Senate and House of Representatives, that the President of the Senate and the Speaker of the House of Representatives be authorized to close the present session by adjourning their respective Houses on the —— day of ——."

In the modern practice the resolving clause of the concurrent resolution is in form different from that given by Jefferson. For a history and chronology of adjournment resolutions, see § 84, *supra*.

§ 592. Parliamentary law as to business at the termination of a session.

When it was said above that all matters depending before Parliament were discontinued by the determination of the session, it was not meant for judiciary cases depending before the House of Lords, such as impeachments, appeals, and writs of error. These stand continued, of course, to the next session. *Raym., 120, 381; Ruffh. Fac., L. D., Parliament.*

Impeachments stand, in like manner, continued before the Senate of the United States.

For a discussion of continuance of impeachments, see § 620, *infra*.

SEC. LII—TREATIES

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§ 593. General nature of treaties.

Treaties are legislative acts. A treaty is the law of the land. It differs from other laws only as it must have the consent of a foreign nation, being but a contract with respect to that nation. In all countries, I believe, except England, treaties are made by the legislative power; and there, also, if they touch the laws of the land they must be approved by Parliament. Ware *v.* Hylton, *3 Dallas's Rep., 223.* It is acknowledged, for in-

stance, that the King of Great Britain cannot by a treaty make a citizen of an alien. *Vattel, b. 1, c. 19, sec. 214.* An act of Parliament was necessary to validate the American treaty of 1783. And abundant examples of such acts can be cited. In the case of the treaty of Utrecht, in 1712, the commercial articles required the concurrence of Parliament; but a bill brought in for that purpose was rejected. France, the other contracting party, suffered these articles, in practice, to be not insisted on, and adhered to the rest of the treaty. *4 Russell's Hist. Mod. Europe, 457; 2 Smollet, 242, 246.*

§ 594. Jefferson's discussion of treaties under the Constitution.

By the Constitution of the United States this department of legislation is confined to two branches only of the ordinary legislature—the President originating and the Senate having a negative. To what subjects this power extends has not been defined in detail by the Constitution; nor are we entirely agreed among ourselves. 1. It is admitted that it must concern the foreign nation party to the contract, or it would be a mere nullity, res inter alias acta. 2. By the general power to make treaties, the Constitution must have intended to comprehend only those subjects which are usually regulated by treaty, and can not be otherwise regulated. 3. It must have meant to except out of these the rights reserved to the States; for surely the President and Senate can not do by treaty what the whole Government is interdicted from doing in any way. 4. And also to except those subjects of legislation in which it gave a

participation to the House. This last exception is denied by some on the ground that it would leave very little matter for the treaty power to work on. The less the better, say others. The Constitution thought it wise to restrain the executive and Senate from entangling and embroiling our affairs with those of Europe. Besides, as the negotiations are carried on by the executive alone, the subjecting to the ratification of the representatives such articles as are within their participation is no more inconvenient than to the Senate. But the ground of this exception is denied as unfounded. For examine, *e.g.,* the treaty of commerce with France, and it will be found that, out of thirty-one articles, there are not more than small portions of two or three of them which would not still remain as subjects of treaties, untouched by these exceptions.

§ 595. General action of the House as to treaties.

The participation of the House in the treaty-making power has been often examined since Jefferson's Manual was written. The House has in several instances taken action in carrying into effect, terminating, enforcing, and suggesting treaties (II, 1502–1505, 1520–1522), although sometimes the propriety of requesting the executive to negotiate a treaty has been questioned (II, 1514–1517).

§ 596. Authority of the House as to treaties in general.

The exact authority of the House in the making of general treaties has been the subject of differences of opinion. In 1796 the House affirmed that, when a treaty related to subjects within the power of Congress, it was the constitutional duty of the House to deliberate on the expediency of carrying such treaty into effect (II, 1509); and in 1816, after a discussion with the Senate, the House maintained its position that a treaty must depend on a law of Congress for its execution as to such stipulations as relate to subjects constitutionally entrusted to Congress (II, 1506). In 1868 the House's assertion of right to a voice in carrying out the stipulations of certain treaties was conceded in a modified form (II, 1508). Again, in 1871, the House asserted its prerogative (II, 1523). In 1820 and 1868 there were discussions of the House's functions as to treaties ceding or acquiring

foreign territory (II, 1507, 1508), and at various other times there have been discussions of the general subject (II, 1509, 1546, 1547; VI, 324–326).

§ 597. Authority of the House as to revenue treaties.

After long and careful consideration the Judiciary Committee of the House decided, in 1887, that the executive branch of the Government might not conclude a treaty affecting the revenue without the assent of the House (II, 1528–1530), and a Senate committee after examination concluded that duties were more properly regulated with the publicity of congressional action than by treaties negotiated by the President and ratified by the Senate in secrecy (II, 1532). In practice the House has acted on revenue treaties (II, 1531, 1533); and in 1880 it declared the negotiation of a revenue treaty an invasion of its prerogatives (II, 1524). At other times the subject has been discussed (II, 1525–1528, 1531, 1533).

§ 598. House approves Indian treaties.

After long discussion the House, in 1871, successfully asserted its right to a voice in approving Indian treaties (II, 1535, 1536), although in earlier times this prerogative had been jealously guarded by the executive (II, 1534).

There have been various conflicts with the executive over requests of the House for papers relating to treaties (II, 1509–1513, 1518, 1519, 1561).

§ 599. Treaties abrogated by law.

Treaties being declared, equally with the laws of the United States, to be the supreme law of the land, it is understood that an act of the legislature alone can declare them infringed and rescinded. This was accordingly the process adopted in the case of France in 1798.

Notice to a foreign government of the abrogation of a treaty is authorized by a joint resolution (V, 6270).

§ 600. Procedure of the Senate as to treaties.

It has been the usage for the Executive, when it communicates a treaty to the Senate for their ratification, to communicate also the correspondence of the negotiators. This having been omitted in the case of the Prussian treaty, was asked by a vote of the House of February 12, 1800, and was obtained. And in December, 1800, the convention of that year between the United States and France, with the report of the negotiations by the en-

voys, but not their instructions, being laid before the Senate, the instructions were asked for and communicated by the President.

The mode of voting on questions of ratification is by nominal call.

The Senate now has rules governing its procedure on treaties.

SEC. LIII—IMPEACHMENT

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§ 601. Jurisdiction of Lords and Commons as to impeachments.

These are the provisions of the Constitution of the United States on the subject of impeachments. The following is a sketch of some of the principles and practices of England on the same subject:

Jurisdiction. The Lords can not impeach any to themselves, nor join in the accusation, because they are the judges. *Seld. Judic. in Parl., 12, 63.* Nor can they proceed against a commoner but on complaint of the Commons. *Ib., 84.* The Lords may not, by the law, try a commoner for a capital offense, on the information of the King or a private person, because the accused is entitled to a trial by his peers generally; but on accusation by the House of Commons, they may proceed against the delinquent, of whatsoever degree, and whatsoever be the nature of the offense; for there they do not assume to themselves trial at common law. The Commons are then instead of a jury, and the judgment is given on their demand, which is instead of a verdict. So the Lords do only judge, but not try the delinquent. *Ib., 6, 7.* But Wooddeson denies that a commoner can now be charged capitally before