

SEC. XLI—DIVISION OF THE HOUSE

The affirmative and negative of the question

§ 501. Division of the House after determination by sound. having been both put and answered, the Speaker declares whether the yeas or nays have it by the sound, if he be himself satisfied, and it stands as the judgment of the House. But if he be not himself satisfied which voice is the greater, or if before any other Member comes into the House, or before any new motion made (for it is too late after that), any Member shall arise and declare himself dissatisfied with the Speaker's decision, then the Speaker is to divide the House. *Scob.*, 24; *2 Hats.*, 140.

This practice is provided for in different language by clause 6 of rule I.

When the House of Commons is divided, the

§ 502. Parliamentary provisions as to division, not applicable in the House. one party goes forth, and the other remains in the House. This has made it important which go forth and which remain; because the latter gain all the indolent, the indifferent, and inattentive. Their general rule, therefore, is that those who give their vote for the preservation of the orders of the House shall stay in, and those who are for introducing any new matter or alteration, or proceeding contrary to the established course, are to go out. But this rule is subject to many exceptions and modifications. *2 Hats.*, 134; *1 Rush.*, p. 3, fol. 92; *Scob.*, 43, 52; *Co.*, 12, 116; *D'Ewes*, 505, col. 1; *Mem. in Hakew.*, 25, 29.

The one party being gone forth, the Speaker names two tellers from the affirmative and two from the negative side, who first count those sitting in the House and report the number to the Speaker. Then they place themselves within the door, two on each side, and count those who went forth as they come in and report the number to the Speaker. *Mem. in Hakew., 26.*

The House formerly employed a vote by tellers that was perhaps comparable to that described above. However, the provision in clause 5 of rule I that provided for teller votes was repealed by the 103d Congress. Under the former procedure tellers took their place at the rear of the center aisle when named by the Chair, and Members passed between them to be counted but not recorded by name. Clause 5 of rule I also provides for taking a recorded vote by means of the electronic voting system when seconded by one-fifth of a quorum.

§ 503. Correction of a vote by tellers after the report.

A mistake in the report of the tellers may be rectified after the report made. *2 Hats., 145, note.*

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When it is proposed to take the vote by yeas and nays, the President or Speaker states that “the question is whether, *e.g.*, the bill shall pass—that it is proposed that the yeas and nays shall be entered on the journal. Those, therefore, who desire it will rise.” If he finds and declares that one-fifth have risen, he then states that “those who are of opinion that the bill shall pass are to answer in the affirmative; those of the contrary opinion in the negative.” The Clerk then calls over the names alphabetically, notes the yea or nay of each, and gives the list to the President or Speaker, who declares the result. In the Senate if there be an

§ 504. Voting by yeas and nays.

equal division the Secretary calls on the Vice-President and notes his affirmative or negative, which becomes the decision of the House.

In the House tellers were sometimes, though rarely, ordered to determine whether one-fifth joined in the demand for the yeas and nays (V, 6045) but in the later practice the Speaker's count is not subject to verification (VIII, 3114-3118), and it is not in order to demand a rising vote of those opposed on a count by the Speaker to ascertain if one-fifth concur in demand for yeas and nays (VIII, 3112, 3113). Clause 1 of rule XX of the House provides the method for taking the yeas and nays in the modern practice; but under clause 2 of that rule both the yeas and nays and calls of the House are taken by means of the electronic voting system unless the Speaker in his discretion orders the utilization of other prescribed procedures.

In the House of Commons every member must give his vote the one way or the other, *Scob.*, 24, as it is not permitted to anyone to withdraw who is in the House when the question is put, nor is anyone to be told in the division who was not in when the question was put. *2 Hats.*, 140.

This last position is always true when the vote is by yeas and nays; where the negative as well as affirmative of the question is stated by the President at the same time, and the vote of both sides begins and proceeds *pari passu*. It is true also when the question is put in the usual way, if the negative has also been put; but if it has not, the member entering, or any other member may speak, and even propose amendments, by which the debate may be opened again, and the question be greatly deferred. And as some who have answered aye may have been changed by the new arguments, the affirmative must be put over gain. If, then, the member entering may, by

§ 505. Parliamentary law as to giving of votes.

speaking a few words, occasion a repetition of a question, it would be useless to deny it on his simple call for it.

Clause 1 of rule III requires Members to vote; but no rule excludes from voting those not present at the putting of the question, and this requirement of the parliamentary law is not observed in the House. No attempt is made to prevent Members from withdrawing after a question is put, unless there be a question as to a quorum, when the House proceeds under clauses 5 and 6 of rule XX.

While the House is telling, no member may speak or move out of his place, for if any mistake be suspected it must be told again. *Mem. in Hakew., 26; 2 Hats., 143.*

§ 506. Movements of Members during voting.

This rule applies in the House on a vote by division, where the Speaker counts; but did not apply to the former vote by tellers, where Members passed between tellers at the rear of the center aisle to be counted.

If any difficulty arises in point of order during the division, the Speaker is to decide peremptorily, subject to the future censure of the House if irregular. He sometimes permits old experienced members to assist him with their advice, which they do sitting in their seats, covered, to avoid the appearance of debate; but this can only be with the Speaker's leave, else the division might last several hours. *2 Hats., 143.*

§ 507. Decisions of points of order during a division.

Representatives no longer sit with their hats on (clause 5 of rule XVII) and always rise to speak; respectfully addressing their remarks to "Mr. Speaker" (clause 1 of rule XVII).

The voice of the majority decides; for the *lex majoris partis* is the law of all councils, elections, &c., where not otherwise expressly provided. *Hakew., 93.* *But if the House be equally divided, semper*

§ 508. Decision by voice of majority; and tie votes.

presumitur pro negante; that is, the former law is not to be changed but by a majority. *Towns., col. 134.*

The House provides also by rule (clause 1 of rule XX) that in the case of a tie vote the question shall be lost.

The House of Representatives, however, requires a two-thirds vote on a motion to suspend the rules (clause 1 of rule XV), on a motion to dispense with Calendar Wednesday (clause 7 of rule XV), on a motion to dispense with the call of the Private Calendar on the first Tuesday of each month (clause 5 of rule XV), and to consider a special rule immediately (clause 6 of rule XIII), and the Constitution of the United States requires two-thirds votes for the expulsion of a Member, passing vetoed bills, removing political disabilities, and passing joint resolutions proposing amendments to the Constitution.

The standing rules also require a three-fifths vote for passage or adoption of a bill, a joint resolution, an amendment thereto, or a conference report thereon, if carrying a Federal income tax rate increase (clause 5(b) of rule XXI) or for passage of a bill called from the Corrections Calendar (clause 6 of rule XV).

When from counting the House on a division it appears that there is not a quorum, the matter continues exactly in the state in which it was before the division, and must be resumed at that point on any future day. *2 Hats., 126.*

While under the rules first adopted in the 95th Congress it is not in order to make or entertain a point of no quorum unless the question has been put on the pending motion or proposition, if a quorum in fact does not respond on a call of the House or on a vote, even the most highly privileged business must terminate (IV, 2934; VI, 662) and even debate must stop until a quorum is established (see IV, 2935–2949). No motion is entertained in the absence of a quorum other than a motion relating to the call of the House or to adjourn (IV, 2950; VI, 680). Even in the closing hours of a Congress business has been stopped by the failure of a quorum (V, 6309; Oct. 18, 1972, p. 37199).

1606, May 1, on a question whether a Member having said yea may afterwards sit and change his opinion, a precedent

§ 511. Change of a vote.

was remembered by the Speaker, of Mr. Morris, attorney of the wards, in 39 *Eliz.*, who in like case changed his opinion. *Mem. in Hakew.*, 27.

The House is governed in this respect by the practice under clause 2 of rule XX.

SEC. XLII—TITLES

After the bill has passed, and not before, the title may be amended, and is to be fixed by a question; and the bill is then sent to the other House.

§ 512. Amendments to the title of a bill.

The House by clause 6 of rule XVI embodies this principle with an additional provision as to debate.

SEC XLIII.—RECONSIDERATION

1798, Jan. A bill on its second reading being amended, and on the question whether it shall be read a third time negatived, was restored by a decision to reconsider that question. Here the votes of negative and reconsideration, like positive and negative quantities in equation, destroy one another, and are as if they were expunged from the journals. Consequently the bill is open for amendment, just so far as it was the moment preceding the question for the third reading; that is to say, all parts of the bill are open for amendment except those on which votes have been already taken in its present stage. So, also, it may be recommitted.

§ 513. Early Senate practice as to reconsideration.

The rule permitting a reconsideration of a question affixing it to no limitation of time or circumstance, it may be asked whether there is no limitation? If, after the vote, the paper on