

## HOUSE....No. 221.

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### Commonwealth of Massachusetts.

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HOUSE OF REPRESENTATIVES, April 1, 1862.

The Committee on the Judiciary to whom was referred the Order of the 10th inst., relative to the pay of Members of the House.

#### R E P O R T :

The precise question presented by the Order is, whether members of the House are entitled to pay for the time for which the House may have granted them leave of absence.

This depends on the construction of the provisions of the General Statutes, which, after enacting that each member of the Senate and House of Representatives shall receive three hundred dollars for the regular annual session for which he was elected, proceed to enact thus, "the treasurer or other person charged with the payment of the members shall deduct from the compensation of each member three dollars for each day that he has been absent, unless his absence shall have been excused by the House of which he is a member," (Chap. 2, § 14.)

Of course, it is not to be doubted that, if a member, having been absent, is *afterwards* excused, no deduction of pay is to be made for his absence.

And the only question is, whether the same rule applies, in case the member, previously to being absent, obtains leave of the House.

The Committee are of opinion that the legal intendment of the law, covers both cases alike; that the word "excuse" does not necessarily imply a subsequent act of the House, but applies equally to a previous one, as when a member being appointed to a committee, before serving, requests to be excused from serving on it; that whether the absence of the member be passed upon and approved before or after the fact, he is equally entitled to the benefit of the condition of the Act; and that the member is in all cases entitled to the stated compensation, unless he be absent from his seat in contempt and disregard of the rules of the House.

To this end, the rules of the House, modified to adapt them to this law at the time of its original enactment, (1858,) provide that, "no member shall be absent more than two days without leave or excuse of the House," (No. 28:) thus attributing the same force and effect to "leave" as to "excuse."

And if we look behind forms to the substance of things, it is obvious to see that the requisition of a prior application for leave is quite as effectual a check as wilful or capricious neglect of duty, as a subsequent application to be excused would be; and the only consequence of assuming that subsequent excuse, and that only, prevents deduction of pay, would be, that no member would apply for leave, but every one would absent himself without leave, and on returning present his excuse to the House.

Indeed, the more common practice has been, to report leave of absence after the absence; which practice confirms the general conclusion of the Committee.

All which is in behalf of the Committee respectfully submitted, by

C. CUSHING.