

Although objection was made that this resolution constituted business which the House in its disorganized condition was not competent to transact, it passed in the affirmative. Later, on January 12, the candidates for Speaker answered interrogatories in accordance with the requirements of the resolution.

**219. After the election of a Speaker and before he has been conducted to the chair no debate or business is in order.**—On February 1, 1860,<sup>1</sup> the Clerk had announced the election of William Pennington, of New Jersey, as Speaker, when Mr. Thomas C. Hindman, of Arkansas, sought recognition and began to speak.

Mr. Galusha A. Grow, of Pennsylvania, made the point of order that a Speaker had just been elected by the House, and that nothing could be in order until he had been conducted to the chair.

Clerk<sup>2</sup> said:

The Clerk begs leave respectfully to suggest to the gentleman from Arkansas that this House has just declared a Speaker-elect, and that the first thing in order is to conduct that Speaker to the chair. The Clerk has no power further to preserve order. Until the Speaker has been conducted to the chair, the House is without an organ or any person having authority to entertain motions or questions of order.

The Clerk then appointed a committee of two to conduct the Speaker-elect to the chair.

**220. The Clerk appoints the committee to escort the newly elected Speaker to the chair.**

**It has long been the usage that the oldest Member in continuous service shall administer the oath to the Speaker.**

After a Speaker has been elected the Clerk appoints the committee to escort him to the chair. On February 2, 1856,<sup>3</sup> after Mr. Speaker Banks had finally been elected after a long struggle, Mr. John Wheeler, of New York, proposed to designate the committee by resolution, but desisted because of the remonstrances of Mr. Joshua R. Giddings, of Ohio, who as “the oldest consecutive Member” was about to administer the oath to the Speaker. Mr. Giddings said that the Clerk always appointed the committee, and to arrange it otherwise would be an “innovation on the whole past practice of the House.”

**221. The contest over the organization of the House in 1849.<sup>4</sup>**

**The House declined to determine the choice of a Speaker by lot.**

**The House by special rule chose a Speaker by a plurality of votes, but confirmed the choice by a majority vote.**

**The question as to whether or not the House, before its organization, may adjourn over for more than one day.**

On December 22, 1849,<sup>5</sup> the House had been in session nineteen days<sup>5</sup> without being able to elect a Speaker, no candidate having received a majority of the votes cast. The voting was viva voce, each Member when called naming the candidate

<sup>1</sup> First session Thirty-sixth Congress, Globe, pp. 654, 655.

<sup>2</sup> James C. Allen, of Illinois, Clerk.

<sup>3</sup> First session Thirty-fourth Congress, Globe, p. 342.

<sup>4</sup> There had also been a prolonged contest over the organization of the House in 1840 (see sec. 103 of this work), but it was not occasioned by a difficulty over the election of Speaker.

<sup>5</sup> First session Thirty-first Congress, Journal pp. 156, 163, 164.

for whom he voted. After the thirteenth ballot Mr. Andrew Johnson, of Tennessee, offered a resolution providing that if, on the next ballot, no individual should receive a majority of the votes cast, the individual receiving a plurality of votes should be the Speaker for the present session. An amendment was proposed, to provide that the vote be taken by ballot. Both the resolution and amendment were laid on the table by a vote of 210 to 11.<sup>1</sup> A resolution proposed by Mr. Frederick P. Stanton, of Tennessee, to restrict the voting to the four highest candidates, and in the event of no choice to the two highest, was also laid on the table.<sup>2</sup>

On December 6, after the fourteenth ballot, Mr. John A. McClernand, of Illinois, offered a resolution to adopt the rules of the last House and appoint Mr. Linn Boyd, of Kentucky, chairman until a Speaker should be elected. After an amendment had been proposed to alternate Mr. Samuel F. Vinton, of Ohio, with Mr. Boyd, and after Mr. McClernand had modified his proposition so as to permit the proposed chairman merely to keep order during the proceedings on the election of Speaker, the whole proposition was laid on the table by a vote of 116 to 105.

After the thirtieth ballot Mr. Lewis C. Levin, of South Carolina, offered a resolution that each of the five parties, or factions, in the House should put the name of its candidate in a box and that the Clerk should draw one therefrom, thus determining the Speakership by lottery. This resolution was promptly laid upon the table. After the thirty-first ballot it was proposed that lots be drawn between Mr. Howell Cobb and Mr. Robert C. Winthrop to determine who should be Speaker. This was not approved. A motion that the vote be taken by ballot was also defeated by a vote of 162 to 62.

After the forty-first ballot Mr. George Ashmun, of Massachusetts, proposed a plan for electing by plurality of votes, but it did not meet with favor.

On motion of Mr. Milo M. Dimimick, of Pennsylvania, it was ordered that the House should proceed with the election of a Speaker and that there should be no debate until such an election should be effected.

Various solutions of the difficulty were offered as the balloting proceeded, such as modifications of the plurality plan, proposals to raise a committee to devise a plan for organization, to elect a Speaker pro tempore, etc.

Finally, after the fifty-ninth ballot, Mr. Frederick P. Stanton offered and the House adopted, after attempts to amend and protests from the minority at the prohibition of debate, the following resolution by a vote of 113 yeas to 106 nays:

*Resolved*, That the House will proceed immediately to the election of a Speaker, viva voce; and if, after the roll shall have been called three times, no Member shall have received a majority of the whole number of votes, the roll shall again be called, and the Member who shall then receive the largest number of votes, provided it be a majority of a quorum, shall be declared to be chosen Speaker.

A strong protest<sup>3</sup> was made against the plurality resolution and against the resolution prohibiting debate. Mr. Robert Toombs, of Georgia, insisted on making his protest, although the Clerk began a roll call while he was on the floor, and there was great disorder and confusion. He denied the right of the unorganized House

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<sup>1</sup>Journal, p. 32.

<sup>2</sup>Journal, p. 34.

<sup>3</sup>First session Thirty-first Congress, Globe, p. 62.

to limit debate or adopt the plurality rule, basing his opposition on the second section of the act of 1789—

That at the first session of Congress after every general election of Representatives, the oath or affirmation aforesaid shall be administered by any one Member of the House of Representatives to the Speaker, and by him to all the Members present, and to the Clerk, previous to entering on any other business.<sup>1</sup>

A motion having been made to adjourn over to a day beyond the next day, Mr. Alexander H. Stephens, of Georgia, arose and suggested the constitutional point that the House could not, until it was organized, do otherwise than adjourn from day to day. The House decided the motion to adjourn over in the negative.<sup>2</sup>

Under the operation of the plurality, resolution, the sixty-third vote resulted as follows:

For Howell Cobb .....	102
For Robert C. Winthrop .....	100
For David Wilmot .....	8
For Charles S. Morehead .....	4
For William Strong .....	3
For Alexander H. Stephens .....	1
For William F. Colcock .....	1
For Charles Durkee .....	1
For Emery D. Potter .....	1
For Linn Boyd .....	1
	—
Whole number of votes given .....	222

Of which number, Mr. Howell Cobb, of Georgia, having received 102 votes, being the largest number cast for any one Member, under the resolution adopted by the House, and being a majority of a quorum of the House, Mr. Stanly thereupon offered the following resolution:

*Resolved*, That Howell Cobb, a Representative from the State of Georgia, be declared duly elected Speaker of the House of Representatives for the Thirty-first Congress.

This resolution having been adopted, Mr. Cobb was conducted to the chair by Mr. Robert C. Winthrop, of Massachusetts, and Mr. James McDowell, of Virginia.

## **222. The contest over the organization of the House in 1855 and 1856.**

**The House by special rule chose a Speaker by plurality of votes, but confirmed the choice by a majority vote on a resolution declarative of the result.**

<sup>1</sup>This now section 30, Revised Statutes. (See also sec. 128 of this work.)

<sup>2</sup>See also Section 89 of this volume. During the prolonged contest in the first session Thirty-fourth Congress, which resulted in the election of Speaker Banks, the House voted, on December 24, 1855, to adjourn over. (Journal, p. 172; Globe, pp. 78, 79.) Mr. Joshua R. Giddings, of Ohio, suggested that they had no power to adjourn over, and that a majority of the Members might come the next day and elect a Speaker, notwithstanding the adjournment over; but the point was not further insisted on. Mr. Alexander H. Stephens, of Georgia, who had suggested it in the Thirty-first Congress, participated in the debate, but said nothing on this point. Previous to this (Journal, p. 18) the Doorkeeper had been directed to enforce so much of the rules of the last Congress as related to the admission of persons within the hall of the House.

**The House declined to permit any announcement but its own declaration in a case wherein a Speaker was chosen by plurality of votes.**

**Use of the motion to rescind in proceedings for organization of the House.**

**Instance of thanks to the Clerk for presiding during a prolonged contest over the organization.**

On February 2, 1856,<sup>1</sup> the House was in the midst of a struggle over the election of a Speaker. One hundred and twenty-nine ballots had been taken without any candidate receiving the majority of the votes cast. Various devices, including attempts to elect Members by means of adopting resolutions declaring such a one to be Speaker, had been tried without success. On this day the proposition to elect by a plurality of votes was revived, and Mr. Samuel A. Smith, of Tennessee, submitted the following resolution, viz:

*Resolved*, That the House will proceed immediately to the election of a Speaker viva voce. If, after the roll shall have been called three times, no Member shall have received a majority of all the votes cast, the roll shall again be called, and the Member who shall then receive the largest number of votes, provided it be a majority of a quorum, shall be declared duly elected Speaker of the House of Representatives for the Thirty-fourth Congress.

This resolution was adopted by a vote of 113 yeas and 104 nays. After its adoption a motion was made<sup>2</sup> to rescind it, and was laid on the table by a vote of 117 to 110. After a motion to adjourn had been voted on, the motion to rescind was again made, but, the question being submitted to the House, the House decided that the motion to rescind was not again in order.

After the one hundred and thirty-third vote the following result was reached:

For Nathaniel P. Banks, jr .....	103
For William Aiken .....	100
For Henry M. Fuller .....	6
For Lewis D. Campbell .....	4
For Daniel Wells, jr .....	1
	—
Whole number of votes .....	214

Of which number Nathaniel P. Banks, jr., of Massachusetts, having received 103 votes, being the largest number cast for any one Member, and a majority of a quorum of the House, was declared by the tellers to have been duly elected Speaker of the House of Representatives for the Thirty-fourth Congress.

Mr. Samuel P. Benson, of Maine, taking the roll, announced the vote, concluding with the declaration that Mr. Banks “is declared Speaker of the House of Representatives for the Thirty-fourth Congress.”<sup>3</sup> Immediately there was a question of the right of the gentleman from Maine to make such a declaration. It was declared that only the House could make such a declaration, and the precedent of 1849 was recalled, when a resolution was adopted declaring Mr. Howell Cobb, of Georgia, duly elected Speaker. Mr. Cobb, in reply, said that he had not believed the declaratory

<sup>1</sup> First session Thirty-fourth Congress, Journal, pp. 429, 430, 444.

<sup>2</sup> Congressional Globe, first session Thirty fourth Congress, p. 336.

<sup>3</sup> Congressional Globe, first session Thirty-fourth Congress, p. 339.

resolution necessary in 1849 and he did not believe it necessary now. If a majority of the House adopted the plurality rule, when a plurality vote was cast for a Member he was elected by virtue of the resolution originally adopted by a majority of the House. On the other hand, it was urged by Mr. William W. Boyd, of South Carolina, that the majority could not empower a minority to designate a Speaker, because delegated power could not be delegated.

Mr. Thomas L. Clingman, of North Carolina, submitted the following resolution:

*Resolved*, That, by reason of the adoption of the proposition known as the plurality resolution, and the votes taken under it, the Hon. N. P. Banks, of Massachusetts, has been duly chosen Speaker, and is hereby so declared.

This resolution having been agreed to by a vote of 156 yeas to 40 nays, Mr. Banks was conducted to the chair by Mr. William Aiken, of South Carolina, Mr. Henry M. Fuller, of Pennsylvania, and Mr. Lewis D. Campbell, of Ohio, and addressed the House.

Mr. Stanton submitted the following resolution; which was unanimously agreed to, viz:

*Resolved*, That the thanks of this House are eminently due, and are hereby tendered, to John W. Forney, esq., for the distinguished ability, fidelity, and impartiality with which he has presided over the deliberations of the House of Representatives during the arduous and protracted contest for Speaker which has just closed.

**223. In 1860 the election of a Speaker proceeded slowly, the voting being interspersed with debate which the Clerk did not prevent.**—At the first session of the Thirty-sixth Congress, which began on December 5, 1859, there was a prolonged delay over the election of Speaker, a result being reached on February 1, 1860, after fifty-four ballots. On the first day of the session it was ordered that the House proceed *viva voce* to the election of a Speaker.

Thereupon a ballot was taken without result. Debate then began; and as the Clerk declined to decide any questions of order, the voting for Speaker proceeded very slowly. All questions of order were submitted to the House and were debated, so it became practically impossible to hasten proceedings. Sometimes only one vote would be taken during a day, the remainder of the time being consumed in debate. It was urged by Mr. Israel Washburn, jr., of Maine, and by others that the order to proceed to the election of a Speaker was a standing order and that debate and other matters were not in order.<sup>1</sup> He also contended that the House should each day proceed to vote without a special order so to do each time. But it was impossible to arrive at a determination of the question raised, and we find the House, at the last of the proceedings, adopting, under operation of the previous question, an order to proceed to the election of Speaker before each vote. Questions of personal privilege were raised by Members, and a resolution relating to the qualifications of the candidates for Speaker<sup>2</sup> was presented and debated, but no decision was reached on the point of order that it was not in order or on the reso-

<sup>1</sup> Thus, on January 18 (Journal, p. 130; Globe, p. 499), the Clerk declined to carry out the order, as he did not feel at liberty to arrest the remarks of a Member.

<sup>2</sup> On January 5, 1860, during the contest over the election of a Speaker, a proposition to elect a Speaker *pro tempore* was presented and discussed somewhat, but not adopted. (First session Thirty-sixth Congress, Globe, pp. 341–343.)

lution itself, the Clerk declining to decide and the House being unable to reach a decision. A resolution for a plurality rule was proposed, but was not acted on. Finally a Speaker was elected by majority vote.<sup>1</sup>

**224. A new Speaker being elected at the beginning of a second session of Congress, Members-elect present and unsworn participated in that election.**—On November 13, 1820,<sup>2</sup> at the beginning of the second session of the Congress, the Clerk called the House to order, and the roll of Members was called by States to ascertain the presence of a quorum.

At the conclusion of the roll call several new Members appeared, produced their credentials, and took their seats.

Then, a quorum being present (the new Members were not, however, necessary to produce this quorum, and there is no evidence as to whether or not they were counted as part of it) the Clerk laid before the House the resignation of the Speaker, and the House proceeded to elect a Speaker, a choice being effected on November 15. The new Speaker, Mr. John W. Taylor, of New York, having taken his seat and addressed the House, and a message announcing his election having been sent to the Senate, he proceeded to administer the oath to the new Members who appeared on the 13th instant.

It seems evident, from a comparison of the Journal and Annals, that the new unsworn Members voted for Speaker. They were 7 in number, and the Journal records only 131 old members as appearing on the first day. Yet the total votes in the first day's balloting range from 132 to 138. On the second day the Journal records the appearance of enough more old Members to bring the total of old Members up to 142, yet during this day the total of votes reached as high as 148; and on the third day, with 147 old Members recorded, the totals of ballots ranged from 141 to 148. If the appearance of Members was recorded with care, as it seems to have been, it is evident that the unsworn new Members voted for Speaker.<sup>3</sup>

**225. A Speaker elected after the organization of the House takes the oath, although he may have taken it already as a Member.**

**Mr. Speaker Colfax, having been elected Vice-President, resigned his Speakership on the last day of the Congress.**

**The Speaker called a Member to the chair and, taking the floor, tendered his resignation verbally.**

On March 3, 1869,<sup>4</sup> the Speaker<sup>5</sup> called Mr. James F. Wilson, of Iowa, to the chair and, having been recognized on the floor, offered his resignation as Speaker, to take effect upon the election of his successor.

<sup>1</sup>First session Thirty-sixth Congress, Journal, pp. 8, 12, 130, 151, 154, 164; Globe, pp. 187, 233, 483, 499, 637.

<sup>2</sup>Second session Sixteenth Congress, Journal, pp. 5–7 (Gales and Seaton ed.); Annals, pp. 434–438.

<sup>3</sup>At the beginning of the Fifty-fifth Congress (March 15, 1897, first session Fifty-fifth Congress, Record, p. 15) several Members present without credentials in due form, and whose names were not on the Clerk's roll, asked to be allowed to vote for Speaker. The Clerk (Alexander McDowell, of Pennsylvania) declined to permit them to do so. Had they presented credentials in due form, the situation would evidently have been different.

<sup>4</sup>Third session Fortieth Congress, Journal, pp. 511–513; Globe, pp. 1867, 1868.

<sup>5</sup>Schuyler Colfax, of Indiana, Speaker. He had been elected Vice-President, and this resignation was tendered at the beginning of the last legislative day of the Congress.