

C. H. A. M. S.

Mr. Speaker. On the 17th of August, 1917, I introduced in the House H. R. 6787. I wish to discuss this proposed measure and the rule of parliamentary practice upon which the provisions of the bill are based.

I.

Provisions of the bill and objects thereof.

In substance H. R. 5787 makes it unlawful for Senators and Representatives in Congress, and the heads of the Executive Departments of the Government, to purchase or own any bond or bonds issued under the Act approved April 24, 1917; authorizes the surrender and cancellation of any such bonds owned by Members of Congress or the heads of Departments; makes appropriation for carrying the Act into effect; and provides a penalty for violating any of the provisions of the Act.

In proposing this bill and in the discussion of the principles involved, I do not ascribe to myself virtues superior to my honorable colleagues in this House. Neither do I intend any reflection upon any Member of Congress nor upon the head of any member of the existing Cabinet.

The object of the bill is not to relieve any Member of Congress from any duty or burden which citizens generally are called upon to perform or to bear. Public officers, above all others, are under obligation to aid in the successful prosecution of the existing war to the very highest extent of their abilities. But the first duty of every public officer and especially of every Senator and Representative in Congress,

is to faithfully and efficiently perform the duties of his office. Members of Congress and the heads of the great Executive Departments of this Government, upon whom very largely rests the responsibility of directing the affairs of the government, in the hour of peril and danger, should not be handicapped or embarrassed in the discharge of their duties. It now seems certain that Congress will be called upon to act upon propositions which will affect the interest rate upon bonds issued under the Act approved April 24, 1917, the taxation of such bonds, and the privileges which shall be accorded. All of these things to a greater or lesser degree will affect the value of such bonds. The heads of the Executive Departments of the government will be called upon to make recommendations upon such proposed legislation. Under parliamentary ~~law~~ generally and under a specific rule of the House, Members of Congress are not allowed to vote upon a proposition in the event of which they possess a direct personal or pecuniary interest. For like reason it would be a breach of propriety for the head of any Executive Department to take an active interest in promoting, through recommendation or otherwise, legislation in the event of which he had a direct personal or pecuniary interest. In selling the first issue of bonds under the Act of April 24, 1917, a general appeal was made to all the citizens regardless of their position, occupation or financial condition, to purchase these bonds. No doubt Members of Congress as well as the members of the Cabinet responded to this call. According to newspaper reports the President himself purchased \$10,000 worth of these bonds. Other issues of these bonds are to be sold. The same appeal will be made. If Members of Congress do not again respond in the purchase of these bonds would they not be subject to criticism for failing to do their duty? On the other hand ~~with~~ with these bonds in their hands, might they not be subject to criticism in voting to enact any law from which

would increase the interest rate on these bonds or add to their value.



II.

CONDITIONS UNDER WHICH BONDS WERE ISSUED.

The bond Act approved April 24, 1917, authorizes the issue of \$7,000,000,000 in bonds. Section 1 of the Act limits the rate of interest on these bonds to "not exceeding three and one-half per centum per annum." Section 5 provides that "if any subsequent series of bonds shall be issued at a higher rate of interest before the termination of the war between the United States and the Imperial Government Government" any previous series of bonds issued under the Act may be convertible into bonds bearing the higher rate of interest.

According to press reports Congress will be called upon to authorize the issue of additional bond issue of \$4,000,000,000, making the total bond issue authorized at this session of Congress to be probably as high as \$11,000,000,000. It is said in the press that the Secretary of the Treasury will recommend that Congress shall authorize the new bond issue to bear a ~~five~~ per centum interest rate. There is a proposal ~~to make~~ the new bond issue taxable. It is safe to say that before this session of Congress adjourns the Members of the House and Senate will be called upon to enact legislation to increase the interest rate on the new bond issue which under Section 7 of the Act of April 24, 1917, will increase the interest rate upon the bonds sold in the first issue. Every Member of Congress who purchased any of the bonds under the first issue would have a direct personal and pecuniary interest in that legislation. I wish now to discuss the question as to whether or not under general parliamentary law and under the special rule of the House Members of Congress are disqualified from voting on such legislation.

III.

WHAT PERSONAL INTEREST, UNDER GENERAL PARLIAMENTARY
LAW, AND THE SPECIAL RULE OF THE HOUSE, DIS-
QUALIFIES A MEMBER FROM VOTING.

The English House of Lords has no rule which prohibits its members from voting upon a proposition in which they have a pecuniary or personal interest. The absence of a specific rule does not mean that the members of the upper House of the English Parliament vote upon proposition in which they are personally interested. That great legislative body simply preferred to practice the principle of the rule rather than to make a specific rule on the subject. The Senate of the United States appears to have followed the House of Lords of the English Parliament in this respect. The United States Senate has no specific rule prohibiting a Senator from voting upon a proposition in the event of which he has direct personal or pecuniary interest. Nevertheless the principle of the rule has been enforced in the Senate. This high legislative body follows the general rule of parliamentary law. This rule is laid down in Jefferson's Manual as follows:

"Where the private interests of a Member are concerned in a bill or question he is to withdraw. And where such an interest has appeared, his voice has been disallowed, even after a division. In a case so ~~contary~~, not only to the laws of decency, but to the fundamental principle of the social compact, which denies to any man to be a judge in his own cause, it is for the honor of the House that this rule of immemorial observance should be strictly adhered to."

On April 7, 1789, during the first session of the First Congress, the House of Representatives adopted a rule which provided that "No Member shall vote on any question in the event of which he is immediately and particularly interested." This rule stood in the above language for 108 years, when the 54th Congress modified the rule to the language which is now found in Rule 8 which provides, "Every Member shall vote on each question as put, unless he has direct personal or pecuniary interest in the event of such question." The language of the new rule is more specific, definite and certain.

It requires no construction. It needs no explanation. The language is plain and unmistakable in its meaning. Under it, a Member is not permitted to vote upon any question in which he has direct personal or pecuniary interest. Nevertheless the rule has been construed. And we must look to the interpretations put upon this rule by the various Speakers of the House to ascertain its force and meaning.

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The leading cases in the House of Representatives applicable to the question under discussion, are those cases in which a Representative's right to vote has been challenged on the ground that he was directly and pecuniary interested in legislation which affected certain corporations. These cases may be divided into two classes as follows:

1. Where a Member's right to vote was challenged because he was a stockholder in a single corporation;

2. Where a Member's right to vote was challenged because he was a stockholder in a single corporation when the legislation pending related to a class of corporations.

Under the first class it has been universally held that a Member under the rule was disqualified from voting.

On May 10, 1830 there was a resolution pending to prohibit the renewal of the charter of the bank of the United States two Members William Drayton of South Carolina, and Campbell P. White of New York, were excused from voting because they were interested as stockholders in the Bank of the United States. Hinds' Precedents, 5954, Vol. 5.

On March 2, 1877, Hon. Wm. P. Frye of Maine, under the ruling of Speaker Samuel J. Randal, declined to vote on a motion to suspend the rule in order to take up a bill to extend the time for the construction and completion of the Northern Pacific Railroad. Mr. Frye was a stockholder in the railroad and was excused from voting on the proposition by reason of his direct and pecuniary interest therein. Hinds' Precedents, 5950, Vol. 5.

On February 28, 1873, on a bill affecting the Central Pacific Railroad Mr. Samuel Hooker of Massachusetts, was held disqualified to vote on the question by reason of the fact that he was a stockholder in said road. The point was made in the Committee of the whole, and Henry L. Dawes of Massachusetts, Chairman of the Committee, said: "The Chair rules that no Member interested directly ~~is entitled to vote~~ in the effect of his vote is entitled to vote." However, the Committee arose on motion of

James A. Garfield, of Ohio, and submitted the question to the Speaker of the House, the Hon. James G. Blaine, who held that, "If a stockholder in a single railroad corporation as in this case, has his vote challenged it would be the duty of the Chair Precedents to hold x x x that he has no right to vote." Hinds' / Vol. 5, Sec. 5955

In the second class of cases, where pending legislation applies to a class of corporations, interest as a stockholder in a single corporation of the class affected does not disqualify Members.

On April 11, 1874, the House had under consideration a bill relating to National Banking and Currency. Mr. Robert M. Speer, a Member from Pennsylvania, challenged the right of Messrs. Poland of Vermont, and Hamilton and Phelps of New Jersey, to vote on the ground that they were stockholders of national banks. The Speaker, Hon. James G. Blaine, held that the alleged interest did not disqualify them. The Speaker asserted that,

"It has always been held that where legislation affected a class as distinct from individuals a Member might vote." Hinds' Precedents, Vol. 5, Sec. ~~5955~~ 5952.

On January 19, 1881, Speaker Samuel J. Randal held that John S. Newberry, a Member from Michigan, was not disqualified to vote on a proposition affecting national banks by reason of the fact that he was a stockholder and director in a national bank.

~~COMPENSATION TO SUBSCRIBERS~~~~TO THE LOYALTY LOAN~~ENGLISH RULE IN HOUSE OF COMMONS.

The question of the right of a Member of the House of Commons, in the English Parliament, to vote upon a proposition in which he was financially interested arose in 1797. William Pitt was Chancellor of the Exchequer, a loan of 18 million pounds sterling had been sold. The credit of the nation had become impaired. The bonds selling at 14 per cent. discount. The subscribers to the loan were in a position to lose money. Mr. Pitt as Chancellor of the Exchequer came forward with a motion to vote a bonus to the subscribers to the loan and an increased interest rate in order to compensate them for loss, through depreciation of the government's credit. The report of the debate on the motion of Mr. Pitt is found in Vol. 33, of the Parliamentary History of England, 1797-1798, pages 783 to 796, inclusive.

The loan was called the Loyalty Loan. We call our late loan the Liberty Loan, and the bonds, Liberty Bonds. The proposition presented by Mr. Pitt was earnestly opposed. Mr. Pitt argued that the subscribers to the loan had been actuated by patriotism; that they had come to the rescue of the country in time of need; that other loans had become necessary; which affected the credit of the nation; and that it was unwise public policy to compel a comparatively few persons to bear a burden that should fall upon the entire nation.

Among those who spoke against the measure were Messrs. Dent, Smith, Tierney, Jolliffe, Bastard, Sinclair, Sheridan and Russell. In the course of the discussion, it was pointed out, that a number of the Members of the House were subscribers to the loan, were directly interested, and were not therefore qualified to vote on the proposition.

Mr. Dundas, speaking on the point, declared, "That it must be left as a question of conscience and individual feeling." He said: "Although he was a subscriber to the amount of 10,000 pounds sterling he was above being influenced in his vote by a few hundreds."

Lord Russell said that "he thought nothing of the patriotism of these subscribers, if they accepted of the price which was now proposed to be given for it. Such patriotism would be patriotism bought to market, and knocked down by the hammer to the best bidder."

The Speaker was called upon to rule on the question as to whether or not a member of the House who was a subscriber to the Loyalty Loan was qualified to vote on the proposition.

In giving his opinion, the Speaker said:

"I have always understood the rule and practice of the House to be, that no member can regularly (subject to some qualification) vote on any question which involves in it an immediate interest of such member." x x x x "But when any measure is submitted to the House, the substance of which is to confer a pecuniary advantage, or diminish a loss, which is the same thing, I am satisfied it is not consistent with the mode of proceeding which the House has adopted on occasions of delicacy and importance, that any member should vote on a measure by which he intends to derive any benefit in case that measure should be carried into law." x x x "The only precedent that I have been able to find analogous to this case, is to be met with in 1664; when a member voted in a question in which he was directly interested, and his vote was disallowed afterwards on a division. If, therefore, any members vote upon a question which includes that species of interest in the opinion of the House, the House may afterwards disallow their votes. I must however add, that this applies to benefits which they expect and intend to derive. If members who may be

entitled to benefit shall say they do not intend to derive any, it will be for the House to judge whether they will allow their votes."

Mr. Windham, Secretary of War, disagreed with the Speaker and said:

"He knew no law that members should not subscribe to a loan. And why, being members, should they be precluded from voting for that loan? The true distinction he conceived to be this: the rule applied only where the private interest was great, and the public interest small; but in this case the private interest was small, and the public great, and therefore he would vote for the motion."

The Speaker re-stated the rule as follows:

"When a measure was to confer pecuniary advantage, or diminish pecuniary loss, no member who intended or expected to derive any benefit from it, could vote."

Mr. Ryder took issue with the Speaker and said:

"For instance, in all cases where a tax was to be laid on horses, dogs, coaches, and other articles, which members might be supposed to pay in a larger proportion than others, he thought, in strictness, the rule now laid down would operate so as to prevent a member from voting against any such tax."

In answer, the Speaker said:

"The cases put by the hon. member were all cases where the interest of members was merely eventual along with those of the rest of the community; the rule, as he had laid it down, according to the former decisions and practice of the House, related entirely to a direct and immediate interest, and he was clearly of opinion that members possessing such interest could not be allowed to vote where that interest interfered."

Mr. Pitt asked for a division on the resolution and that "the votes of those interested be disallowed if they did not disclaim that interest."

The resolution was carried by a vote of 36 to 35.

Mr. Tierney then moved that the vote of George Rose, Esq., be disallowed, asserting that Rose had not declared his intention of not accepting the benefits of the act. Mr. Rose arose and said "he had determined not to take any advantage of the measure, and had expressed that determination to his friends near him."

The question was then raised that it was too late to make that declaration after the division. In ruling on this point the Speaker said:

"The hon. member had formally disclaimed all intention of profiting by the measure, and therefore was qualified to give a vote. The Speaker was of the opinion, that any member declaring his resolution not to profit by the bonus, had a right to give his vote, whether that determination was expressed before or after the division."

This was what occurred in the House of Commons of the English Parliament in 1797, one hundred and twenty years ago. The case is clearly in point on the question before Congress at this time. The English Government had floated a loan of 18 million pounds. It was called the "Loyalty Loan;" the subscribers apparently had acted from patriotic motives; the credit of the nation was impaired; the government wanted to make a new loan; in order to aid in floating the new loan, the Chancellor of the Exchequer, Mr. Pitt, proposed a bonus to the subscribers with increased interest rate; members of the House of Commons, actuated by patriotic impulses had subscribed to this loan; the question was raised as to the right of such members to vote on the proposition; the question was thoroughly discussed. It was held that the members of the House of

Commons who were subscribers to the loan, were disqualified to vote, and that to entitle them to vote they must declare in the House that they would not take advantage of the act or accept any benefit therefrom.



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