadmissible Substitutes. Under color of amendment, it is not in order to substitute, after the word "Resolved," a proposition condemnatory of polygamy in Utah, for one declaring that duties on imported silks should be reduced; nor after the word "Ordered," to insert that the clerk notify members respecting a special order, in lieu of the mandate that the sergeant-at-arms shall bring in a certain absent member; nor after the words, "Be it enacted, etc.," to strike out a bill relative to national banks, and insert one upon foreign relations. Yet so-called amendments, quite as incongruous have been allowed in Parliament, and the reason has been given that there is no necessity that the amendment should be akin to the question. Other rulings there, however, sufficiently neutralize those sustaining substitutions not germane, so that we are free to follow the better precedents and the reasons sustaining the position that one duly introduced main motion, bill or order cannot be supplanted by another foreign to the subject, under the disguise of amendment.

21. Admissible Additions. Additions, however, to the main motion, bill, etc., are liberally allowed if on the same subject-matter, though

greatly enlarging the scope of the original idea. A bill granting right of way for a railroad might be amended by extending the grant to a lateral road A resolution concerning our diplomatic relations with Peru may have an addition including those with Chili, if the original subject has a bearing upon the latter country.

The practice of Congress has not been uniform with regard to additions; they have sometimes been allowed, when of doubtful character, and sometimes refused when sufficiently germane, owing to the difference of opinion that is quite common among men as to the congruity of different ideas. Want of uniformity is not mentioned here by way of criticism, but rather to show that the House rule and the reasons underlying it are more reliable than the precedents upon the subject.

22. Additions Confined to the Subject-Matter. The law on the relevancy of amendments seems to be that if they are on the same subject-matter with the original motion, resolution, order or bill, they are admissible, but not when foreign thereto. Both with regard to substitution and addition, this law applies.

All of a resolution after the word "Resolved," may be stricken out, and new matter supplied, provided the latter is really an amendment; that is, really on the same subject-matter and not a resolution on another topic. So of an order. So of a bill; all after "Be it enacted," etc., may be eliminated, and substitution may be made of a relevant character, within the limits above stated. All of a resolution, order or bill may be retained, and additional matter added, provided it is congruous, though it may

greatly extend the original proposition; and like rule and reason apply to motions to strike out without adding, for the original idea may be circumscribed and changed thereby, yet the curtailment may possess the true character of an amendatory motion.

23. Negative Amendments. In the application of the word "not" by way of amendment, an obvious but nice distinction must be observed. If such an amendment is meant to perform no other office than to put the negative of the original proposition to vote in advance of the affirmative, it is not in order. For instance, if there is a resolution pending in a state legislature to instruct senators in Congress to vote for a tariff bill there pending, a motion to qualify "instruct" by the word "not" would be out of order, for the reason that the parliamentary course is to bring the resolution to vote by taking the sense of the affirmative side first, and the proposed amendment could perform no office except to reverse this order. It is therefore inadmissible, because useless, mischievous and tending to complexity. But, if the amendment applies the qualifying word to the verb "to vote," it would not be objectionable on the grounds stated. The legislature might choose to instruct the senators not to vote for the tariff bill; and a resolution changed to this form would still be an affirmative proposition. The question might be raised whether the amendment is germane, but there seems no doubt that such qualification is within the latitude allowed to amendments. If it be thought an abuse of the proper function of the amendatory motion,

it may still be sustained as within the purview of allowable abuses.

24. Abuse of Amendatory Motions. The abuse of the amendatory motion is the wielding of it in parliamentary tactics to render the main motion defective, ridiculous, absurd or improper, with a view to its defeat. Such abuse is sometimes in order and sometimes not. Though there is a sense in which it is never proper, yet while improper it may be parliamentarily in order. If an amendatory motion is relevant to that to which it is applied, and is plausibly pertinent, the chairman will entertain it rather than take the responsibility of ruling against it. He ought to give the amendment the benefit of a doubt, in cases where he is uncertain of its admissibility. He should not presume to know the *animus* of the mover as unfriendly to the main motion. Though the object is manifestly to expose some absurdity in the original proposition, he may be obliged to rule the amendment in order. On the other hand, if the amendment itself is palpably ridiculous, absurd, trivial and tending merely to confusion and indecorum, he should rule it out of order, and let any member appeal if dissatisfied.

Abuse may take any of the three forms of amendment: addition, elimination or substitution. To a motion for admitting judges to seats on the floor of the House, an amendment to include clerks of courts and bailiffs would be allowable, though the evident object would be to cripple the main motion. A motion that the word "judges" be stricken out of the original resolution and the words "all citizens" be inserted, would be a manifest blow at the resolu-

tion itself, but the chair could not properly rule such substitution out of order. Suppose the following resolution to be duly pending: "*Resolved*, That all motions relative to special orders shall be undebatable," and it should be moved to amend by eliminating the words "relative to special orders," so that the resolution, if thus shorn, would make all motions undebatable: would the amendment be in order? It would altogether change the original meaning, but the chair could not do otherwise than entertain it as being within the bounds of allowable abuses.

The division of a substitutory amendment may also be abused so as to result in the defeat of the substitution. Suppose this resolution: "*Resolved*, That the assistant librarian be promoted to the position of chief librarian," should be followed by a motion to strike out the word "promoted," and insert in lieu thereof the words, "removed from his office and appointed." Now, should a division of the amendment be ordered, so that the vote must be taken first on the proposition to remove the assistant librarian, that proposition might be carried; afterwards the proposition to appoint him to the position of chief librarian might be lost. The original resolution, thus crippled, would be voted against by its former friends: the result of disregarding the unity of the substitution.

II. To Amend an Amendatory Motion.

25. Limited to the Second Degree. Motions to amend extend to the second degree, but not beyond. Further modification would tend

to confusion rather than to clear expression of deliberative will. Some limit is necessary, and the usage has grown into law that an amendment to an amendment is allowable, but that no motion can be entertained to amend further.

The motion to amend an amendment supersedes the question on the amendment, and becomes the only topic immediately under consideration. It must have some disposition before either its immediate predecessor or the original resolution can be further handled. It becomes the only question before the assembly for immediate consideration.

26. Applications of the Motion. This motion is in character so much like that just considered, that nothing more need be said than that it may be to strike out, strike out and insert, or simply insert, but with reference to the amendment only which it seeks to modify. So important, however, is this parliamentary instrument that its temporary postponement carries with it the amendment and the original resolution; and when the assembly afterwards resumes consideration of the question, the amendment to the amendment retains its place in front, so that it must be adopted or rejected before any further step towards a vote upon the older questions can be had.

By the 31st of the Standing Rules of the U. S. Senate, when an amendment by striking out and inserting is pending, "motions to amend the part to be stricken out shall have precedence." It seems to be specially allowed that while a motion in the second degree to amend the words to be inserted is pending, another motion in the second degree to amend the part

of the motion of the first degree, to strike out, may not only be entertained, but shall have the preference.

A motion to amend an amendment may be divisible, subject to the same proceeding as a divisible first amendment or original motion: and this is the common practice. It may be withdrawn by the mover before being stated, or upon motion after having been stated, precisely like the antecedent propositions. A motion to divide, or to withdraw, would not be in the third degree, for neither is an amendatory motion.

27. How put to Vote. When put to vote, the chair should state the question, the matter proposed to be amended, and the resolution as it will read after the modifications; and, to do so, it is better that the Secretary be called upon to read the pending resolution, pending amendment and immediately pending modification of the amendment. Then the chair should, if the meeting is ready, put the question on the amendment to the amendment. When the decision has been announced, whether the motion be carried or lost, another amendment to the amendment, if moved, would be in order. If the motion above discussed has been carried, the modification of the amendment has been merged in the amendment; so a motion further to modify the amendment would not be in the third degree. If the motion has been lost, the field is equally clear for another motion to amend the amendment without trenching upon the prohibited bounds.

There is no limit to the number of amendments to amendments, provided they come by

one motion at a time, when no other amendment in the second degree is pending. The assembly can easily protect itself from abuse in this direction by remedies readily applicable, as will hereafter appear.

28. Practice in U. S. House of Representatives. Although it is a settled rule of parliamentary law that amendment beyond the second degree is not permissible, yet by Rule xix of the U. S. House of Representatives, "When a motion or proposition is under consideration, a motion to amend and a motion to amend that amendment shall be in order, and it shall also be in order to offer a further amendment by way of substitute, to which one amendment may be offered, but which shall not be voted on until the original matter is perfected, but either may be withdrawn before amendment or decision is had thereon."

III. To Amend Other Subsidiary Motions.

29. Relative to Declinatory and Dilatory Motions. Amendments are inapplicable to declinatory motions. They apply to two of the dilatory but not to the third; that is, motions to commit or to definitely postpone the main motion may be amended, but that to table it may not. As this application of amendatory motions will be more readily understood after dilatory motions have been discussed, it is relegated to the chapter on that class of subsidiary motions.

30. To Incidental and Other Motions. So far as amendment is applicable to incidental

and other classes of motions, it will be treated hereafter in connection with those classes respectively. It may not be unnecessary here to remark that the motion to divide a proposition is not deemed an amendatory one, as some have considered it, and that its treatment, therefore, does not belong to this chapter. The filling of blanks with numbers and names will come up hereafter in proper place, for it is governed by rules different from those which apply to amendatory motions.

Some privileged main motions are, in their nature, not amendable; such as that to adjourn. Generally speaking, no undebatable motion, whether main or subsidiary, can be amended.

ANALYSIS No. 2.

Amendatory motions.

42. When is an amendatory motion applicable to an ordinary main one?

When the latter has been stated; and at any time, provided no other subsidiary motion has intervened.

43. Why may it not supersede a pending declinatory motion?

Because there is no utility in perfecting a proposition if its consideration is to be declined.

44. Is it in order while any dilatory motion is pending?

No; for the reason that commitment, definite postponement or tabling the main motion may preclude the necessity of its amendment.

45. May dilatory motions be applied to the main question while one to amend it is pending?

Yes; because delays are to befriend the main question and to favor amendment; and also because amendatory motions are not thus de-

feated, since they adhere to the main question, and are brought back with it.

46. Do dilatory motions supersede an amendatory one?

Yes; in the order of consideration and voting.

47. What is the proper use of an amendment? Object of.

To perfect that to which it is applied.

48. Is it always confined to this legitimate purpose?

There are allowable abuses.

49. In what ways is amendment applied?

Three; by addition, by elimination, and by substitution.

50. What is amendment by addition? Amendment by addition.

Adding or inserting something.

51. Can an adopted addition be afterwards corrected?

Only upon reconsideration of the vote adopting it.

52. Why not?

Because the house having passed upon it as an amendment, cannot pass upon it again in that character, either upon a motion to strike it out or to change it.

53. Can a rejected addition be afterwards reoffered?

No; and for the same reason; but more or less may be, since the precise proposition would not thus be reoffered.

54. What is amendment by elimination? By elimination.

Striking out something.

55. Can an adopted elimination be negatived by a motion to reinsert the motion stricken out?

Only by going over the same ground after ordering a reconsideration.

56. Can a rejected motion to eliminate be renewed?

No; in both cases the action is final unless the former vote be reconsidered.

57. What is amendment by substitution? By substitution.

Striking out and inserting.

58. Should it be treated as two propositions?

No; unless it is susceptible of being divided into two without destroying the sense, and without disadvantage.

59. When may such motion be deemed indivisible?

When it imparts unity of idea, so that the striking-out and the putting-in are intimately and indissolubly connected.

Division of substitutes.

60. When may such a motion be deemed divisible?

When two distinct ideas are presented, each of which had better be considered separately; and when members might properly vote to strike out, yet vote against inserting; or might properly vote to insert, yet vote against striking out.

61. When divisible, should the chair always take the vote separately on each proposition?

Only when demanded and duly ordered.

62. Then, in what order must they be put?

First, upon striking out; secondly, upon inserting.

63. What are the rule and usage of the United States House of Representatives?

Divisibility is disallowed in such case.

Putting the question.

64. In what form should the question upon striking out be put?

The better practice is to put it in the form in which the motion is made, though the special rules of some assemblies require that the question shall be whether the original words shall stand. The former mode is preferable, because in accord with the motion, and because the motion to strike out is then properly lost in case of a tie.

65. Is not the putting of such a question analogous to the putting of an appeal?

No; because the question upon appeal really is, "Shall the decision stand?" like a judicial appeal.

66. Must amendatory motions be germane to the original proposition to which they are applied? Germane amendments.

Yes; there must be relevancy. Where there is total incongruity, the motion to amend would not be in order; but much latitude is allowed.

67. Why may not an incongruous amendment be in order?

Because it is in effect a new proposition; and, not being in order as a new main motion, it cannot steal in under the disguise of an amendment.

68. What are the rule and practice of the United States House of Representatives? Practice in Congress.

No motion on a different subject is admissible under order of amendment.

69. Is this the established practice upon the subject?

It is the better practice, extensively established, and the only reasonable usage.

70. Is the same rule applicable to bills?

The same usage and the same reason apply to amendments to bills, joint resolutions, orders, etc.

71. Has the practice of Congress always been uniform?

Not with respect to additions, though generally so with respect to substitutions.

72. Has the rule of relevancy been always observed by the houses of the British Parliament?

No; though there has not been uniformity of practice.

73. What is the common rule with regard to the relevancy of amendment by addition? Relevancy

It must be on the same subject-matter with the original; if foreign thereto, it would be out of order.

74. May all of a resolution after the word *Resolved*, be stricken out, and new matter substituted?

Yes; provided it is really an amendment; that is, on the same subject-matter; but a

foreign proposition cannot thus supplant the one ligitimately in place before the house.

75. Does this apply to a bill?

Yes; legitimate substitution may take place after the enactory clause.

76. May not the new vary from the old?

Yes; the original idea may be enlarged or curtailed, but there must be congruity.

Negation. **77.** May the original proposition be reversed by an amendment inserting the word "not"?

No; if reversal is the object it cannot be attained by amendment, since the parliamentary course is to bring the original proposition to vote. But the negative is allowable when applied to some part of the original proposition without such object or possible effect.

Doubtful relevancy. **78.** What is the true course when the relevancy of an amendment is doubtful?

The chair should entertain the amendment.

79. Is there not a margin of allowable abuse?

Yes; though the use of amendment is to befriend, it may be perverted to cripple and defeat its principal, and yet be allowable.

80. What should the chairman require?

That it always be plausibly pertinent.

Trivial amendments. **81.** How should he rule if an amendment be palpably trivial and absurd?

He should properly rule it out, leaving the mover his remedy by appeal.

Order of amendments. **82.** May more than one primary amendatory motion be under consideration at once?

No; the doctrine, "one thing at a time" applies as to all other motions.

83. If one primary motion be adopted or rejected, may another primary one be made?

Yes; any number of them successively.

Amendments of the second degree. **84.** What is an amendatory motion of the second degree?

It is the amendment of an amendment.

85. May there be an amendment in the third degree?

No; because it is unnecessary and would tend to confusion.

86. What is the effect of the secondary amendment on the primary?

It supersedes the primary, is of higher rank and its question is first put.

87. In what form must the secondary amendment be made?

It may be an addition, an elimination or a substitution, but it must apply to, and be confined to the primary.

88. What is its rank with regard to other subsidiary motions? Rank.

It is higher than declinatory motions but below dilatory ones, and yields to incidental ones.

89. What is the effect upon it of the commitment, definite postponement or tabling of the main motion?

It still adheres to the primary amendment, which still adheres to the main motion, so that it is delayed with them, and is afterwards resumed as first in order when they are resumed.

90. What is the law with regard to its divisibility?

The same as that applicable to primary amendment.

91. May more than one secondary amendment be under consideration at once?

No; but when one is either carried or lost, another may be offered, and several others successively.

92. Does Congress invariably follow these laws?

Both houses, under special rules, have somewhat modified them, each for its own government.

93. Are amendments applicable to declinatory motions? Applicability.

No; for reasons already given.

94. Are they applicable to dilatory motions?

To commitment and definite postponement, but not to tabling.

Amending motion to commit.

95. How may the motion to commit be amended?

By substituting one committee for another, by inserting or striking out instructions, by altering the time of reporting, etc.

96. If the motion is to refer to a select or special committee, how may the reference then be made to a standing committee?

By special rules, a separate motion for reference to a standing committee is common in legislative bodies, with preference over that to refer to a select committee.

Amending motion to postpone definitely.

97. How may the motion to defer definitely be amended?

By altering the time, making a special order, etc.

Tabling not amendable.

98. Why is the motion to lay upon the table not amendable?

Because it is complete and in the simplest form.

99. Why not amend by adding "subject to call?"

Because two motions would have to be voted upon then instead of one; and facility of use (a great merit of this motion), would be hindered. Tabling subject to call is a distinct matter and may be the first form of the dilatory motion, but cannot be added by way of amendment.

Relative to dilatory motions.

100. What is the rank of amendatory motions in relation to the dilatory ones to which they are applied?

They outrank and supersede them in order of consideration and vote.

101. What is the better course when the main motion has become burdened with amendments, primary and secondary, of a crude or complicated character?

It had better be delayed by means of some one of the dilatory motions; usually by reference to a committee.

CHAPTER III.

Dilatory Motions.

I. To Commit.

31. Reference for Revision. Reference to a committee may be advantageous when the resolution or other form of proposition is not properly prepared and needs revision; when it is encumbered by a proposed amendment badly written or badly fitted to the original; when there is a further proposed amendment, in the second degree, to add to the complication; and especially when the resolution itself and its amendments are susceptible of division into two or more propositions.

Under such circumstances, the work of remodelling the resolution and adjusting the proposed emendations to the original so as to produce a

full, round whole, can be better done in a committee-room than in the assembly. A committee can more coolly and collectedly study the details, and more succinctly and accurately express the ideas involved in the major and minor propositions than could readily be done by a full house. Removed from the excitement and prejudice frequently incident to debate in the assembly chamber, and relieved from the pressure of other business urgently demanding the attention of the body at large, the few men composing the committee take up the matter referred in a dispassionate way, and may thus succeed in reporting the referred business in such a shape as to meet the views of all.

32. Reference for Preservation. When no amendment has been proposed to the original resolution or other form of proposition, but indefinite postponement has been moved and seconded, it is often advisable to move reference to a committee. In its original form, owing to defects, its defeat by indefinite postponement may be imminent. If the friends of the measure suffer the vote upon such postponement to be taken, it may be almost certain that the assembly will now vote to decline the further consideration of the resolution; but if the motion to postpone indefinitely be supplanted by one to commit, there may be members enough willing to give the friends of the measure a chance to improve it (or at least as willing to get rid of the resolution temporarily as to dispose of it permanently) who will vote for the commitment and thus save the resolution from premature condemnation. If reported back in an unobjectionable form, and at a time when its former opponents are in de-

liberative temper, the resolution may have its proposed modifications accepted, and may finally be adopted.

33. Reference in General. Reference may be the rightful course, whether the measure be burdened with the motion to amend, or with that to postpone indefinitely (it cannot possibly be burdened by both, since they are of equal grade), and it may be the rightful course when it is burdened with neither. It may, in itself, be so clumsy, cumbrous, indefinite, defective, prolix, or illegal as to require the skillful hands of a selected committee that it may be remodelled; or it may be perfect in itself, yet doomed to defeat if not taken out of the way of a bill which most of the members are anxious to take up; and, under such circumstances, its commitment will not only afford the desired opportunity for the other members to bring forward their favorite, but may aid the resolution by gaining for it the indorsement of an influential committee, as well as by gaining for it the deliberation of the house at a more favorable time.

For any of the foregoing reasons, or for any of the considerations of policy above suggested, a member may move to refer the ordinary main motion to a committee; and without any reason at all, without any wise policy or adequate motive, it is his right to move the reference when no motion of higher grade is pending, unless the assembly is considering or voting upon objections to the consideration of the original measure. In some bodies all resolutions are referred to appropriate standing committees as a matter of course, under regulations so requiring.

34. Reference to Standing and Select Committees. It has so often been said by writers that when a proposition is made for a reference to a standing committee, and another proposition for reference to a select committee, the former should be first put to the question, that the statement seems to requires a passing notice. In a well-ordered body, this state of things could not exist, unless under special rules. The two propositions could come before the body only by motions; and the former being first moved and seconded would forestall the second and render it out of order. Such two subsidiary motions could not stand together, and compete with each other, under the circumstances. On the other hand, when a select or special committee is first proposed, a motion to refer to a standing committee is usually given the preference in societies and other assemblies.

In the U. S. Senate preference is given to the standing committee when reference to that and to a select committee are both proposed. This is under a special rule [Standing Rule 48]; and the true interpretation of the rule is that when there is a motion pending to refer to a select committee, it is in order to move reference to a standing committee, and the latter shall have preference so as to put the former in abeyance.

In all legislative bodies, petitions, etc., are usually reported to standing committees to be reported upon by bill or otherwise; and the introduction of the bill or resolution to the house is by the committee. It is then subject to any parliamentary action; but special rules generally

provide what course shall further be pursued with reference to such bill or resolution.

35. Form. When standing committees have been previously appointed upon different subjects, the motion may be to refer to some one of them, unless the petition, resolution or business to be referred should belong to some one of them by right, under special rules; otherwise, the motion to commit should also create, or provide for the creation of, a special committee. In the latter case, the form of the motion may be thus: "Mr. President, I move that the resolution be referred to a committee of three (or other number), to be appointed by the chair," or, "——a committee of three to be selected by the assembly;" or, "——a committee to consist of Messrs A, B and C."

If the motion be simply to refer to a special committee of a specified number, its adoption would necessitate the appointment of the committee. In such case it is usual for the President to appoint, and to make the mover chairman of the committee. It would be in order, however, after the adoption of the first, to introduce a second resolution naming the committee or giving the selection of it to the house, where no special regulations interfere.

36. Time for Reporting. Some time may be fixed within which the committee should report back the committed resolution; and this should be specified in the motion, thus: "I move that the resolution be referred to a committee of——to be appointed by——which shall report on or before ——." The time should be stated to fill the last blank, as "Monday next." Where no limit is made, the assembly may order

a report, or discharge the committee and resume the consideration of the referred resolution, at any time when there is no other question under consideration. When the reference has been to a standing committee, the committed resolution may, in like manner, be taken from them by vote of a majority of the assembly.

When reported back by either a special or a standing committee, or when taken from either without a report, the assembly becomes possessed of the resolution just as before the commitment, and such resolution becomes the only thing under consideration.

37. Rank. It will be seen that the motion to commit, and its accessaries (such as that for the appointment of the committee when not embraced in the motion to commit), are subsidiary to the main motion, and therefore supersede it. So, after the resumption of the consideration of the main resolution, when it has been reported back or taken back without report, if there be a motion made for its recommittal, the latter would supersede the former and be first put to vote.

The motion to refer is the third in rank of the dilatory motions. It is superseded by those to lay upon the table and to defer definitely, though made before them. But it supersedes motions amendatory of the main proposition, and also that to postpone indefinitely, though it be made after them.

When either the motion to table or that to defer definitely is pending, it is not in order to move reference to a committee; but, should it have been previously moved, and then superseded by one of those motions, and the super-

seding motion should be lost, the motion for reference would regain its position without renewal. Should such superseding motion be carried, the motion to refer would not be tabled or definitely postponed with the main motion, but would be lost.

A proposition, when referred to a committee, has its proposed amendments still adhering; but a superseded motion to postpone it indefinitely does not adhere, but is lost.

Since objection to the entertaining of a resolution must be made and voted upon without debate as soon as it has been stated, if made at all, there is no contest of rank between that and the other subsidiary motions, though it take the form of a motion, except that none of them can be superseded by it when they have been made in order.

The motion to commit cannot be postponed indefinitely, for the reason that it contemplates the future consideration of the proposition, which is incompatible with declining any further consideration of it.

It cannot be postponed definitely, for the reason that it is more direct to vote upon the question of reference, than to postpone that question to another time, and thus complicate and obstruct rather than facilitate the consideration of the main motion.

It cannot be laid upon the table, for the reason given against postponing the question of referring, and for the further reason, that the only object of tabling would be to cut off further debating and amending, and this object can be reached by ordering immediate vote on the question of reference.

It cannot be referred to a committee, for the reason that such course would unnecessarily complicate business, since it is more direct to refer the main question to a committee, than to refer the question of reference, and then have the latter question reported back for disposal.

It cannot, in fine, have any declinatory or dilatory motion applied to it.

38. Amendment. Amendatory motions are applicable to the motion to commit. They apply in various ways. One standing committee may be substituted for another by the motion to strike out and insert; the number of a proposed special committee may be increased or diminished; instructions to the committee may be added to the motion to refer, or may be eliminated if embraced in the motion of reference, as first offered; the time of reporting may be changed by amendment, and any other germane emendation may be offered.

Such primary amendments (proposed singly of course, unless conjoined as one amendatory proposition), may each have a secondary amendment applied to itself. Such amendments, both of the first and second decree, are governed by the laws which control amendatory motions applied to main motions. That of the first degree is subsidiary to the motion to commit to which it relates; therefore it supersedes it, puts it temporarily in abeyance, and is first brought to vote. That of the second degree, in like manner and with like effect, supersedes its own immediate antecedent.

39. Other Motions Applicable to that to Commit. Motions relative to voting are also applicable to the motion to commit; but as they

have not yet been treated, they need not further be discussed in this connection, except to call attention to the fact that of all the subsidiaries, they and the amendatory motions are all which are applicable to the motion to commit, except some incidental motions. As shown above, the other two classes (the declinatory and the dilatory), are always inapplicable. Incidental motions are in order while a motion to commit is pending, and they may have reference to it as to any main motion; and when one of these is made for the withdrawal or the division of the motion to commit, it is strictly subsidiary, and should be included among the applicable subsidiaries above mentioned.

40. Reference Debatable. The question of reference is debatable, as are almost all questions on amendable motions. Whether the reference should be ordered or not is the point to be debated. The merits of the resolution proposed to be referred are not now at issue; and, strictly speaking, they are not now debatable. But the form of that resolution is involved, and the fate of it is sometimes dependent upon the decision of the question of commitment; therefore much latitude is given to the debate. The chair cannot always draw an exact boundary line between the merits of the matter to be referred and the propriety of the reference, so as to confine debate closely to the latter.

When, however, the main proposition has already been fully discussed, and the chair is about to put the question thereon, if a motion to commit it is then made, debate ought to be confined as closely as practicable to the propriety of the reference.

When there is a main motion for commitment, as "that a committee be appointed to take sanitary improvements into consideration," or, "that a committee be appointed to audit the treasurer's accounts," the rule of debate is the same as it is with regard to any debatable main motion.

41. Abuse of Commitment. The dilatory motion to commit a main proposition is often used to the prejudice of that which it purports to aid. Such application of it is allowable to a limited degree; but beyond the precincts of that degree, it should not be tolerated. Those limits may be found where ostensible friendliness to the main motion ends. The boundary line will better appear by illustrations than by any didactic statement.

A motion to refer to a standing committee known to be hostile to the referable measure could not be ruled out of order by the chair as evidently unfriendly, since the motives of the mover cannot be divined. It would be an abuse of the motion, though the chair could not do otherwise than tolerate it. But a motion to refer with instruction to report only at some impossible time, as an hour after adjournment on a given day, should be ruled out of order, since it is ostensibly hostile as well as trivial.

Is a motion to refer, with instruction to report at a time beyond the general session, within the bounds of allowable abuses? It is tolerated in the practice of some assemblies, but there seems to be no reason for such toleration. It is indefinite postponement after indefinite postponement has been superseded by a motion of higher grade. It is manifestly meant to convert an

instrument of improvement into one of destruction. It deranges the gradation of the subsidiaries and destroys the symmetry of the scale. The chair ought to rule it out of order.

The proposed reference must be undoubtedly subversive of the true character of the motion to commit, to justify the chair in refusing to entertain it. The opponents of a measure may move its commitment with the object of having it reported upon adversely, or otherwise "killed in committee," as the phrase is, yet the motion may be within allowable bounds, so that the chair could not rule it out of order without trenching upon the rights of the members. A motion to commit, moved near the close of a session, especially when made on the last day of it, would work the defeat of the measure committed, yet would be in order.

II. To Postpone to a Certain Time.

42. Object. Delay may be desirable, should the members of the assembly choose to consider and perfect the main motion themselves, when they get ready, rather than send it to a committee for that purpose. Whether it be burdened or complicated by pending amendments or not, whether it be in proper form for immediate passage or not, whether a motion to commit be pending or not, they may prefer to postpone it to a more convenient season, that they may make way for some other proposition to be introduced and considered. It often occurs that the predisposition of some other measure has an important bearing upon the decision of the pend-

ing question; but such other measure cannot be introduced till the pending one has been put out of the way; and in such case some of the dilatory motions must be employed, and definite postponement is frequently the most convenient and fitting, and the one least likely to encounter the opposition of the friends of the measure sought to be delayed.

43. Proper Use. This method of delay is always ostensibly in aid of the main motion; and, when properly applied, it is likely to secure the support of the friends of that motion. Indeed, there are circumstances under which those friends would resort to this dilatory method for the salvation of their measure. If indefinite postponement has been moved, they may supplant it by the higher motion to postpone definitely; or, if reference to an unfriendly standing committee has been moved, they may overreach that attack by moving to postpone definitely, and thus save their measure.

Even if no such hostile subsidiary has been proposed, they may not trust the temper of the house at the moment, and prefer delay to a time when discussion will be more palatable and success better assured.

44. Form. Whether judicious or not, the motion is in order, if no higher one is pending (unless objection to the main motion has been made), provided it is applied to an ordinary main motion or to a debatable privileged one. That to which it relates is indicated by its form, when the title of the bill or resolution is expressed; and it is always clearly implied when a member merely says, "I move that the question be postponed to Monday next, at 12 M.," or to

some set time. Sometimes the form is: "I move that the question be postponed and made the special order for to-morrow at one o'clock P. M." No form is sacramental; but it is essential that the postponement should be to a time certain; and, in later sections of this chapter it will be shown that that time must not be knowingly beyond the limits of the session.

45. Rank. Designed to delay the main question, it necessarily supersedes it in the order of consideration and voting, since it would otherwise be futile. As above intimated, it also supersedes any pending motion to postpone indefinitely, to amend, to amend amendment, or to commit; and the reason is that, since it contemplates consideration of the main question by the house at some future stated time, such disposal is incompatible with the declination, present emendation or reference of that question.

It preserves the pending amendments for the future by sending them forward with their principal, but it destroys the others altogether: provided it be adopted. If lost, the previously pending motion of the next highest rank regains its former position, and the entire state of things is precisely as though the motion to postpone definitely had not been made.

Of the three dilatory motions, definite postponement is the second in rank. It is superseded by that to lay on the table, when the latter follows it in the order of time. When the latter has been made, definite postponement cannot be moved while it is pending, nor after its adoption; though, in case of its loss, the way would be clear.

The motion to postpone definitely cannot it-

self be laid upon the table, nor deferred, nor committed, for the reasons given with respect to the non-application of dilatory motions to the motion to commit. Nor can declinatory motions be applied to that to defer definitely, for like reasons.

46. Amendment. Amendatory motions are applicable to that of definite postponement. They have reference to the time; or, to the making of a special order. A motion to defer to Monday next might have "next" stricken out and "fortnight" inserted. While pending, such substitution might have "at ten o'clock A. M." added by way of amendment in the second degree.

Motions ordering the vote, and some incidental motions, may be applied to definite postponement; but, not yet having been treated, they cannot profitably have their relations thereto explained at this place.

The gradation of definite postponement which places it above the indefinite is in accord with the practice of the U. S. House of Representatives (Rule xvi), though the Senate has adopted, for itself, the reverse order. The latter ranks it next to tabling (R. 43). The practice of the former is now generally followed in this country in all deliberative bodies.

47. Debatable Character. Since the motion to defer to a day certain is amendable, it is also debatable, the two characteristics usually going together. The debatable issue is the question of postponement to the stated time; not the merits of the thing to be deferred. But (as remarked of the motion to commit), the chair cannot always draw a very nice distinction

between the two, and it is better to err on the side of clemency, than on that of tyranny. However, the rein should be drawn when the members take too broad license; and, should the chair thus err, the house has the means of correction in its own hands, by resort to appeal.

48. Abuse. The most flagrant prostitution of the motion to defer definitely, is the transformation of it into that to defer indefinitely, by fixing the "day certain" beyond the general session. When the assembly has its session limited by law to a fixed period, or limited by its own resolution, a motion to postpone a main question to a date deyond that period, is a gross abuse. It is subversive of the object and character of the instrument used, and obstructive to the proper working of parliamentary machinery. Is such abuse allowable?

Within the scope of allowable abuses, a member may move to defer a bill or resolution to a day within the session upon which he thinks it is likely to be lost, he may believe that there is a majority in its favor, which could be reduced to a minority before the time when the bill would be voted upon, if deferred, and may therefore move postponement to a distant day in the session; but could he rightly move to postpone it to a day beyond the session?

That he could not, would seem to be the answer, by reasons entirely conclusive. In the motion to postpone to a certain day beyond the session, a subsidiary which is professedly only a dilatory motion, is cunningly converted into a declinatory one. The reader will recognize his old acquaintance, indefinite postponement, in this slight disguise. That member of a

totally different class, is sought to be resurrected after having been destroyed by a previous vote rejecting it, it may be; or sought to be presented after the time for its introduction in due order has passed. A motion to commit may have subsequently been made, superseding the motion to postpone indefinitely; and now, by what right shall the latter, under a false garb, supplant the former?

49. Abuse—Continued. The legitimate motion to postpone definitely is amendable, while that to postpone indefinitely is not, as has been shown; but if the latter can usurp the place of the former by taking on the false name of definite postponement to a certain day beyond the session, the character of the two in relation to amendability is lost in confusion. It is true that some writers on parliamentary law and usage say that indefinite postponement may be amended so as to become definite; but since that would change their own scale of rank as to the preferences of motions, and render either of those two convertible into a motion of a different degree by the process of amendment, such practice would not facilitate business. Their reasoning is based upon the Senate's arrangement, which places indefinite postponement above definite postponement, it must be admitted; but as soon as the former is amended, it becomes precisely the latter, and thus what was unfriendly to the main motion becomes friendly; what was meant to defeat it, now tends to aid it. And if definite postponement has been previously moved, but has been superseded by the moving of indefinite postponement, the amendment of the latter would really present the

anomaly of two motions for definite postponement existing at the same time, which would be absurd. Or, if definite postponement has been previously moved, brought to vote, and lost, the motion for indefinite postponement, if thus amended, would virtually revive the lost motion, which would be equally absurd.

Try the hypothesis of the amendability of this motion by the scale of the House of Representatives, and we have these absurd results: the amendment lifts it above the motions to amend and to commit the main motion, cuts off all opportunity of their being made, doffs its own declinatory character, and dons the dilatory and friendly one of postponement to a day certain, and thus disturbs the scientific symmetry of procedure.

It is now sufficiently well settled by the practice of parliamentary bodies, that the motion to postpone indefinitely cannot be amended so as to make the postponement one to a definite time. Assuming this, it follows that postponement to a day beyond the session should be subject to the same law, since it is shown to be of the same character as indefinite postponement. It follows further, that it should be held not in order unless made when indefinite postponement would be in order.

Under the arrangement adopted in this work, such by-method of bestowing the amendatory character, and such interchange of degrees, cannot be allowed; a declinatory motion cannot become a dilatory one; a motion to postpone to a day beyond the session, cannot be entertained when its purpose is known, unless made before the motion to amend or to commit; and,

if made before, it should be treated entirely as a motion to postpone indefinitely with all the characteristics which appertain to that declinatory resort.

III. To Lay Upon the Table.

50. Its Use. The motion, *To Lay upon the Table* the main question, seeks to make a temporary disposition of it before the assembly passes upon it by a final vote. Such temporary disposition is often desirable; for the members may not be ready to discuss the question, may wish to await further information, or may choose to clear the way for the introduction of some other business deemed of more immediate importance. Whatever the motive, they have the right to table the pending question.

The motion to table is a dilatory one, since its office is to delay the consideration and debate of the question to which it relates till the assembly may choose to take it up from the table. It is subsidiary to the main motion, as the student will see, since it relates to it and is meant to affect it.

51. Relation to the Main Question. It supersedes the main motion and puts it in abeyance immediately. So soon as the motion to table is seconded, its question is in advance of the main question, and must be first put to vote. The reason is that its office would be utterly abortive if this preference were not given. Thus advanced, it becomes the only question under consideration, since but one thing can be considered at a time. All debate

upon the foregoing proposition ceases at once, and the chair must put the question immediately upon the motion to table; for it is never debatable. Were it liable to discussion, its usefulness would be destroyed in great part, since one of its chief objects is to prepare the way at once for the introduction of other business.

If the motion to table is lost, the main question instantly regains its former position as the only thing under consideration (provided there are no subsidiary motions intervening), and the debate may be resumed. If carried, the effect is to remove the main question from deliberation and to assign it to the table, there to lie for no definite time, but till the uncertain time when, upon motion, the assembly may decide to take it up.

52. Tabling and Taking Up. The usual forms for tabling and for taking up, are: "I move to lay the question upon the table;" "I move to take from the table the question on the resolution" (designating the resolution). Other equivalent words will suffice in either case. As the motion to take up cannot be made when there is some other question under consideration, it will be seen that the effect of the tabling is not only to defer the main question to the uncertain time when the assembly may choose to take it up, but also to some time when the assembly is without other business before it. It often proves difficult to get a question up after its having been consigned to the table. Not only a time clear of other business must be found, but a majority must be found willing to resume the consideration of the question at the time of the making of the motion to take

up; consequently, tabling often works the defeat of a measure. All the opponents of the measure will vote against taking it up, and those favorable to it may not all be agreed as to the time of resuming the consideration.

53. Tabling Subject to Call. There is another form of tabling which renders the method of taking up somewhat different from that above described. It may be moved to table the main question "subject to call." Seconded and stated, this motion cuts off the debate of the main question, and is not itself debatable, being, in these respects, like the unqualified motion to lay upon the table. Indeed, it is like it in all respects, except that it is never used with the purpose of defeating the tabled motion, since any member may ask to have the latter taken up for consideration when the way is open for it. As any member may call it up, no motion need be made and seconded for the purpose, unless in some body which has a special rule requiring it. And such special rule would practically render tabling subject to call equivalent to simply tabling.

54. Rank. The motion to table is in order though any or all of the dilatory and amendatory motions have been made previously, or the motion for indefinite postponement. It is the highest in rank of all the subsidiary motions. If carried, it renders its inferiors nugatory, with the exception that amendatory motions go to the table with their principal, and come up with it upon motion to take from the table. If lost, its inferiors would regain position in due order.

Suppose a main motion made. If there be

no objection to its entertainment, a motion to postpone indefinitely might be followed by one to commit; then a motion to postpone to a certain day might be made; then a motion to lay the main motion on the table would be in order (as it would at any previous stage), and, if then made, all the rest would be put in abeyance. If lost, the motion to defer definitely would be revived; if that should be lost, the motion to commit would be again under consideration; and if that be lost, then the motion to defer indefinitely would regain its place.

55. No Subsidiary Applicable. No subsidiary motion whatever is applicable to the question of laying upon the table the pending motion or resolution. It cannot be delayed by commitment, for to require a committee to report whether the main motion should be tabled would be futile. It cannot be postponed to a certain day, for it would hinder rather than facilitate business to appoint a time at which to consider the question of tabling. Besides, it would be absurd to attempt to dispose of an undebatable question by the operation of either of these debatable ones, by which discussion might be elicited, when one of the objects of the motion to table is to suppress debate.

The motion to lay upon the table cannot be laid upon the table, because such procedure would complicate and obstruct business. It cannot be indefinitely postponed, for that would preclude the subsequent taking of it up, which is implied in the motion to table. It cannot be amended, because it is already perfect in form. It cannot be changed so as to be made subject to call: the simple form in which it is first submitted,

must be retained. Besides, emendation would imply the right of debate; and tabling differs from the other motions of its class in being never debatable. It also differs from the other dilatory motions in not being subject to the operation of the previous question; the reason being that it is always brought to immediate vote by reason of its undebatable and unamendable character, and therefore the application of the motion for the previous question would be futile.

IV. General Characteristics of Dilatory Motions.

56. The Term "Dilatory" Misapplied. The term *dilatory* has not always been applied and confined to those stated as such in the classification of motions made in Chapter I. It has sometimes been employed to designate motions of a character totally different from those. Even the motion to adjourn has been styled a dilatory one. It is sometimes so styled in Congress. It is referred to as such in the eighth section of the 16th rule of the House of Representatives. Perhaps one of the definitions of the word adjourn, "put off," has led to this use. In the British Parliament a question is said to be adjourned when it is postponed. In this sense, the motion would be a dilatory one, since its purpose is to delay the consideration of the question. But a motion that the house adjourn is not for the purpose of delaying any question. Practically it may be made trivially for such purpose, as any other privileged question might

be raised to accomplish such an end; but to delay the pending question is not the object of the motion to adjourn the house, parliamentarily speaking. It is not the ostensible object. And practically it is seldom made with the covert object of delaying the pending motion. It is therefore not properly classible with dilatory motions.

The motions to lay upon the table, to postpone to a given day and to refer to a committee, are always for the purpose of delaying the consideration of the question to which any one of them is applied; and, though they may be abused for the purpose of defeating a measure, they are ostensibly made for the purpose of aiding it by putting it off to a time when it may be acted upon more advantageously. It will be found very convenient and greatly conducive to the elucidation of the general subject under treatment, if those motions, and those only, be classed as dilatory. But, as that for indefinite postponement is dilatory in form (though not in character) it has been re-noticed in connection with this class, since it has long been associated with the above three motions by manualists.

57. The Term "Privileged." These dilatory motions have also usually been associated with that for the previous question, and all five have been styled privileged motions. Mr. Jefferson thus classifies and treats the five, as do most, and, perhaps, all of the other writers on the general subject. But by the term *privileged* they mean merely that these motions have preference over those to which they are applied in the order of consideration and decision. In this sense, amendatory motions also are privi-

leged with reference to the main motions to which they are applied. So are incidental motions. And as there are privileged motions, including motions of privilege, of a well-established and totally different character, the term *privileged* loses its distinctive attribute and ceases to be useful when extended to so many different kinds of motions.

Throughout this work, those preference motions which are ostensibly for delaying other motions to which they are subsidiary are treated as *dilatory* motions; and they constitute a separate class.

58. Delaying "the Whole Subject." It is never in order to move that "the whole subject" be laid upon the table, or postponed, or committed, for the reason that deliberative bodies deal with questions, resolutions, orders, ordinances and bills, but never with "subjects" in the sense vaguely implied by the words above quoted. Suppose there is a resolution pending on the subject of commerce: that resolution might be laid upon the table, and then another embodying the same idea would be out of order; but if the subject of commerce could be tabled, no resolution on that subject, though expressive of a totally different idea from the former resolution, could be entertained; and this would be manifestly absurd.

Motions to delay *subjects* should never be entertained. To the presiding officer, the meaning of the mover may be plain; and he may suggest that the evident intent is to table, postpone or commit the pending question, and he may state the question and put it to vote accordingly, should the mover acquiesce; but if the mover

should insist upon handling a *subject*, the only course left for the chair is to rule the motion out of order.

ANALYSIS No. 3.

Motion to commit.

102. What is the purpose of the motion to commit?

It is to have a defectively prepared resolution considered and perfected by a committee, or to gain further information upon the subject of it, or to have its complicated details simplified, or to subserve any other purpose designed by the mover.

Debatable.

103. What is the effect of the motion to commit?

The main question is superseded and put in abeyance, and debate turns upon the question of commitment.

104. What is the effect of commitment?

The main question is removed from consideration till the committee report.

105. What is the effect of refusal to commit, or loss of the motion?

The main question resumes its position.

Instructions.

106. May the motion contain instructions?

Yes; with regard to the time when the committee should report, or any other pertinent matter.

107. When no time for reporting is fixed, may the assembly afterwards compel a report?

Yes; either from a special or a standing committee.

Standing and select committees.

108. Would a motion to refer to a standing committee be in order while one to refer to a special committee is pending?

Under special rules, this is allowed in Congress, and the practice there, in this respect, is generally followed by other assemblies.

Definite postponement.

109. What is the purpose of definite postponement?

It is to put off the further consideration of the main question to a given time, for the purpose of gaining further information, or to make room for new business.

110. What is the effect upon the main question of a motion to postpone it definitely?

The main question is immediately superseded and put in abeyance. If the motion is adopted, the main question is removed from consideration till the time to which it is postponed; but, if lost, the main question resumes its former position.

111. Is there any limit as to the time to which a question is postponed?

It should be to a time within the session, but it may be beyond; in the latter case the motion is equivalent to that of indefinite postponement.

112. May definite postponement be qualified?

Yes; the question postponed may be made the special order for a given day and hour.

Abuse. **113.** May definite postponement effect the defeat of a measure?

If made too late in a session, or if the assembly refuse to consider the postponed question at the time designated, or if the postponement be to a day that cannot be reached during the session, it would be equivalent to the rejection of the measure thus postponed.

Debatable. **114.** Is the motion to postpone to a given time debatable?

Yes; but debate should be confined to the propriety of the postponement.

115. Why should debate be thus confined in cases where the object is the defeat of the main motion?

Because defeat is not the ostensible object, as in case of indefinite postponement; it is an abuse of the motion to postpone to a time certain when it is made to defeat the main motion, but an allowable abuse.

116. Is not the motion for indefinite postponement dilatory in form?

Yes; but as it is always declinatory in character, it is no abuse to apply it for the defeat of the main motion; therefore the merits of the main question are debatable under a motion to postpone indefinitely.

117. Why is the main question thus debatable though superseded by this subsidiary motion?

Because otherwise it might be condemned without a hearing under the operation of a nominally dilatory but actually declinatory motion.

118. When is the motion to table properly made? Motion to table.

When the assembly is not ready to discuss the main question, or may desire to make room for the introduction of some other business.

119. Is it debatable? Why not debatable.

No; for were it so, it would rather hinder than expedite business by making way for a new motion.

120. What is the effect if the motion to table be lost? Effects of.

The main question immediately regains its position as the only business under consideration, and debate upon it may be resumed.

121. What is the effect if the motion to table be carried?

The main question is laid by till the assembly choose to take it up.

122. When is the motion to take up in order? Taking up.

At any time when there is no other question under consideration, if any business has intervened.

123. What is the effect if the tabled question is never taken up?

It is equivalent to the defeat of such question.

124. May the motion to table be qualified? Tabling subject to call.

It may be to lay upon the table subject to call.

125. What is the difference in effect when the motion is thus qualified?

In such case any member may call up the tabled question when there is nothing else under consideration; but when the tabling is unqualified it can be taken up only upon motion adopted by a majority.

Agreements and differences among dilatory motions

126. Wherein are all dilatory motions alike?

All are subsidiary; each supersedes the question to which it relates, each ostensibly aims only to delay it, but each may be abused so as to defeat it.

127. Wherein do they differ?

The motion to table is not debatable while the others are; that to postpone definitely fixes a certain time for delay, and that to commit sometimes designates the time for reporting, while that to table is without specified limit.

Delaying the "whole subject."

128. Is it ever allowable to move the tabling, committing or postponing of "the whole subject?"

Such a motion is never in order.

129. Why cannot dilatory motions be applied to *subjects?*

Because deliberative bodies deal with resolutions, orders, bills, ordinances and the questions thereon, and never with *subjects*, parliamentarily speaking.

Rank.

130. What is the relative rank of dilatory motions?

That to table is the highest, the next is definite postponement and the lowest is to commit.

Effect.

131. What is the effect of tabling the main motion, with respect to those to defer definitely and to commit it, when those have been previously made?

It not only supersedes them but renders them nugatory; for the main question goes to the table shorn of the other dilatory motions.

132. Are those motions forever lost by the tabling?

Yes; they do not come up with the main motion when it is afterwards taken from the table.

133. What is the effect when the motion to table is lost?

The dilatory motion next highest in rank (presuming all to have been previously made in due order) would cease to be in abeyance and be brought to vote; and, should that be carried, the lowest one would be rendered nugatory; but, should it be lost, the lowest would regain its position and be voted upon as the only question under consideration at the time.

134. May a motion to table be tabled? Subsidiaries not applied to tabling.

No; because such procedure would obstruct business rather than facilitate it.

135. May it be committed or postponed?

No; for the same reason; and for the further one that it would be absurd to dispose of an undebatable question by the operation of debatable motions.

136. May a motion to postpone be tabled? Postponement cannot be tabled.

No; for it is more direct to vote at once upon the question of postponing the main question than to vote upon the question of tabling the proposed postponement of the main question; and direct vote, without debate, can be reached by the application of the proper method—the ordering of the previous question.

137. May a motion to postpone be postponed or committed? Nor postponed, nor committed

No; for it is more direct to defer at once than to refer or postpone for the purpose of being advised whether or not to put off business.

138. Are dilatory motions relatively subsidiary? Relation of dilatory motions to each other

No dilatory motion is subsidiary to any of the others.

139. What is the effect of dilatory upon amendatory and declinatory motions?

They, when adopted, delay the pending amendatory motions along with their principal, but destroy the declinatory.

CHAPTER IV.

The Resumption of Delayed Business.

I. Taking up Business After Tabling or Definitely Postponing It.

59. At What Time. When a question has been tabled or definitely deferred, or when a resolution has been committed, the business temporarily delayed may be resumed at some time. In case of tabling, the time is indefinite; but in the other cases it is better determined, and the matter delayed comes up without motion; that is, the question deferred to a given hour is in order at that hour; and the resolution referred comes back to the assembly when the committee reports upon it.

The motion to take up may be made at any time after a question has been tabled, provided nothing else is under consideration, except that it would not be in order when no other business had intervened, for the reason that it is just the reverse of laying down, and therefore would be a retaking of the same vote. It might seem that reconsideration at such stage would be subject to the same exception, with reference to

ordinary questions; but such is not the practice. And there is this difference: the motion to take up may be made at any time when there is no other motion under consideration, after other business has intervened, while that to reconsider is limited as to time. The limitation is usually to the succeeding day, or two days at most; and to measures not meanwhile executed.

60. In What Condition. When a question comes up from the table, it comes with its subsidiary adhering questions, but not with all its former subsidiary questions. To illustrate: the main question comes up from the table with its proposed amendment, and also with the proposed amendment to that amendment (or rather, with the questions thereon), if such were adhering to it when it was tabled; but it does not come back with questions of motions to indefinitely postpone, to commit and to postpone to a given day, because, though they may have been all existing and awaiting their turn for being voted upon when the motion to table was moved, yet they were all forever cut off when the motion to table was adopted. Tabling was selected by the assembly as the method of delay in preference to the other proposed methods. But tabling could not take the place of amending.

So, also, the order for the previous question, though moved before the making of the motion to table, would be overslaughed by the adoption of the latter, so that the tabled question would come up without any call for such order pending, and would regain its debatable character, if it had had it before.

The further consideration of a question, after it has been taken from the table, is, in all re-

spects, precisely as though it had never been laid there.

61. Resuming Postponed Questions. When the hour arrives to which a question has been postponed, the chair should call it up without awaiting a motion. Even if there is other business pending and unfinished, the chair should obey the behest of the assembly which fixed the time within which the delay should terminate, and which subsequently commenced other business only on the condition that it must give way to that which is entitled to the precedence when the time for the resumption of the latter should arrive.

62. Special Orders. Special orders are common and necessary in legislatives bodies; and they are rendered the more so by the dual character of legislatures. They are governed ordinarily by special rules; but, in the absence of any special rule, a question deferred to a given time is the only thing in order upon the arrival of that time, unless some privileged or incidental question should spring up at such juncture. It always takes the place of such business as could not have been before the assembly had the deferred question kept its place and not been deferred. The thing under consideration is suspended by the taking up of the special order; it is superseded by the resumed question; or, rather, the resumed question takes its rightful place, and leaves the other to bide its time.

The question comes back with its accompanying questions on amendatory motions, if any, but not with any growing out of other subsidiary motions, just as when taken from the table;

and thenceforward the proceedings are as though it had never been deferred.

II. Business Reported Back by a Committee.

63. Time of Reporting. The committee to which a pending resolution or order has been referred, must report at the time designated, when there has been any set time, or then ask leave for further indulgence. In the absence of any limit, the report should be within reasonable time, so that there would be no unnecessary delay. Should the committee purposely withhold report till too late in the session for action, or withhold it altogether, such course would be reprehensible. It is always within the power of the assembly to order a report, and to take back the business that has been committed, even before the committee has prepared any suggestions or collected any information or performed any duties whatever.

64. Reception of the Report. The deferred question comes back with the committee's report. When the chairman of the committee rises and proposes to report, or asks leave to report, it is understood that the assembly agrees to receive the report without a motion to that effect. If there is no objection, general assent is presumed. If, however, there is objection, a motion that the report be received may now be made. Sometimes the assembly is not willing to hear the report at the time, and may decline to receive it. But if a motion to receive is

necessary at all, it is at this time, before the report has been read.

After the reading, the assembly has received the report and is in possession of it, and is competent to act upon it. To move then that the report be received, would be futile. It is common for such a motion to be made, at that juncture, in various societies and other deliberative assemblies, but it is a work of supererogation.

65. Action on the Report. Should the committee merely report back what was referred to it, and make no recommendations, and submit no amendment, the assembly would resume consideration just where it was left off at the time of commitment. A resolution thus reported back would be resumed with whatever rightfully adheres to it, as before explained.

If mere suggestions or recommendations come with the resolution reported back, they offer nothing for ready action, and cannot be adopted unless moved as amendatory to the resolution. But in case the resolution, when referred, was loaded with a pending amendment, no other can take its place merely because recommended by the committee. Of course, secondary amendments, substitutions, etc., would be now subject to the same law as though there had been no reference.

66. Acceptance of the Report. Whatever the report, a motion that it be accepted may be made, and the discharge of the committee may or may not be added; or a motion may be made to recommit. The effect of the acceptance of a report is not to adopt any resolution that may have been recommended, or

any suggested amendment. When a committee has been appointed merely to gather and report information, its acceptance may be proper, since, in the absence of such expression, the report might not be known to be satisfactory. When a committee has been appointed to do some act, and reports it done, a motion that the report be approved is proper. When a committee reports facts only, there would seem to be no meaning in a motion to adopt such report. When a report upon the treasurer's account shows it to be correct, a motion to accept or to approve is all that is ordinarily necessary. When a committee is appointed to devise some plan, and reports a plan, the assembly may adopt the report; or, more accurately, adopt the plan by a motion to that effect. But when a pending question has been referred to a committee, the report cannot change the order in which that question stood when referred, and any emendations recommended by the committee must take their chances in due course as though moved by any member of the assembly, unless special rules provide otherwise. There is this difference, however: when a resolution is defective in form or expression, and is referred, with or without amendatory motions pending, for the purpose of having the committee report it back in better shape, a resolution reported by them may be, on motion, substituted for the inchoate matter referred, and may then take its place to be adopted, rejected, amended or otherwise disposed of, like any main motion originally introduced.

67. When Report not Amendable by the Assembly. What a committee reports for

action, as a bill, resolution, series of resolutions, form of address, plan, etc., after a mere petition has been referred to them; or after they have been appointed and instructed to prepare such bill or other matter; or (if a standing committee), after there has been reference to them as a matter of course, under the rules, is original business before the assembly, and therefore subject to any parliamentary action as though first introduced by an individual member. Such reported resolution, or other matter, may be amended; but not any statement of facts by the committee.

Such statement is like the report of a treasurer concerning his receipts and disbursements, accompanied, perhaps, with suggestions. What right has the assembly to amend such a report so as to make him say what he did not say; to make him suggest what he did not suggest? Such a report may be approved, upon motion; a resolution appended to the report may be adopted, but certainly the report itself cannot be amended by the assembly; and there would seem to be no significance in a motion to adopt a mere report of a committee detailing facts. Distinction must be observed between the report and the bill, resolution or plan reported for action.

68. Unfinished Business. Unfinished business, under consideration at the time of adjournment, comes up rightfully on the next day, just after the disposition of the minutes; and in the same condition and order in which it was when left off by the interruption of adjournment, unless there are other arrangements by special rules. Frequently by such rules the first of the

day is given to the reception of communications, giving notices, etc.; and, in legislative bodies, there is usually what is called "the morning hour," in which memorials, remonstrances, petitions, resolutions, bills, etc., are presented and referred—all of which will be noticed hereafter.

ANALYSIS No. 4.

Resumption of delayed business.

140. When is delayed business resumed?

When reported back from a committee, or when the hour to which it is deferred arrives, or when it is taken up from the table, as the case may be.

141. When may the motion to take up, or a call to take up, be made?

At any time after other business has intervened, if there is nothing else under consideration.

Main motion with adherents.

142. When the main question is taken from the table, what necessarily comes up with it?

All adhering amendments, but not other subsidiary motions; because the tabling is to aid amendments and it is resorted to as a method of delay in preference to other dilatory motions of inferior grade; so it cuts off any previously pending motion to delay the vote, and all other subsidiary motions.

143. What is the course with respect to the main motion and its adherents, after having been taken from the table?

Precisely as though it had never been laid there.

144. May dilatory motions now be applied?

Yes; they may be renewed, as originally offered, but the former ones are not recalled.

Special orders.

145. What is the course when the hour arrives to which a question has been postponed?

The chair should call it up, but it may be taken up by motion.

146. Should other business give way to it?

Yes; if it has been made the special order.

147. Are special orders necessary?

Necessary, common and convenient in legislative bodies.

148. How are they usually governed?

By special rules.

149. What becomes of displaced business?

It is placed in abeyance to be resumed in due time when the special order has been disposed of, and comes up as unfinished business.

Reporting.

150. When must a committee report back a committed resolution, order or bill?

At the time designated in the motion to commit; or, if there is no set time, as soon as the committee is ready, or whenever called upon by the house.

151. By whom does the committee report?

By its chairman.

Receiving report.

152. What is meant by a motion that the report be received?

Only that the house is willing to take it into possession. Such motion is unnecessary when the committee offers to report and there is no objection made.

153. Ought such motion be made after the report has been submitted and read?

No; for the assembly has already received it.

Recommitment.

154. What is the course if the assembly is dissatisfied with the report?

It may be recommitted, or referred to an other committee, or its suggestions may be disregarded and the resolution may be considered as though it had never been referred.

Accepting report.

155. Should there be a motion to accept the report?

That is unnecessary, unless by way of approval of the committee's work; it does not have the effect of adopting the suggestions of the report, but it virtually discharges the committee, if a special one.

156. Should there be a motion to adopt the report? Adopting report.

A motion to adopt reported resolutions is always proper, but the report itself may consist only of facts or arguments, which, parliamentarily speaking, are not susceptible of adoption.

157. May the assembly amend the report? Amending report.

No; reported resolutions or bills may be amended, but the report itself is the expression of the committee which must not be made to say that which the committee did not say.

158. What is the proper method when a committee has reported back a bill or resolution with adhering amendments, in a new form?

The new may be substituted for the old by motion; and thereafter it may stand as the bill or resolution pending before the house.

159. Do legislative bodies always pursue this course?

Practice is varied by special rules. Amendments agreed upon by conference committees are not amendable.

160. How are committees selected? Appointing committees.

By the assembly or by the chair, pursuant to special rules or resolutions; standing committees being usually elected by vote of the members, and special committees appointed by the chair, named in a resolution or elected by the assembly.

CHAPTER V.

Complemental Motions and Nominations.

I. Nominations.

69. How they Differ from Ordinary Motions. Nominations are rather suggestions than motions. They differ from the latter in the following particulars: (1) they require no seconding; (2) several nominations may be under consideration at one time; (3) the suggested names are all voted upon at once; (4) nominations of officers are not an essential preliminary to voting; (5) suggested names to fill blanks are voted upon together, while suggested numbers are voted upon separately, but from the greatest to the least, or from the least to the greatest, as the nature of the case may require, and not in the order of suggestion as when motions are voted upon.

The reasons are as follows: No seconding is required, because it is the right of any member to name his candidate and vote for him, whether

any other member coincides or not; nominations are not essential because they cannot control the right of voting for one not nominated; the nominations of officers must be considered and voted upon simultaneously, because the candidates must have equal chances of election; the filling of blanks with names of committeemen, contractors and the like, must be done by acting upon all the suggestions simultaneously, for the same reason; the voting upon numbers must be as above indicated, because the suggestion least likely to be adopted would have little chance of being brought to vote at all, if not given the preference.

70. Filling Offices. When the chair announces that nominations to fill an office are in order, it is the right of every member to name one candidate, but no more. The reason is that as only one can be elected, and the nominator can vote for only one, it is presumable that he will name his preference and will vote for his nominee. He is not bound so to vote by reason of his suggestion, but the presumption is a sufficient reason for confining him to it in the making of nominations, were there not the further reason that the multiplicity of nominations that might be made if every member could suggest more than one would seriously embarrass the election, without any compensating good. The nominator, however, may withdraw his suggestion and make another, at his own option.

The incidental motion that nominating be closed, is not in order until every member has had a fair opportunity of presenting a candidate, since otherwise the right of the member

would be denied. It is not in the power of the majority, nor of the whole assembly excluding himself, to debar a member of this right when nominations are in order. Majorities cannot thus trample upon personal rights. After full opportunity has been afforded, such motion is in order, whether any nominations have been made or not; and the house will proceed to vote by ballot or by such other method as will allow simultaneous action upon all the nominations. Nominators and other members may vote for nominees or for persons not named, since the preliminiary suggestions cannot control the right of voting.

It will be borne in mind that a motion to appoint an officer is not governed by the usages controlling nominations, but requires seconding, and is subject to all the laws by which other ordinary motions are manipulated and governed.

It is needless to dwell longer here on the subjects of filling offices and voting as they are elsewhere noticed, upon features not here described, in connection with other topics.

II. Filling Blanks with Names in Skeleton Resolutions.

71. Incomplete Motions—How Completed. A skeleton resolution is a form to be written out in full by the assembly itself. It is an unfinished proposition, not meant by the mover to be adopted as presented, but offered by him as the mere frame upon which the assembly may build. Part of it is left unwritten; and usually

an important, if not the most important part. The assembly itself is to finish the writing and thus complete the resolution, so as to put it into condition to be voted upon.

The completing of such a skeleton resolution is by filling the blanks purposely left by the member who introduced it. The filling is done by the insertion of names, sums, times or whatever may be wanting; thus, if the resolution be: "Resolved, That —— be authorized to collect the dues owing to this society by its members," the blank is to be filled by a name; if the resolution be: "Resolved, That —— dollars be appropriated for the erection of a new hall," the blank is to be filled by a sum. Whether the filling is by a name, a sum, or a time, the principle upon which the filling is done is precisely the same; and the method is the same, except in the peculiarity of voting upon the word or words to be inserted. Neither the filling by name or by number is an amendment, as will hereafter be shown, though the process has been usually treated in the books as that of amending.

72. Suggesting Names. Proceeding to supply a wanting name in such a skeleton as that first above suggested, the assembly receives nominations from the members. When one name has been suggested, that is no bar to the suggestion of another by some other member, though it would be, were it an amendatory motion. Many names may be suggested, but voting upon the filling of the blank is not in order until the presentation of names has been completed.

The nominations are precisely like nominations to offices. No seconding is required in

either case. Persons may be voted for and chosen, in either case, without having been nominated at all. When officers are to be elected, nominations may serve to indicate the choice of those who make them, and may increase the chances for the election of the candidates named, and may expedite business by concentrating votes upon nominees, and by thus diminishing the number of ballotings that might otherwise ensue; but they are not essential, and do not prevent members from voting for those not nominated. When there are several candidates (as before remarked), the voting upon all must be simultaneous, for fairness' sake; therefore it must be by ballot, by division, by roll-call or other method allowing all to vote at once, so that no one nominee can have any advantage over the rest. When there is but one nominee, the vote might be taken by the voice or by raising the hand.

73. Simultaneous Voting. Is there any difference discernible between nominations to fill an office and nominations to select some one to collect the dues of the members, so far as the above stated particulars are concerned? Ought not all the names suggested to fill the blank in the skeleton resolution appointing him, be nominated successively without limitation of number, and then voted upon simultaneously for the sake of fairness? There is no difference. Besides, the two kinds of nominations agree in several other respects: either may be withdrawn by the nominator; either requires a majority vote for success unless otherwise ordered by special rule; and, while nomination for office will be universally conceded to be not

an amendatory motion, it will be shown that nomination to fill a blank in a skeleton resolution is also not an amendatory motion. In one respect (not yet mentioned), there is a difference: a majority vote for a nomination to an office, is final action, while a majority vote for a nomination to fill a blank is final only as to the filling, since the completed resolution must afterwards be brought to vote; but this difference does not affect the argument. It might be thought to favor the idea that the suggestion of a name for the blank is an amendatory motion, but the following six particulars will show that it is not; and they will require no elucidation.

74. Suggestions to Fill Blanks are not Amendatory Motions. (1). There is no full resolution offered, so as to be the subject of amendment. (2). The suggestion is merely to eke out what the mover purposely failed to present. (3). The suggestion, if a motion, would require seconding; and (4) would preclude another motion of like grade being offered while it should remain undisposed of. (5). If an amendatory motion, but one nomination could be voted upon at once; and the rule of voting to fill blanks is otherwise. (6). Such suggestion is not governed by the general rules concerning motions.

Now, suppose the skeleton resolution to be as follows: "Resolved, That a committee of three, to consist of Messrs. ——, —— and ——, be selected by the assembly, to audit the accounts of the treasurer," would not the filling of the three blanks be governed by the same considerations as those governing the filling of the one

blank first given for exemplification? There is no difference except that each member would vote for three on his ballot; but all the names suggested, however many, should have a chance with the first ballot. It would seem that the plan laid down in some of the books, that voting must first be on the names first suggested, is erroneous because unjust, and because based upon the idea that filling the blank of a resolution is an amendment.

Committees are usually appointed by the chair, or named in the resolutions creating them; but when blanks are to be filled by names of committeemen selected by the assembly, the process is similar to the insertion of a sum or a time in an incomplete resolution.

III. Filling Blanks with Numbers in Skeleton Resolutions.

75. Proceeding from the Greatest to the Least Sum. Recurring to the example above mentioned: "*Resolved*, that —— dollars be appropriated for the erection of a new hall," it will be found not different from the foregoing two examples, except in the method of voting. Nominations of sums are made in this case, like nominations of names in the other, requiring no seconding, and barring no subsequent suggestion. One member names ten thousand dollars; another, nine; another, five; another, three; another, one. The vote is taken upon the greatest number first, not because first suggested, but because it is least likely to command a

majority. If lost, the next highest is put to vote, but with more chance of success, since those who wished to appropriate ten thousand, may be supposed to now favor nine, etc.; and thus on to the least sum, if a majority be not previously centered upon some figure higher. Voting from the greatest to the least is the rule of most legislative bodies, and it will generally be found effectual and convenient; but the better practice is to reverse the process when the sense requires it. As an auctioneer receives bids from the lower to the higher when selling; and as bids are received from higher to lower when a contract is being let, so the *minimum* or the *maximum* is the beginning point, according to the nature of the case, when filling a blank with a sum.

76. From the Least to the Greatest Sum. Suppose a skeleton resolution for selling something, with the price left blank. Ten, nine, five, three and one thousand dollars are suggested as before; but here it is manifest that the vote should first be upon the least sum, since it is least likely to meet the views of the majority as the price to be fixed; and then, proceeding upwards, voting stops as soon as the sum which the majority is willing to take shall have been reached.

The books give examples of the first method, drawn from the fixing of the amount of a fine, the term of imprisonment, the time within which a loan shall be irredeemable, and other instances in which the greater proposition is said to include the less; they give examples of the second from the fixing of the amount of a tax, the day of adjournment, etc.

When blanks are to be filled by the insertion of a time, the rule is the same as with regard to a sum. Generally, beginning with the highest sum and longest time will be found practicable. By the 32d rule of the United States Senate: "In filling blanks the largest sum and the longest time shall be first put." The lower house seems to have made no provision on this matter further than is done by the adoption of Jefferson's Manual by its last rule.

77. Amendment by Substitution of Sums. Suppose a member should offer a fully written resolution appropriating a thousand dollars to the poor: no other sum could be suggested except by way of amendment. Suppose another member moves to amend by striking out "thousand" and inserting "hundred:" which should be first voted upon? The amendment, of course. But should it be lost, would the question recur on the greater sum? Certainly so; because the main motion must come to vote. It would seem to be a work of supererogation, after the voting of a hundred dollars had been refused; but the state of things is wholly different from that upon the filling of blanks. Members, knowing that the original proposition must come to vote if they defeat the substitution, might vote against the sum of one hundred, yet be ready to favor the sum of one thousand. The illustration shows the difference between amendatory motions and nominations to complete skeleton resolutions.

78. The Resolution Written. When the members of the assembly have reached a conclusion with regard to filling the blank, the resolution is merely completed as to form, and

may be withdrawn by the mover by leave of the assembly, if he dislike the filling and prefer to write the whole of his resolution and fill the blank as he may please. The resolution, if not withdrawn, is liable to amendatory motions, like any other maiden resolution.

79. No Competition of Motions. If it be said that the method of filling blanks in skeleton resolutions is contrary to the cardinal rule, *One thing at a time*, the answer is that that rule has reference to motions. It was never meant to apply to nominations of officers, of members of committees, or of names, sums or times to fill blanks. Besides, were it exceptional, the method is well founded in reason, serves to expedite business and does not hinder or complicate it. Practically, a resolution prepared by the members themselves is not likely to elicit subsequent emendation or opposition. What has been said of its liability to withdrawal and to amendment was merely to show its character; but when the method of filling blanks is brought into question, that liability will be found of no serious objection, since the members will always be likely to adhere to the entire motion in the form and figures in which they themselves have written it.

ANALYSIS No. 5.

Complemental motions.

161. What is a complemental motion?
It is a motion to complete a skeleton resolution by filling its blanks after it has come into the possession of the house.

Filling blanks with names.

162. How are names supplied when purposely left wanting by the mover that the assembly may supply them?

By nomination or complemental motion—to fill up the resolution with the names of committeemen, for instance.

163. How are nominations to fill blanks voted upon?

Precisely as upon nominations to fill offices; but if there is a motion to fill with certain names, the question is put as in case of any incidental motion.

Filling blanks with numbers.

164. How are blanks for sums and times supplied?

By motion or suggestion to complete the resolution by inserting a sum or date.

165. May more than one such suggestion be pending at the same time?

Any member may suggest the number, sum or time he prefers, though others have already suggested.

166. How are suggestions voted upon?

First, upon the greatest number and the longest time, then upon the next to the greatest, and so on to the least, or till some suggestion be adopted; but this order should be reversed when the sense requires it.

Not amendments.

167. Why is not the first proposed number in order to the exclusion of other propositions?

Because it is not an amendatory motion, and is not governed by the rules appertaining to such motion. It does not change the original proposition, but completes the writing of it.

168. Why is not the second proposed number supersediary of the first, like a second degree amendment?

Because it does not relate to the first, but is an independent suggestion relating to the original proposition in its skeleton form.

169. Do complemental motions require seconding?

No; and in this further particular they differ from amendatory motions.

170. Are they debatable?

They are not, thus further differing from amendments.

171. Why is no seconding required? Limitation

Because it is the right of every member to suggest the name or number which he wishes to have inserted in the blank, whether he has any supporter or not.

172. May a member make more than one suggestion for the filling of a blank?

He is limited to one, since the suggestion of two different numbers would be inconsistent.

173. May he withdraw his motion?

He has the right to do so, and may then make another suggestive of a different sum, mumber or name, as the blank may require, provided he do so before the time for nominating has been closed.

174. When may a motion to close nomi- Closing. nations be made?

When each member has had the opportunity of making his suggestion.

175. After the writing of a skeleton reso- When lution has been completed by the filling of amendable its blanks, may it be amended?

Yes; for it is then in the condition of a resolution first offered in complete form.

CHAPTER VI.

Incidental Motions.

I. The Motion to Permit the Withdrawal of a Motion.

80. Motion to Withdraw Incidental. Incidental motions are subsidiary to other motions, and consequently supersede them in the order of voting. They are generally not debatable.

If the mover of a resolution should not withdraw it before the assembly becomes possessed of it, he then could only do so by general consent, or by a motion passed by a majority. Such a motion is incidental to the resolution, and the question upon it is an incidental question with reference to that upon the resolution.

81. Form and Effect. Such a motion is not made unless the mover of the resolution has asked leave to withdraw, since it would other-

wise be discourteous. The mover of the resolution, however, instead of asking such leave, might himself make the incidental motion. Ordinarily, when the mover asks leave to withdraw, the chair asks: "Are there any objections?" If none, the chair will grant leave; if any, a motion would be necessary. Such incidental motion is always brought to immediate vote, and needs no order to that effect. If adopted, the resolution to which it is incidental is removed from further consideration with all that adheres to it. It is impossible to withdraw a main motion without taking with it any amendment that may be attached, and any secondary amendment that may belong to the amendment, and any dilatory motion that may be in line, together with any amendment that may have been appended to the dilatory motion.

82. Practice in Congress. In the United States Senate, "any motion or resolution may be withdrawn or modified by the mover at any time before a decision, amendment, or ordering of the yeas and nays, except a motion to reconsider, which shall not be withdrawn without leave of the Senate" (Standing Rules, No. 44). By the 16th rule of the other house, a motion "may be withdrawn at any time before a decision or amendment." General assent would be requisite to enable the mover to withdraw his motion after amendment or some minor decision on it; or it would be necessary that a motion to grant leave be passed by the majority, as in any other deliberative body where there is no special rule to indicate a different practice.

II. The Division of a Resolution.

83. Call for Division. When a resolution is susceptible of separation into two or more distinct propositions, a member may call for its division that each may be voted upon alone without being embarrassed by matters embraced in other parts of the general measure. In such case the propositions need not be incongruous or contradictory, one with another; it is sufficient if each be distinct and complete in itself, and of such a nature that a member might reasonably wish to vote for one and against another of the propositions embraced in the resolution.

84. When Divisible. However long and complicated a resolution may be, it may yet preserve unity and be indivisible. On the other hand, it may be brief yet contain more than one distinct proposition. For example of the latter, the following may be given: "*Resolved*, that the sessions of the Convention be held daily in the town hall." A member might desire daily sessions, but not in that place. There are two distinct propositions and the resolution may be divided. In like manner, a resolution containing many distinct propositions, each capable of standing alone, may be divided into as many different parts to be put to vote *seriatim*.

85. Motion for Division. When the division of a resolution is called for by a member, the assembly may not give general consent; and when no rule makes division imperative upon the demand of a member, he may move for a division, to take the sense of the house. It is

often inadvisable to divide resolutions, even though they do contain propositions susceptible of separation. There is often a mutual relation between them rendering it better that they all be considered together. Business may be facilitated by keeping the resolution entire. When a motion for division is made, therefore, the members may properly take into consideration other arguments than the one based upon the existence of two or more propositions, each capable of standing alone.

86. Separate Consideration of the Parts. When a division has been ordered, all but one proposition must stand in abeyance until some disposition shall have been made of the question pending upon that. No other is debatable or subject to any motion whatever, since there can be but one matter under consideration at the time, and the matter now is the adoption or rejection of the first proposition. When that has been, in due course, as above explained, adopted or rejected, or otherwise disposed of, the second proposition is at once advanced without the necessity of any motion to take it up. A temporary disposition of the first, such as takes it from further consideration at the time, immediately advances the second to the front, and it becomes the only question for immediate action. No other independent and original resolution can intervene, except such privileged matter as will be presented in due course. When the second proposition has been either permanently disposed of by adoption or rejection, or temporarily disposed of by being postponed, committed, laid on the table or otherwise, the third must be called up by the chair to the exclu-

sion of other matters (with the exceptions above stated), and so on till all the propositions shall have been disposed of by the assembly. Sometimes the nature of the question is such that the first proposition of a divided resolution cannot be first put to vote. Suppose the motion, that the society do now adjourn to meet on Saturday next, should be divided; the question on the appointment of the next meeting must be first put, since otherwise the adoption of the first part would preclude its being put at all.

87. Multifarious and Contradictory Resolutions. A resolution embracing many independent propositions is not to be ruled out by the chair on the ground of multifariousness, since it is often convenient and often serves to expedite business to have many matters thus conjoined. Where two propositions in one resolution, or a series of resolutions embracing many propositions, are pending before the house, they should be voted upon together, if the members are so disposed. The chair should not rule the motion to adopt out of order on the ground of multifariousness. But when two propositions in one resolution, or two resolutions in a series, are manifestly contradictory to each other; when, for instance, a resolution declares that a thing is and is not, or an order requires that an officer shall and shall not perform certain functions, or one resolution creates a rule and another repeals it, the chair should rule the motion to adopt out of order, on the ground that the propositions negative each other and are a blank presenting nothing for action.

Manifest as this reason is, there are many cases in which the contradiction is not perfectly

apparent; and, in cases of doubt, even where there is evidently some incongruity, the chair should not take upon itself the responsibility of declining to put the question.

88. A Motion to Divide is not to Amend. Some treat the dvision of a resolution as an amendment, but clearly it is not. It is not subject to the rules governing amendments. The separated parts constitute the whole, without any change of idea. The motion to divide cannot be properly and advantageously classed with amendatory motions, since it is not governed by the same rules. It is purely incidental, though relating to the resolution which it seeks to divide; and while it is thus necessarily subsidiary, it cannot be properly classed with any other branch of subsidiary motions than its own.

The motion to divide cannot be amended, since it presents a simple question intervening between the making of the motion to which it relates and the vote thereon, and should be summarily disposed of. For the same reason, it is not debatable. It follows that there would be no utility in applying the previous question to it.

If the motion to divide were an amendatory motion, it might be amended by a motion to amend the amendment; it would be debatable in character, as is generally the case with such motions, and there would be utility in the ordering of the question to immediate vote. It seems needless to dwell longer on this point, but it may be proper to say that the opposite position—that the motion to divide is to amend—has been repeatedly held. One of the princi-

pal advantages of grouping motions into classes is the better understanding of their nature.

89. Practice in Congress. Both houses of Congress hold the motion to strike out and insert to be indivisible; yet the Senate proceeds upon such a motion as though it were already divided, allowing the amendment of either proposition as though it were a separate resolution. By the 31st Standing Rule, any Senator may have a question divided, "except a motion to strike out and insert, which shall not be divided; * * * but the part to be stricken out and the part to be inserted shall each be regarded for the purpose of amendment as a question; and motions to amend the part to be stricken out shall have precedence." It would seem by this that though an amendment to the amendment-by-inserting be pending, the Senate would then entertain an amendment to the amendment-by-striking-out, and that the latter would supersede the former and put it in abeyance for the time being.

The rule of the lower house is: "On demand of any member, before the question is put, a question shall be divided if it include propositions so distinct in substance that one being taken away a substantive proposition shall remain. A motion to strike out and insert is indivisible." (Rule 16.)

III. The Motion for the Reading of Papers.

90. Papers not Under Consideration. This is incidental, relating to the question which the reading is meant to affect. It is subsidiary

to such question, and must be first put to vote without amendment or debate.

"When the reading of a paper is called for, and the same is objected to by any Senator, it shall be determined by a vote of the Senate, and without debate." (Standing Rule, No. 15, U. S. Senate.) "When the reading of a paper other than the one upon which the House is called to give a final vote is demanded, and the same is objected to by any member, it shall be determined without debate by a vote of the House." (Rule 31, House of Representatives.)

Papers to be acted upon may be once read upon the request of any member, as a matter of right; and no motion is necessary; but when a member desires to read other documents, or to have the secretary read them, he must obtain the assent of the assembly. If the chair asks whether there are objections, and no response is made, the reading may proceed. A motion is necessary, if there be objection; and such motion, relating to and incidental to the main question, must be put before it, and without emendation or discussion. Were every member allowed to read any paper, document, book or newspaper, as a matter of right, he might greatly delay and interrupt business: he is therefore not left to his own option but must have the assent of the assembly by silent acquiescence or by the orderly passage of the incidental motion for permitting the reading, before he can proceed. Even a written speech is supposed to come under the rule requiring permission for reading, though the reasons do not fully apply, since the member might create greater delay and interruption by the oral delivery of a

speech less prepared and condensed than the written one is likely to be.

91. Papers Under Consideration. Of course the rule is different when the paper which the member would have read is that which is being considered, and upon which he must vote. He has the undoubted right to hear such paper read, and to have all the others of the assembly hear it. However, after it has been read by the secretary and is under consideration, there must be a reasonable limit to the number of times a member may demand its reading.

Congress and other legislative bodies, receiving hundreds of papers in the forms of petitions, memorials, remonstrances, official reports and messages, etc., are accustomed to refer them to their appropriate committees without any previous reading. It would consume a great portion of the time of a session to read all the communications, of every character, that are to be acted upon. Most of them are never read at all before reference to a committee. They come back in a different form, being reported "by bill or otherwise." Of course, that which is to be voted upon for adoption or rejection; that which is reported back for action, is read. It is thrice read before final vote upon the passage, though not so often read in full. And equally of course it may be said, no member is bound to vote upon a question of reference without having the thing read which is proposed to be referred. But the reference is usually provided for in the form of a rule, requiring certain classes of business matters to go to certain designated committees. The references and readings will be noticed hereafter.

IV. The Motion to Suspend Rules.

92. When in Order. Assemblies which have adopted special rules must obey them while they exist; and no majority, not even if it embraces two-thirds or three-fourths or nine-tenths of the members, can suspend one of those rules, unless there is provision for suspension in the rules themselves. The principal object of adopting them is to provide a law which all must obey; and there may be the object also of protecting minorities in their rights.

As the motion to suspend derives its right to exist from the rules themselves, it varies in different societies. One set of rules may require the vote of two-thirds to order their suspension; another may require less; and a third, more. In the absence of any rule on the subject, a majority cannot suspend a rule, though competent to repeal it. While it is in existence it must be obeyed; but it may be put out of existence.

The United States Senate allows the motion to suspend a rule in whole or in part after a day's written notice, or after unanimous assent given. The eighteenth rule is excepted (R. 61). The other house allows suspension upon the vote of two-thirds after seconding by a majority, but only on the first and third Mondays of each month and during the last six days of a session (R. 28).

93. When not Permissible. While a rule which is indebted for its existence to its adoption by an assembly, may doubtless be repealed or suspended in such way as the assembly may devise, there would seem to be a difference between such a rule and one which would be

existent and operative without such adoption. Suppose, among the special rules of a society, we find written: "The majority shall rule;" "Motions, duly seconded, must be put to vote by the chair;" "Adjournment shall take place when a motion to adjourn has been duly put and carried and adjournment pronounced," and similar regulations: could any deliberative body rightly suspend such rules, or rightly pass a rule authorizing their supension? Rules based upon a constitutional requirement or upon a statute, cannot be suspended. The Senate Standing Rule 1, making a quorum to consist of a majority; and Rule 19, "When the Senate shall be equally divided, the Vice-President may, by his vote, determine the question," cannot be suspended. Some of the House rules might be specified which cannot be subject to a motion to suspend. No rule based upon established parliamentary principles should ever be suspended.

A motion to suspend a rule should express the purpose for which the action is required. It is not debatable ordinarily, though debate is allowed, under certain circumstances, by the rule of the House of Representatives last above cited. It is not renewable on the same day's session on which it was considered. It cannot be reconsidered. When suspension is allowed, in any association, it is a commendable provision to require the vote of two-thirds.

There are other incidental motions besides those designated herein, all partaking of the general characteristics described, and which may therefore be readily recognized as they arise in practice.

V. Questions of Order and Appeals.

94. Calling to Order. Questions of order give rise to the largest class of incidental proceedings. They necessarily take precedence of any pending proposition to which they relate, and must be decided in advance. Appeals from decisions thereon also forestall the vote upon such proposition, their disposition being necessary to the final decisions of the incidental questions.

It is the duty of the presiding officer of any assembly to preserve order with reference both to decorum and the rules of procedure. Any member may call another to order through the chair, but it is obligatory upon the president to see that all rules are enforced, and that all motions which he entertains are in order. Though much latitude is given in debate, yet if the debater is clearly out of order by reason of words spoken or improper manner violative of decorum and of the rules of the assembly, the chair should check him; and, if the case is a palpable breach of order, should silence him at once. The assembly should support the chair in the maintenance of decorum; and, when the disorderly member is persistent, and refuses to be brought down by the chair, should even subject him to discipline and to appropriate punishment by censure, expulsion or other means within its authority. Whether the member called to order by the chair be right or wrong, the other members should maintain the authority of the chair, unless he exercises his privilege of appeal, or some one else appeals, when the mem-

bers should sustain the chair or not, according to the merits of the case.

Whether there is an appeal or not, the member called to order should immediately heed the call and take his seat. He may be permitted by the chair to explain. He may be permitted by the assembly to explain. An incidental motion to that effect may be passed. If called to order for words spoken, he may resume his speech after a successful appeal.

95. Stating and Deciding. A member, calling another to order for words spoken in debate, should indicate the objectionable words that they may be immediately taken down; and he should state the point of order which he makes. He cannot raise the question, if other business has been transacted after the breach of order, unless the intervening business has, by reason of its more highly privileged character, prevented him from raising the point. He cannot object to any motion as out of order unless he does so at the proper time, which is when the motion is offered. He cannot object after the day on which it has been offered, seconded, stated and entered, unless, by reason of immediate adjournment, or the immediate introduction of some privileged question, all opportunity of raising the point has been cut off. A member raising any question of order, whether concerning decorum or procedure, must state his point. The presiding officer may immediately decide it, or he may indulge debate at this stage for his own information. It is not the right of each member to be heard at this juncture. The chair may, at the close of any speech, proceed to decide without awaiting further

speeches. Reasons for the decision need not be given; but the president may render them, and, possibly, thus satisfy the members so as to preclude appeal.

The chair ought not to give any opinion on a matter of order in reply to a question by a member before a point has been regularly raised; he is only to decide when a question is properly presented.

96. Appeals. Appeal may be moved by the member decided against, or by any other member. It requires seconding. It is the right of the appellant to state the grounds of his appeal. It is the right of the president, and, under some circumstances, his duty, to submit to the assembly the reasons of his ruling, in case of appeal. He should state the question arising upon appeal, as follows: "Shall the decision of the chair be sustained?" or, "Shall the decision of the chair stand as the judgment of the house?"

An appeal is debatable, as a general rule. It is subject to the ordinary regulations of debate: no one being allowed to speak twice till all have had the opportunity of being heard, and afterwards only by sufferance, or by leave granted; the appellant being allowed to open and close as a matter of parliamentary courtesy; the debate being subject to closure by incidental motion, and all the usages of discussion being applicable.

There are exceptions to the general rule that appeals are debatable. Speaking is not permissible upon an appeal from a decision that words spoken have transgressed the rules of speaking. If the previous question has been moved, or the main question ordered, and then a point of or-

der been raised, decided and appealed, no debate can be had on such appeal; nor is the point debatable before the chair's decision. If, when any undebatable question is pending, a point of order incidentally be raised, there can be no speaking upon such point, either before the chair's ruling, or afterwards upon appeal. By general consent, these restrictions are sometimes relaxed; especially when the question of order is new, difficult and important.

An appeal is subject to the motion that it be laid on the table, pending which motion it is not debatable. The effect of tabling an appeal is not to suspend the decision of the chair appealed from, but to sustain it as the judgment of the assembly. The decision is overruled by a tie vote upon the appeal, owing to the form in which the question is stated.

97. Renewal, Reconsideration, Etc. When an appeal has been decided, it cannot be renewed, though additional grounds be suggested. The decision cannot be reconsidered, if the resolution, bill or measure which gave rise to it has been subsequently passed by reason of the decision. If a proposition be offered and it be objected to as not in order, and the point be decided adversely and debate be allowed to progress upon the proposition, the point cannot be renewed on the following day.

In the U. S. House of Representatives, appeals on questions of order are debatable by all the members, though no one can speak twice without leave; but questions of order arising after the previous question is moved, and such question arising on any undebatable motion or

measure, or during the division of the House, constitute exceptions.

The practice in the House is in accord with the general usages governing questions of order and appeals as herein treated, and need not be here further stated.

ANALYSIS No. 6.

Incidental Motions.

176. Are incidental motions subsidiary?

Yes; and consequently any one of them supersedes the pending motion which gives rise to it.

To withdraw a resolution.

177. What is the effect of the adoption of the motion to withdraw a resolution from the possession of the house?

The latter is removed from consideration with all its appendages.

To divide a resolution.

178. Is the motion for the division of a resolution incidental or amendatory?

The former.

179. When may it properly be applied?

When the resolution contains distinct propositions which may be voted upon separately with advantage or without detriment to any one of the propositions.

Order of putting the questions.

180. What is the course where division has been ordered?

All the propositions but the first stand in abeyance till the first has been disposed of; then the second is advanced, and so on to the end; but this order is changed when the nature of the proposition renders it necessary.

Multifarious motions.

181. May not a resolution containing several propositions be ruled out of order on the ground of multifariousness?

It cannot, though that may be good ground for its rejection by the assembly.

Contradictory motions.

182. When two propositions, embraced in one resolution, are contradictory, should not the resolution be ruled out?

Yes; if the contradiction is palpable, as that a thing is and is not; but if there is the slightest doubt of the contradiction, the chair should not assume the responsibility of ruling it out.

Division not debatable.

183. Is the motion to divide debatable?

Neither debatable nor amendable, though every proposition of the resolution, when divided, may be both.

Demand.

184. Is a motion always necessary for a division?

Any member may demand division by the rules of some assemblies (including U. S. House of Representatives) but motion is a member's only method, if driven to use one, in the absence of special rules.

Reading papers.

185. Does the reading of papers not being acted upon require a motion?

Yes, if it is objected to; and such motion cannot be amended or discussed.

Suspending rules.

186. May special rules be suspended by a motion incidentally made?

Yes, if such rules so provide; and the vote necessary to pass such motion, whether a majority or two-thirds, or three-fourths, or unanimous, depends entirely upon such special rules, in any particular assembly.

Questions of order.

187. How is a question of order raised?

Any member may object to a motion or to conduct which he deems disorderly, and may state his point.

188. May the presiding officer take notice of a disorderly motion or indecorous behaviour when no member has raised a point of order thereon?

It is his duty to do so, and to rule upon it.

189. May he decide peremptorily upon a submitted point of order?

When the assembly is dividing upon a question, he should do so; and on other occasions he need not indulge the members in debate further than he deems it necessary for his own information.

190. What is the duty of a member when called to order?

He should heed the call, take his seat and await the action of the chair.

191. What is the course when he is called to order for disorderly words in debate? Disorderly words.

The words are taken down and the member may explain. If he is decided to have transgressed the rules of debate, he cannot resume his speech without leave of the assembly. He may be censured or otherwise disciplined.

192. How is the time for objecting to disorderly words limited?

The objection comes too late if other business has intervened.

193. What is the remedy if any member deems the chair's ruling erroneous on any question of order? Appeal.

He may appeal: the appeal must be seconded.

194. Is an appeal debatable?

Ordinarily so. The presiding officer should give the reasons for his ruling, and the appellant should state the grounds of his appeal and should be accorded the opening speech thereon.

195. Is the debate general? Appeal—Debate.

Each member may speak once, but not again without leave.

196. What questions of order and appeal are undebatable?

Points of order incidental to undebatable questions, those raised after the previous question has been moved or the main question ordered, those relative to disorderly words spoken in debate, and those raised when the assembly is dividing, cannot be debated either before or after the taking of appeal.

197. May an appeal be laid upon the table? Division. Renewal, etc.

Yes; and the practice is common; and the effect is not to suspend the decision of the chair, but to sustain it.

198. When brought to final decision upon appeal what is the form of the question?

"Shall the decision of the chair stand as the

judgment of the assembly?" or, "Shall the chair be sustained?"

199. What is the effect of a tie vote?

The ruling would not be sustained.

Undebatable questions.

200. May an appeal be renewed after decision?

No; not even on newly stated grounds.

201. May it be reconsidered?

Yes; unless the measure which gave rise to the incidental question of order, whence sprang the appeal, has been disposed of pursuant to the decision.

CHAPTER VII.

Debate.

I. Speaking to the Question.

98. What is Debatable. The general rule is that all questions are debatable, because the object of deliberative bodies is to reach the mature judgment of the majority by means of free interchange of thought. Exceptions are based on the reason that some questions require instant action in order to dispatch business. Undebatable questions are those upon adjournment, fixing the time of the next meeting (when the question thereon is privileged), laying on the table, taking from the table, ordering the main question, reconsidering an undebatable question, withdrawing a motion, suspending a rule, taking up the order of the day, fixing priority of business, limiting or closing or extending debate, questions of order arising upon undebatable questions, and any question of like nature.

99. Speaking by Sufferance. There must be a motion seconded and stated before there can be any question to be debated. Here, distinction must be drawn between speaking by the sufferance or permission of the assembly, and debating as a matter of right. Even a visitor, upon invitation, may address the body on any subject appertaining to the business of the assembly and consonant with its character, though there is no question pending. Members may be allowed to speak when there is no question, by general assent; or by invitation, when a majority vote therefor upon motion. It is not uncommon for a member, who has given previous notice of intention to introduce a resolution at a given time, to rise at that time and proceed to make a preliminary speech; or, without previous notice, to rise, stating that his purpose is to make a motion, and then proceed to make prefatory remarks before introducing it. The seconder also, before formally seconding a motion, sometimes addresses the chair, giving his reasons for favoring the resolution or order. But neither the mover nor the seconder can speak thus out of order as a matter of right. It is only by the indulgence of the assembly that either is heard at this stage.

100. Why Motion precedes Debate. The reasons why the mover has no right to speak upon his motion not yet made, are (1) there is no question to be discussed; (2) the motion when made may not be in order; (3) if in order it may not be debatable; (4) if in order and debatable, the assembly may not choose to have it discussed but prefer to table, commit or postpone it, or to order an immediate vote upon it.

These reasons need no amplification; but it may be well to advert to the fact that they seem to have been overlooked by those writers who state that the member rising to move something may rightfully make a preliminary speech. It has been even laid down as a general parliamentary rule that the mover is entitled to introduce a motion by a speech, if he announces when he rises, or has previously announced, that he intends to make a motion. And it is further said that his intention to move is presumed when he rises, though no announcement of it be made; and if, under such circumstances, he should be interrupted on the ground that there is no question before the house, he, upon stating then that he intends to conclude with a motion, would be entitled to proceed.

101. Why Seconding precedes Debate. The reasons against allowing a preliminary speech before moving, apply in part against allowing it before seconding; for, though it may be known whether the motion is made in order, and whether it is debatable, it cannot be known whether the assembly will choose to discuss it or dispose of it summarily; and the prime reason applies: there is no question to be discussed at the time a member rises to second the motion. Yet it has been averred that the seconder has only to announce that he rises to second the motion in order to be entitled to make a preliminary speech. The error here is not so glaring as that stated in the preceding paragraph, since the announcement by a member that he rises to second a motion might be considered as the seconding of it; still, there is

no question stated by the chair, none in possession of the assembly, nothing to be discussed.

102. Preliminary Speakers Ruled to Order. The true doctrine is that such preliminary speaking, either by the mover or the seconder, is always by indulgence and never by right; and that, without permission previously obtained of the assembly, either is liable to be taken down upon a call to order. This doctrine is not only sustained by the bare reasons above stated, but might be further supported by arguments drawn from the necessity of preserving the symmetry of parliamentary science, and from the best precedents. Besides, must an assembly incur the risk of a wanton waste of time; the danger that a protracted speech may end in a motion trivial, impertinent or on a subject different from that of the speech; and the liability of having thrust upon it the disagreeable duty of dealing with the wrong-doer by reprimanding, censuring or even more severely punishing him, in order to preserve the order and dignity of the assembly?

103. Mover and Seconder may Debate, in Order. So far has the opposite doctrine been carried, that it has even been insisted that the mover and seconder of a motion have no right to debate it after it has been stated by the chair, even if they have not made preliminary speeches; that failure to make them must be considered as a waiver of their right to speak, though no question was in existence before the motion had been both made and seconded, and none in existence for debate before it had been stated. It is true that the assembly may consider itself in possession of the mover and seconder's sentiments

regarding the proposition by reason of their making and seconding the motion, but their right to enforce their opinions by argument remains equal to that of other members.

104. Speaking by Committeemen. The chairman of a committee, after making report, is not entitled to the floor for debating any question to which the report may give rise, until such question has been duly stated by the chair. A verbal report, though containing the reasons upon which the conclusion is founded, is not debate, nor is it governed by the rules of discussion. When the question arising upon the report has been stated, the chairman of the committee cannot then claim the floor as of right by reason of his office; but if the question is upon a resolution reported by him, the other members ought to give him the first opportunity of speaking as a matter of amenity, and for the purpose of having the resolution more fully explained by one presumed to understand it better than the rest. If, however, the question should be upon the reception or acceptance of the report from the committee, and not upon the adoption of a resolution submitted, there would not be the same reason for according him the preference; but, on the contrary, he should rather forbear to speak.

When there is a minority report, one of its signers should be allowed to follow the chairman of the committee, as a matter of courtesy and also for the purpose of getting all the views of the committeemen before the assembly prior to general discussion. But none of the minority, any more than one of the majority, has any exclusive right to the floor without having

obtained it in the usual way, like any other member.

Speaking to the question, after its statement, and then one speech at a time, confined to the question, addressed to the chair, and respectfully delivered, is the invariable rule of debate in all properly conducted deliberative bodies. Its violation is subversive of the very object of such bodies: the reaching of a conclusion by the majority after free interchange of thought and argument.

II. The Order and Etiquette of Debate.

105. Courtesy. To the mover of a resolution or order should be accorded the first opportunity of speaking, not only as a matter of courtesy, but as a means of understanding his proposition as the basis of further argument; and this precedence should be cheerfully accorded by his fellow members. And when another contends with him for the floor, if both have otherwise equal claims so far as concerns the time of rising, the chair should prefer the mover.

Those who afterwards successively obtain the floor must be heard, but none should be heard a second time till all have had the opportunity of addressing the chair. The closing speech should be by the mover, if he desires to make it, and if there be no good reasons why debate should be closed without it.

In the absence of special rules, there is no limit to speeches as to time, except that the assembly may protect itself from being imposed

upon by speeches of annoying length, evidently made to waste time and not to subserve the prime object of a deliberative body as above stated; and, in order thus to protect itself, the assembly may interrupt the speaker through a member rising to a point of order and stating that the speaker is abusing his privilege. And the chair may, in an extreme case, rule the speaker out of order, and leave him to his remedy by appeal. Even a motion made to deny him a further hearing might properly be entertained, if made for the protection of the assembly under such circumstances. It would raise such an incidental question as would temporarily supersede the question under discussion, and would be allowable from the necessity of the case.

106. Personality. It would seem to be needless to say that all personality and ungentlemanly language and manner must be avoided in debate; that deference to the presiding officer, as the head of the body, must be always observed; that useless questions to, and interruptions of, the speaker should not be indulged; and that orations foreign to the question should be discountenanced as abusive of the privileges of the assembly, and tending to embarrass free deliberation and to defeat its legitimate end.

When a question of order is raised during a speech, the speaker must desist until it is settled, whether it concerns himself or not. Should he be called to order for disorderly words, the words should be taken down immediately that they may not be forgotten and that they may form the evidence for the decision of the question of order thus raised, or of any motion of

censure or expulsion that may follow. Where there is a stenographic report already made, that may suffice; but it should be read at once and agreed upon.

107. Yielding the Floor. When a speaker yields the floor, by request, for a temporary purpose, he does not thereby lose his right to it for the purpose of finishing his speech, as some writers have supposed. True, should he thus yield without the chair's cognizance; if, for instance, some member should whisper to him and get his consent to give up the floor temporarily, the chair would not be presumed to know that he had not finished his speech, and would not be bound to restore the floor to him.

Ordinarily, however, the member desiring the floor for a temporary purpose, rises and asks that the opportunity be offered him; whereupon the chair asks, "Will the gentleman yield the floor for the purpose?" and, should the speaker yield, the chair should give him the floor again when the purpose of the yielding has been accomplished.

108. Using Names. Parliamentary etiquette excludes the unnecessary mention of members' names in debate when other designations will answer as well. Generally, reference to a member as the gentleman from the place which he represents, as, from Maine, from Georgia, etc., will prove sufficient; or, as "the gentleman on my right," "the gentleman who immediately preceded me," "the gentleman who opened the discussion," etc., will be found definite enough; but were there several members representing the same state—even the same county or town, and all seated in the same part of the hall, and

none distinguishable as the preceding speaker, or by any like designation, it would be both proper and parliamentary to allude to one of them by name. And even the Christian name could be used with the surname, if rendered necessary by there being two or more from one place, seated together and bearing the same patronymic.

109. Decorum. It is commonly laid down as a rule of deliberative bodies that members addressing the chair must stand "uncovered." No doubt they should do so; but this is merely a matter of good manners, and is not peculiar to parliamentary etiquette, but appertains also to that of the parlor. Hats are worn in some European assemblies where custom sanctions it; and to ensure a different habit in this country may be why this particular matter is mentioned in books and rules without any further specification relative to the matter of attire. Of like character is the injunction that members must not talk, or pass between the speaker and the chair when a speech is being made. Such disorderly behavior in members of parliamentary bodies as calling "Question!" "Question!" "Chair!" "Chair;" inquiring whether a motion would be in order, if made; and similar reprehensible practices, should not be countenanced as parliamentary.

These last mentioned practices are really violative of the decorum of deliberative bodies, while being covered with a hat is not necessarily so, since a Quaker or a woman may speak, wearing one, without being disrespectful. Even the standing posture, while speaking or making a motion, is not universally impera-

tive; for, in very small bodies, such as a board of bank directors, or a jury, it would not be indecorous to sit. This matter, like the rest, belongs to the etiquette of assemblages, rather than to the common law of parliamentary procedure. If special rules require "standing uncovered," let them be obeyed, though gentlemen will usually maintain respectful attitudes without rules to that effect.

110. Special Regulations. In legislative bodies debate is usually regulated by special rules. Such rules override the general parliamentary law with regard to the subjects which they embrace, though the latter remains in force where the rules are silent. It is not uncommonly provided that the member who reports a measure from a committee may both open and close the debate thereon, and that the mover of a bill or resolution shall be accorded the closing speech. And the closing has been allowed, by rule, even after the ordering of the previous question.

Written speeches have long been inhibited by such bodies, without leave granted for the reading of them, though the use of notes and heads of argument has not been deemed objectionable. Formerly, by special rule, some legislative bodies preferred the opponent of a bill to its advocate when both contended for the floor. The attitude of speakers, their decorum and that of others when a speech is being delivered, are often made subjects of special rules.

111. Common Usage. Not only by such rules but by the common usage, members are allowed to address the chair after having spoken upon the question, if they rise to explain some

matter of a previous speech which has been misunderstood, or if they have some important fact to communicate.

Though a member may have spoken on the main question, he has the right of speaking should an amendment give rise to a new question, or should a debatable subsidiary motion of any character be made, seconded and stated. What has been said above is applicable to debate upon any question, and is not confined to that of the main question.

112. Closing Speeches. There must be an end to discussion. That is reached when all the members cease to speak, after fair and full opportunity, and assent by their silence when the chair asks whether they are ready for the question.

There may be cases in which speaking should be permitted after the chair has begun to put the question, before any one has voted; for some member may not have heard when the chair inquired into the readiness of the house, or he may have some other good reason for his tardiness; but when voting has really begun, it would be a very extreme and meritorious case indeed that would justify the re-opening of debate.

The claim maintained by the zealous advocates of the right of free discussion, that after the vote has been taken, and the chair has announced which side seems successful, and a division has been called for, debate may be resumed by the members as a matter of right, tends to render parliamentary discussion an interminable matter. It seems to be without good support in reason, however sustained by

ancient precedents occurring at a time when the chair was accustomed to evolve questions from preliminary argument; and however favored by more recent rules necessarily limited to the bodies by which they are promulgated. Ordinarily, no one should be permitted to speak after members have begun to vote.

113. Closing Debate. It would seem that the right to close discussion when it has been so prolonged and tedious as to be no longer desirable or profitable, should exist somewhere. It may be wise for the majority to fix upon a standing rule requiring a vote of two-thirds for the suppression of debate. Suppression is usually effected by the designation of a future hour at which debate shall cease. Within the time, all have an equal right to obtain the floor; and any one who fails to get it cannot complain that the limitation is specially unjust to himself.

Clôture has largely engaged the attention of the House of Commons, of late; and though the right of free speech was ably argued, it was finally decided that the right of the majority to close debate and bring on the vote is inherent, and that its exercise is necessary under certain circumstances.

The adoption of the motion to suppress debate does not prevent further amendments, etc., as that ordering the main question does; and it is therefore the one to be preferred if only the closing of debate is intended.

ANALYSIS No. 7.

202. What questions are debatable? Debatable questions.
All, as a general rule; there are exceptions.
203. Why are all generally debatable?
Because the object of a deliberative body is to arrive at conclusions after free interchange of thought.
204. Upon what are exceptions based?
Upon the urgency of action, in some cases, for the dispatch of business.
205. What are some of the usual undebatable questions? Undebatable questions.
Those upon adjournment, fixing the next meeting in case of necessity, laying on the table, taking from the table, ordering the previous question, reconsidering an undebatable question, declining to entertain a question, withdrawing a motion, suspending a rule, taking up the order of the day, fixing priority of business, limiting or closing or extending debate, questions of order incidental to undebatable motions, etc.
206. What are some partially debatable questions?
Those upon postponement to a certain time, and those limited by special rules.
207. What is meant by speaking to the question? Speaking to the question.
The question under consideration is the only thing debatable, and the speaker must confine himself to that.
208. May he not speak when there is no question pending?
Only by sufferance; and that by general consent, or by motion duly passed.
209. Are not prefatory remarks allowable before the mover presents his resolution? Prefatory remarks.
They are not unusual, and the chair ordinarily permits a brief statement, if no objection be made.
210. Why may not the mover then speak as a matter of right? By the mover.

Because there is no question before the assembly; his proposed motion may not prove to be in order, may not be debatable, may be declined by the house, may prove one that the house would rather table, refer or defer, than immediately discuss.

211. Is he not entitled to speak if he states his intention to make a motion?

Not of right; but if he be allowed to speak at length, by sufferance, he should not afterwards be heard to speak upon his resolution till all others have had the opportunity of speaking.

By the seconder.

212. May not a seconder speak when he obtains the floor and announces his design to second the motion?

Such an announcement may be equivalent to seconding, but he cannot speak, as a matter of right, until the question has been stated by the chair.

After statement of the question.

213. Have the mover and seconder the right to speak after the statement?

Yes; though some have been held to the contrary; they have the right, and, in case of competition for the floor between either of them and some other claimant, the preference should be awarded to the mover or seconder, provided other claims are equal. By special rule, the mover is usually allowed to open and close the debate.

214. Is not the house made aware of the sentiments of the mover and seconder, without speeches from them?

Yes; but it is entitled to their arguments too, if they choose to offer them, in due time and order, like other members.

By chairman of a committee

215. May not the chairman of a committee make a speech when offering the committee's written report, before any question thereon has been stated by the chair?

Preliminary explanation is all that is allowable, and that may be ruled out, upon objection. He may make a verbal report, but that is not debating a question.

216. Has he a preference over others in speaking, after a question upon the report has been stated?

Other members should accord it, as a matter of courtesy, when the question is on the adoption of reported resolutions; but the chair should give him the preference only when his claim and his competitor's for the floor, are equal; as when both have addressed the chair at once. Upon a question of accepting the report from the committee, he should have no favor. By special rule, the chairman of the committee is usually awarded preference.

217. May the maker of a minority report have like sufferance and courtesy? By a minority-report committeeman

Like latitude is usual in his case; but both must take their chances in debate with the rest of the members, so far as right is concerned, unless special rules give them priority. Special rules do not usually accord preference to a member making a minority report.

218. How often may a member speak? Times and length of speeches.

But once, till all have had opportunity of being heard; then the discussion may be protracted as long as the members choose, when unrestrained by special rules.

219. How long may a member speak?

In the absence of any special regulation, there is no limit; but the assembly has power to protect itself against an abuse of the privilege.

220. What must be the conduct of the speaker? Demeanor of speaker

It must be respectful to the chair, to the house and to the visitors; personalities must be avoided; even the naming of members unnecessarily is deemed disrespectful.

221. When a speaker is called to order for words spoken in debate, how is evidence of the words preserved?

They are taken down at the moment.

222. When a speaker temporarily yields the floor, does he lose it? Yielding the floor.

Not if such yielding is under the cognizance of the chair.

Disorderly exclamations.

223. Is it orderly for sitting members to call "Question!" "Question!!" "Chair!" "Chair!!" while a member is speaking?

No; it is at all times disorderly.

Written speeches.

224. May a member read a written speech?

Yes, by leave; or if there be no objection.

Explanations.

225. May not explanations, by a member who has spoken once, be made before all have had a chance for the floor?

Yes; if the chair deems them sufficiently urgent, and always if they involve a question of privilege.

Debating new questions.

226. If one has spoken on the main question, may he gain the floor and speak upon a subsequently offered amendment while there are others who have not had the opportunity of speaking?

It is a different question; he may speak to it.

227. May he do so, if a debatable subsidiary question has been interposed?

That depends upon the turn the intruding motion gives to the debate. If the subsidiary motion be to postpone indefinitely, he should not speak again, since the merits are involved; if it be to commit, he may discuss the commitment; if it be to postpone definitely, he may discuss the propriety of such postponement.

Closing debate.

228. How is debate brought to a close?

By the members ceasing to speak; by the declining or delaying of the question; by its supersedence by a privileged question; by the operation of the order for the main question, or by the adoption of a motion to close debate.

229. Who has the privilege of making the closing speech?

The mover or committee-reporter of the measure is usually accorded this privilege by special rules; and even after the main question has been ordered, such privilege is allowed by some legislative bodies.

CHAPTER VIII.

Ordering the Vote.

I. The Previous Question.

114. Definition. The *previous question* is one put previously to the putting of that question to which it relates. It takes its name from that circumstance. It is previous in the order of voting. Its form is: "Shall the main question be now put?" It relates to the main question. Its purpose is to order the main question to vote.

All subsidiary questions are put previously to the putting of the questions to which they relate, but usage has confined the term *previous* to the question of ordering the main question to immediate vote. The definition of "the previous question" would be more explicit, if given as follows: *the question upon ordering the main question.*

The word *main*, in this definition, and in the form, "Shall the *main* question be now put?"

does not, in every instance where the previous question is applied, mean the principal question or that on the adoption of a resolution, etc., but it often means one subsidiary to that principal. Whether the previous question is moved with regard to the principal or a subsidiary question, that to which it relates is the *main one* to which the minor is applied. For instance, if the pending question, under debate, were upon an amendment to a resolution, and the previous question should be moved on the amendment, the question on the amendment would be the *main* question in its relation to such motion though subsidiary in relation to the resolution. It would be the major, while the motion would raise a minor question. It would be brought to vote after the previous question (the minor one) had been put, and the voting ordered. The minor must be put to the house before the major, and therefore it is the *previous* question.

115. Object. When a member calls for the previous question, he seeks to bring the question, to which the minor one relates, to immediate vote. If the motion for the previous question is successful, the order is thus made; the order that voting shall now take place upon the major or main question (using the word "main" in the sense just above defined).

The objects, uses and relative importance of this motion, in comparison with other methods of closing debate, may further illustrate its character and meaning. Debate may be closed by a successful motion to suppress it, in bodies where such procedure is allowed; but an order suppressing debate does not prevent the offering of motions subsidiary to the pending one,

nor bring the latter to an immediate vote. Debate may be closed by the adoption of a motion to lay the pending question on the table; but that would not precipitate voting, nor prevent a renewal of discussion and the offering of subsidiaries, whenever the tabled question should be taken up. On the other hand, when the previous question is successful in getting the main question ordered, debate is thus closed; the further offering of amendments prevented; the further offering of any thing subsidiary to the main question (except tabling), is prevented, and the ordered question is brought to vote at once. It is thus, by far, the most effective method of expediting business. Whatever may be urged against it as an instrument in the hands of the majority, it must be conceded to be efficacious in furthering business.

116. Seconding. The call for the previous question must have the support of the majority, at least. They express themselves, not by voting as on other questions, but by seconding the call. When the previous question has been moved by a member, the chair inquires: "Is the previous question seconded?" or, "Is the call for the previous question seconded?" whereupon, those favorable to the call, rise to their feet. If a majority rise (unless more are required by special rule), the chair says: "The main question is ordered." So, seconding the motion is adopting the motion. Voting upon that preliminary motion, after such expression by the number necessary to pass it, would be a work of supererogation.

Were all ready for voting, there would be no need for the order. If, by general consent, all

further debate and all further offering of subsidiary motions should stop, it would be the duty of the chair immediately to put the pending question to vote; and thus would be accomplished precisely what is accomplished by means of the previous question. The motion to table stops debate, emendation, etc., and hence the call for the previous question is out of order when that motion, relating to the same main one, is pending.

Whether a member is an advocate or an opponent of the measure to be subjected to vote, he may desire that it be brought to the test, and may therefore consistently move or second the previous question. The order is not an instrument exclusively in the hands of either the friends or the enemies of a pending measure.

117. Effect of Refusal. Under the practice which formerly prevailed in legislative bodies, the opponents of a bill would move the previous question with reference to it, because they hoped to have the order refused; and this result prohibited any vote from being ever put. When the word "now" had been added to the form of the proposed order, legislative bodies long held that a negative result, being a decision that the question should not *now* be put, precluded any vote upon the question for the day.

The present effect of the refusal of the majority to second the call for the previous question is to leave the pending question precisely where it was before the ineffectual attempt to bring it to immediate vote was made; and also to leave all its adhering questions, and all dilatory ones, in the same state as before. This is now generally understood, though some legislative

bodies may hold to the other interpretation. In the absence of any specific regulation upon the subject, deliberative bodies of all kinds should go on with business, when the question has been called for but not ordered, precisely as though there had been no call.

118. Applications of the Motion. The different applications of the previous question are fully recognized by the popular branch of Congress (Rule xvii, House of Representatives), and thus expressed: "There shall be a motion for the previous question, which, being ordered by a majority of members present, if a quorum, shall have the effect to cut off all debate and bring the House to a direct vote upon the immediate question or questions on which it has been asked and ordered. The previous question may be asked and ordered upon a single motion, a series of motions allowable under the rules, or an amendment or amendments, or may be made to embrace all authorized motions or amendments, and include the bill to its engrossment and third reading, and then, on renewal and seconding of said motion, to its passage or rejection."

This rule, though binding as such only on the body which has adopted it, is in conformity with the reasons applicable to the subject in its present state of advancement, and therefore expressive of the practice that should prevail in all deliberative bodies when the previous question is employed as an instrument in parliamentary work. The United States Senate does not use this instrument, though the inhibition is merely by implication in the Standing Rules of that body.

By Rule xvii, 1 (House of Representatives, U. S.), after the previous question upon the final passage of a bill has been ordered, a motion to commit the bill will lie.

By Rule xxviii, debate for thirty minutes (half on either side of the question), is allowed after the main question has been ordered, provided there has already been no discussion thereon.

119. The Call. The call must not be confounded with the order. In the scale of the rank of subsidiary motions: to table, to prequestion, to postpone definitely, to commit, to amend secondarily, to amend primarily, to postpone indefinitely—the second motion mentioned means that the call for an order to vote immediately may be made though the question upon any one of the subsequent motions be pending; may be made and put to vote—that is, submitted for seconding by the majority. But it does not mean that the order to vote, made by such seconding, cuts off subsequent voting upon pending subsidiary questions of lower rank. The call for the order is first put for seconding, but the execution of the order brings the subsequent questions to vote in regular succession when applied to the whole series.

The call can have no subsidiary motion applied to it; that is, it cannot be tabled, postponed, committed or amended. It can be superseded by no motion, in the scale above stated, but the motion to table that to which it applies.

Where the books say that when the main question is ordered, motions to postpone, commit and amend are cut off, they must be under-

stood to mean that all further opportunity of making them is cut off.

It should be remembered that the application of the previous question to any motion not debatable nor amendable nor delayable, would be futile; hence it is no more in order when the question of consideration is pending than when the question of tabling is before the house.

120. To What the Call and Order Relate. When nothing is before the house but a resolution in the form in which it was first offered, and the question of its adoption is under consideration, the call for the previous question would relate only to that. When an amendment is pending, the call would include that; and the order, that the main question be now put, would bring on voting, first upon the amendment, and then upon its principal, unless the mover should confine his motion to the amendment. So, if a secondary amendment should be pending, it would be included also in the general order; but the previous question might be expressly confined to it by the mover.

The order is exhausted whenever that to which it is applied and confined has been voted upon. It may be applied to, and confined to, and exhausted upon any motion subsidiary to the resolution, except tabling and declining to consider the resolution. The mover ought to designate what he means the order to affect; whether one or more questions. It is generally understood, in assemblies, how the order is to be applied, when the chair puts the preliminary question, "Shall the main question be now put?"

When the order relates to a series, voting

should be had upon each question in succession according to rank till the order be exhausted.

121. Ordering an Incidental Question. Such of the incidental questions as are debatable and amendable are susceptible of having the previous question applied and confined to them, or to one of them, just as to other subsidiary questions. Those not debatable or amendable or subject to any subsidiary motion, would not have their vote facilitated by such order: so, like the motion to table, they are exempt from its operation, and for the same reason.

There is this peculiarity in subsidiary motions incidental to the principal question: they may be made after the order that the main question be now put; and, when made at such juncture, if they are incidental questions of order, they come under the operation of the previous question, though they could not have been contemplated or anticipated when the order was entered. The national House of Representatives have embodied this necessary law with their regulations, Rule xvii, 3: "All incidental questions of order arising after a motion is made for the previous question, and pending such motion, shall be decided, whether on appeal or otherwise, without debate."

The previous question (that is, the call therefor, and the execution of the order when made), yields to a privileged main question, to a question of privilege, and to an incidental question, so as to be put in abeyance by any one of them; but it regains its position when such intervening question has been disposed of, and then goes on

to perform its office with regard to the question or questions to which it applies.

122. Application to the Motion to Reconsider. When a motion to reconsider is under consideration, and the previous question is moved thereon, the order is limited to that motion.

If such motion is made with reference to a question of amendment after vote has been taken under the operation of an order, it would be subject to the effect of the previously made order and would be therefore undebatable. For instance, pending an amendment to the principal question, the previous question is ordered; then the amendment is voted upon; then a motion is made to reconsider the vote on the amendment: the latter motion would be subject to the previously made order, and would be not debatable.

If the principal question has been brought to vote under the operation of the previous question, the latter is then exhausted; and a motion thereafter to reconsider the vote would not be subject to the exhausted order, nor would the principal question be so if again resuscitated by the adoption of the motion to reconsider.

II. Calling for Voting Orders when Submitting a Resolution.

123. Nature of Such Calls for the Question on Resolutions when offered. It is not uncommon for a member to offer a resolution, and, at the same time, to call for the previous question thereon or for the *yeas* and *nays* thereon. This is so usual that it can hardly be

called unparliamentary at this late day. At first view it seems to be the making of two motions at once, and to be violative of the fundamental rule: *One thing at a time.* But are there competing motions? The member moves his resolution and then asks that it be voted upon immediately; or, he moves his resolution and then asks that it be voted upon by *yeas* and *nays.* There is no conflict: the request as to the time or manner of voting upon it is not a rival motion.

124. Seconding when the two Motions are made. It is better to use the word *call* with reference to the previous question and the *yeas* and *nays.* It differs from a motion in the following particulars: the call may be made before the simultaneously offered resolution has been seconded; it does not have to be voted upon after the requisite number have joined in the call; it always refers either to the time or method of voting upon the offered resolution. The offerer of the resolution need not await a seconder before calling for the previous question thereon, or for the *yeas* and *nays* thereon. The chair will not notice the call, unless the resolution be seconded; then, after stating the question thereon, he will inquire, "Shall the main question be now put?" or, if the method of voting be the subject of the call, "Shall the *yeas* and *nays* be ordered?" Seconded by the majority, in the one case, or by one-fifth (if required) in the other, the requested time or manner of voting will be ordered.

Other motions relative to voting, including that to reconsider, will be treated in the next two chapters.

ANALYSIS No. 8.

Previous question.

230. What is a call for the previous question?

It is a call for ordering the vote on the question under consideration.

231. To what questions is the order confined?

Debatable, amendable and delayable questions.

232. Why is it not applied to others?

Because they are brought to immediate vote without it.

To what applied.

233. Is it applicable to other than the main question?

It may be applied to the main question, or to that and its pending amendments; it may be applied to an amendment, or to a debatable dilatory question, or to one of those together with some subsidiary question growing out of it, or it may include a series of questions.

234. When is the principal question necessarily the only one meant when the previous question is called for and the main question ordered?

It is so when there are no intervening subsidiary questions.

235. May it be the only one meant when there are amendatory motions pending?

No; the latter are first brought to vote, and then the main one.

236. May the order, in such case, be confined to an amendment.

Yes; but if that is meant the call should limit the order to it.

237. May the previous question be confined to a dilatory motion.

It may be confined to such motion.

Seconding the call.

238. How is the order for voting upon the main question made?

A member calls for it, and the chair inquires, "Is the call seconded?" and, when seconded,

the chair announces, "The main question is ordered."

239. How many are necessary to second the call?

A majority, including the mover; but more are required by special rule in some assemblies.

Effect of the order.

240. What is the effect of the order?

Further amendment, debate, and delay are cut off, and the question is immediately put.

241. Is the call in order when a question upon tabling is under consideration?

Since such a question brings on immediate voting (though not on the principal question), the call would be not in order.

242. Is the call employed by the friends or the opponents of the measure to be voted upon?

By either, since either may wish the measure brought to the test.

243. Was it not formerly used exclusively by the opponents of a measure?

When the call, if refused, was fatal to the measure, they employed it exclusively; but now, under the practice which leaves the measure unimpaired upon a refusal to order an immediate vote, the use of the call is not thus limited.

244. What is now the effect of a refusal, by the majority, to second the call?

The measure is left as it was before the ineffectual attempt.

245. Is this now the established practice?

It is pretty generally established in this country; it is the better practice; and it is the rule of the U. S. House of Representatives.

246. Is it the rule of the Senate?

That body does not employ the previous question at all.

247. Does the lower house confine it to main questions?

It applies the order to a single motion, to an amendment, or to a series of motions, as the case may be.

Rank.

248. What is the rank of the motion for

the provious question in relation to other subsidiary motions?

Where all refer to the main question, its rank is below that to table, but above all the rest.

249. Would not the same relative rank be maintained if the competing subsidiaries referred to something other than the main question?

Yes; with the explanation that the motion to table does not apply to dilatory and declinatory motions.

250. How does this rank affect the order of questions?

The motion or call for the previous question, with reference to the main question, cannot be made if the motion to lay upon the table is pending; nor can any other subsidiary motion be made if the motion for the previous question is pending.

251. What is the effect if the motion for the previous question is made while dilatory motions are pending?

It supersedes them in the order of voting.

252. What is its relation to amendatory motions?

If first made, it forestalls them; if subsequently made, it is submitted for seconding in advance of voting upon the amendments; if ordered, it brings them to vote: first, the amendment in the second degree, next the amendment in the first degree, and then the main motion as above stated.

253. May any subsidiary motion be applied to the motion for the previous question?

No; it cannot be tabled, postponed, committed, amended, etc.

254. In the execution of the order for voting on questions, meaning a whole series, what is the process? Execution of the order.

All the questions are voted upon in succession in the course in which they would have come up had not the previous question been moved.

255. What, then, is the good of such order?

The prevention of further debate, and of further complication by new motions.

Form of stating.

256. How should the chair submit the call when reference is only to the main question?

By inquiring, "Shall the main question be now put?"

257. When should this form be varied?

When the question sought to be ordered to vote is not the principal one (though it may be the one immediately pending before the question upon the call) the inquiry should be "Shall the question upon the amendment (or whatever it is) be now put?" and the plural should be used, if voting upon more questions than one is moved.

258. Need it be in the plural when only the main question and pending amendments are meant?

No; for the latter are adherents of the former, and the chair may specify only the main question: "Shall the main question be now put?" which would include the adhering amendments.

259. May the order be confined to any one of the amendatory, or declinatory, or dilatory motions?

Yes, to any one to which it is applicable at all; and the mover should, in such case, designate the question which he would have voted upon, as "I move the previous question upon the amendment," etc.; that is, he should designate whether he means the question immediately pending, or means to include a question or questions regularly following so as to constitute a series.

Applicability to incidental questions.

260. Is the order applicable to incidental questions?

Only to such as are debatable, amendable, or delayable.

261. Why may not others be thus controlled?

Because they are brought to immediate vote without such order.

262. Is an incidental motion permissible after the previous question has been called for with reference to an antecedent question?

Yes; and it would supersede the submission of the call for seconding.

263. Would it be affected by the order?

Yes; under such circumstances it would neither be amendable nor debatable, but must be voted upon at once, that the order may be executed with reference to the question to which it is applied.

264. May the order for the main question be applied to privileged main questions? To privileged main question.

Only to debatable, amendable or delayable ones; and, when applicable, it is governed by the same laws as when applied to ordinary main questions.

265. Does the order for the main question yield to privileged main questions, including questions of privilege?

It yields, but regains its position when such an intervening question has been disposed of; and then it goes on to perform its office as though never put in abeyance.

266. May the motion to reconsider a main question be controlled by an order for immediate voting thereon? To motion to reconsider.

It may; but the order would not extend to the question to be reconsidered.

267. Had it previously been applied to the latter, would it extend to a motion to reconsider, without being renewed?

It would not, if previously applied to a main question; but it would, if previously applied to an amendment that had been voted upon under an order to bring the main question to vote. The previous question is exhausted when it has brought a main question to vote.

268. What is necessary to the taking of the vote by *yeas* and *nays?* Call for yeas and nays.

There must be a call for it, and the call must be seconded by the requisite number.

Seconding the call.

269. What is the requisite number?

One-fifth, in Congress, is fixed by the constitution. In state legislatures the number varies, according to their respective rules.

270. What should be the number in the absence of rules?

If a call is made, the vote should be taken by *yeas* and *nays* if no objection be interposed; but, where there is objection, a majority is necessary to second the call.

271. What is the effect of the seconding?

That completes the order; and the names of the voters in the affirmative should be entered; and also those in the negative.

272. Ought not the recording of the voters' names be ordered upon demand of any member?

Not if objected to; for the reason that it is not important to business in a deliberative body that the journal should show by whom a measure has been carried or lost. If there are ulterior considerations favorable to the recording of the voters' names it should require a majority to have the names recorded, except when a less number has been previously fixed by rule.

Call when making another motion.

273. May a resolution be offered, and a call for the *yeas* and *nays* thereon, or for the previous question, be made at the same time?

It is common practice: the call not being a motion, in the sense of the rule that two motions cannot be made at once.

274. May such call be made before the offered resolution has been seconded?

It is in order to make it then, but in such case the seconding of the call must come after the seconding of the resolution.

275. Is not such practice exceptional?

It is peculiar but not exceptional; for all motions contemplate some vote upon them, while this, when accompanied with the call, merely designates immediate vote, or the manner of voting, as the case may be.

276. Is it not violative of the rule, One thing at a time?

That rule means *one motion at a time;* the call for the previous question, or for the *yeas* and *nays*, is not a proposition competing with the resolution offered simultaneously with it. But if the usage be deemed exceptional, it is well established in practice.

CHAPTER IX.

Voting.

I. Methods of Voting.

125. Importance and Duty of Voting. When immediate voting has been ordered; or when, without an order, the members are all ready for the question, the next business is voting. It is the most important business, since it is the consummation of the work of a deliberative body. It is especially important when main questions are thus brought to decision; for, though minor ones may be of great influence, the errors made in voting upon them may be corrected in a degree by the final vote. Courts, when litigation arises with regard to the passage of a measure, will look to see whether it has been legally adopted in regular order, rather than to the previous disposition of subsidiary questions and rulings on points of order, though such minor matters will always be investigated if the issue of the case require it.

To ascertain the will of the members of an assembly, different methods of voting have been devised, and have long had the sanction of

established practice. Some of these are very simple, while others are attended with more formality because the exigencies of the case require it.

All the members present should vote, unless excused. All must be open to conviction to the very moment of voting; but the practice of "pairing" is so far countenanced in the U. S. House of Representatives as to be regulated by rule.

126. Silent Assent. There are several different methods of voting: (1) By silent assent; (2) By voices; (3) By showing hands; (4) By division; (5) By roll-call or by *yeas* and *nays;* (6) By ballot.

Voting by silent assent is when the chair inquires, after stating the motion, "Are there any objections?" If none are interposed, the vote is deemed unanimous. Even without a motion, in some cases, the chair may thus inquire; for instance, after the minutes have been read, the inquiry may be made whether they are approved. In case of a dissentient voice, the chair cannot declare the motion adopted or the minutes approved, but there must be a vote taken that the majority may decide. If the matter is one which requires unanimous consent, one objector renders voting unnecessary.

127. Voice. Voting by voices is done by the taking of the affirmative vote first, and then the negative. The chair says: "Those in favor of the motion, say *aye;*" or, "As many as are of opinion that" [stating the proposition] "say *aye;*" or any similar form may be used. After the affirmative vote has been taken, the chair says, "Those opposed to the motion, say *no;*"

or, "Those of contrary mind, say *no;*" or "As many," etc., or similar form of words.

This method of voting is not confined to resolutions, orders, bills, etc., but is sometimes employed in the election of officers when there is but one candidate and when voting by ballot is not required by special rules or by the nature of the case. When thus employed, it retains its character as when used in the decision of a measure; the negative side of the question should always be put as well as the affirmative; the process is nothing more than voting *viva voce* upon a single candidate in the same way as on a resolution.

Moving that a candidate be "elected by acclamation" requires some notice. A friend of a nominee makes such a motion by way of complimenting him and giving him an air of popularity. When other candidates have not all been withdrawn, such a motion would be out of order, because in derogation of the rights of the friends of such other candidates. When all have been withdrawn, or when none have been nominated but the subject of the subsequent motion, would the motion be in order? Not if the rules require balloting. Not if, in the nature of the case, the secret ballot is the right of the members who may choose to defeat the candidate though he have no competitor. When it would be in order to move that a stated person is elected, it yet might not be in order to have him elected *by a shout*, for that is what "acclamation" means. The motion "that the candidate be elected by acclamation" literally proposes nothing more than to fix the method by which he shall be elected, though the mover

may mean to elect him by the adoption of such motion. The proper form would be to move "that the meeting proceed to vote *viva voce* on the nomination," if no rules obstruct. Voting by a shout is unseemly in a deliberative body. "Acclamation" is not a method of voting known to parliamentary law. It is often moved to elect by acclamation under such circumstances that the chairman, if he chooses to aid the mover by suggesting that the evident meaning is to vote *viva voce* in the usual form of such voting, may relieve it of objection; but it is usually out of order, because either violative of a rule requiring balloting in a particular society, or of the rights of other candidates, and the privileges of members who wish to preserve the right of the secret ballot to be cast against the candidate or not at pleasure. It is never in order when more candidates than one have been duly nominated and not withdrawn.

Voting by showing hands differs in method from the manner last mentioned only by the chair substituting, in putting the question, the words "Raise your hands," for "Say *Aye*" and "Say *No*." Members respond first in the affirmative and then in the negative, and the result is ascertained by counting the uplifted hands.

128. Division. Voting by division is not usually resorted to, unless there is doubt of the result after voting by one of the above mentioned methods. The chair, if uncertain, may order a division; or any member may call for it, in case of doubt, provided he call at once, before other business shall have intervened. If no response whatever was made by the negative side when the vote was first taken, or if

none was made by the affirmative side, division cannot be claimed as a matter of right.

In voting, first those on the affirmative side are called upon to rise; after that, the negative; or both sides may vote at once by separating to different parts of the hall, if that is the method desired, and if that is called for by the chair. Tellers may be appointed by the chair to assist in the count. Sometimes the members are required to pass by the tellers, and thus each party indicates its mind.

129. Yeas and Nays. Voting by roll-call, or by yeas and nays as it is called, is by this method: The clerk calls the roll and the members, previously directed by the chair, answer yea or nay as their names are called. The constitution of the United States (Art. I, 5 (3), requires a fifth of the members present, of either house of Congress, for ordering the entry of the members' names upon the journal with the vote of each, whether *yea* or *nay*. But in all cases of voting upon a vetoed bill, such entry must be made (Art. I, 7 (2) without being ordered.

In some of the State legislatures, five members are sufficient to second the call for yeas and nays; in others, three; in all, where there is any rule, less than a majority may second. And there is reason for this; for the minority may justly wish to have the names of the voters recorded.

If, in any deliberative assembly which has no special rule upon this subject, a single member should ask the *yeas* and *nays*, they ought to be ordered if no objection be interposed after having been called for. Where there is objection, it would seem that a majority must be

obtained for making the order for the entry of the names upon the journal, since such recording is out of the usual course.

Sometimes, where a resolution is submitted, there is a call for the *yeas* and *nays* made at the same time. For the treatment of this usage, see the concluding sections of the preceding chapter.

130. Ballot. Voting by ballot is not ordinarily resorted to in deliberative bodies, except for the election of officers, which is done by putting names into a box. Societies sometimes use white and black balls in voting upon the admission of proposed members.

The duty of balloting cannot be delegated to the clerk or to any one, except where different delegations are required to vote as a unit. In such case, some one must be appointed to cast the vote. Where delegations from different States must each cast the vote of the State represented; or delegations from different counties in a State convention are voting by counties, there must be some one to cast the vote, or rather, the result of the delegation's vote, in each instance.

But in a society where each member is an independent voter, representing himself only, it is not in order for a motion to be made that the secretary be instructed to cast the entire ballot of the society. A motion of the kind, when adopted, gives no legality to the ballot thus cast by proxy.

The very object of the ballot is that the vote shall be secret; and any member may desire to cast his vote against the candidate for whom the society directs, by majority, that the whole

vote shall be cast by the secretary. It is said that if any one objects, the balloting cannot be thus delegated; but no one should be placed in a position where his right to vote secretly would be denied. No one should be obliged to object.

Whenever vote by ballot is required by law, by the charter of a corporation, by the constitution or by-laws of a society, it must be so conducted as to allow every member to cast a secret ballot, or the result will be tainted with illegality. It is in no case valid for a majority or even a unanimous vote to evade such a requirement. Motions for the secretary or any one to cast the ballot of all at once are not only always out of order, but always illegal and subversive of the object and intent of the ballot.

131. The Casting Vote. The casting vote cannot be given by the presiding officer if he has already voted as a member of the body; but if he has not, he may vote as a member before the result is announced, as any other member may do when coming in at such time, or when he has been delayed by any cause beyond his control. When the president is not a member of the body, he cannot vote in case of a tie since he is not a voter at all; the only exceptions being where, as presiding officer of a legal body, he is authorized by statute or by the constitution of a State, or by that of the United States, to give the casting vote in case of a tie. Lieutenant Governors of States, though not members of the bodies over which they preside, may be thus authorized. The Vice-President of the United States is not a senator, and therefore cannot vote ordinarily, but he gives the casting vote

when there is a tie in the Senate, by authority of the constitution of the United States.

Members may change their votes (unless the voting is by ballot), at any time before the chair has announced the result. No one can vote in the United States Senate after yeas and nays have been called and decision has been announced thereon; but by unanimous consent, a senator may change or withdraw his vote.

II. Principles of Voting.

132. Majority. In voting, the majority prevails. That is the common-law requirement. Modifications by societies and legislatures are so common, that the usual ones will be carefully considered. Without special rules, however, it takes a majority to pass any thing or defeat any thing, or to make any subsidiary ruling; and it takes no more. And the reason is that, as deliberative bodies exist to think and conclude, the deliberation and decision is not that of such a body, but of less, if a majority do not agree. And on the other hand, if a majority agree, that is an agreement by the body, since the minority must have assented that the majority should govern by the very act of coming into the assembly. And the reason is so plain that one would be apt to conclude that never less than a majority could be authorized to decide upon any thing, and that never more than that could be required for decision; yet it is common to allow a mere plurality to rule in some things and to require two-thirds in other matters.

133. Plurality. Elections are frequently by

a plurality; and yet sometimes a two-thirds vote is required, as in the democratic conventions for nominating candidates for the presidency and vice-presidency of the United States; but in all such cases there must have been a previous authorization of this by the majority, or a subsequent ratification, or both. An officer, elected by a mere plurality vote of an assembly, usually has the election ratified afterwards by the majority. This would be necessary to its legality should such election be by a corporation, the charter of which required the election of officers without modifying the common law by permitting a mere plurality of members (which might or might not be the majority), to make choice of officers.

The practice of moving "that the election be made unanimous," is so absurd as to need no comment. It is however necessary that the majority should agree, in some form, that one who has received a plurality is elected (if he is meant to be chosen, owing to tacit consent of the members not previously embodied into a resolution or order); but that nothing can be unanimous while one is opposed to it, is a truism; and a resolution in this form, "Resolved, That the election of —— is unanimous," would be false, though adopted by a majority, if there should be a minority voting against it.

Less than a majority can never decide questions upon bills, resolutions, orders, etc., whether they be main or subsidiary.

134. Two-thirds. The two-thirds rule has so often been adopted, and so long used, by many deliberative bodies, in cases below mentioned, by special regulations, that it is now

contended by some persons that it is a rule of parliamentary law. It has been frequently applied to voting upon: (1) ordering the previous question; (2) limiting or closing debate; (3) declining to consider a question; (4) making a special order; (5) taking up a question out of the regular order; (6) amending the rules; (7) suspending the rules.

All these questions involve something out of the ordinary course of business; and the two-thirds vote may be necessary to protect the minority from the overbearing of the majority. The requirement of so large a vote may be said to be unjust to the majority whose will ought to be respected; but it should be borne in mind that the special rule which requires so great a vote in the specified cases, must have been put to the question and adopted by a majority, prior to its operation upon other questions. Legislative and other assemblies are not all agreed with respect to the voting rule regarding all or any of the foregoing specifications. In the absence of a special rule, a majority would be sufficient for passing any motion in any deliberative body. A majority is all that is necessary for limiting or closing debate, as a general rule; and any modification of it must be by special regulation.

A special order may be made by a majority, by general parliamentary law; but when an order has been made, how can it be disturbed, either by a majority or more, without its reconsideration? It is found convenient however, in legislative and other continuous assemblies (especially in such as are composed of two houses), to adopt rules for taking up ques-

tions out of the regular order, and a two-thirds vote for the purpose is usually required by them.

Amending or repealing the rules is within the power of a majority, on general principles, while suspending them is not allowable at all except under a special authorization. So long as they are rules they must govern; but they may be amended or repealed by the power that made them. For convenience' sake, however, it is frequently the case that assemblies reserve the right to suspend rules temporarily, upon a vote of two-thirds. But it cannot be truly said that this has grown into law by usage.

135. Quorum. A quorum is a majority of the members. It is never less under the common law of parliamentary procedure. Unless more than half of the members of any body are present, the body is not present. When more than half are present, the body is complete, and is as though all the members were present. If less than half could do business, it would be possible for deliberative bodies to be divided into two or more assemblies, each capable of doing business, and each liable to adopt measures contrary to those adopted by some other section. Where less than a majority may compose a quorum by special authorization, it is necessary to guard against the formation of different sections from the one body with liability to counter action, by making the time and place of meeting absolute, or requiring the presence of the regularly elected officers as an essential to the transaction of business. It is usually found convenient for societies meeting weekly or monthly or at like stated intervals, to

fix upon a number below the majority of the whole as a quorum. Legislative bodies, in this country, do not modify the common law requirement. The constitution of the United States inhibits both houses of Congress from any modification of it. In the British House of Lords, a quorum consists of three members, who may do business; but it cannot be done elsewhere than in their proper chamber in the parliament house, and only at the fixed time.

In voting, a majority of a quorum is requisite. While debate may go on without a quorum after the session of the day has been commenced with the requisite number of members present, voting cannot. Even debate would have to cease, should the fact, that the quorum had been broken, be brought to the knowledge of the chair by a call of the house.

Less than a quorum may validly vote upon a motion to adjourn; and if such motion should be lost, the chair may adjourn the body, unless the members present, in a legislative body, choose to exercise the right of compelling the attendance of any absentees, which they may do under special authorization.

ANALYSIS No. 9.

277. When do members vote? **Voting.**
When they are ready for the question.
278. What are the methods of voting?
By silent assent, by voices, by showing hands or rising, by division, by roll-call and by ballot.
279. What is silent assent? **Silent assent.**
When the chair states a question, inquires

whether there are objections, yet receives no response.

Viva voce. **280.** What is voting by voices?

It is when the members voting affirmatively respond "aye," and those voting negatively respond "no," at the request of the chair.

Showing hands. **281.** What is voting by showing hands?

Raising a hand at the chair's request, instead of responding by voice.

Division. **282.** What is voting by division?

The rising of the affirmative voters first; then, of the negative: a method usually employed when previous voting has created doubt.

283. At what stage may a division be called for?

After voting by one of the other methods just explained, and before the final division thereon.

Roll-call. **284.** What is voting by roll-call?

The clerk calls the roll and the members respond *yea* or *nay* as their names are announced, for the purpose of having their votes recorded as well as for deciding the question.

Ballot. **285.** What is voting by ballot?

Secret voting by depositing tickets in a box.

286. When is this method usually employed?

In the election of officers.

287. May balloting be delegated?

No, except when a delegation has been instructed to vote as a unit; then one of their number may be selected by the others to cast the ballot.

288. May not the secretary of a society be authorized to cast the ballots of all the members?

Certainly not; that would be a perversion of the method.

289. May single ballots be cast by proxy?

No; except that delegates to an assembly are sometimes allowed to appoint their own substitutes; and, by special rules, any volun-

tary assembly might allow proxy voting. In private corporations persons are often, by power of attorney, authorized to vote for stockholders.

290. In case of a tie, under any method of voting, what is the result? Tie.

The decision is deemed to be in the negative.

291. Has the presiding officer the casting vote? Casting vote.

No. If a member, he should vote with the rest; if not, he has no right to vote at all.

292. Does not the President of the U. S. Senate have the casting vote?

Yes; but the power is conferred upon him by the constitution.

293. Does not the Speaker of the other house have the casting vote?

Only in case he should withhold his vote, as a representative of his District, at the time the other members were voting, which he may do under the special rules.

294. May a member change his vote? Changing vote.

Yes; provided final decision has not been announced, unless the vote was by ballot.

295. May he never do so afterwards?

By special rule, in the U. S. Senate, a senator may change or withdraw his vote after *yeas* and *nays* have been called and decision rendered, though it requires unanimous consent; and even that will not enable a belated member to cast his vote.

296. What is necessary to the adoption of a motion? Majority.

A majority vote; because a deliberative body, existing to think and conclude, does not conclude favorably to a thing unless more than half favor it.

297. Are there no exceptions? Exceptions.

Many, by special rules. Elections are frequently by plurality, though two-thirds are sometimes required. The latter vote is frequently required in ordering the previous question, closing or limiting debate, declining

to entertain a question, making a special order, taking up a special order out of time, amending the rules, suspending the rules, etc.

298. When the election of an officer is by plurality, is it not often made unanimous by motion?

Such motion is absurd; it cannot change the ballot; it is always out of order; and, if in order, one dissenting voice would demonstrate its falsity.

299. Is there then no way by which a plurality election may be approved by a majority?

The way is by a resolution declaring the election.

CHAPTER X.

Reconsideration.

I. When and by Whom Reconsideration May be Moved.

136. How Employed. The general rule is that when a proposition has been adopted it must stand; and to this rule there was formerly no exception. Now, however, the retaking of the vote upon most questions can be accomplished by the passage of a motion so ordering; and the practice is so general in deliberative bodies in this country, that it may be said to have grown into common law, so as not to be dependent upon authorization by special rule. The House of Representatives complied with the usage before adopting any regulation upon the subject, and the practice prevailed in the Congress of the Confederation. The Senate of the United States, as well as the co-ordinate branch of Congress, and the houses of the State legislatures resort to this method, providing for it in their rules, though generally not particularizing its various ramifications, but leaving those to the general law established by the usage of deliberative bodies. The practice is sanctioned by parliamentary law in this country

none the less because the British Parliament does not observe it.

The motion must be made by one who first voted with the successful party, that there may be some indication of a change of sentiment. Were the motion in order when made by one of the defeated party, the likelihood is that business would be impeded without any corresponding good result; for the presumption is that the sentiments of the members remain unchanged.

The reason for allowing a majority voter to move revoting is in the fact that the better decision of the assembly—the "sober second thought" of the members—is thus obtained when there has been change of sentiment. It is not the whim of the moment, but the deliberative judgment of a body of men, that is sought.

137. When in Order. The motion must be made within time, for the reason that there must be an end to legislative or other deliberative work, and right of reconsideration must not be so exercised as to hinder and even prevent consummation.

The time varies according to the character of the question to be considered. If the question on an amendment of the second degree is to be retaken, it must necessarily be before the vote on the amendment of the first degree has been taken. So, a member, who has voted successfully to have an amendment of the first degree adopted or rejected, can move to reconsider before the adoption or rejection of the principal question; but not afterwards, unless the vote upon the principal question has been first reconsidered. Then the amendment may also be re-

considered; and if a primary amendment be thus reopened, a secondary one may then be reconsidered. After this, the voting must proceed in the reverse order: first on the secondary, next on the primary amendment, and then on the principal question.

Dilatory motions cannot be reconsidered after having been lost and the principal motion adopted, unless the latter question be reopened. This is true of all lost subsidiary motions. A vote once reconsidered cannot be reopened again.

Legislative bodies limit the time within which reconsideration may be moved, and allow the motion therefor to be entered by the clerk within the limited time to be called up thereafter when in order.

The motion for reconsideration is debatable when that to which it applies was so. The previous question may be called upon a debatable motion to reconsider. The motion to table may be applied to the motion to reconsider, and it is very frequently so applied in the proceedings of Congress; but the tabling of the motion does not work the tabling also of the matter sought to be reconsidered.

If the previous question has been called, and the main question ordered, the ordering may be reconsidered if not yet executed; but if executed by the taking of the vote on the main question, the motion to reconsider the ordering would be too late. Whatever is beyond reversal is beyond reconsideration.

138. Practice in Congress. The houses of Congress differ with each other somewhat in their provisions on the limit to reconsideration.

The Senate allows the motion to reconsider to be entered by one of the successful party, on the day of the first vote or within two days of actual session thereafter; and allows such motion, though the bill, resolution, etc., sought to be reconsidered, may have gone in due course to the other house; requiring however, that there shall be an accompanying motion to request the return of such bill, etc. The latter motion must be brought to immediate vote without debate; and if lost, its loss is "held to be a final disposition of the motion to reconsider." If a motion to reconsider be lost, or if carried and then the first decision of the reconsidered question be reaffirmed, it cannot be renewed but by unanimous consent. Motions to reconsider subsidiary questions "shall be decided at once." Any motion to reconsider may be tabled without taking with it the question to which it refers; and it cannot be afterwards taken up from the table. (Standing Rules, U. S. Senate, Nos. 20, 21.)

The other house confines the time for entering the motion to the same and the succeeding day of the first vote; ranks it above all others except motions for the consideration of a conference report, for fixing time for the next meeting, for adjournment and for recess; forbids its withdrawal after the two days without permit; allows any member to call it up thereafter, and requires immediate action on such motion if made during the last six days of a session. No bill, resolution, etc., referred to a committee, or reported therefrom, for printing and recommitment, can be brought back into the house on a motion to reconsider. (Rule xviii, House of Representatives.)

II. Office and Rank of the Motion to Reconsider.

139. Suspensive Effect. The motion to reconsider is subsidiary and suspensive; it suspends the execution of the resolution or order to which it applies until it is itself brought to vote, unless it has been tabled. To this law there is the exception that the suspension is not beyond the general session of an assembly holding daily meetings. When the meetings are weekly or monthly, the suspension is to the close of the next meeting.

A motion for the reconsideration of the question of indefinite postponement after it has been carried, suspends action as stated generally in the above paragraph; but if the question of indefinite postponement has been lost, a motion to reconsider it must be acted upon before the question sought to be postponed has been brought to vote, and before some subsidiary motion of higher preference has intervened.

The adoption of the motion to reconsider restores the question to which it applies to its former position. If debatable before, it is so now, unless debate was cut off by the operation of an order for the previous question. If it is a principal question upon which the order was exhausted, debate may be resumed.

140. Relation of Subsidiary Motions to the Motion to Reconsider. The motion to reconsider cannot be amended, because it is already in its simplest form; it cannot be referred to a committee, nor indefinitely post-

poned, because the application of such motions to it as subsidiary would result in useless entanglement, would delay business, and would subserve no good purpose.

It may be postponed to a given time, or laid upon the table. The motion to reconsider, and the motion to lay that motion on the table may both be made at once. Such is the common practice in the House of Representatives of the United States and other legislative bodies. It is of daily and almost hourly occurrence. It seems exceptional to the rule, "One thing at a time;" but it is so generally sanctioned by usage, and so convenient, that legislators are likely to continue the practice.

The motion to reconsider yields to privileged and incidental questions and questions of privilege.

The main question, after having been voted upon under the operation of the previous question, may be subjected to the motion to reconsider it; and the latter motion would not come under the influence of the previous question so far as to become undebatable. But, if the order is applied to a series, and an amendment has been voted upon, but the previous question has not been exhausted, a motion to reconsider the amendatory question would be undebatable. Much latitude is given to debate on a question of reconsideration, unless the one sought to be reconsidered was undebatable.

The motion to reconsider has been entertained in the U. S. House of Representatives when it related to "the several votes taken."

ANALYSIS No. 10.

Reconsideration.

300. May a vote be reconsidered after decision announced?

That is now allowed in practice.

301. How is reconsideration effected?

By motion offered by one belonging to the party successful on the former vote.

302. Why is the right to move reconsideration denied to the defeated party?

Because a motion coming from that source would not indicate any change of the general sentiment already expressed.

When moved.

303. Within what time must such motion be made?

Necessarily before other votes have rendered it impracticable; as when a main question has been adopted, the vote upon an amendment thereto cannot be reached for reconsideration; nor that upon any subsidiary motion thus put beyond action.

304. But may not vote on the main question be reconsidered?

Yes; and then it is possible to reach the subsidiaries.

Reconsidering subsidiaries.

305. Are all of the subsidiaries liable to be reconsidered, if the motion therefor be made at the proper time?

If the members have decided to table a motion, it is easier to take it up than to reconsider the vote on the tabling. So, if they have decided to take up, it is easier to lay on the table than to reconsider the vote on taking up.

Reconsidering other motions.

306. May a vote to adjourn be reconsidered?

If carried, the adjournment is declared, and the members disperse; if lost, it is easier to renew than to reconsider: so the motion can not be reconsidered.

307. May a vote to suspend rules be reconsidered?

By special rule, such reconsideration is generally inhibited.

Limitation

308. Is there a limit to motions for reconsideration, with respect to the time within which they may be made?

They are usually limited to the day of the voting and the following day; and the practice, in this respect, has been pretty general. In such case, the motion is allowed to be filed with the clerk, though it should be made in open session if the floor can be obtained.

309. Is there a limit with respect to the number of such motions?

A vote once reconsidered cannot be subjected a second time to a motion to reconsider it.

Amendment.

310. May the motion be amended?

No; because it is already in the simplest form.

311. Is it debatable?

Debate.

It takes the character of the question proposed to be reconsidered, with regard to debatability.

Previous question.

312. When debatable, may it be pre-questioned?

Yes.

313. Should the motion for reconsideration then be tabled, what would be the effect?

The motion to pre-question would go to the table with it and leave the vote unaffected which was sought to be reconsidered.

314. Should the vote go into effect before the tabled motion to reconsider be taken up, what would become of the latter?

It would be rendered futile, and would be abandoned.

315. May the ordering of the previous question, upon a main or other motion, or upon a series, be reconsidered?

It may, if the order has not been executed.

Suspension.

316. Does not the motion to reconsider suspend the execution of that which is proposed to be reconsidered?

Yes, till it is itself brought to vote or other-

wise disposed of; provided, however, that the suspension cannot be beyond the general session; nor beyond the next sitting, if the meetings are weekly, or monthly.

317. What is the effect of the adoption of a motion to reconsider?

It restores the revived question to its former condition.

Reconsidering and tabling.

318. May a motion to reconsider and one to table that motion be made at once?

Some bodies allow such practice; it is common in Congress.

Competition.

319. What is the effect when privileged and incidental questions compete with that of reconsideration?

The latter yields.

Entering motion on the journal

320. May not a motion to reconsider a vote be offered when some other and different question is under consideration?

Such motion is allowed to be written and filed with the secretary or clerk for entry, while another is under consideration, though it cannot properly be offered till it may be moved in order, unless by previous authorization.

321. Is not such the practice in both houses of Congress?

Both have special rules allowing such filing within a given time.

CHAPTER XI.

Privileged Main Motions.

I. Motions of Necessity.

141. What are Motions of Necessity. Some business matters are privileged above others from the necessity of the case. They put in abeyance whatever is under consideration, and secure immediate attention. It would be difficult, if not impossible, to specify all the propositions which may properly be presented by privileged main motions; but they may be generally characterized, and some of those most frequently arising may be particularized. It may be stated, however, of this class as a whole, that no main motion is privileged so highly as to supplant all other business under consideration, if its immediate consideration is not absolutely necessary; if it could, without injury, abide its time for presentation when there would be nothing else pending.

Necessity is the touchstone by which any main motion's quality of privilege is to be tested. And as some motions of this class are of greater urgency than others, the rank among themselves is determined by their different degrees of necessity.

The most urgent are the most highly privileged.

Action may be essential, yet not immediately indispensable. In illustration, this state of things would give rise to necessary motions: Suppose all the officers of an assembly should simultaneously vacate their positions during a session; it would immediately become a matter of necessity that all pending business be stayed until a president and secretary should be chosen. Motions for the selection of such officers *pro tempore* would be privileged, from the necessity of the case. Such motions, however, would not be of the greatest urgency; and they would not supersede a pending motion to adjourn, since some member might put the question on adjournment, and the reorganization might be effected on the following day.

142. When Fixing the Day to Which to Adjourn is Urgent. A case giving rise to a motion of the greatest importance, is presented when there is a motion for adjournment pending, yet no appointment of the next meeting has been made. A motion to fix the day to which to adjourn, made at that late stage, is one of necessity, since it is of the highest importance that the dissolution of the assembly should not be effected when the members do not mean to adjourn *sine die*. Such motion, made at that juncture, would be in order, would supersede the

less privileged motion to adjourn, would be immediately brought to vote without amendment or debate, and would then be followed by the putting of the motion to adjourn. Even when the latter has already been put, the urgency might be so great as to justify the entertaining of the more necessary motion, before adjournment has been declared by the chair.

It is quite common in Congress and other legislative assemblies for business to be done by general consent, after a motion to adjourn, and before adjournment declared. It consists mostly of granting leave of absence to members. But when the appointment of the next meeting is urgent, the motion therefor is not dependent upon general consent for its validity, though made at this late stage.

143. When Fixing the Place of Next Meeting is Urgent. The fixing of the place of the next meeting may, under certain circumstances, be a matter of equal urgency. If an assembly cannot have the use of the hall in which it is sitting beyond the day's session, and a motion to adjourn is pending when no provision for reassembling elsewhere has been previously made, the necessity of designating a place would be so urgent that a motion supplying the want would supersede that to adjourn, and be first decided, without debate or amendment, to be followed by the disposition of the motion to adjourn, as in the first mentioned case.

Neither the motion to appoint the time, nor that to appoint the place, is of such urgent necessity when made in due course of business while adjournment without such appointments

is not imminent. Ordinarily, such matters when not urgent are both amendable and debatable, though not subject to dilatory subsidiaries for the reason that were they tabled, committed or postponed to another day, their object would be thwarted. They might be deferred to a later hour of the same day, without embarrassment, if a motion to adjourn should not be made before that hour. Should such brief postponement ever be ordered, and adjournment be moved before the set time for considering the appointment of the next meeting, it would become imperative that the time be anticipated, and the vote upon such appointment taken before the vote upon adjournment.

144. When neither Time nor Place is Urgent. Motions to appoint the time or place to which to adjourn are not privileged at all, but are mere ordinary main motions, except when made under the circumstances above indicated. A change of place when the assembly has the privilege of continuing where it is, or a change of time of remeeting when there is already proper provision for meeting daily at a given hour, is not a matter of urgency or necessity. A motion therefor would not be privileged, unless some rule should make it so for any particular body adopting it. The U. S. House of Representatives has such a rule with regard to the appointment of the time of remeeting. Rule xvi, 4, ranks the motion "to fix the day to which the House shall adjourn" above that to adjourn. The rule stands unqualified and invariable. It makes no distinction, whether such motion be urgent or not. Were the house to follow this rule in practice, in its

literal meaning, it might prove troublesome in the hands of tacticians bent upon obstructing business. That rule further prescribes, (5): "A motion to fix the day to which the House shall adjourn, a motion to adjourn and to take a recess shall always be in order;" but how could either of the latter two be in order, should the first be pending, without violating the preceding section of the rule? Constructed together, the two sections may not mislead; but those who hold that the House of Representatives makes parliamentary law for all the deliberative bodies of the country, must see that there is reason against the making of the motion to appoint the time of the next meeting invariably urgent and invariably in order.

The Senate places the motion "to adjourn to a day certain, or that when the Senate adjourn it shall be to a certain day," below the simple motion to adjourn, but above that to proceed to executive business or that to table, and makes it undebatable. [R. 43.]

II. Adjournment.

145. When Motion to Adjourn is in Order. Adjournment of a day's session may be moved whenever a member can get the floor, unless the assembly has just decided against it, or has already fixed the time when the chair must adjourn the body, or is considering the appointment of the time or place of the next meeting when urgent, or is engaged in voting, or when a member is speaking. Only one motion to adjourn can be made pending a motion

to suspend the rules. The motion to adjourn should not be abused to hinder business when the body has repeatedly refused to adjourn, even though some other matter may have intervened; for its repetition may become troublesome, and may even justify the chair in treating the motion as frivolous, and ruling it out of order. The assembly can readily correct any error of ruling with regard to this point (as any other) by appeal; so that if the majority choose to adjourn, they can do so at any time without any possible hindrance arising from such ruling. As a general rule, however, the motion is always renewable after some other business has intervened.

The reason why, as a general rule, the motion to adjourn is in order whenever made by any member having the floor, is that a deliberative body should not be kept in session against its will, because, if so restrained there could not be free deliberation and discussion.

146. Not Debatable in its Simple Form. The simple question of adjournment is not debatable, nor subject to any subsidiary motion. The reason is that if the members choose to adjourn, they should be allowed to do so at once. Besides, were the motion debatable, and amendable, and liable to the operation of subsidiary motions, much of the time of a deliberative body might be frittered away by the frequent repetition of the motion to adjourn, with all such concomitants, so that it would be in the power of a small minority seriously to impede the business of the assembly.

If, however, the motion be not simple, but an ingredient of a compound; if the offered reso-

lution be that the meeting do now adjourn to Monday next, or that it do now adjourn *sine die*, it would be susceptible of division; and if divided, the latter proposition would be first in order, and debatable; or, if not divided, the resolution as a whole would be debatable. It would be neither divisible nor debatable if the assembly had previously resolved that when it adjourn, it shall adjourn to Monday, or adjourn without day; but, in such case, the latter part of the above supposed resolution would be surplusage.

147. Declaring Adjournment. When the question of adjournment has been voted upon, the chairman, in pronouncing the result, should first say (as in all similar cases), "The ayes seem to have it," or "The noes seem to have it," as the case may be; or "The question seems to be decided in the affirmative," or "The question seems to be decided in the negative," as the case may be; or some other equivalent expression. This is important at this juncture, since, if such opportunity be not afforded the members for calling a division or other corrective, all remedy would be cut off in case the chair should be mistaken upon the result of the vote. Then he should announce the decision, if no division or other test be called for. When such decision is announced, the members should all still retain their seats, till the chair shall have declared the assembly adjourned.

It is even possible as before remarked, after the question of adjournment has been voted upon, for an urgent privileged motion to be made; such, for instance, as one fixing the time for the next meeting when it is matter of abso-

lute necessity. And such a highly privileged motion may give rise to some further proceedings; such as appeals from decisions of the chair on points of order concerning such necessary proceedings. When such privileged matters have been disposed of, the decision upon the question of adjournment, which has thus been held in abeyance, must be announced by the chair; and if in the affirmative, in due order, the assembly must be declared adjourned.

It may be that, because of the intervening privileged business, some members have changed their minds concerning adjournment; and before the decision upon the vote has been announced, they have the right to reverse their votes even at this late stage. So the motion to adjourn may be decided differently from what would have been the result had the vote been declared as first cast before the intervention of the more privileged question upon fixing the time of the next meeting as a matter of urgency.

148. Adjournment by the Chair. Less than a quorum may adjourn from day to day; and necessity would justify the fixing of the time of the next meeting by less than a quorum. In case no motion be made to adjourn, when a a quorum is wanting, especially if absent members cannot be brought in so as to restore the quorum, the assembly may be adjourned by the chair. The reason the chair would have such authority, is that the body has ceased to be a deliberative one, and no business can be transacted. The whole assembly may have dispersed, except the president and the secretary, and then the right and duty of the chair to declare adjournment would be clearly manifest.

Where there is such disorder and violence that business cannot be done, as for instance, where the assembly is divided into parties in hostile array against each other, a motion to adjourn would be the most highly privileged of any; if that could not be made and seconded and put and voted upon, because of disorder, the chair may justifiably declare the assembly adjourned. And, in such case, if no time of remeeting has been previously agreed upon, the chair should adjourn the assembly to the next day; or if a legal holiday or more should follow, he should adjourn the meeting to the next business day. The reason for his authority to thus fix the time as well as the adjournment is found in the necessity of the case and in the character of the chair as the representative and embodiment of the assembly, and in the fact that the assembly has, for the time being, ceased to be a deliberative body, being wholly incapable, by reason of the disorder and excitement, of calmly considering questions, debating and deciding. The assembly, in such case, has abdicated its own authority as fully as though all the members had dispersed and left the president and secretary as the only occupants of the hall.

149. Remedy for Abuse. The prerogative of the president is so important, in such a case, that to afford remedy in case of its abuse, as well as to act as a wholesome restraint upon him to prevent such abuse, he should instruct the secretary to record the reason why he declared the adjournment (and also the time of meeting where this also is included); as that the assembly had previously dispersed, or had

hopelessly destroyed the quorum, or had ceased to be a deliberative body by reason of disorder or violence. And the secretary is bound to enter the reason as thus directed.

Upon reassembling, the adoption of the minutes would cure any error of the chair in thus adjourning the meeting on the previous business day. A majority, however, would have the power to neutralize the president's action, so far as such action would then be susceptible of reversal or modification.

Should the president abuse his high prerogative, his punishment is in the assembly's own hands, and they would have power to censure or even depose him for a tyrannical order of adjournment, as for any other culpable act. It is necessary that the power of adjournment, in such cases as have been suggested, should be lodged somewhere; and parliamentary law lodges it with the chair, subject to such subsequent action of the assembly as has been above indicated.

Adjournment *sine die*, or the dissolution of the general session, is effected by an ordinary main motion fixing the time therefor. Such motion is debatable, and is governed by the ordinary usages applicable to common motions.

III. Motion to Adopt the Minutes.

150. The Motion Privileged. When the assembly is again convened at the time to which it stood adjourned, the first business ordinarily is the calling of the roll and the reading of the minutes; and the question upon the adoption

of the minutes is a privileged one. It may be raised by a motion to adopt, or may be submitted by the chair without a motion. Such a question may give rise to corrections and amendments of the record; and any motion pertinent thereto would be in order in its proper place, and would be of such privilege as to outrank the business which was under consideration when the motion to adjourn was made on the preceding day.

The reason why the question upon the adoption of the minutes, and kindred questions, are privileged is, that it is necessary that the members should make the secretary's record their own, so as to render it legal evidence of the preceding session's transaction, while the proceedings are fresh in their memory.

The record is really made by the members, and they have the right to change the statements of the secretary as they choose. As remarked in the next chapter, the secretary is the right hand of the assembly; he writes for the members and not for himself; he states the facts of transactions for them to adopt and make their own; he differs from a committee which is solely responsible for facts reported. If his entries are correct, the members should approve them. They should not change the entries because their own views may have changed since the minutes were written.

151. Expunging, Postponing, etc. Expunging resolutions have been allowed in legislative bodies of high position; but how can it ever be right to obliterate from the journal anything that has been regularly adopted by the assembly, properly recorded by the secretary

and duly approved by the members? Reconsideration, within the allotted time, is proper; repeal of a resolution, etc., is often necessary; but by what right may a deliberative body mutilate the journal and render it an incorrect record of transactions?

A motion to expunge from the journal what has been rightly entered and approved, ought not to be entertained. It would be out of order, because proposing the falsification of the journal—a matter not within the purview of an assembly's business. There is precedent. however, for the entertainment of such motion.

When minutes have been adopted, the secretary should attest them; and then the record becomes evidence of the transactions of the assembly.

When the question upon the adoption of the minutes is under consideration, it may, unlike some other questions of its class, be postponed to a later hour of the day, or even to the morning hour of the following day, or made the special order for an early given time; but such practice is not commendable, tending rather to uncertainty and disagreement than to any salutary end. Such question may be laid upon the table; and there is nothing exceptional in the fact that such action does not carry the minutes to the table, since the minutes themselves are merely the subject of the motion to adopt them. A subsequent motion for their disposition before the taking up of the tabled motion to adopt them would be out of order, because of the existing one to adopt them.

152. Procedure after the Disposition of Privileged Questions. When a privileged

question has been disposed of, whatever had been superseded by it regains position, and becomes the first thing in order, and should be announced by the chair without a motion to resume it. When the journal has been disposed of, as the first business of the morning, whatever had been displaced by adjournment comes up in course, unless there is a different order of business previously adopted. But, if there has been a final adjournment of a general session, questions cut off by it are lost. They do not come up in course as unfinished business at the commencement of a new general session. They might be transferred to a new session, by motion, without doing violence to any principle of parliamentary law.

IV. Questions of Privilege.

153. What they Are. Matters concerning the rights, safety, integrity and dignity of the assembly, and those affecting the rights, reputation, conduct and safety of members in their official or representative capacity, give rise to questions of privilege.

Business is sometimes interrupted by occurrences during a session which require immediate attention; and a motion relative thereto is admissible though made when some other question is under consideration, if there is necessity for immediate action. While it is impossible to foresee and specify the various matters that may thus force themselves upon the attention of an assembly, it may be well to suggest a

few by way of showing what are questions of privilege.

The credentials of members, the behavior of either members or visitors, the sanitary condition of the hall where the session is held, quarrels between members, the discipline of a member, the censure or expulsion of a member, the protection of the assembly, charges made against the official character of an officer or member, the obstruction of business by mob violence, the extinguishment of lights at a night session —anything which concerns the privileges of the body or its members, may be the subject of a question of privilege.

Such questions often concern both the collective body and the members of it. Indeed, those affecting the rights and reputation of the latter cannot fail also to affect those of the former.

154. Rank. Questions of privilege supersede all others except the privileged questions upon fixing the time or place to which to adjourn when it is urgent, and such like, and upon adjournment. The U. S. Senate follows this established practice, but the other house has a special rule (R. 9), giving questions of privilege "precedence of all other questions except motions to fix the day to which the House shall adjourn, to adjourn, and for a recess;" thus ranking the first mentioned, even when not urgent, above questions of privilege.

Of the two classes, those questions affecting the body are more highly privileged than those affecting its members. When one of the former competes with one of the latter, it must be accorded the preference and be first brought to vote or be disposed of otherwise.

Various subsidiary questions may arise upon a main question of privilege. For instance, if an altercation occur between two members, a motion may be made for the expulsion of the aggressor. This may be followed by a motion to amend so as to substitute censure for expulsion. Then an amendment to the amendment may be offered. Not only the main question of privilege, but each of the following, at the time it is the one subject under consideration, is liable to be subjected to any appropriate subsidiary motion; either of the amendments may be laid upon the table (which would carry with it the main question); the main question might be referred (which would carry with it the adhering amendments); and other dispositions might be made. It will be seen, therefore, that the interruption of the regular order of business by the raising of a question of privilege may be very much protracted.

The reason why such questions rank so high is that the freedom, efficiency and even the existence of a deliberative body may depend upon the prompt disposition of such questions. So necessitous may be the case that all other business is instantly suspended without a vote to that effect; debate on any pending question is abruptly cut off, even in the middle of a speech; and the assembly acts at once for its safety, decorum, reputation, dignity or even existence.

155. Loss of Privilege. Pending a question of privilege, should it be referred, deferred or tabled, the regular business previously displaced would be at once resumed. When again brought before the assembly, the question would no longer retain its privileged character, unless

it had been made a special order for a given time. It would be treated like ordinary business and could not again interrupt the due course of procedure. The reason of this is that the circumstances which gave it urgency with respect to the time of its consideration would now no longer exist.

ANALYSIS No. 11.

Privileged main motions.

322. Why are some main motions privileged?

Because of the necessity for their immediate consideration.

Appointing next meeting.

323. When is the motion fixing the time for re-meeting privileged?

When, otherwise, adjournment already moved would result in the dissolution of the assembly.

324. When such motion is made, in the absence of such necessity, is it a privileged motion?

Not by its nature; only such if so made by special rule.

325. May the fixing of the place of the next meeting be privileged by its nature?

Only when it is indispensable to the further existence of the assembly.

Filling offices when urgent.

326. Are there other contingencies under which a motion ordinarily unprivileged becomes privileged?

Yes. Should all the officers resign, motions for filling the chair and appointing a secretary would become so, from the necessity of the case; and many other like contingencies may arise.

Motions which are always privileged.

327. Are there some motions always privileged by their nature?

The motion to adjourn is so, and is the highest of this class. The motion to take a

recess, to pass upon the minutes, to dispose of questions of privilege. may be instanced.

Motion to adjourn.

328. Is not the motion to fix the time of re-meeting of higher rank than that to adjourn?

It is so if necessity requires, as above stated; but the motion to adjourn is the highest of those which are always privileged.

329. What is the reason of the privilege of the motion to adjourn?

The reason is that a deliberative body should not be kept in session against its will, because restraint would hinder free discussion.

330. Is the motion always in order?

Generally, but there are exceptions; as when a like motion has just been negatived, and when it is frivolously made.

When frivolous.

331. When may it be deemed frivolous?

It may be so deemed when, though business may have intervened, the motion is repeatedly made for the evident purpose of hindering business when there is no serious probability of carrying it.

332. Should not the chair entertain the motion under such circumstances?

In extreme cases he should rule it out of order, as frivolous, and leave the mover his remedy by appeal.

Not debatable.

333. Is the motion debatable?

No; nor subject to any subsidiary motion.

334. Why not?

Because, were it debatable, amendable or delayable, its consideration might be so prolonged as to destroy its usefulness as the means by which the members may disperse at will; and also prolonged so as to hinder business.

Made without a quorom.

335. May the motion be passed in the absence of a quorum?

Less than a quorum may adjourn from day to day; and the chair may declare adjournment without a motion, if necessity should require it.

Adjournment by chairman.

336. Under what necessity may the chairman adjourn the meeting?

When a quorum is hopeless and no one moves adjournment, after effort to bring in absentees has failed; or when nearly all have dispersed except the president and secretary; or when there is such a degree of mob violence as to render deliberation impossible.

337. To what time may the chair thus adjourn the meeting?

The next business day.

338. How should such adjournment be recorded?

The chair should cause the secretary to enter the reasons for his order of adjournment upon the journal for the action of the assembly thereon in case the adjournment was wrongful.

Remedy for abuse.

339. What would be the remedy, should the president have abused his authority?

Censure or deposition, as for any other culpable act.

Recess.

340. By what rule is the taking of a recess governed?

The same as adjournment.

Adopting minutes.

341. Is the motion to adopt the minutes privileged?

It is so by its nature, because the adoption of the secretary's entries should be voted upon while the transactions recorded are fresh in the memory of the members.

342. Is this motion subject to subsidiary ones?

Yes; and it is debatable.

343. When the members have made the record their own, by whom should it be attested?

By the secretary.

Resumption of ordinary business.

344. When a privileged question is disposed of, what is next in order?

It is whatever was superseded by the privileged question; but if nothing was superseded, any new business would be in order.

345. When a question is interrupted by an adjournment for the day, does it come up on next day's session?

As a matter of course, unless other privileged business or orders should prevent.

346. What are questions of privilege?

Questions of privilege.

Those affecting the rights, safety, etc., of the assembly or of its members.

347. How do such questions usually originate?

They mostly spring from matters concerning the credentials of members, the behavior of members or visitors, sanitary conditions, quarrels, altercations, obstruction of business by mob violence, charges against members' official character, etc.

348. What form do motions usually take which give rise to questions of privilege?

Motions to investigate charges, to censure or expel members, etc., give rise to questions which are privileged above those arising upon ordinary motions; and above all others except adjournment and fixing the next meeting when absolutely necessary.

Debatable and delayable.

349. Is a question of privilege subject to debate and subsidiary motions?

Yes; and it may be removed from present consideration by the application of any dilatory motion.

350. What would be the effect of such a disposition?

The question would lose its privileged character; and when its consideration should afterwards be resumed, it would be but an ordinary question.

CHAPTER XII.

The Organization and Constitution of Assemblies.

I. Organization.

156. Calling the Meeting to Order. Organization is begun by the calling of the meeting to order. Whose duty it is to make the call, depends upon the character of the assembly about to be organized. If it is to be a legal body, such as a municipal corporation or a legislative body, it is usually governed by law in its organization, and the person required to call the meeting to order is usually designated. Thus, the Lieutenant Governor may be designated by law to call the Senate to order; the Mayor of a city may be required by the charter to call a city council to order when first met for organ-

ization. But, in voluntary meetings to form associations or societies, any person present may make the call.

It is optional with those present, at a voluntary meeting, to respond to the call or not. They may not choose to be governed by the majority; to elect officers and entrust to them important functions; to submit to the laws of parliamentary order; but it is to be presumed that they will heed the call, since no such thing as a deliberative body could be formed unless they do come to order. When, by their own consent, they respond to the call and come to order, they virtually assent that the majority shall govern, and that officers shall be selected, and that the rules of parliamentary order shall be respected and obeyed so far as applicable at that stage.

157. Temporary Organization. It may be by general assent, and without any formal motion or vote, that the temporary chairman is selected. The person calling the meeting to order may request another to take the chair; and if there be no dissent expressed, the gentleman thus requested may become the temporary chairman; for, prior to organization, all the rules of parliamentary procedure are not binding on such a meeting of gentlemen. Usually, however, a motion is made and seconded that some one named take the chair. Such a motion should be put to vote, but ought not, at this stage, be subjected to subsidiary motions and to all the machinery of parliamentary procedure, for the reason that there is not yet a deliberative body. The negative vote should be taken, however, and the motion should not be

declared carried unless it has been adopted by a majority of those voting. If not adopted, there is no organization of the meeting; but if carried, the selected chairman should take the chair; and the selection of a secretary, by motion duly seconded, put to vote and adopted, completes the temporary organization. Now, all the rules of the common law of parliamentary procedure are operative, and business must be conducted accordingly, if the president and members study their own comfort and interests, or are desirous that their transactions shall be binding in the courts where matters of pecuniary business are concerned. If all mean to be mutully just, respectful, helpful and efficient in the accomplishment of the objects of their convention, they cannot be too particular in observing the letter and spirit of parliamentary law.

158. Stating the Object of the Meeting. The temporary organization having been thus effected, it is usual for the chair to state the object of the meeting, though no law requires it, and though it is done merly by the sufferance of the meeting. Should a member rise for this purpose, he could be heard by general consent, or by consent of the majority expressed by a resolution duly moved, seconded and adopted. But without such assent, neither the chairman nor any other member can address the meeting, as a matter of right, when there is no question under consideration.

159. Preliminary Business. Prior to permanent organization, the only business proper consists of the reading of the call for the meeting, taking a list of the members, resolving to

proceed to the permanent organization, and such other things as are in their nature preliminary, and not the business itself upon which the meeting is convened. If the body is a constituent one, the examination of the credentials of the delegates, by the aid of a committee, or otherwise, would be among the preliminary matters. If the body is a legislature, city council or other legal convention, the preliminaries necessary to permanent organization for the purpose of doing the business appertaining to such assembly are prescribed by law.

Where the law requires a president, or speaker, or other officers to be elected by ballot, no general business is in order under the temporary organization. Whatever is required to constitute permanent organization, must, in such case, precede the transaction of general business. But in a voluntary assembly not thus restricted, the organization, meant to be but temporary, might be allowed to continue indefinitely, since there is no parliamantary law requiring any change, if the majority choose to continue the first chosen officers, though selected informally.

160. Permanent Organization. Permanent organization need not be effected by ballot, unless required by law concerning legislative and other legal bodies, except where there are more nominees than one for the same office. If, for instance, several persons should be nominated for president, they must all be voted upon at once; and this is best done by balloting, though it might be effected lawfully by a division of the members.

It is laid down by some writers, that when several candidates are nominated, the vote must

be taken first upon the one first nominated, secondly upon the second, and so on. But this would be contrary to parliamentary law. It would be treating each nomination as a motion, with several like motions pending and under consideration at one time, which would be violative of the first principle of that law. True, there might be a motion that a designated person shall be the president. But, until such motion should be disposed of, no other independent motion, naming some other person for president, would be in order.

But a nomination differs from such a motion, in these particulars: it need not be seconded, and it is not forestalled by the existence of a pre-nomination. Manifestly then, if several nominations may legally be pending at once, they must all be voted upon at once, by ballot, by roll-call, by division or by some other way that will give the friends of each nominee equal chances for his election. If the nominations were put to vote separately by ayes and noes, the one first put to the test would have the advantage of the rest, which would be unfair and unjust; and, for that reason, unlawful.

The same reasoning applies to the selection of the permanent secretary and other officers.

161. The Presidency. The president is the head and master of the assembly. It is frequently said that he is the servant of the members, but he is so only as the master of a school is the servant of his scholars; as the President of the United States is the servant of the people. All good rulers must serve. It is true that the presiding officer of a meeting must obey the behest of the majority in all matters in which

they have the right to control him, but so must every individual member; and he is, in this respect, no more a servant than any of them. It is misleading to say that the president is not the master but the servant of the members, as has been frequently written in the books.

The headship of the body is in the president; and he must be respected and obeyed as the leader and representative of the whole assembly. He is, in a sense, the assembly itself; for disrespect to him is an affront to the whole house. Selected by the voluntary suffrage of the members, he is put forward as their standard, their mouthpiece, their arbiter; and there is nothing degrading to the members in styling him the master, since he rules by their permission and may be deposed at their will.

162. Duties and Powers of the President. There should be mutual service. He can best serve them by presiding with dignity and authority, promptly deciding all questions of order, patiently hearing free discussion, resolutely maintaining order and the rights of individual members, firmly confining debate to the one question under discussion, impartially putting the question at the proper time, decidedly announcing the result of the vote, and always adhering to parliamentary law; while they can best obey him by recognizing his headship, submitting to his decisions upon points of order or respectfully appealing therefrom, and aiding him generally in the furtherance of business and the preservation of decorum. Without mutual support, neither the president nor the members can adequately perform his or their respective duties, nor enjoy the benefits

and privileges of a properly constituted assembly.

What has been here said of the position and power of the president, and of the mutual relations between him and the members over whom he presides, is with reference to the common parliamentary law. In the absence of special rules limiting his authority, he is the head and governor or moderator of the assembly by reason of his position and from the necessities of the situation, in accordance with established usage and the assent of the members implied by the very act of electing him, or their assent implied by accepting seats in the assembly when the presiding officer has been previously designated by law.

163. His Authority Not Wholly Dependent on Special Rules. Apparently overlooking this rule of the common law, and probably entertaining the popular error that parliamentary order rests only upon specially adopted rules, Mr. Calhoun, when Vice-President of the United States, declared that he had no authority to call a Senator to order for words spoken in debate. When the rules were afterwards amended so as to recognize this authority (though only by implication), he spoke of it as a "power conferred upon the chair" by the emendation. By the present standing rules, the authorization is express: "If any Senator, in speaking or otherwise, transgress the rules of the Senate, the presiding officer shall, or any Senator may, call him to order." (R. 36.) This was doubtless passed, like many other rules, under the impression that it was necessary; but, since

it merely reiterates the common law of the subject, the authority was in existence without it.

161. The President of the U. S. Senate. The constitution (Art. I, § 3), prescribes: "The Vice-President of the United States shall be President of the Senate," which would seem to imply that he shall have all the authority accorded to the presiding officer by the established usage of deliberative bodies. Had the framers of the constitution meant that he should have less, they doubtless would have modified the common law upon the subject as they did with respect to voting, in some instances requiring two-thirds; and with respect to other matters, as shown in the chapter on Congress.

If the constitution, in making the Vice-President the presiding officer of the Senate, did not mean that he should keep order, what authority or duty did it mean to confer? In providing (Art. I, § 5), that "each house may determine the rules of its proceedings," doubtless it gives latitude to either to modify the common parliamentary law to meet its own exigencies, and to add thereto when necessary; but not to take from the Vice-President the right to preserve order as a necessary incident of his office. Those curious to pursue this subject further, and to examine Mr. Calhoun's views more fully, may be aided by Mr. Fillmore's remarks, when Vice-President, entered upon the Senate Journal, 1850.

165. The Secretary—Keeping the Journal. The secretary keeps the minutes. He is the hand of the body, by which the members record their transactions. What he enters upon his journal is their entry, when approved by them;

and they may direct the entries. They usually direct him through their leader, the president; and, in this, the secretary is the president's right hand. He must enter all that is done which results in a parliamentary transaction; but this does not include unseconded motions nor all ineffectual appeals, unless special rules or orders require their entry.

The secretary of any society or other assembly should not intrude his personal opinions of the transactions into his minutes; he must not describe speeches as eloquent, pertinent or otherwise; he must not record that a measure was thoroughly discussed or appropriately amended; he must not characterize a report as able, full or exhaustive; he must not compliment the president or any member: for the right to praise would imply the right to censure; and who made him a critic? Who authorized him to play the reporter? He is the servant of the assembly, not the censor. He is a recorder of transactions, not a reporter of speeches. He must enter only what is done; and he is officially authorized to attest the adoption of the minutes by the assembly. It is difficult to decide whether the ordinary clerk of a meeting is more apt to err on the side of omission or commission.

The minutes may be corrected or changed by the assembly, for the secretary only writes for the members. His entry of a day's transactions is thus wholly different from the report of a committee. Facts stated in a committee's report cannot be changed by the assembly, but whatever is stated in the minutes may be

changed by the assembly, since it is the statement of the members by the secretary.

Ordinarily, the secretary should not state, in his journal, who made speeches upon any question; for speeches are not transactions of the body. Exception to this is found in literary societies formed for debating upon selected questions, when those speaking on the affirmative and those speaking upon the negative should be designated, without any characterization of the speeches; also in scientific and religious societies in which the titles of papers read with the authors' names may be properly recorded, without remarking upon their merits.

166. The Secretary's Other Duties. Besides keeping the journal, reading it for approval, making ordered corrections, certifying to its adoption, etc., the secretary's duty includes the calling of the roll, the reading of papers called for, assisting the president in his duties when required, calling the meeting to order in the absence of the president (if there be no vice-president, or none present), and performing all the duties incumbent by established practice. Besides, he is often required, by special rules, to keep certain calendars of business, give certain notices, and do various other things. The secretary is strictly the servant of the assembly, but he takes his orders mainly from the chair. He is not usually selected from among the members of the assembly, but he may be. The president is usually a member, but not necessarily so. Other officers, such as vice-president, treasurer, sergeant-at-arms, etc., may be required by special rules.

II. Constitution of Assemblies.

167. Majority. Whether the members of an assembly meet voluntarily or are convened pursuant to law, they come together with the understanding that the majority shall rule. Any one not assenting to this would refrain from becoming a part of a voluntary society; any one declining to obey the majority rule would not be permitted to serve as a member of a legal body. All deliberative bodies are necessarily democratic; and the will of the majority is the will of the whole. No exception to this principle is found when a vote of two-thirds or more is required to pass certain motions; for such vote is always by virtue of special rules, and those rules are the work of a majority, and by a majority may be repealed.

168. Procedure. There must not only be organization and government by the majority, but there must also be system in the transaction of business. No deliberative body can disregard established forms and usages, though it may modify them in minor matters. Some legislatures treat the motions *to refer* and *to defer definitely* as of equal grade, subject to the rule, "First made, first put." Adjusting the scale of motions accordingly, they do business with parliamentary system and with legal results. Others treat the motions *to amend* and *to defer indefinitely* as of unequal grade. Some employ the previous question: others do not. Some bodies adhere to the rule that a *quorum* consists of more than half of the members:

others provide that a less number may do business at the proper time and place. Thus, minor modifications are allowable.

When a quorum is made to consist of less than a majority, it is absolutely essential that some protecting safeguard should be provided, such as requiring meetings to be held in a certain place, presided over by the elected president, called to order at a fixed time, etc., for the reason that if less than a majority may meet at any place, call any one to preside *pro tem.*, and be called to order at any time, the assembly might thus be divided into two or more assemblies, which would be absurd.

169. Place and Time of Meeting. "Place" means not the city or town, or even the building, but the hall or room of the meetings, since otherwise an opposition organization might meet in some other apartment when less than a majority is a quorum, and proceed to do business. "Time" means the hour for calling to order fixed by law, by special rule or by previous adjournment, since otherwise members might get together at any other time, and, under the operation of a rule allowing a limited quorum, a minority might transact business without the opportunity given to the majority to be present.

Anything that would enable two bodies to be formed out of one would render contradictory and inconsistent transactions possible, and would lead to absurdity. The necessary safeguards are too frequently overlooked by voluntary societies.

170. Free Speech. Deliberation, being the duty and one of the leading purposes of an as-

sembly, must precede decision. The majority governs, but only after due consideration. The mature opinion of the greatest number is the object sought; not the first, crude impression. The arguments of the minority are to be heard and duly considered. Free discussion is therefore essential to a proper deliberative body. All questions are therefore debatable, as a general rule; the exceptions apply to questions of which the discussion would rather hinder general deliberation than promote it.

171. Differences of Structure. Deliberative bodies are so differently constituted, that there are parliamentary usages applicable to some which are not general to all. The foregoing chapters are meant to be of universal application, but it is necessary to note some of the peculiarities of certain assemblages, and to present the law that is specially applicable to them.

The most marked difference to be noticed is that between single and double bodies; that is, between assemblies composed of but one house, and legislative bodies which always consist of two in this country. It will be seen that this marked difference of constitution must give rise to many minor differences. It will be found convenient to notice first the different characteristics of single deliberative bodies.

172. State Conventions: Organization. One of the most important of these is a convention for the adoption or revision of a State constitution. The members, elected by the people pursuant to legal requirements, assemble at the appointed day upon terms of mutual equality. From their number, a presiding officer

is to be selected, though minor offices are usually filled by persons who are not members. Some member must call the meeting to order, as in ordinary assemblages, and nominate some other member to the chair; and a secretary *pro tem.* must be appointed, who is also usually a member. One of the first things to be done is to ascertain who are the members elect to the convention. A motion is made for the appointment of a committee upon credentials; and, when duly carried, the chair appoints such committee unless the convention otherwise orders. The committee examines and reports upon the credentials of those claiming seats, and the convention decides thereon by adopting a resolution containing their names, or by approving the report. It is usual then to appoint a committee to draft rules; but it is better not to disturb the general parliamentary law so far as concerns rules of order. Special regulations are necessary to provide for the appointment of standing committees and to designate their duties, for the creation of necessary offices not essential in all deliberative bodies, and for regulating other matters peculiar to such an organization. The standing committees are usually on the following subject: The Judiciary, The Executive Department, The Legislative Department, General Provisions of the Constitution, Public Education, Internal Improvements, Finance, Enrollment, Printing, Contingent Expenses, Ordinance and Schedule, Draft of the Constitution, etc.

173. Id: Officers, Order of Business. Resolutions, petitions, etc., appertaining to the subject upon which there is a standing commit-

tee are usually by rule required to be referred to the appropriate committee for report before being further acted upon by the convention. Officers, such as enrolling clerks, sergeant-at-arms, door-keepers, pages and postmaster are usually required by the rules and elected by ballot, in addition to the president and secretary. Provision is usually made for an order of proceeding; for regulating the orders of the day; for fixing the number that may call the yeas and nays, and for suspending rules; and also for ordering the previous question if more than a majority vote should be thought desirable for such purpose.

174. Municipal Councils. City councils are deliberative bodies of great importance, especially those of large cities, where questions of much pecuniary interest often require decision. That they should be legally constituted and that their business should be legally conducted, greatly concern the welfare of the citizens. Organization, in such a body, must be in accordance with the charter under which it exists and acts, in all matters upon which that instrument prescribes; but business must be done according to parliamentary law in all respects where the statutory provisions are silent, and where no special rules of the council interfere.

If all the members of a city council are new ones, who have met for organization, the first proceedings are like those above described for the beginning of a State convention; but, if there are members holding over from a previous session, the committee on credentials should be selected from them. A city council, usually composed of one board, though sometimes con-

sisting of two, is not confined to the business of passing resolutions and orders, but its legislative work is the making of ordinances, and amending or repealing them. It is common, therefore, to require a proposed ordinance to be read at three stated times before the final vote upon it; and this requirement renders a few special rules necessary. Standing committees are usually formed to consider resolutions, petitions, etc., and to draft ordinances and resolutions, and report them to the council for action. Such offices as are necessary, are created by rules or by-laws (if not by the charter). Beyond these things, special regulations are rather an impediment than a help to procedure, so far as questions of order are concerned.

The law of municipal corporations is fully treated in the several text books upon the subject.

175. Boards, Juries, Etc. County boards of commissioners or supervisors need no comment beyond what has been remarked of city councils. School boards, boards of trustees for the poor, and like official organizations, are legally bound to do business in accordance with parliamentary practice where the statutory law is silent, in all matters of procedure; and not to modify the common usage by special rules of their own, except within the allowable bounds, already shown.

Grand juries are accustomed to do business with the foreman as chairman, by means of motions, though their functions are so limited that but few parliamentary rules apply to them. They cannot meet or adjourn when they choose.

so motions fixing the time would not be in order. They are summoned to hold inquests and not to legislate, and their principal business is to vote upon bills of indictment prepared by the prosecuting attorney, which they cannot avoid by indefinite postponement or otherwise. They are deliberative bodies, but they are not subject to the general rules of procedure. And petit juries are subject to very few of the laws governing other deliberative bodies.

Incorporated business associations, such as a banking, insurance, railroad or manufacturing company, must each follow the statute creating it, but must as carefully follow the common parliamentary law in doing business in meetings of the corporators, unless acting under allowable modifications of such law. Such meetings of corporators are, however, not usual. But when a board, composed of a few of the corporators, is doing the business of such an association, the members may deliberate at more advantage by being informal, may express themselves by conversation rather than by regular debate, and may come to conclusions without any systematic voting, so that the president may be enabled to direct the secretary, in the presence of the board, to enter an order or resolution as adopted.

The law of private corporations, and the rights and powers of their business boards, are fully treated by law writers. The essential thing in the business of such boards is to arrive fairly at the will of the majority.

176. Societies. Literary, scientific, religious, charitable and like societies, though doing their business in accordance with parliamentary

practice, have essays and prepared papers read, and addresses made, when there is no business question pending to be discussed; and such exercises are not out of order, since the objects of associations of this class are thereby promoted. While in a legislative or other similar body, no member would be in order who should attempt to speak or read a disquisition when there is no business question before the house, it is manifestly different in a society organized for the purpose of having speeches delivered and papers read. Questions proposed for discussion in a debating society are not parliamentary questions, and are therefore not subject to subsidiary motions. Even if proposed for debate in the form of resolutions, they cannot be laid upon the table, or otherwise subjected to parliamentary tactics. It is better that subjects for debate be not stated in the form of a resolution. Business propositions, however, must take that form, and be subject to all subsidiary motions and to the common rules of order.

177. Political Meetings. Mass meetings of citizens, for political or other public objects, though ostensibly of a deliberative character, are little adapted to the more refined usages of parliamentary procedure. It is generally impracticable to organize such a meeting by electing its officers by ballot. Voting by roll-call would be impossible, since there is no roll. As the meeting is but for a day, dilatory motions having reference to a future day are not within its comtemplation. Motions to lay questions upon the table are not uncommon in such meetings, and they sometimes serve a good purpose in cutting off debate that might hinder the business

for which the meeting was called, and by summarily defeating a measure which the majority may not wish to adopt.

In a body so unwieldy as a large mass meeting, it is better that the citizens be brought to direct vote upon main questions, and that all subsidiary motions be avoided; but, since business is attempted according to the usual forms, it cannot be said the chair would be justifiable in ruling all subsidiary motions out of order. That would depend much upon the character of such motions when offered. If, in a mass meeting limited to a day, some citizen should move that a resolution be referred to a committee with instructions to report on some subsequent day, the motion would be clearly out of order. Other motions, as they arise in such a meeting, may safely be ruled out of order by the chair, if equally impracticable by reason of the peculiar character of such an assembly, though they might ordinarily be in order according to the general practice of such deliberative bodies as have been heretofore considered.

An assembly consisting of two houses differs so much from all those above mentioned that it may be more conveniently treated in a separate chapter.

ANALYSIS No. 12.

351. What is the primary and universal principle upon which deliberative bodies are formed?

It is the democratic principle that the majority shall govern, united with the conservative principle that it shall decide only after Majority.

an opportunity for free discussion has been afforded.

352. Is the government by the majority of the whole number?

Of the number present.

Quorum. **353.** How many must necessarily be present?

More than half of the whole: that constitutes a quorum.

354. How may less than half be made to constitute a quorum?

By special rule.

355. How should such a quorum be protected from the simultaneous formation of other like quorums?

By fixing the place, time and officers of meetings so that the assembly cannot possibly be divided into two or more bodies, each with a quorum.

Officers. **356.** What officers are absolutely necessary to a deliberative body?

There must be one to preside and one to record the transactions; the head and the hand of the body.

357. What are the duties of the president?

To preserve order, direct business, put questions, announce votes, decide points of order, and maintain the integrity of the proceedings and the dignity of the body over which he presides.

358. What are the duties of the secretary?

To keep the journal, read papers, call the roll, certify the minutes when adopted, and obey the president and the assembly.

359. How are other offices constituted and filled?

By special rules any other offices may be created and their duties defined; each assembly providing thus to meet its own wants.

Organization. **360.** How is organization effected?

Some one calls to order and nominates a chairman, and puts the nomination to vote without any formality. A secretary is chosen

in like manner, and thus temporary organization is effected.

361. Are all the laws of parliamentary procedure applicable as soon as there has been a call to order and a chairman nominated?

No; for there is yet no deliberative body formed. It would not be in order, for instance, to apply subsidiary motions at this stage.

362. When do all the laws of order become available?

So soon as a temporary organization has been accomplished.

363. What is usually the next business after such organization? Membership.

Ascertaining who are entitled to membership.

364. How is this ascertained?

Usually by referring the credentials to a committee, which reports thereon for the action of the assembly; and then the assembly decides by vote upon the admissibility of members. In voluntary societies, signing the roll is sufficient. In legal bodies, statutes must be followed.

365. How should officers be chosen in the absence of a statute or a special rule prescribing the method? Officers.

All nominees for a single office must be voted upon at once by ballot, division or otherwise; but if there is but one nominee, the voting may lawfully be *viva voce*, in the absence of a statute to the contrary.

366. Are not special rules of order as necessary as by-laws in every deliberative body? Special rules and by-laws.

Special rules are necessary only when the members choose to depart from established usages, or when the assembly is so peculiarly constituted as to need innovations; while by-laws may be essential to fix the number and duties of officers, the time and place of meetings, etc.

367. Are parliamentary usages applicable alike to all assemblies?

Assemblies are so differently constituted that the application varies.

368. What is one of the most marked differences?

That between an assembly composed of one house and an assembly composed of two.

Assemblies.

369. What are some examples of the former?

A convention to adopt or revise a State constitution; the council of a municipal corporation; a board of county commissioners; a school board; a jury; a conference, convention or assembly of a church; literary, scientific and charitable societies, etc.

370. How do these one-bodied assemblies differ among themselves?

Some are delegated and others are voluntary.

Credentials.

371. How are delegates credited?

After those claiming to have been sent by constituents have been called to order, and temporary presiding and recording officers selected, a motion is made for the appointment of a committee on credentials. The motion adopted and the appointment made, the committee examines and reports upon the evidences of election presented by the respective members, and recommends the seating of those duly accredited. The convention acts by adopting a reported resolution seating them accordingly, or by other procedure.

Committees, etc.

372. What is usually the next business?

The selection of a committee on by-laws, action on the report, etc., and then the election of permanent officers to fill the offices created by such by-laws.

373. Do not such by-laws sometimes affect the ordinary application of the laws of order?

When they create standing committees, and require every original resolution to be relegated by the chair to its appropriate committee, they modify what would otherwise be the parliamentary course; and in other ways modifications are common.

374. How are the permanent organization, and the establishment of the standing committees, and the adjustment of all the parliamentary machinery effected? Organization.

As heretofore explained; unless the by-laws, or some specially adopted rules of order, require some different method.

375. Are not organization and methods of procedure sometimes prescribed by statute? Statute requisitions.

Yes; and the statute governs above all. For instance, a municipal council must organize and do business in accordance with its charter, even if it minutely prescribes forms and rules of order.

376. But is such minuteness common?

No; and, therefore, such a council must be governed for the most part by the common parliamentary law.

377. Are not a few special rules helpful?

Some may be both helpful and necessary, such as regulate the different readings of an ordinance before passage, etc.

378. In delegated assemblies, not under regulations prescribed by statute, such as religious judicatories, are special rules necessary in addition to established usages? Religious bodies.

Such bodies are differently constituted; some being presided over by bishops and others by moderators of their own choice; and there are other differences, especially in the judicial character of such deliberative bodies, rendering rules necessary for each so far as it is peculiar.

379. How are voluntary assemblies organized? Voluntary societies.

By calling to order, electing a chairman and secretary *pro tem.*, adopting such organic instrument as may suit the purpose of such a society, having those sign it who are to constitute the membership, effecting permanent organization by electing such officers and in such way as the adopted constitution requires.

380. How, then, should business be conducted?

By the common parliamentary law, though there may be need for the special regulation of debating, reading papers, etc.

381. What bodies generally may be styled voluntary assemblies?

Literary, scientific and charitable societies, and the like.

382. Are political mass meetings of this class?

Yes; but being usually confined to a few hours duration, only the more general rules of order are practicable therein.

CHAPTER XIII.

General Methods of Procedure in State Legislatures.

I. Organization, Introduction of Bills, etc., and Readings.

178. General View. Although the several legislatures of this country preserve a family likeness, each has its peculiar features which cannot be portrayed in a general work on parliamentary practice. Every one of them is governed by a different constitution, necessitating some variety in methods of business; and every one of them has adopted some especial rules peculiar to itself. All that is aimed at herein is to present the science of parliamentary order as it is applicable to all legislative and other bodies. So far as legislative methods are concerned, they can be treated here only in a general way. The examination of the rules of all the different legislative bodies, and the rulings thereon, would prove both tedious and unprofitable.

A legislature, being composed of co-ordinate branches, differs from single bodies of delibera-

tion, in important particulars; but it is subject to the general principles of parliamentary law and practice.

179. Introduction of Business. When a house is organized, and all its legislative machinery in working order, business may be presented by any citizen or other person through a member of the body or the presiding officer, by petition or memorial or remonstrance. The member presenting it should designate its character, or the chair should do so; then it may be read by the clerk. It is then referred, without debate, to its appropriate committee, unless objection be interposed which would necessitate voting upon the reference. In such case, a motion to refer is not amendable generally, though instructions may be made by way of amendment.

If there is no appropriate standing committee, the reference is to a select one; and if there is, the house may prefer the latter; but a motion to refer to a standing committee is usually given preference over one to refer to a select or special committee, in legislative bodies.

Business may be introduced by any member, by bill or resolution, and the same course of reference is ordinarily pursued. Previous notice, of one or two days, is usually required before the presentation of a bill or joint resolution; and unanimous consent is necessary for the introduction of business in this form, in the absence of such previous notice.

180. Readings. A bill or joint resolution must be read three times before its passage, on three several days. By general consent, two of the readings are usually by title only, and sometimes a bill or resolution is read twice on one

day, without objection. The general practice is to read twice before reference.

There is no engrossment till after the first and second readings. It is ordered as follows: the chair puts the question, "Shall the bill be engrossed and read a third time?" If decided in the affirmative, the chair immediately directs the third reading; if in the negative, the bill is rejected. If the bill originated in the other house, and has therefore been there engrossed, the question put by the chair is simply, "Shall the bill be read a third time?"

181. Passage of a Bill. After the third reading has been ordered, the next question is, "Shall the bill pass?" Amendment is not usually allowed at this stage, though debate is in order. If the bill has been debated at a previous stage, the previous question is not unfrequently demanded at this juncture.

Excuses from voting must be offered, if at all; and explanations of votes made, if members desire to make them, before the voting upon the passage of the bill.

When the bill has been passed, the chair directs that the title be read; and, if no objection is made, it stands as read. If there is a preamble, it is submitted prior to the title, and in the same way.

182. After the Passage. The member who has charge of a bill may move that its passage be reconsidered and that the motion to reconsider be laid on the table. This is a common practice. The effect of the tabling is to prevent subsequent reconsideration and to allow the immediate transmission of the bill to the co-ordinate branch of the legislature, for concurrence.

Such practice is allowable at every stage of the bill; and it is frequently employed when bills are important and are spiritedly contested.

The bill, when transmitted for concurrence, should be accompanied by the papers upon which it is founded.

II. Daily Routine of Business.

183. Order of Business. The order of business varies in different assemblies, but a general pattern may be presented.

After prayer by the chaplain, the journal is read. It is corrected, approved, or otherwise disposed of. Then the chair announces communications received, if any, and all bills, joint resolutions and messages from the other house, remaining on his table. Next follow the presentation of petitions and memorials, the reports of committees, the introduction of bills and joint resolutions, and lastly, the introduction of other resolutions.

The above order is for the morning hour. Until the chair shall have announced the business of that hour concluded, no motion is in order for considering any thing upon the calendar, such as a bill, resolution, or report of a committee, unless by universal consent. Such motion, if thus assented to, is not amendable, and the subject proposed to be taken up must not have its merits discussed, pending such motion. When thus taken up by consent out of due order, a bill or resolution must not be considered beyond the hour, unless by unanimous consent.

Upon the expiration of the morning hour, the first in order is the unfinished business pending on the previous day's adjournment. This is usually pursued to conclusion, notwithstanding special orders. If concluded before the time fixed for the special orders, the chair must call up the latter at the appointed time. In some bodies, unfinished business gives way for special orders at their appointed time. If there are more special orders than one fixed for the same time, they have precedence in accordance with the respective dates of their assignment. If any business which has been made the subject of special order for a given hour should not be finished on the day it is taken up pursuant to such assignment, it is replaced on the calendar of special orders, and there ranks in accordance with the date of its original assignment as a special order, unless its completion has been hindered by adjournment so as to make it the unfinished business of the next day.

If there is neither unfinished business nor any special order, the chair, at the expiration of the morning hour, must proceed with the bills, resolutions, etc., upon the calendar of general orders, each in the order of the assignment. Business not reached during the day retains its position upon the calendar.

In either house of a State Legislature, the day's routine is usually similar to that above described, though the order of business is established by each body for itself, and is therefore variable.

Bills, resolutions, petitions, and memorials are usually endorsed so as to show their character and the names of the members presenting

them. Favorable reports of committees are ordered to be printed, and referred to the Committee of the Whole and placed on the proper calendar. Amendments are placed on separate slips and appended to the bill, if it is one that had its origin in the other house; and they are not incorporated into the bill till the house originating it has concurred in them.

In some bodies, two-thirds are necessary to pass amendments when the question on the passage of the bill has been announced; and they are, in some, not then receivable unless seconded by a majority.

III. Committee of the Whole, Etc.

184. General Orders in Committee of the Whole. What are called "general orders of the day" are considered in Committee of the Whole, after they have been reported favorably by standing committees. When the president or speaker calls up such business, the house, upon motion, resolves itself into a Committee of the Whole. Then bills are taken from the file in turn. The chairman (appointed by the president or speaker, as the case may be), reads the first section of the bill first reached, and calls for amendments. If none are proposed, he declares that section agreed to, and reads the second, making a like call, and so on to the end. Then he calls for amendments to the body of the bill, and declares the bill passed in committee, if no amendments or objections are made. When such are made, either to separate sections or to the bill as a whole, they are freely debated,

and adopted or rejected. No vote is taken upon the title or the enacting words. Then the bill next on file is taken up and subjected to like procedure; and so of other bills. On motion, the committee rises and reports progress, or reports back a bill with favorable recommendation, with or without amendment; and may report adversely, recommending that it be tabled or rejected. It may recommend that the bill be recommitted, made a special order, put upon its immediate passage, etc. Amendments are reported upon separate slips. The House concurs in the recommendations, or otherwise. If the recommendation is that the bill be passed, it is then placed for third reading and passage on the next day.

When both houses have passed a bill, it is by the house originating it ordered to be enrolled as *An Act.*

185. Intercourse between the two Houses. Intercourse between the Senate and House of Representatives is regulated by joint rules. Messages are usually communicated to the Senate by the clerk of the lower house, and to the latter by the secretary of the Senate. Papers on which a bill or joint resolution is founded must be transmitted with it. Notice of the rejection of a bill must be given, by the house rejecting to the house originating it. Committees of conference are appointed by the two houses to adjust differences. If, after conference and report, either house adheres to its former position, the bill is treated as lost, and some legislatures require a two-thirds vote for its revival during the session. Elections of officers in joint convention of the two houses must be

certified by the presiding officers of both. Special joint regulations are usually provided regulating the method of doing business within a day or two of the close of a session; providing for the enrollment of acts passed, and also to comply with statutory requirements of the State relative to appropriations, raising revenue, electing United State Senators, and other special matters.

It seems unnecessary here to present further the usual procedure in State legislatures, since all that has gone before, in the preceding chapters, is contributory to the subject; and what follows in the next, on the subject of proceedings in the two houses of Congress, will further serve to elucidate the prevailing methods of business in State legislatures.

ANALYSIS No. 13.

Legislation.

383. Of what is the State Legislature composed?

Of two houses: The Senate and the House of Representatives, organized in accordance with the constitution and laws of the State and of the United States.

Order of business.

384. What is the usual order of business?

Calling to order—prayer—reading and disposing of the minutes—communications read—bills, joint resolutions, messages, etc., from the House announced—petitions, bills, reports, etc., presented—unfinished business—special orders—general orders, etc.

Committees.

385. What are the usual standing committees?

A standing committee is usually appointed on each of the following subjects: Finance, Claims, Appropriations, Ways and Means,

Contingent Expenses, The Judiciary, Education, Public Improvements, Commerce, Manufactures, Agriculture, Railroads, Banking, Printing, Engrossed Bills, Enrolled Bills, Credentials; and other subjects are included when deemed necessary by any house.

386. How is business introduced into either house? Introduction of business.

By a bill, resolution, order, petition or memorial, properly endorsed and ready for reference.

387. To what committee is such business referred? Reference.

To its appropriate standing committee; or, if there is none appropriate, to a select committee, after the required reading.

388. Is notice necessary to the introduction of business? Notice.

It is usual to require previous notice to the presentation of a bill or joint resolution, but it may be omitted by consent.

389. May a bill or resolution be amended before reference? Amendment.

The reference is usually a matter of course, under the rules, and no amendment is in order before. When a motion to refer is necessary, such motion may be amended but not the bill itself.

390. May a bill or resolution be debated at this stage? Debate.

It is not the practice of legislatures to allow it before reference.

391. May there not be immediate consideration without reference?

Yes; by unanimous consent; and then the bill would be both amendable and debatable by such consent.

392. When a committee reports a bill, what is the procedure thereon? Report.

The bill is read; and, if there is no objection, it may be read a second time and given its place upon its appropriate calendar.

393. What calendars are commonly in use? Calendars.

"The House Calendar," "The Calendar of the Committee of the Whole," "The Calendar of General Orders" and "The Calendar of Special Orders."

394. What becomes of business not reached in usual order during the day?

It retains its position upon the calendar to be called up in due course when reached.

395. When is unfinished business called up?

At the close of the morning hour.

396. When are special orders taken up?

It is the duty of the chair to call them up at the time assigned.

Printing. **397.** When a bill has been referred to a committee and reported back favorably, what is the procedure?

It is ordered to be printed and referred to the Committee of the Whole.

Amendments. **398.** When the committee reports a bill with amendments, in what form are they presented?

On slips appended to the bill; and they are not incorporated into the text till the other house shall have concurred, if the bill originated there.

Enrollment. **399.** What is done with a bill returned from the other house without amendment?

It is referred for enrollment.

400. How are concurrent resolutions treated?

They are usually acted upon without reference.

Reading. **401.** How often must a bill or joint resolution be read before being put upon its passage?

Three times: first, by title; second, in full; third, by title, unless full reading be demanded by a member.

402. When may it be tabled?

On second and third readings.

Voting. **403.** When may excuses from voting be offered?

Before *yeas* and *nays* are called.

404. When may explanations be made?

Before the calling of the roll for voting.

405. Must all bills be voted upon by roll-call or *yeas* and *nays?*

No; unless demanded by the requisite number.

406. What is next in order after the passage of a bill? Title.

The question is then upon its title.

407. What is the next proceeding?

If passed, the bill is then transmitted to the other house, unless notice be given of a motion to reconsider.

408. What is necessary in the other house?

It must there be considered as in the first.

409. What is the Committee of the Whole? Committee of the Whole.

It is the house itself resolved into a general committee.

410. For what purpose is it constituted?

To consider general orders of the day after they have been favorably reported upon by a standing committee.

411. How does the house resolve itself into Committee of the Whole?

By motion. When it is carried, the speaker names a chairman, retires from the chair, and the committee sits.

412. How then is business conducted?

Bills are taken from the file in turn. The first section of the first bill is read and amendments called for and acted upon, if there are any. If none, the chair declares the first section agreed to, calls up the second, and so on to the end. Then the chair calls for amendments to the body of the bill, and if none, and no objections be offered, he declares the bill passed. The title is not voted upon. Then the next bill is called, etc.

413. Is debate allowed?

Free debate, with much latitude.

414. How does the committee report?

On motion, the committee rises, and the chairman reports progress, or whatever may have been the action upon a bill, to the speaker, who is now again in the chair.

415. How does the House proceed upon such report?

It concurs with the recommendation, or otherwise. If the recommendation is that the bill reported be passed, the bill is then placed for third reading and passage on the next day.

416. When is a bill styled An Act?

When, after passage by both Houses, it is enrolled by the House in which it was originated.

Intercourse.

417. How is intercourse between the two Houses regulated?

By joint rules.

418. How do the two houses communicate with each other?

Through the secretary of the Senate and the clerk of the House.

419. What papers must be transmitted from house to house with a bill?

Those on which it is founded, if any.

420. What notices must be given?

Notices of the rejection of bills must be given by the house rejecting them to the house originating them.

421. How are differences adjusted?

By committees of conference appointed by the two houses.

422. If either house still adheres to its former position, what is the result?

The bill is lost.

423. What is a joint convention?

When the members of both houses meet together to elect officers.

424. How must their action be attested?

By the certificate of the presiding officers of the two houses.

425. How are appropriation bills, tax

bills and other bills requiring somewhat peculiar legislation, acted upon?

Each State provides by statute, where peculiar procedure is required, and the statute must be followed

CHAPTER XIV.

Methods of Procedure in Congress.

I. Constitutional Provisions on Parliamentary Order.

186. Quorum, Special Votes, Etc. The constitution prescribes methods of procedure in Congress, to a slight degree. It prescribes that a majority of each house shall constitute a quorum, but that a less number may adjourn from day to day, and may be authorized to compel the attendance of absent members. This accords with the common law of parliamentary procedure; but there are other provisions which are peculiar, framed to govern extraordinary proceedings. Thus, a quorum consists of members representing two-thirds of the States in the House of Representatives when it is choosing a President of the United States upon the failure of the Electoral College to choose; for the voting is by States—a majority of which may elect. So, in the Senate, when the College has failed

to choose a Vice-President: a quorum consists of two-thirds of the whole number of Senators when choosing a Vice-President of the United States, though a majority of the whole number of Senators may elect him.

Two-thirds of the members present must agree in the Senate to convict upon impeachment and to ratify treaties; two-thirds in either house are required for the expulsion of a member; two-thirds in each house successively for the passage of a vetoed bill, resolution, order or vote; and two-thirds of either house, voting successively, to propose amendments of the constitution.

One-fifth of the members present in either house may cause the yeas and nays upon any vote to be entered upon the journal; but the votes upon vetoed bills must be by yeas and nays, and be entered upon the journal with the names of the voters, in all cases.

187. Powers, Duties and Limitations. The Senate elects its own officers, except its presiding officer, who is designated by the constitution; but in case his office be vacated, the Senate may fill the place by the election of a president *pro tem.* The House of Representatives chooses all its officers, like any other deliberative body.

The constitution prescribes how the members of each house shall be elected; makes each the judge of the qualifications of its own members; fixes the time of the annual meeting of Congress, unless otherwise ordered by the body itself; authorizes each house to make its own rules, subject to the restrictions expressed; requires each house to keep a journal of its pro-

ceedings; limits temporary adjournments of either house to three days, unless with the consent of the co-ordinate branch; and prohibits adjournment to any other place than that in which the two houses are sitting.

The constitution requires that bills for raising revenue shall originate in the House of Representatives, and that voting to ratify treaties shall be confined to the Senate. It gives the Vice-president of the United States, when presiding over the Senate, the casting vote in case of a tie.

The powers of Congress, and of its respective houses, are defined in the constitution, as well as the rights and privileges of members. On subjects not treated in that instrument, each house may make its own rules of order, except those concerning the two-fold character of the general body, upon which both must concur. Beyond the constitutional requirements and the special rules adopted, Congress is subject to the common law of parliamentary procedure.

II. The Senate.

188. Officers, Journals and Calendars. The Senate being a continuous body, not becoming new every two years like the other house, not expiring with a Congress, is never wholly without organization. The presiding officer not being elective by the senators, except when the vice-presidency of the United States is vacant, and two-thirds of the senators "holding over" from a closing Congress to its successor, there is never a new Senate to be organized. But the election of a president *pro tem.*, and the other

officers: secretary, sergeant-at-arms, etc., and their assistants, and the selection of the standing committees, are necessary to complete the working machinery of the Senate.

Perhaps the journals and calendars should be mentioned as a part of the machinery. There are four journals: (1) Minutes of the usual legislative transactions; (2) of proceedings of executive sessions; (3) of confidential transactions or secret legislation, and (4) of proceedings when sitting as a Court of Impeachment. There are two calendars: (1) The Calendar of General Orders, and (2) The Calendar of Special Orders.

189. Order of Business. The daily order of business is as follows: Calling to order, prayer, reading the journal, correcting and approving the journal, presentation by the president to the Senate of communications from the President of the United States, from the executive departments and other communications addressed to the Senate, calling up bills, joint resolutions and communications from the House of Representatives remaining over from the previous day, presentation of petitions and memorials by members, reports of committees, introduction of bills and joint resolutions, and the introduction of other resolutions. The above business belongs to the morning hour; and when the president has announced such business concluded, he calls up the unfinished business of the previous day, which, when finished, is followed by taking up the special order of the day if its hour has arrived, and if there are more such orders than one, they are taken up according to their dates of assignment—the

first assigned having the preference; and should any not be disposed of, they are placed on the Calendar of Special Orders unless some one becomes unfinished business by reason of adjournment. Next to special orders, the Senate takes up general orders as they stand on the Calendar of General Orders, and any not then disposed of, retain their position on it to be called whenever again that calendar be taken up.

190. Introduction of Business. Business is introduced by the offering of a petition, memorial, resolution or bill. Petitions and memorials are usually received and referred without objection, but in case of objection, motions for reception and reference are put to vote; but such motions are not amendable except by way of instructing the committee to which the reference is proposed.

Credentials of new senators are usually presented upon the commencement of a session, though their reception is in order in preference to other business at any time, unless a question of order, or of adjournment, is pending, or the minutes are being read or considered, or the Senate is voting by division.

Bills are introduced after a day's notice unless on leave by unanimous consent. Joint resolutions are governed in this, and in the following particulars concerning bills, by the same requirements, so that they need not be hereafter coupled with bills whenever the latter are mentioned.

191. Readings. Every bill must be read three times before being put upon its passage, and not more than once on any day unless by unanimous direction. Two readings must precede commitment or amendment, unless intro-

duced on leave or communicated from the House of Representatives, when but one reading is imperative, and when, if there are two, both may be on the same day, if there be no objection, and if the object be reference; but such bill is not debatable on the first day unless by unanimous consent. When a bill is reported from a committee, it is read if it has not received a previous reading; and, if none object, it may be read a second time on the same day, and then be given its place on the calendar. Bills introduced on leave or brought from the other house, if twice read before reference, must also be placed on the calendar, if there be objection to further proceeding immediately.

After two readings, a bill is considered by the Senate as if in Committee of the Whole, though the Senate does not resolve itself into such committee by the appointment of a chairman for it, sitting, rising, etc., as the other house does. After such consideration, any amendment then informally adopted is again considered by the Senate. All amendments must be before the third reading, unless introduced afterwards by unanimous consent, though commitment may be moved after the third reading; and thus, when again reported, there may be suggested amendments, and it is put again upon the calendar, and is again considered by the Senate as though in Committee of the Whole.

192. Special Regulations. Special regulations govern the manipulation of appropriation bills, private claim bills, propositions to amend the constitution, business in executive session, and procedure upon the trial of impeachments,

which need not be discussed in this place, since they will be readily understood by reference to them in the rules of the Senate. The matters above set forth, and those which follow, are also expressed in the rules; but they are of such general interest, and are so illustrative of the general method of doing business in legislative bodies, that it was deemed advisable to present them in the form here employed.

The few rules of order adopted by the Senate leave that body subject to the common law of parliamentary procedure in most respects. Those few rules are in harmony with that common law in the majority of the particulars which they mention, but they differ from it in others, and supersede it, so far as the Senate is concerned, in those minor instances. By those few modifications, the declinatory motion of indefinite postponement of the main question may be made after one to amend it, or one to defer it to a given day, or one to refer it to a committee, has been made, and even after all of these three motions have been made; so that the Senate may not only decline to entertain a main motion after it has been moved and seconded, and may not only entertain the declinatory motion to indefinitely postpone after such main motion has come into possession of the Senate and has been discussed, but it may entertain such declinatory motion at any stage prior to a motion to lay the main question on the table.

Another special provision is the exclusion of one of the forms of motion for ordering the vote; *i. e.*, the motion for the previous question. The provision that the motion "to proceed to the consideration of executive business," shall

take precedence of the motion to table, is not an innovation, but is a regulation required by the nature of such business, and is peculiar to the Senate. Some other modifications have been noticed heretofore in chapters where their subjects were respectively discussed; but for the most part, all provisions relative to motions and the order of deliberative procedure are consonant with the general usage. The standing rules on debate seem a mere expression of the general law, except in the fixing of the number of speeches a senator may make upon a question. So, with respect to appeals on points of order, there does not seem to be any innovation.

III. The House of Representatives.

193. Officers and Machinery. Not being a perpetual body like the Senate, the House of Representatives organizes anew at the beginning of each Congress by electing a speaker by ballot, and all the other necessary officers *viva voce*, who select respectively their subordinate appointees. The speaker, being a member of the House, may vote with the rest on all questions if he choose; and he has no casting vote unless he has reserved his vote as a member to be given in case of a tie. Among the duties of the clerk is that of calling to order on the opening of a new Congress and presiding till a speaker *pro tem.* be elected. The duties of the other officers are defined in further rules. Necessary committees are selected, and all the machinery for legislation is provided, much as in the Sen-

ate. There are three calendars of business reported from the committees: one of the Committee of the Whole House on the state of the Union; another called "The House Calendar," and a third styled "The Calendar of the Committee of the Whole House," sometimes called "The Private Calendar." The first is for revenue and appropriation bills, and other public bills for appropriating money or property; the second for public bills not of the above character; and the third, for private bills.

194. Order of Business. The daily order of business is as follows: Calling to order, prayer, reading and disposing of the journal, reports of committees (1st., standing; 2d., select committees), to the close of the morning hour, if not sooner disposed of. Then—unfinished business—communications from the President, from other executive officers, from the Senate—bills from the Senate on their first and second reading, engrossed bills and those from the Senate on their third reading—then the House may go into Committee of the Whole House on the state of the Union—next consider business on the House calendar.

This daily routine is varied as follows: On each Monday, States and Territories are called, when bills, resolutions, memorials and petitions from legislative bodies may be presented and referred—also resolutions of inquiry directed to cabinet officers.

The first and third Mondays of each month are excepted from the daily order for the morning hour. Fridays, just after the morning hour, the business on the private calendar (or Calen-

dar of the Whole House) may be considered in Committee of the Whole. (Rule xxiv)

195. Readings. Petitions and memorials are endorsed by the members offering them with their names and the disposition or reference intended, and delivered to the clerk, and entered by him on the journal, to be called up by the speaker, in due order, if not of improper character. (Rule xxii.)

Bills are twice read by title on introduction for reference. If originally coming from a committee, reported, for present action, by unanimous consent, the first reading is in full, and the second and the third are by title unless some member demand full reading. (Rule xxi, cl. 1.)

Bills, on their passage, are read first by title; secondly, in full; thirdly, by title (unless full reading is demanded by a member). What is above said of bills is equally applicable to joint resolutions. (Rule xxi, cl. 2.)

196. Committee of the Whole. Proceedings in Committee of the Whole are as follows: A chairman, appointed by the speaker, presides. Business on the calendars is taken up in regular order, though preference is given to revenue and appropriation bills. When objection to the consideration of a bill is made, the committee rises, reports the objection to the House (which decides without debate) and resumes its sitting. After general debate, five minutes are accorded to a member to explain an amendment offered by himself, and there may be a reply of five minutes' length. So with reference to a secondary amendment. Neither can be withdrawn

without unanimous consent. After debate upon amendments has begun, debate may be inhibited both upon the proffered amendments and upon the section or paragraph sought to be amended, or upon either; and, if inhibited, further amendments are undebatable. A motion to amend is superseded by one to strike out the enacting words of a bill, and defeated by it if the latter is carried. A bill adversely reported upon by the Committee of the Whole is deemed recommitted if the House do not acquiesce in the report, unless referred by the House to some other committee; but, in the latter case, when such other committee shall not report the bill back to the House, there must be recommitment without debate to the Committee of the Whole. (Rule xxiii.)

When, upon motion, the committee rises, the chairman reports to the House, addressing the speaker, who now resumes his chair, stating the result of the sitting, submitting recommendations, or reporting progress and asking leave to sit again, if necessary.

The House rules of order are extended to the Committee of the Whole so far as they are applicable. They will be now briefly noticed without special reference to the two different capacities in which the members sit to deliberate.

197. The House Rules. As but few special laws of order have been adopted by the House of Representatives, the common law governs that body for the most part. Indeed, the majority of those special laws are but the expression of the latter on the points they cover. However, there are some modifications which

must be noticed, since they override the common law in that particular body so far as they come in contact with it. Some of these changes have been already noticed herein, when the subjects which they concern were under treatment; others are so few that they hardly need now be mentioned.

A motion "may be withdrawn at any time before a decision or amendment." (Rule xvi., 2.) Though in possession of the House, it may be withdrawn. General consent is not mentioned as a condition; of course, with that, a motion may be withdrawn at any time in any assembly. When the previous question has been called for, and even after it has been ordered, it is in order by Rule xvii., "for the speaker to entertain and submit a motion to commit, with or without instructions." The extension of amendments beyond the second degree (Rule xix.), was noticed herein when amendatory motions were considered. Pending the incidental motion to suspend rules, debate is allowed for thirty minutes upon the proposition which that incidental motion affects (Rule xxviii.), and like debate is allowed when the previous question has been ordered, if there has been no discussion. (*Id.*)

198. Conference Committees. Amendments between the two houses usually are referred to a committee of conference, composed of three members of the Senate and three of the other house. If the Senate has made an amendment, and the lower house has disagreed thereto, the former may insist and ask a conference; or the latter may have made an amendment upon which it may insist and ask a con-

ference if the Senate has disagreed thereto. Conference may be asked by either when disagreeing, and it is sometimes asked when one house has adhered. Usually there are two conferences before adherence, and there may be more.

Motions take rank in the following order with respect to amendments from the other house: To Agree, To Disagree, To Recede, To Insist, To Adhere. The motion to recede is in order though either of the last two is pending and under the operation of the previous question, but would not then be debatable.

The report of the committee of conference is in order at any time unless the rules have been suspended, or the journal is being read, or the roll is being called, or the House is dividing. If inability to agree is reported, another such committee may be raised. If the committee have agreed, the report may be rejected and another conference called for, since the terms of settlement cannot be amended. The report must be signed by a majority of the members comprising it from either house, *i. e.*, two of the Senate and two of the House of Representatives; and it must first be made to the house to which the conference was proposed.

199. Rules of Congress do not Constitute a General System of Parliamentary Law. There are particular and necessary rules of order adopted to meet the wants of the House of Representatives (and also by the Senate for its special government), which, though not changing the general common-law practice, cannot be considered innovations. Such provisions are necessary in every deliberative body which

may wish to require a two-thirds vote on certain questions, to fix limit to speeches, etc. The House of Representatives has provided such regulations, limiting speeches to one hour; and, under circumstances heretofore stated, to five minutes; and confining each member to one speech on one question, unless by leave, or when entitled to close by way of reply after all others have spoken who choose to do so; also, providing for conferences, secret sessions, drawing for seats, the pairing of members, admitting visitors, accommodating reporters, directing enrollment, engrossment, printing, etc. The Senate has regulations peculiar to itself.

Neither house, by its rules, undertakes to present any general system. The questions that arise in the application of their rules are always governed by the science of parliamentary law; therefore, the adoption of the rules of the House of Representatives (as is sometimes done by societies), cannot supersede the necessity of resorting to the general principles of the science. Many contingencies must arise, and many questions be raised, in legislative assemblies as well as in voluntary societies, upon which those special regulations are silent. They may be excellent in their place, but they do not purport to constitute a universal system of parliamentary law and practice.

ANALYSIS No. 14.

Quorum by the constitution.

426. What, by the constitution, constitutes a quorum in either house of Congress?

A majority of all the members.

427. Are there any exceptions?

Yes; members from two-thirds of the States are required when the House of Representatives is choosing a President of the United States; and two thirds of the senators, for a quorum, when a Vice-president is being elected.

428. When a quorum is present, does the majority govern?

Yes; except that it requires two-thirds of the Senate to ratify treaties, or to convict upon impeachment; two-thirds of either house to expel a member, to pass a vetoed measure, and to propose amendments to the constitution; and one-fifth, in either house, may order voting by *yeas* or *nays*.

Constitutional rules.

429. Does the constitution make further provision concerning Congress, as a deliberative body?

It provides that the vice-president shall preside over the Senate; makes each house the judge of the qualifications of its own members; fixes the time of annual meetings, unless otherwise fixed by Congress itself; authorizes each house to make its own rules; requires each to keep a journal; limits temporary separate adjournments of either house to three days; prohibits adjournment to any other place than that in which the two houses are sitting; requires revenue bills to be originated in the House of Representatives, and confines the ratification of treaties to the Senate, and gives the vice-president the casting vote in the Senate in case of a tie.

Adopted rules.

430. Have the houses respectively made their own rules of order?

Partially, though they cover but little of the ground.

431. How are they governed, as to order, when the rules are deficient?

The lower house has adopted Jefferson's Manual, but both necessarily become subject to the common law of parliamentary procedure where the special rules are silent.

Officers.

432. Do both houses respectively elect their own officers?

All, except the presiding officer of the senate; and he is elected when the vice-presidency is vacant.

433. When are the credentials of new senators presented? Senate procedure. Credentials.

Usually at the commencement of a session; and the question upon their reception is in order at any time in preference to general business, provided no more highly privileged question is pending, and the Senate is not voting by division.

434. What questions are more highly privileged?

Questions of order, of adopting the minutes and of adjournment.

435. What journals of minutes are kept? Journals.

There are four; that of usual legislation, that of executive sessions, that of confidential transactions, and that of impeachment trials.

436. What calendars are kept? Calendars.

Two; that of general orders, and that of special orders.

437. What is the daily order of business? Daily order.

Calling to order — prayer — reading and adopting minutes—communications presented —bills, etc., from the House of Representatives remaining over from the previous day—petitions—reports of committees—introduction of bills and resolutions—unfinished business—special orders—general orders.

438. When is unfinished business in order?

At the close of the morning hour.

439. When are special orders taken up? Special orders.

When unfinished business has been disposed of, if the set time for them has then been reached.

440. In what order of succession are they taken up?

They follow according to the dates of their assignment.

441. What becomes of any not reached or not concluded?

Such are placed on the calendar of special

orders, unless one is under consideration at the time of adjournment so as to become unfinished business.

General orders.

442. How is the calendar of general orders disposed of?

Each order is called in turn, and those not reached retain their position on the calendar.

Introduction of business.

443. How is business introduced?

By petition, memorial, bill or resolution.

444. How are petitions referred?

They are usually referred without objection, under the rules.

445. Is notice necessary before presenting a bill or joint resolution?

One day's notice, unless on leave by unanimous consent.

Readings.

446. How often must a bill or joint resolution be read previous to its passage?

Three times; each on a different day, unless the Senate unanimously directs otherwise.

447. What notice must the president give at each reading?

He must announce whether it is the first, second or third reading.

448. How many readings must precede commitment or amendment?

Two.

449. How often must bills and joint resolutions from the other house, or introduced upon leave, be read for reference?

They must be read once, and may be read twice on the same day, if there be no objection.

450. Can they be considered as if in Committee of the Whole?

Not without unanimous consent. After two readings they are treated as if in Committee of the Whole.

451. Does the Senate ever resolve itself into a Committee of the Whole?

No; the president does not vacate the chair for the members to sit as a committee, and then rise and report; but there is an informal consideration of bills twice read.

452. What course is next pursued? Amendments.

Amendments adopted informally are regularly considered afterwards by the Senate.

453. At what stage of a bill may further amendments be offered?

Before the third reading, and not thereafter, unless by unanimous consent.

454. May there be commitment after the third reading?

Yes; and when reported the bill is put upon the calendar again, and again considered as if in Committee of the Whole.

455. How are joint resolutions manipulated? Joint resolutions.

Like bills; and the foregoing explanations apply to them.

456. Are all bills treated as above stated?

Special regulations govern the manipulation of appropriation bills, private claim bills, resolutions for amending the constitution, procedure in executive sessions and courts of impeachment.

457. Is general procedure in accord with the common parliamentary law of this country? General procedure.

There are differences from the practice of the House of Representatives, and from some established usages. Indefinite postponement is made to rank next to the motion to lay upon the table; the previous question is never ordered, etc.

458. Is the motion to proceed to the consideration of executive business made a privileged one?

Yes; and it outranks the motion to table the question under consideration.

459. Is this an innovation?

No; like many others, it is a necessary special regulation, made to meet a want of the Senate; and it is not in conflict with any of the common laws of order.

460. How is the House of Representatives organized at the beginning of a new congress? House of Representatives.

The clerk of the previous session calls the

members to order, and they elect their own speaker and other officers.

461. Has the speaker the casting vote in case of a tie?

As a member, he may vote after the others if he has not voted before, and may withhold his vote till a tie requires it.

462. What committees are employed for conduct of business?

Standing committees on all general subjects; and special committees when required.

Calendars. **463.** How are the calendars designated?

The House Calendar; the Calendar of the Committee of the Whole; the Calendar of the Committee of the Whole on the state of the Union. The first is for ordinary business; the second, for private bills; the third, for revenue and appropriation and other public bills.

Order of business. **464.** What is the daily order of business?

Calling to order—prayer—disposing of the journal—reports of committees—unfinished business—communications—Senate bills on first and second reading—engrossed bills and Senate bills on third reading—committee of the whole on the state of the Union—business on the House calendar.

465. How is this order varied on Mondays?

Then bills, resolutions, petitions, etc., are received from the legislatures of states and territories, and are referred; also, resolutions of inquiry directed to cabinet officers. The first and third Mondays of each month are excepted from the daily morning hour.

466. When is private business usually considered?

On Fridays, just after the morning hour.

Introduction of business. **467.** May members offer petitions and memorials without first obtaining the floor?

They may lodge them with the clerk to be called up by the Speaker in their turn.

468. How is a bill or joint resolution read?

When introduced for reference, it is read

twice by title, unless a member demands that the second reading be in full. The same course is pursued when an original bill is reported for commitment; but when reported for present consideration by unanimous consent, the first reading is in full, and the second and third by title, unless the third in full be demanded.

Committee of the whole.

469. What is the procedure in Committee of the Whole?

A chairman, appointed by the Speaker, presides over the sitting. Business on the calendars is called in due order, with preference given to revenue and appropriation bills. The committee, upon motion, rises, and the chairman reports.

470. What are its peculiarities as to rules of order?

The House rules of order apply to it; but some special regulations are peculiar, especially with reference to amendments. When objection is made to the consideration of a bill, the committee rises and reports to the House for decision, and then resumes its sitting.

General procedure.

471. Are the House rules of order in accord with those of the common parliamentary law of this country?

Generally so, though there are some innovations. A motion may be withdrawn after having been stated (R. 16); a motion to commit, may be made after the previous question has been ordered (R. 17); the motion to fix the time of the next meeting is made always privileged (R. 16); amendments beyond the second degree are allowed in some cases (R. 19); debate is allowed upon the main motion when the incidental one to suspend rules is pending (R. 28); and, also when the previous question has been ordered if there has been no previous debate (R. 28).

472. Are there other special rules of the House to meet cases rising because of the

peculiarity of its organization, for which the ordinary usages are not found adequate?

Yes; regulations concerning conferences, secret sessions, drawing for seats, admission of visitors, limiting speeches, pairing of members, requiring a vote of two-thirds, etc., the most important of which have been noticed in previous answers.

CHAPTER XV.

Reason and Precedent.

I. Common Law of Parliamentary Procedure.

200. Established Usage. Parliamentary law is the rule of action for all deliberative bodies, governing the introduction, modification, discussion and decision of propositions. It is divided into *Common* and *Special.*

The common law of parliamentary procedure is founded upon well established and reasonable usage. It does not rest upon mere custom, but upon reasonable and equitable custom. "What is not reason is not law" may be said with reference to the common law of order in deliberative bodies, as well as to the common law of the land in general. In both, established practice must be followed, unless it can be demonstrated to be unjust, unreasonable or absurd; since it is better that there be a form universally accepted than that there be none, even if the reason of it is obscure, or not readily discernable. There is always at least a latent reason for every parliamentary custom that has taken a strong hold and been of long continuance; for, having no-

thing but its reasonableness and usefulness to commend it, it could hardly have been called into being and been cherished for many years of usage, if intrinsically absurd. There is a presumption in its favor which should not be disregarded unless it can be clearly removed. We must say of the common law of order what Blackstone, in the introduction to his Commentaries, says of the common law in general: "Precedents and rules must be followed unless flatly absurd and unjust."

201. Reason for Forms. What Mr. Jefferson says, in the first section of his Manual, citing Hatsell as his authority: "All the reason for forms is custom, and the law of forms is practice; the reason is quite out of doors," seems to require some qualification so far as common parliamentary law is concerned. It is true that special parliamentary law, that is, the rules of order adopted by any particular deliberative body for its own government, must be followed by such body, though "flatly absurd and unjust;" but is this true of the common law of order? Why should any assembly be obliged to follow an old fashion demonstrably absurd? It is enough to say that it must be followed upon presumption of a reason underlying it; it is too much to say that it must be followed, when admitted to be irrational, on the broad statement that the reason of parliamentary customs is "quite out of doors."

There is a reason for every form of parliamentary procedure which has been long sanctioned by general usage. There is a reason readily apparent for almost every one of them. They have been approved by experience; found

useful and expedient in practice, and have grown into general acceptance.

202. Parliament. The established practice of deliberative bodies in general has created the code of parliamentary common law; not merely the practice of the British Parliament or of the Congress of the United States. This statement may be contrary to what has been generally accepted. The term, *parliamentary law*, has been thought to mean the law of the British Parliament. Though perhaps no one, upon reflection, will contend that the term should be so confined, yet the impression that the customs and adopted rules of Parliament constitute parliamentary law, is popular. Doubtless they constitute it for that body; but the term is a broad one, applicable to all deliberative assemblies everywhere. There are those who think that, in this country, the customs and adopted rules of Congress constitute parliamentary law here; but Congress, as above remarked, makes such law for Congress only, so far as there is departure from established and reasonable usage; rather should it be said, each house adopts regulations for itself.

As sources of parliamentary law, Congress and the State legislatures and the British parment are to be considered. They have been prolific of precedents and of special rules, which, when found good, have been imitated by other bodies, and, in many instances, have been incorporated into the general stock of parliamentary common law.

203. Legislative Modifications. Because the House of Representatives of the United States or any other deliberative body, has made a rule

contrary to the common law of parliamentary procedure, must that be received as a change in such common law? If any assembly, however influential, could by a single rule, or by a single precedent, change parliamentary law for all bodies, it would become exceedingly important for us to know what body it is that possesses such power. The two houses of Congress differ with each other in their rules modifying the common law, each for itself. The Senate gives the motion to postpone indefinitely, rank next to that to table: the other house ranks it below that to commit. The Senate discards the use of the motion for the previous question: the other house employs it freely. Many other differences exist. How then can either be said to make parliamentary law for assemblies in general?

Both houses furnish suggestive precedents, and their respective codes of rules have been influential with State legislatures and other bodies; but neither covers all the ground, and cannot, in the nature of things. As well might a legislator attempt to meet all requirements by statute law so as to render common law obsolete, as for a rule-writer to undertake to express the law of deliberative order so as to render the common parliamentary law no longer operative.

Neither the Senate nor the House of Representatives of the United States has made a code of rules for itself that covers more than a fraction of the broad field of parliamentary law and practice. Constant resort to general principles must be had. It is impossible, in the nature of things, to foresee all the exigencies that may arise. In this, as in every other de-

partment of law, the final and general resort must be to approved precedents, established practice, settled principles, and ultimately to reason.

Fully nine-tenths of the rules of order adopted by those bodies are nothing more than statements of common-law principles. They would be binding if not formally adopted. They are authoritative in all deliberative bodies, without adoption, because they belong to the system which long and reasonable practice has approved.

204. Precedent. Precedent, as a source of law in parliamentary procedure, is of far more limited operation than is popularly supposed. Strickly speaking, a precedent is of no force at all beyond the particular body which has created it. Generally speaking, precedents have done much towards establishing the existing system of parliamentary law. To make the meaning more palpable: a ruling upon a point of order by the Speaker of the U. S. House of Representatives may serve to justify a subsequent ruling when the same question comes up again for decision, but it would not necessarily be of force in the U. S. Senate should a similar point there arise, nor in any State Senate or House of Representatives, nor in any deliberative body whatever; but, should the U. S. House of Representatives long continue to follow that precedent, and should the Senate and other legislative bodies also choose to follow it, and should deliberative bodies generally conform to it, we should have an instance of a precedent creating a law, since its general adoption would make it law. What is said of a precedent made by

the U. S. House of Representatives is applicable to any ruling by any assembly. It is therefore manifest that we cannot prove a parliamentary rule by citing some isolated ruling of the House of Lords, or of the Commons, or either house of Congress, or of any assembly however influential. We cannot rest upon the citation of a ruling upon a point of order as we do upon the citation of a decision upon a question of law, by a competent court. Either house of Congress settles points of order only for itself, but the Supreme Court of the United States settles questions of law for everybody.

It is clear, therefore, that the citation of the rulings of any assembly does not prove what is parliamentary law with regard to the point upon which the citation is made. Those who state a parliamentary proposition and refer to a precedent to support it, do nothing more than show how the particular body which created the precedent has decided for itself. It has not been thought advisable, therefore, to cite herein isolated precedents on mooted points. When precedents upon any given point have become numerous and harmonious among themselves, such point is so well established in practice as to need no citation of its origin.

Precedent, being thus limited, must yield to reason, which is of general application. All that is aimed at herein is to present in a simplified way what has become established and reasonable law and practice in deliberative bodies in general; what must be recognized and enforced as parliamentary law by the courts. For the courts must be the arbiters whenever litigated questions turn upon points of order in

deliberative bodies. Whether a city ordinance was legally passed so as to be enforceable in a court of justice; whether a contract has been made with a corporation sitting as a deliberative body by reason of an expression of assent through certain parliamentary forms; which of two parts of a divided assembly, each claiming to be the assembly itself, is entitled to its claim, and many other legal questions, may turn upon parliamentary action and be before the courts for decision.

205. Litigated Questions. Courts, in deciding litigated cases involving parliamentary common law, will look less to the forms which have led to decisions in deliberative bodies than to the decisions themselves; but they will brook no injustice superinduced by neglect of established forms. Whether a municipal corporation has assented to a proposed contract would be a more important question in a court of justice, than whether a motion to accept such contract had been seconded before being put to vote; but the court would by no means disregard the parliamentary law that requires such a motion to be seconded, should the case turn upon the question whether or not the chair put the vote prematurely. Whether there was a quorum present when such a corporation voted to issue bonds, would be considered and decided by a court should the corporation bring a suit, if that question were raised.

There is no rule or form of parliamentary law, however seemingly unimportant, which may not possibly be the hinge upon which important litigation before the courts may turn.

Among the general principles that the courts must recognize, the following may be mentioned:

(1.) The majority governs. In the absence of special rules modifying this general law, more than half of any assembly must be present to constitute a quorum. And more than half of those present must agree before it can be said that the assembly has agreed.

(2.) The majority governs after deliberation. The idea of a deliberative body carries with it discussion and free interchange of opinion. Any restraint upon this must be by the use of established methods employed by the majority, or by special rules, or because of the undebatable nature of the question.

(3.) One thing at a time; one thing in order and all others out of order at the time; one main idea under consideration, and no others to supersede it except such as are subsidiary or incidental to it, or are privileged, and which require predisposition from their nature, must be ever received as a cardinal law of parliamentary procedure.

(4.) The law of necessity (by which privileged motions usurp the proper place of ordinary ones and their concomitants), is always recognized here, as elsewhere.

(5.) Almost all of the rules usually adopted specially concerning motions, appeals and parliamentary procedure generally, are rules of the common law, and need no adoption; of which the courts will take notice, whether formally written out and specially adopted or not.

206. Practice. To undertake to show what is now universally established by long and approved usage, by citing numerous instances in

which present methods have been employed, would be a work of supererogation. It would be as useless and unnecessary as would have been the task of collating the facts upon which the general common law of England grew gradually into being, had Blackstone essayed such a labor. It was enough for him to show that certain usages and principles had been well established; it is enough now to show that the common law of order is generally accepted, without attempting the almost impossible work of proving how the various laws and usages of order came to be generally adopted from time to time.

Immemorial usage, claimed for the common law of England, cannot be predicated of all the laws of parliamentary procedure; nor is it essential. There must be some law on the subject, and it is not important that its foundation should be upon immemorial usage, but it is of absolute necessity that it should rest upon usage now accepted.

Demonstration is better than precedent. The support of a received form or of an accepted principle as parliamentary, by the reason that must underlie it, is vastly more valuable than the citation of many precedents. Even were there some recognized superior assembly which all others would be bound to follow, its precedents would be of little worth if not based upon reason. Even judicial precedents upon questions of law in general are of less value than logically conclusive arguments.

While demonstration is always binding upon courts free to act upon it, it bears to precedent a far greater relative preponderance where questions of parliamentary law are litigated than

when other judicial questions are at issue, for the reason that there are no decisions of presiding officers of deliberative bodies, or of such bodies themselves, upon points of order, which are obligatory upon the courts in the sense that those of superior tribunals are binding upon the inferior. Unsupported by reason, the decisions of deliberative bodies constitute no law for the courts unless they have been so uniform as to become a part of the common parliamentary law; and then the principle decided is recognized, not because it has been decided, but because it has grown to be universally accepted, so that the courts are bound to take notice of it.

207. Evidence. Evidence in a court of justice that any given assembly (a city council or a State senate, for instance), manipulates motions according to a certain usage, even if peculiar to that body, would be received and acted upon, as any other evidence, in a case involving it, even though the reason of such usage might not be readily apparent; but, in the absence of such evidence, the judge must take notice of the common parliamentary law as he would of common law in general applicable to the issue upon trial before him.

The particular transactions of an assembly are proved by its adopted journal, attested by the secretary; and, in the absence of this, secondary evidence is admissible.

208. Judicial Rulings. It may be asked, why not collect the judicial decisions bearing upon questions of parliamentary common law, and rely upon them to support the system? The answer is that they cover too little of the ground; that they are not sufficiently uniform,

and that the tribunals rendering them have not invariably been so learned in this branch of jurisprudence as to entitle their deliverances to great weight in the settlement of general principles, beyond the mere issues in litigation. It will readily occur to the inquirer that in the absence of such acquaintance with the system of order, considered as a science, as would command entire respect, a tribunal should not be deemed authoritative beyond the particular case which it decides; and, even there, it is the decretal part of the judgment which is obligatory upon the litigants; the reasons assigned are not of general obligation.

Reason, in this branch of jurisprudence, may be as potent when suggested by another, as when rendered by a judge. It must answer for itself, and not lean upon any sponsor. It is the ultimate resort when the lawfulness of an established parliamentary usage is brought into question.

II. Special Rules of Parliamentary Procedure.

209. Relation of Special to Common-Law Rules. Special rules bear the same relation to the common law of order that statutes bear to the general common law. They are unnecessary when they are a mere repetition of common-law rules. They are, however, of higher authority, when they conflict with the latter. They supersede and override laws founded merely

upon usage when they cover the same ground yet provide different methods.

But the operation of special rules is confined to the particular body adopting them. Either house of the British Parliament, either house of Congress, either house of a State legislature, may make special rules for itself. Any other assembly may make regulations for its own government, and they may be partly and even wholly different from those of the common law.

There is no statutory establishment of forms or rules for deliberative bodies in general. The few rules of order prescribed in the constitution of the United States are applicable to Congress only; rather should it be said, some of those requirements apply to the Senate and some to the other house, but none are of general application to all parliamentary bodies in this country. It has never been attempted to improve upon the common law of order so far as to enact statutes making special rules for all assemblies.

Special rules are not founded upon custom, nor is it essential to their validity that they should be reasonable. They must not infringe upon private rights nor contravene the laws in any way.

Special rules are altogether unnecessary when they provide that the president or speaker shall take the chair, call the meeting to order, preserve order, decide questions of order, put the vote, etc.; that motions must be seconded, may be amended, may be referred, deferred, tabled, etc., for all these things and most others which are put into special rules, are well established

forms and usages of the common law of parliamentary procedure, and are binding, and would be recognized as law by the courts in case of a legal question turning upon them.

210. When Special Rules are Necessary. It is necessary and important, however, that there should be special rules adopted, if the majority choose to yield any of their rights to a minority. In order to protect the latter, it is common to agree upon a rule that it shall require a vote of two-thirds the members present to pass certain extraordinary motions. A majority may adopt such a standing rule; and it is wise to do so—for no member knows how soon he may be one of a minority needing protection. It is not uncommon that two-thirds are required for the expulsion of a member, for the suspension of the rules, for the amendment of a rule, for ordering the previous question, for taking up a question out of its proper order, for making a special order, for declining to entertain a proposition, for limiting debate or suppressing it, etc. It is found convenient to fix, by special rule, the number necessary for ordering the *yeas* and *nays* so that three or five may be sufficient, thus enabling a small minority, in a large body it may be, to have the names of voters put upon the record.

The necessity and usefulness of special rules are further apparent when the assembly is peculiarly constituted. One composed of two houses, like the legislative assemblies of this country, requires rules regulating intercourse between the two; and sometimes, also, to enable them to comply with laws imposing particular duties. One deliberative body requires more and differ-

ent officers than another; and, though the duties of president and secretary are embraced in the provisions of common parliamentary law for the most part, yet particular requirements of such officers need to be specifically expressed; and the duties of other officers, such as treasurer, sergeant-at-arms, etc., are not so embraced; indeed, those last named officers themselves are not essential to the constitution of an assembly.

211. Conclusion. This expository chapter seemed necessary, because of the popular impression that parliamentary law is not founded upon reason, but upon innumerable precedents without any scientific basis; that it is involved in a medley of abstruse, complex and contradictory forms and expedients; that it is arbitrary, intricate and difficult of mastery; and that only acute and analytical minds can follow the labyrinths of deliberative procedure so as always to be sure of safe footing—always certain whether a motion is in order. Throughout the work, the distinction between common and special laws has been observed, and the reasons for the rules and usages of the former, adduced; but it seemed advisable that the distinction should be more pointedly stated, and that the relative authority of reason and precedent should be made more clearly apparent.

It is hoped that the erroneous impression above mentioned will be somewhat eradicated by the separation of motions into families appropriately designated, so that their character and relations may be more easily understood and their uses, as business instruments, more readily applied. The classification of subsidi-

ary motions into Declinatory, Amendatory, Dilatory, Complemental, Incidental and Motions Relative to Voting, though new, is in perfect harmony with established practice; it is not an innovation on parliamentary machinery, but rather an adjustment of its several cogs and wheels to effect more easy operation. Names of motions are not changed; established usages are not disturbed. It is hoped that their classification and treatment will tend to a more general acceptance of parliamentary law as a science and to its more skillful practice as an art.

ANALYSIS No. 15.

Parliamentary law.

473. What is parliamentary law?

It is the rule of action for all deliberative bodies, governing the introduction, modification, discussion and decision of propositions.

474. How is it divided?

Into the common law of order and the special rules of order.

Common law.

475. Upon what is the common law of order founded?

It is founded upon reasonable, equitable and established usage.

476. What are the sources of parliamentary usages?

The practice of the Houses of Parliament, Congress, State legislatures and other influential assemblies.

Precedent.

477. Does a precedent made by a House of Parliament, or of Congress, or any other body, make or change common parliamentary law?

Only for the body making the precedent;

other bodies need not follow it unless it should grow into general use.

478. To what test should any such precedent be put?

To the test of reason.

479. What is recognized by the courts as belonging to the common law of parliamentary procedure?

Government by the majority, free disscussion, the doing of one thing at a time, the law of necessity, and general usages in the conduct of business.

Special rules.

480. What are special rules of order?

They are the regulations adopted by any assembly for its own particular government.

481. What relation do such special rules bear to the common law of order?

The same that statutory law bears to the general common law, except that their effect is confined to the body adopting them.

482. Is there any statutory establishment of forms or rules for deliberative bodies in general?

No.

When unnecessary.

483. When is it unnecessary for an assembly to adopt special rules for its government?

It is always unnecessary when the common parliamentary law covers all the ground meant to be occupied by such rules.

When necessary.

484. When are they necessary?

They are only useful to meet particular exigencies, and to authorize innovations upon the common law.

485. Do they then supersede the common law?

Yes, in all points where they conflict with it; but only in the particular assembly adopting them.

486. What are some of the most usual purposes for which particular assemblies employ special rules?

To limit the power of majorities in certain instances; to require a two-thirds vote to carry some extraordinary motions; to fix the

number necessary for calling the *yeas* and *nays;* to appoint times of meeting, regulate the election of officers, and the like.

487. Is it necessary, in such rules, to express the established common law of order, with reference to motions and their rank and all like matters?

It is altogether superfluous, unless innovations are intended.

CHAPTER XVI.

Notes on Several Topics of the General Subject.

212. Effect of Legal Decisions. Courts are authorative as to the construction of statutes which prescribe methods of procedure, and as to all litigated questions growing out of the actions of deliberative bodies within their jurisdiction. But they no more assume to create or modify parliamentary science than to settle theories of psychology. They apply the law of order, as established by usage, to the cases before them, and their deliverances are conclusive upon the litigants, but have not such general force as to affect the established system. They make contributions to the general stock on this subject, as on others, only so far as their reasoning is convincing and influential. Their opinions may be cited properly on matters within their province. One or two on a point will generally be sufficient here where citations are not meant to be exhaustive. It is not neces-

sary to refer to any in support of usages long established by reasonable precedents, and generally this will not be done in this chapter, but exception will be made in some instances.

Courts are rightly more concerned to do substantial justice than to follow forms. They care more to ascertain the validity of a contract, made by a deliberative corporation with another party, than to find whether all usages have been observed by it in voting to adopt the terms. They are therefore not fruitful sources of contribution to parliamental knowledge. Were not this true for the reason mentioned, there is yet another: Judges are not usually equipped for imparting such knowledge, and are not likely to be while law schools and universities continue indifferent to it. (See § 205.)

213. Stockholders' Meetings, as to Quorum. The majority quorum is not applicable to every promiscuous gathering, business association, popular meeting or a society with no definite membership, for these cannot strictly be called parliamentary bodies. A meeting of the stockholders of a corporation may afford an illustration. The owners of shares in a great railroad company never meet in large numbers; usually only a few get together, and the voting is mostly by proxy. It is the majority of the stock — not that of the persons assembled — which decides the business questions upon which the meeting has been called. Such corporation meetings are regulated by statute. A majority of the stock must be represented when the statute or charter, governing a corporation, so requires.[1] Voting by proxy is usually auth-

[1] Weinburgh v. Union St. Ry. A. Co., 55 N. J. Eq., 640.

orized.[1] It is not essential that even a majority of either the stock or the stockholders be present, under some of the statutes—those who respond to the general call being held competent to act on the business designated.[2] In some corporations, the majority of the corporators, actually voting, elect officers.[3] The states are not uniform in their statutes regulating the meetings of corporators, but we must look to the legal requirements rather than to parliamentary law to ascertain what is essential in each state. Enough has been written here to to show that the common quorum is little applicable to stockholders' meetings.

214. Indefinite Membership, as to Quorum. When the voters of a county, township or school district are legally notified to attend a meeting at a designated time and place, to transact business and elect officers, it is not necessary that more than half of the notified citizens should be present.[4] The same is true when a voluntary assembly meets, for the first time, to organize and do business. A minority of all who are privileged to attend are competent to proceed. An adjourned meeting of such a promiscuous body is subject to the same rule; for those who did not exercise their privilege to attend at the first may come to the second meeting, and those who are present, however few, constitute the assembly and may go on with the business.

[1] Bank of Holly Springs *v.* Pinson, 58 Miss., 421; 38 Am. Rep. 330.

[2] Morrill *v.* Little Falls Co., 53 Minn., 371.

[3] Levee Co. *v.* Meiser, 39 Mo., 53.

[4] Kimball *v.* Marshall, 44 N. H., 465.

No other way is practicable, since the citizens of a community are not organized as a deliberative body with an ascertained membership. Even a society, consisting of an indefinite number so that the presence of half the members cannot be ascertained, may transact business though only a minority be present.[1]

Churches have rolls of members, but they are organized as religious rather than parliamentary bodies. They hold occasional business meetings but seldom half the members respond to a call. It has been held that the attendants may act though composing but a minority of the whole.[2] The courts so holding neither say nor mean that a church or other like corporation, which has adopted a regulation fixing upon a certain number as a quorum can do business with less. A small number—say fifteen—to meet only at a designated *place* and *time*, adopted by such corporation as their quorum, is sufficient, though the church or other corporation may consist of a hundred members or more. Whenever a quorum is fixed below the majority, it is very important that time and place be included in the rule to prevent more than one meeting of the body being held at the same time. This applies to all classes of parliamentary bodies.

215. Parliamentary Bodies, as to Quorum. The majority quorum, or a special one created by a majority, applies to churches and

[1] Field *v.* Field, 9 Wend. 403; *Citing* Rex *v.* Mayor, 4 T. R., 822; Rex *v.* Bellinger, 7 Cow., 409.

[2] Craig *v.* First Pres. Church, 88 Pa. St. 42; The King *v.* Whitaker, 9 B. & C., 648; Field *v.* Field, 9 Wend. 394; Wardens *v.* Pope, 8 Gray (Mass.) 140.

like bodies (when they have regular business meetings, weekly, monthly or at other stated times) organized to transact their affairs methodically. It applies to the great church judicatories, such as presbyteries, synods, general assemblies, conventions, etc., after they have met and organized and ascertained a definite membership with the view of holding sessions from day to day.

A majority of the members constitutes the quorum of all *parliamentary* bodies under the common law. The rule applies to legal assemblies though some members elected may not have qualified,[1] or may be disqualified by interest,[2] or may be dead or unable to serve from any cause.[3]

In joint session, must there be a majority of each board to make a quorum? Or is a majority of the whole body sufficient? The first question has been judicially answered in the affirmative.[4] So has the second.[5] Which is right? It depends on the constitutional or statutory requirement in each state.

216. Counting a Quorum. In all parliamentary bodies, legal or voluntary (whether a majority be necessary under the common law rule, or less under a special regulation adopted by the majority) the presence of a quorum is ascertained by counting the members present.[6]

[1] Saterlee *v.* San Francisco, 23 Cal., 315.

[2] Buffington Wheel Co. *v.* Burnham, 60 Ia., 493.

[3] *See* McCracken *v.* San Francisco, 16 Cal., 591; *Compare* McDermott *v.* Miller, 45 N. J. L., 251.

[4] State *v.* Patterson, 35 N. J. L., 190, 194.

[5] Kimball *v.* Marshall, 44 N. H., 465, 468; Beck *v.* Hansom, 29 N. H., 213.

[6] United States *v.* Ballen, 144 U. S., 1; Brown *v.* Dist. of Columbia, 127 U. S., 586; Slate *v.* Ellerton, 117 N. C., 155.

This method has been always employed, with scarcely any exception but the long neglect of it by Congress, till within a few years. The common rules of order allowed it all the while, and there was no special rule against it; only a *ruling* that ought not to have been drawn in precedent. And yet, there are those who entertain the opinion that the present right of counting owes its legality to the adoption of a new special rule. The last cited case shows this view.

When a quorum is found present, and but a few vote, the silent members are presumed to acquiesce in the result, whether the measure be carried or lost. Silence is not to be taken as assent to the proposition when the vote, however small, is against it. If a member wishes to be understood as indifferent — favoring neither side—he should so express himself when his name is called, or when the vote is taken without roll call.

A blank cast, when there is a ballot, is not acquiescence in the result but it is a vote against all the candidates. If all the ballots but the blank are for one candidate, he is not unanimously elected. If but one ballot be cast he would be unanimously elected, should all the members but one neglect to vote when they have the opportunity, since they would be presumed to acquiesce in the result.

217. Two-Thirds Rule. Departing from the true principle laid down by Hakewell and quoted by Jefferson: "*The lex majoris partis* is the law of all councils, elections, etc., when not otherwise expressly provided," some suppose that a two-third vote is always essential to

the passage of certain things when not so expressly provided; and they instance the amendment and suspension of rules, making a special order, taking up a question out of its proper order, ordering the previous question, limiting or closing debate, expelling a member, and some other matters. Just as plausibly might they insist upon three-fourths. One writer claims all; says that there must be unanimous consent for the doing of certain things, such as suspending rules, expunging minutes, taking up out of order, instructing a committee to report when there is nothing pending, withdrawing incidental motions after their "adoption," and deciding privileged questions.

No doubt special rules requiring more than a majority are often wholesome; but, *in their absence*, the majority governs in all the matters mentioned which can be done at all. Withdrawing motions after their adoption, cannot be done. The text on the subject, as already expressed, needs no modification.[1]

Legislatures often prescribe rules to corporations created by them, requiring more than a majority to pass specific acts. When two-thirds are required, it is held that two-thirds of the members present and in quorum are meant—not that number of all the members, unless the statute or charter expressly so provides.[2] When it does so provide, and some members are disqualified from voting because of their interest, there must yet be two-thirds of the whole num-

[1] *Ante*, §§ 132, 133, 134.

[2] Warnock *v.* Lafayette, 4 La. Ann., 419; San Francisco *v.* Hazen, 5 Cal., 169; Logansport *v.* Legg, 20 Ind., 315; Gardner *v.* Newberne, 98 N. C., 228 (⅔ required).

ber elect to pass the act.[1] And when passed it is held that a majority may repeal it;[2] for authorization to pass an ordinance implies the right to repeal it.[3] But a rule requiring two-thirds or three-fourths to pass an act, cannot be suspended by a majority to enable them to pass it.[4]

218. Void Rule. A representative legal body, such as a legislature or municipal council, cannot curtail its powers by adopting a rule requiring more than a majority to pass an act or an ordinance. A two-third rule, or one requiring any number in excess af the majority, passed by such body, would be void: hence it should be disregarded. No suspension or repeal is necessary. Action may be taken on a bill or ordinance pending, regardless of such rule, and a majority legally will pass it or reject it.[5]

Such nullity does not attach to a like rule adopted by bodies which represent no constituency, such as voluntary societies.

219. Unanimous Consent. There is much misunderstanding as to the power of assemblies to override rules and do inhibited things by unanimous consent. The object of restraining rules is not only to protect minorities but to provide against popular whims that might tem-

[1] Buffington Wheel Co. *v.* Burnham, 60 Ia., 493.

[2] City of Chariton *v.* Holliday, 60 Ia., 391. *Compare* Stockdale *v.* Wayland School Dist., 47 Mich., 226.

[3] Kansas City *v.* White, 69 Mo., 26; Terre Haute *v.* Lake, 43 Ind., 480.

[4] Hornor *v.* Rowley, 51 Ia., 620.

[5] Commonwealth *v.* Mayor of Lancaster, 5 Watts (Pa.), 155; Heiskell *v.* Mayor of Baltimore, 65 Md., 125; 57 Am. Rep., 308; Gosler *v.* Corp. of Georgetown, 6 Wheat., 597; City of Chariton *v.* Holliday, 60 Ia., 391. *See* Bennett *v.* Bedford, 110 Mass., 433, 438. *Compare* Stockdale *v.* Wayland School District, 47 Mich., 226.

porarily carry the members away and lead them to do things which their deliberate judgment would not approve. Constitutions, by-laws and special regulations operate as safeguards against such result. The common law of order also thus operates in the absence of any modification.

Not only in parliamentary proceedings, but in all that is done under the general law, this principle holds good. The constitution of the United States restrains Congress from doing many things which the members might unanimously desire to do when swayed by some popular impulse. State constitutions limit legislatures in the same way. And the special rules, adopted by societies, legislatures and other deliberative bodies, operate in like manner to restrain members as a whole until such restraining rules are repealed or suspended regularly under a provision authorizing the suspension.

It has been erroneously said (though not accepted as parliamentary law) that with unanimous consent an assembly can do anything within its province regardless of any rule to the contrary; that special rules may be suspended by such assent though there be no rule authorizing it.

Though business is properly expedited by the chair's inquiring whether there are objections and declaring the matter passed when there are none, with respect to the approval of the minutes, questions of routine and the like, yet these things may be done by majority vote as well, and they are not analogous to the act of disregarding a restraining rule, by general consent.

No one would contend that a bare majority has the right to violate a rule. The majority

of an assembly is the assembly itself. What the majority cannot do, the whole cannot do. The restraints thrown around the assembly's power are made by itself or imposed by higher authority such as that of a legislature over a municipal council. A bare majority may impose them, yet they hold the whole membership while in force. If the majority wields all the power of unanimity, and yet can do nothing in disregard of the adopted rules while they are in force, it follows that universal consent is unavailing to suspend rules when there is no rule authorizing the suspension.

It is well established that a majority has all the power of the whole body; that it constitutes a quorum under the common law of order; that (unless there is some constitutional or statutory provision prescribed by a higher to a lower legal body, or some special rule or by-law adopting a different principle) the majority of the voters of a quorum controls the assembly and can do any act the whole body can do.[1]

A single member's vote will decide a question if all the others of the quorum refrain from voting.[2] Could that one voter so decide in disregard of a valid special rule? He wields all the power of the whole body; how then can

[1] United States *v.* Ballin, 144 U. S., 1; Brown *v.* District of Columbia, 127 U. S., 586; Joseph Township *v.* Rogers, 16 Wall, 664; State *v.* Farr, 47 N. J. L., 208; Barnart *v.* Paterson, 48 N. J. L., 399; Wells *v.* Rahway River Co., 19 N. J. Eq., 402; State *v.* Ellington, 117 N. C., 158; State *v.* Deliesseline, 1 McCord, 52; Heiskell *v.* Mayor of Baltimore, 65 Md., 125; *Ex parte* Wilcocks, 7 Cow., 402, 410.

[2] Those who vote decide—a quorum being present: Launtz *v.* The People, 113 Ill., 137; 53 Am. Rep., 405; Walden *v.* Vanosdal, 131 Ind., 388; State *v.* Green, 37 Ohio St., 227; Attorney General *v.* Shepard, 62 N. H., 384; Somers *v.* City of Bridgeport, 60 Ct., 521.

more be done by unanimous consent? How can it logically be said that a restraining rule, still in force, can be rightly disregarded by unanimous consent?

220. An Assembly Cannot Declare a Vote to have been Unanimous. Whether voting has been by ballot or by some other method, it is the duty of the chair to declare the result—not the province of the members. Whether they declare it truthfully or falsely, they act without authority. If the chair make a mistake in announcing the result, it may be corrected on appeal; but if the assembly declare it wrongfully, there is no parliamentary method of correcting the error.

When a candidate has been elected, or a resolution, bill or ordinance adopted, by a bare majority, it is false to declare the vote to have been unanimous. It is a falsification of the record showing the real vote. But may not the dissenting members change their votes, and do so by joining in the subsequent expression of unanimity? No—they cannot change their ballots cast and counted; for, the vote being secret, if one's statement that he voted adversely could be received, the door for fraud would be open, and there would be no means of verifying his assertion; or, the vote being open, he would be too late to change after the result had been announced by the chair and accepted by the assembly without appeal. Only upon duly ordered reconsideration of the vote can the members "make it unanimous" when such was not the case in the first instance.

The notion that a vote without unanimity can be declared so subsequently has obtained in

political conventions. The purpose is to compliment the successful candidate and give him greater commendation when he is to represent his party in a popular election to follow. This purpose may be achieved by a resolution of complimentary character, after the ballot, if all choose to adopt it; and thus the object may be accomplished legitimately.

221. Balloting cannot be Delegated. The pernicious notion that balloting may be delegated by general consent, so that a teller or secretary may cast the vote of the whole assembly, has been already exposed;[1] but those who hold this view are so persistent that a further word may be allowable. There is no such practice in Congress or any deliberative body worthy of imitation. It is mostly confined to desultory clubs and societies and political caucuses.

When the ballot is required by law or by an adopted rule, it cannot be delegated without violation of the requirement; because the casting of all the votes by one person is not balloting, but an evasion of the law. It is the changing of the prescribed method to *viva voce* voting, since the expression of general consent is by the voice, and the farcical action of the person named as the proxy of all the members is but a minor performance.

The secrecy of the ballot is thus destroyed. The object of a law or rule prescribing balloting is to secure independent expression uninfluenced by fear or favor. If a voter is driven to make open objection to a motion that the clerk cast the ballot, he is likely to be thought inimical to the candidate or to the measure to be voted upon.

[1] *Ante*, § 130.

The law requiring the secret vote does not permit any one member to be thus forced to show his hand.

The device for turning the ballot to a single open vote by proxy, is illegal. When a statute provides that certain officers shall be elected by ballot, the so-called casting of it by the secretary would result in no election. When a special rule prescribes balloting, its avoidance by this device is not parliamentary.

This fraud upon the ballot is supposed to expedite business. There is a perfectly legitimate way to facilitate it, where there is a unanimous disposition to elect a candidate or adopt a measure when balloting is required. Let it be tacitly agreed that only one or two shall vote. Their ballots will be sufficient: the non-voters acquiesce.

222. No "Informal Ballot." In some voluntary meetings—political caucuses mostly—a preliminary test of party strength is sought by what is called an "informal" ballot, by which is meant a vote not binding. When the result proves satisfactory to the managers, one of them next moves "that the informal ballot be declared formal." These fanciful terms go for nothing, as a body in session can take no vote that will not be binding. The "informal ballot" is reprobated by the law.[1]

If society members, party caucuses or political conventions wish to test the strength of candidates in advance of the election, let them take a recess and play at balloting; but such side show is not parliamentary practice.

The folly of taking a vote not to be binding

[1] Conrad v. Stone, 78 Mich., 640.

is clearly apparent when we think of it in connection with legal assemblies—legislatures balloting for senators, for instance. They never entertain the notion, but how ridiculous would be the case were they to indulge it and act upon it! If the practice would be idle in such bodies, it cannot be allowable anywhere.

223. Nominations.[1] When there is but one nominee, there is no need of balloting, unless it is legally required or enjoined by a special rule. When so required, it is essential to the legality.[2] It is held that plurality elects an officer unless the statute requires a majority.[3] In deliberative bodies the rule is the reverse; a majority is necessary to election unless a special rule requires only plurality.

As every member may nominate, and seconding is not required as in case of motions, the somewhat prevalent practice in conventions of appointing a nominating committee and cutting off the right of other members to name candidates is almost as bad as it would be to have an exclusive moving or voting committee. If, to expedite business, and to properly adjust a list of officers, a nominating committee is useful, it may be shorn of objection by allowing competing nominations to be made by any members who have candidates to name. Whether any other names be presented or not, it is improper to treat the committee's nominations as a "report" to be adopted on motion. If no other names be presented, the nominees may be elected separately or altogether by an oral vote

[1] *Ante*, §§ 69, 70.
[2] State *v.* Harris, 52 Vt., 216.
[3] *Ib.*; Citing McCrary on Elec. § 571; Cooley's Const. Lim., 619.

or a show of hands as speedily as by the adoption of the committee's "report."

If nominations are motions, a member might move that a certain person be chosen, and might thus cut off all others from consideration till action upon the motion be had. If they are motions, can nominations be amended by striking out one name and inserting another? This would give only two candidates a chance, injustice would be done to all the rest, and parliamentary rights of members would be denied. This was really done once in our national senate. When Mr. Edmonds had nominated Mr. Sherman to be president of the senate, Mr. Voorhies moved that the name of Mr. Harris be substituted. The "amendment" being lost, the nominee was elected without further opposition. No one could defend such *substitution* for a *nomination* as a good parliamentary precedent.

It is not in order to move that voting be confined to the two or three candidates who have received the highest vote in ballots already taken; for the adoption of such an order would be dictation to members and would be the exercise of unwarrantable power by the majority over the minority. As each member has the right to name his man without the concurrence of a seconder, so he has the right to vote for him to the last, and the majority cannot control him.

Nominations are not essential: balloting may proceed without them. A ballot is vitiated if it contains more names than the voter has the right to vote. For instance, if five persons are to be elected, the voter cannot put six names on his ballot without vitiating it. If the additional

name is for a different office, the vote is yet good; for instance, if five selectmen are to be chosen, the voter may vote them, and also put the name of someone on his ticket for a different office, which, though not warranted, would not affect the vote for selectmen.[1]

224. Casting Vote. There is a popular impression that the chair always has the casting vote in case of a tie. Some of the manuals so state, without qualification, though doubtless their authors would not seriously deny that so broad an assertion needs qualification. They would admit the correctness of the casting-vote rule herein expressed.[2]

Some additional remarks will not be superfluous. It has been a somewhat mooted question in the courts, whether the chair's declaration of the result in favor of one side, in case of a tie, is equivalent to his voting on that side. This has been decided in the negative, with much good reason.[3] The contrary, however, has been held.[4] In the case just cited from Barber's Reports, it was considered proper that the presiding officer, under the conditions stated, could vote with the other members and yet cast the turning vote when they were equally divided. It is, however, too well settled to require authorities, and too evident to require argument, that a member cannot vote twice because he occupies the chair, and cannot vote at all when he is not a member, though presiding,

[1] Commonwealth *v.* Wentworth, 145 Mass., 50.

[2] *Ante*, § 131.

[3] Lawrence *v.* Ingersoll, 88 Tenn., 52; Horning *v.* State, *ex rel.* Gamble, 116 Ind., 458.

[4] People *v.* Rector, etc., 48 Barb., 503; Small *v.* Orne, 79 Me., 78.

unless specially authorized — usually, if not always—by a higher body, as a mayor by the legislature. When not entitled to vote, his doing so would vitiate the proceeding. When a *de jure* president would have the right, one *de facto* may vote without vitiating.

When the right exists, it may be exercised in case of a tie upon a *viva voce* vote as well as upon a ballot.[1]

225. When a President Cannot Vote. The question, whether a lieutenant-governor can vote and debate in committee of the whole, has been seriously asked. The state constitutions mostly employ language similar to that of the federal: "The vice-president of the United States shall be president of the senate, but shall have no right to vote unless they be equally divided."[2] Linguistically it would seem to imply that the right to vote would exist but for this inhibition. The form should have been conjunctive instead of disjunctive: "——— shall be president of the senate *and* shall have the right to vote when the senators are equally divided." The meaning, however, has not been misunderstood. The framers meant to limit the officer to the presidential duties of a non-member presiding except giving him the casting vote in case of a tie. Some of them were for giving the senate the right to elect their president from their own body, so that he would have the casting vote only in case of withholding his vote till the last—just as the speaker of the house has it. In Charles Pinckney's draft of a constitution it

[1] Morris v. McFarland, 149 Ind., 266; 39 L. R. A., 49.
[2] Art. 1, sec. 3, par. 4.

was proposed: "The senate shall choose its own officers."[1] In the draft of the committee of five, it was proposed: "The senate shall choose its own president and other officers."[2] This plan was opposed by Publius in The Federalist[3] on the ground that it would give the presiding senator's state more than its equal representation if he could vote on all questions and have the casting vote besides; while, on the other hand, his state would have less than equal representation were he accorded only the casting vote.

Thus it is shown that the convention had this subject under discussion, and that it was agreed that the vice-president should have no voting right except when the senators are equally divided. And they gave no authorization, expressly or by implication, for him to take part in the deliberations of the senate when in regular session or when sitting as if in committee of the whole.

Jefferson, writing in his Manual of the speaker of the lower house taking a seat with the other members in committee of the whole, had no reference to the vice-president. He never claimed the right for himself when he was over the senate but not of it.

A lieutenant-governor, deriving his powers from a constitutional provision like that of the constitution of the United States, being not a member of the state senate but only its president, can no more vote or take part in the committee of the whole than can other officers of

[1] Art. 4, Secret Debates, p. 232.
[2] *Id*, p. 257, Art. 4, sec. 4.
[3] P. 456, ed. 1898.

the body—the clerk, for instance. The clerk is a sort of vice-chairman who temporarily presides when the chair becomes vacant. In the lower house of Congress, the clerk sometimes officiates as moderator for days while a new speaker's election is progressing.

The committtee of the whole is the house itself, in a sense. It is a part of the machinery of legislation. Business is shaped by it, and its reports to the regular session are influential. A non-member, therefore, cannot participate. By sufferage, attorneys of corporations and of other interested parties are often permitted to discuss pending measures, in behalf of their clients, before ordinary committees. But this is not a matter of right.

The whole matter concerning the right of a lieutenant-governor's taking part in committee of the whole depends on his membership of the senate. In most of the states—perhaps all—he is not, and therefore cannot take such part. His presidency carries with it no rights of membership. "There is no novelty in the appointment of a person to preside who is not a constituent member of the body over which he presides."[1]

226. The Chair Should Not Answer Out of Order. There is a popular impression that "the chair should answer all parliamentary inquiries;" "should inform the assembly on points of order as they arise;" should allow a member to ask in advance and should answer him.

Those who entertain this view mean that the

[1] Story on Const. §937, where the case of the Lord Chancellor presiding over the House of Lords is given in illustration.

chair should declare in advance whether it would be in order to move this or that, and they do not confine to appeals the discussion of questions of order.

They assign no reasons to support their position. There are many against it. The president or speaker is not a teacher by virtue of his office. It is not made his duty, by statute, to instruct the members. It is not his right, before appeal. It is not his privilege, except by sufferance of the house.[1] It is disorderly to allow such inquiries, and promotive of disorder to answer them. A chatty speaker, like a talking judge, lowers his dignity and loses the respect of the house. It is a waste of time and a hindrance to legitimate business to indulge the discussion of points when it is not in order to discuss them, whether the discussion be by the chair or by any member.

There is nothing in the letter or spirit of parliamentary law to warrant such disorder. As to precedent, there is none creating a rule that the chair must answer inquiries in advance. Instances there are of speakers doing this, but they are illustrations showing the evil of it, rather than examples to be followed.

In small bodies, the chair, *by sufferance*, may say in advance whether a contemplated motion would be in order if offered, and less confusion would ensue than in large assemblies, but even here such a course is not the function or privilege of the chair as a matter of right.

227. Recognition.[2] May discretion be

[1] *Ante*, § 95.

[2] *Ante*, § 2.

given to the chair as to the recognition of members? No such power can be conferred by rule, either in a voluntary or a legislative assembly, because the majority cannot deprive any member of his rights. If the assembly is a constituent one, the rights of any one member's constituents cannot be denied by such a rule adopted by a majority, or three-fourths, or nine-tenths, or all except the member himself, or even including him (for he cannot shirk his duties). The reason why unanimous consent cannot legally empower the chair to withhold she floor from a member entitled to it is that tuch power would be tyrannical, and tyranny is unconstitutional, for the constitution favors liberty.

There are certain preferences, however, established by long usage, which the chair should observe. The mover is entitled to be first heard in a debate on his own resolution. The chairman of a committee or other member of it, making a report, should be privileged above others, to explain or discuss it. One who had the floor at the time of adjournment has the right to continue when the subject of discussion comes up again. A member rising on a question of privilege has preference over one claiming the floor or even having the floor on an ordinary question. And, generally, the one who has opened debate ought to be allowed to close it.

In overcrowded legislative chambers, business may progress better if a few competent leaders are favored, but that does not justify favoritism. A partisan president is as bad as a partial judge or a cheating tradesman. The remedy for the evils of a large assembly is not in the arbitrary

disposition of the floor, but in the observance of the law of order by all the members.

228. Reconsideration. Though the treatment herein of the motion to reconsider[1] needs no revision, it may be extended by way of meeting some contrary notions. That the true rule is that this motion must be made by one of *the successful party*, and not always by one who voted with the majority in the first instance, is apparent when we reflect that where two-thirds are required, by special rule, to pass a resolution, the majority may be the defeated party. Why should one of that party make the motion to reconsider, since his action would be no indication of a change of sentiment? In such case the movement for a new deal must come from the winning side though it be but little more than half the number of the other. In all cases it is right to say "the successful party" instead of "the majority," relative to the move for reconsideration.

It has been denied (though not judicially or authoritively) that this motion can be made at the meeting next following that which has acted upon the matter to be reconsidered. Since the practice has been to allow it at the next meeting, ever since this instrument of parliamentary manipulation became incorporated into the general system, nothing less than a special rule can prevent its use as stated. But courts have differed as to whether the motion can be made and acted upon on the same day the matter to be reconsidered is passed.[2] There is no reason for

[1] §§ 136, 140.

[2] *See* Gouldy *v.* Atlantic City, 63 N. J. L., 537; Baker *v.* Cushman, 127 Mass., 105; State *v.* Adams, 58 Vt., 694; Jersey City *v.* Slate, 30 N. J. L., 529; People *v.* Rochester, 5 Lansing, (N. Y.) 11.

allowing the motion before some time has passed, and the intervention of other business has afforded opportunity for reflection so that some voters of the successful party may have changed their minds. The rule stated herein,[1] accords with this, showing that the application of the motion depends on the character of the action to be reconsidered.

When a right to office has been vested by a vote resulting in an election, such vote cannot be reconsidered;[2] and executed orders manifestly cannot.

229. Contents of the Journal. There has been untenable teaching relative to the journal and what it should contain. It has even been taught that it is sufficient to record, of resolutions, that they were "amended and finally adopted;" that speeches should be noted; that the secretary may enter his own opinions, etc. As all this is at varience with settled principles, and cuts athwart what has been written herein,[3] it may be well to explain the secretary's duties and the journal a little more. Only *transactions* should be recorded, and whatever is essential to the proper understanding of them, so as to make the journal read like a book. Reports of committees need not be spread upon the minutes unless the assembly order it to be done; but resolutions appended to a report, amendments submitted, and all that is to be acted upon, should appear.

When the names of the voters were required

[1] *Ante*, §§ 137, 138.

[2] State *v.* Barbour, 53 Ct., 76; *Compare* State *v.* Chapman, 44 Ct., 601; Baker *v.* Cushman, 127 Mass., 605.

[3] Ante, §§ 165, 166.

but neglected by the clerk of a council, he amended his minutes later, and the ordinance voted upon was held legally passed.[1]

The clerk may always be ordered to make his minutes conform to fact.[2] In other words, the members themselves may change the minutes to suit themselves before adopting them and thus making them their own.

A charter prescribed that all votes should be by *yeas* and *nays*, but this was held inapplicable to votes on adjournment.[3]

230. The Journal as Evidence. The journal consists of the clerk, under the direction of the chair, before they are adopted by the assembly. When they have been adopted, after the making of such corrections as the members deem proper, those entries constitute the journal of the body. The record now contains the statement of the assembly as to their transactions; before adoption, it contained only the statement of the clerk under the chair's direction. It will be seen how much greater is the value of the adopted journal, than the unapproved entries of the clerk, as evidence before a court of justice.

The record, prior to adoption, has its importance, especially when attested by the writer (the clerk). When supported by the sworn testimony of himself, or of members of the assembly, or both, it is entitled to great weight.

[1] Beeker *v.* Henderson, 100 Ky., 450.

[2] Glencoe Board of Education *v.* Trustees of Schools, 174 Ill., 510; 74 Ill. App., 401.

[3] City of Green Bay *v.* Brauns, 50 Wis. 204. See Cutler *v.* Russellville, 40 Ark. 101. The requirement that *yeas* and *nays* be called and recorded, was held not to confine voting to the method by roll-call: Brophy *v.* Hyatt, 10 Col., 233.

The adopted journal is of much greater weight; it is the confession of the members as to their doings. It was judicially said: "We are at a loss to imagine a higher degree of evidence than that supplied by the official acts of the common council performed in regular session of the municipal legislature." [1]

The journal, when offered against a corporation, may not be admissible under some circumstances. For instance: votes passed by way of offering a compromise to one who demands damages would be no more admissible to prove acknowledgement on the part of the corporation than would the tender of a compromise by a private person.[2] And it has been held that in an action against a town for injuries, the report of a committee and action on it would be inadmissible to show the state of a road alleged to have caused the injury complained of.[3] This does not seem to have been generally followed. Of course the journal is admissible evidence when there is nothing to take it out of the general rule.[4]

As the journal is the work of the secretary, under the direction of the president, to be submitted to the members for them to adopt as their own statement of their transactions, he is responsible. He cannot clothe a deputy with such powers as appertain exclusively to himself. The deputy may write the minutes but not at-

[1] City of Delphi *v.* Lowery, 74 Ind., 526, and cases cited by the court.

[2] Dudley *v.* Weston, 1 Met. (Mass.) 477.

[3] Collins *v.* Dorchester 6 Cush., 396.

[4] Chicago *v.* Powers, 42 Ill. 169; Requa *v.* Rochester, 45 N.Y., 129, 137; Thornton *v.* Campbell, 18 N. H. 20; Erd *v* St. Paul, 23 Minn., 443; Monaghan *v.* School District, 38 Wis., 101.

test them; he may make out warrants for a legal body but not sign them.

Ordinarily, the signatures of the presiding officers, and the approval of the governor, evidence the passage of a law, and the journal is not needed as evidence, but it becomes very important when the legality of the passage is drawn in question.

231. Incongruities. Many errors spring from a disregard of the law of order as a system. The tendency is to put the whole machinery out of gear by displacing a wheel. When it is claimed that indefinite postponement is amendable and of the same rank as tabling, the claimant evinces his misappreciation of harmonious work with the subsidiaries. If it can be made definite by amendment (as alleged) then a declinitive motion can be changed to a dilatory one, so that an instrument designed to kill may be mad e to cure.

If definite postponement can be grafted upon indefinite by amendment, there is little need of longer preserving both instruments after their long use and usefulness. If the rank of the motion to lay upon the table were no higher than that to postpone indefinitely, it would not be in order while the latter is pending. The whole classification of subsidiaries would be deranged.[1]

The novel position, that the motions to indefinitely postpone and to pre-question can only be employed when authorized by special rule, is harmful rather than helpful. Their places are now as well assigned in the system as those of the other subsidiaries. And when we are told that the motion to adjourn, in its simple form,

[1] *Ante* §§ 7-10, 50-57.

made when no other is pending, is both amendable and debatable, and that all "preferred questions" are debatable while "privileged" ones are not, and told all this without an accompanying reason, we cannot help thinking the statements misleading. The functions and rank of all the subsidiaries are too well established to be questioned. One might almost as well attempt to confound subject and predicate, and the parts of speech in the grammar of a language.

232. Privilege. Each house of congress judges of its own privileges, and one cannot interfere with the other in regard to them. What they are cannot be enumerated. Blackstone says that "if all the privileges of parliament were to be set down and ascertained, and no privilege to be allowed but what was so defined and determined, it were easy for the executive power to devise some new case not within the line of privilege, and, under pretence thereof, to harass any refractory member, and violate the freedem of parliament."

Privileges are for the protection and independence of legislative bodies and their members. Some are declared by the constitution and some are warranted by long usage. A few may be given in illustration: exemption of the members from arrest during session, and in going to or coming therefrom, except on a charge of breaking the peace, felony or treason; protection of members from being molested for language employed in debate; the right of each house to decide as to the election and qualification of its own members; to investigate the character and conduct of members; to expel or

censure them; to protect itself from officers, reporters and visitors; to pass upon the charges of one member against another; to repel false attacks of newspapers upon the proceedings, and, indeed, any thing that affects the dignity of the body or its members.

In the language of Speaker Winthrop: "If a member rise and state a breach of privilege committed on himself or a fellow member, whether arising upon facts within his own knowledge or reaching him by rumor, whether growing out of debate in this house or of circumstances which happened a thousand miles distant, it is for the house to take up the question and determine whether such a breach of privilege has occurred as to require its interposition."

Questions of privilege are of two sorts: those of the house and those of the members. Privileged questions have been discussed in a previous chapter.[1]

233. Closure. Privilege is not only to protect the legislative department of the government from executive encroachments, and from judicial in the form of writs of arrest, injunction against legislation and the like, but also to prevent obstructions by its own members. Every legislative, even every deliberative body, possesses inherent power to stop debate when the sole purpose of the debater is to block business and prevent voting.

The function of a legislature is to legislate; so, whatever would destroy that function may be suppressed. Ceaseless debate would render voting impossible and therefore defeat legisla-

[1] Chapter XI.

tion. The parliamentary system provides an adequate remedy for such mischief. The previous question has been employed for two hundred and fifty years, and is well imbeded in the system. Though it has undergone a change of application in this country, it has prevailed here in its present form for more than a century. It is available in all deliberative bodies without the interposition of a special rule; while on the other hand, such a rule is essential to its abrogation.

The federal senate does not employ it, but may it not do so? Its rules do not forbid its use. They do not authorize it: is express authorization necessary? The opinion seems to be entertained by some senators that there is no parliamentary law for their body but their own adopted code of rules. The constitution provides that each house *may* determine the rules of its own proceedings; *shall* keep a journal.[1] It may—it may not, but may follow the common law rules. The senate has made rules. Do they render common usages inapplicable in cases where the special rules are silent? Congress is authorized to make statutes, and it does so; but it is well known that the common law prevails where the statutes are silent. Not only by point of reasoning, but by the general principle applicable to all deliberative bodies and repeatedly inculcated herein (that common usages obtain when not superseded by special regulations), it follows that the federal senate may protect itself from obstructive debate by using the previous question under its rules as they now stand. Other means of closure might

[1] Art. 1, Sec. 5.

be employed but the conclusion is that this means is in order.

Should the vice-president rule that a motion for it is in order, such temporary excitement may follow as when Mr. Speaker Read properly counted a quorum in consonance with usage almost immemorial (yet long disused in House of Representatives), but without a special rule; yet it would prove good medicine for a bad senatorial malady. Senators, doubtless, will have to devise some method of closure if they do not resort to this.

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