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CONSTITUTIONAL LAW—CONGRESSIONAL COMMITTEES—QUORUM—Petitioner, having testified falsely before a committee of the House of Representatives, was convicted of perjury. On trial, petitioner contested the competency of the committee,¹ maintaining that a quorum must actually be present when the testimony is given. Evidence was offered tending to show that though there was a record quorum at the beginning of the meeting in question, this quorum was not maintained at the time petitioner testified.² The trial court agreed that presence of a quorum was essential, but charged, in effect, that this requirement is satisfied by a showing of a record quorum at the outset together with the fact that the point of "no quorum" was not raised. Petitioner appealed alleging error in the instruction, and the Court of Appeals for the District of Columbia affirmed.³ On certiorari to the United States Supreme Court, *held*, reversed. Evidence of absence of a quorum in a committee of the House of Representatives is not overcome by a presumption that a quorum once established continues. Chief Justice Vinson and Justices Jackson, Reed and Burton dissented. *Christoffel v. United States*, 338 U.S. 84, 69 S.Ct. 1447 (1949).

The power to determine its rules of procedure, together with rules for its committees, resides in each of the respective houses of Congress.⁴ The rather narrow question of the principal case—what is the rule of quorum in a committee of the House—would not seem to warrant the amount of discussion aroused by this decision. That a quorum must be present before a legislative body is competent to act, is a cardinal rule of parliamentary law.⁵ The absence of a quorum, when attention is drawn to that fact, terminates the power to transact business.⁶ There

¹ Every person who, having taken an oath or affirmation before a competent tribunal. . . ." D. C. Code (1940) tit. 22, §2501.

² Neither petitioner, nor any member of the committee raised the point of "no quorum" during the hearing. Principal case at 88 and 91.

³ (App. D.C. 1948) 171 F. (2d) 1004.

⁴ U.S. CONST., Art. I, §5: "Each House may determine the Rules of its Proceedings. . . ." See also *United States v. Smith*, 286 U.S. 6, 52 S.Ct. 475 (1932); *United States v. Ballin*, 144 U.S. 1, 12 S.Ct. 507 (1892).

⁵ JEFFERSON'S MANUAL OF PARLIAMENTARY PRACTICE §VI (1840) made applicable to House proceedings by the authority of Rule XI(2)(f) and Rule XLIII, 80th Cong., H. Doc. 769, 79th Cong., 2d sess., §§738, 938 (1947). See generally LUCE, LEGISLATIVE PROCEDURE, c. II (1922).

⁶ *Ibid*.

is, however, little authority to govern a situation, as was alleged to exist in the principal case, where, though the evidence shows the lack of a quorum, the committee was unaware of that fact.⁷ The House itself is governed by what appears to be a conclusive presumption that until the contrary is shown, a quorum is always present.⁸ In the committees, of course, a quorum must actually be present at the beginning of each meeting,⁹ but authority is divided as to whether such a presumption applies in any other way to the committees.¹⁰ The principal case, it is submitted, does little to resolve the issue, though the decision may induce Congress to clarify its rules. Limited by the facts, the case goes only so far as to say that if a presumption of continuing quorum does exist, it is not conclusive in the face of evidence to the contrary.¹¹ The language of the Court, however, seems to go beyond this to say that no quorum presumption attaches to a committee meeting.¹² If this latter represents the correct view, then in such a case as this the burden is upon the government to make a prima facie showing of quorum, and this burden is not satisfied by the record quorum existing at the outset. It is interesting to note that even this broad interpretation leaves undecided the effect of an entry in the record to the effect that a quorum was present at all times.

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⁷ Justice Jackson, in his dissent, suggests that petitioner should have raised the point of quorum in the original proceedings. (Principal case at 92). It is however, questionable whether any legal effect could be ascribed to a parliamentary objection by one not a member of the body. Such is the opinion of the majority (p. 88). See also JEFFERSON'S MANUAL OF PARLIAMENTARY PRACTICE §VI (1840).

⁸ 6 CANNON'S PRECEDENTS OF THE HOUSE OF REPRESENTATIVES §§565, 624 (1936). The lack of quorum may be disclosed by specific raising of that point or by a mere division of the House.

⁹ Legislative Reorganization Act of 1946, 60 Stat. 812, §133 (d); 8 CANNON'S PRECEDENTS OF THE HOUSE OF REPRESENTATIVES §2222 (1936).

¹⁰ The Speaker of the House has indicated that though a quorum must exist at the beginning of committee meetings, perhaps it need not be maintained unless the point is raised. 8 CANNON'S PRECEDENTS OF THE HOUSE OF REPRESENTATIVES §2222 (1936). The only decision found which was similar to the principal case turned on the question of actual presence of a quorum at the outset, but the Court charged the jury to the effect that subsequent absence of a quorum did not affect the competency of the committee when the question had not been raised in the committee. [United States v. Stewart, (Sup. Ct., D.C.) partially reported in 6 CANNON'S PRECEDENTS OF THE HOUSE OF REPRESENTATIVES §345 (1936)]. But see 8 CANNON'S PRECEDENTS OF THE HOUSE OF REPRESENTATIVES §2212 (1936) where the Speaker is quoted as ruling against the report of a bill on the ground that though no point of quorum had been raised in the committee, it had been shown that a quorum was not present when the bill was reported.

¹¹ The question of whether a presumption of quorum ever applies could be raised by a case in which the jury was allowed to find the defendant guilty though the only evidence of competency presented was the record showing a quorum at the beginning of the meeting.

¹² "The heart of this case is that by the charge that was given it the jury was allowed to assume that the conditions of competency were satisfied even though the basis in fact was not established. . . ." Principal case at 89.