

South Africa—and acts to further the goals of political and economic development of Africa. It presently has a mission in New York. . . .

THE SPEAKER: The question is on the motion of the gentleman from Oregon (Mr. Ullman) that the House suspend the rules and pass the bill H.R. 8219.

The question was taken.

MR. [JOHN R.] RARICK [of Louisiana]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 340, nays 39, not voting 54, as follows: . . .

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Parliamentarian's Note: Although it did not directly “raise” revenue, the Senate bill clearly “affected” revenue, because it granted an immunity from taxation.

§ 19. Senate Action on Revenue Legislation

In addition to its mandate that the House originate all revenue bills, article I, section 7 of the Constitution⁽²⁾ authorizes the

2. See annotation following article I, section 7, *House Rules and Manual*.

Senate to propose or concur with amendments as on other bills. Senate authority to amend revenue bills is broad, but not unlimited. A principle frequently applied is that the Senate may substitute one kind of tax for a tax that the House has proposed, but may not impose a tax if one had not originally been proposed by the House. Thus, the Supreme Court has held that a Senate amendment which substituted a corporate tax in place of an inheritance tax which had been proposed in the original House version did not contravene the constitutional provision; for the bill had properly originated in the House as a revenue-raising measure and the Senate amendment could constitutionally be added thereto.⁽³⁾

In a similar case, the House without debate and by voice vote held that a Senate amendment in the nature of a substitute infringed upon the House prerogative and returned the bill, as amended, to the Senate.⁽⁴⁾ In this case, the substitute, which was offered to a House bill to amend the Railroad Retirement Act, sought to impose a tax.

On the other hand, as a further application of the above principle,

3. *Flint v Stone Tracy Co.*, 220 U.S. 107 (1911). See also *Rainey v United States*, 232 U.S. 310 (1914).

4. See § 15.8, *supra*.

the House tabled a resolution to return to the Senate a House excise tax bill, which the Senate had amended by provision for a general surtax.⁽⁵⁾

When the issue has been raised, the Senate has generally respected the House prerogative. Thus, the Senate rejected a committee amendment changing a definition in the Internal Revenue Code which was added to a Senate bill granting independence to the Philippine Islands.⁽⁶⁾ On another occasion, the Senate sustained a point of order that a Senate amendment affecting the Revenue Act, offered to a House bill directed to administrative purposes rather than raising revenue, infringed on the prerogative.⁽⁷⁾ Moreover, after the House returned a Senate bill to the Senate on the ground that certain tariff schedule amendments infringed upon the House prerogative, the Senate deleted the amendments.⁽⁸⁾ And the Senate has deleted amendments to the Internal Revenue Code that appeared in a Senate bill.⁽⁹⁾

5. See § 16.1, *supra*.

6. See § 19.3, *infra*.

7. See § 19.4, *infra*.

8. See § 19.5, *infra*.

9. See § 19.6, *infra*.

Constitutional Issue Submitted to Senate

§ 19.1 Because it requires interpretation of the Constitution rather than the rules of the Senate, an issue as to whether a Senate amendment to a House bill infringes upon the prerogative of the House to originate bills raising revenue is decided by the Senate, not the Chair.

On Mar. 28, 1935,⁽¹⁰⁾ a question of order as to the propriety of a Senate amendment to a House bill was submitted to the Senate.⁽¹¹⁾

The Senate resumed the consideration of the bill (H.R. 6359) to repeal certain provisions relating to publicity of certain statements of income.

THE VICE PRESIDENT:⁽¹²⁾ The question is on the amendment offered by the Senator from Wisconsin [Mr. La Follette].

The amendment offered by Mr. La Follette is after line 5 insert a new section reading as follows:

Sec. 2. (a) Section 11 of the Revenue Act of 1934, relating to the normal tax on individuals, is amended by striking out "4 percent" and inserting in lieu thereof "6 percent."

10. 79 CONG. REC. 4583, 4584, 4586, 4587, 74th Cong. 1st Sess.

11. See also 84 CONG. REC. 6339-49, 76th Cong. 1st Sess., May 31, 1939, for submission of a similar issue to the Senate.

12. John N. Garner (Tex.).

(b) Section 12(b) of the Revenue Act of 1934, relating to rates of surtax, is amended to read as follows:

“(b) Rates of surtax: There shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual a surtax as follows:

“Upon a surtax net income of \$4,000 there shall be no surtax; upon surtax net incomes in excess of \$4,000 and not in excess of \$8,000, 6 percent of such excess. . . .”

MR. [PAT] HARRISON [of Mississippi]: Mr. President, I make a point of order against the amendment offered by the Senator from Wisconsin. I do not think I formally made it yesterday, because the Senator from Wisconsin said he desired to make a brief statement. He made that statement yesterday afternoon, and I now make the point of order that the pending bill is not, in a strict sense, a revenue bill, and that for the Senate to attach a tax proposal to the bill at this time would be contrary to that provision of the Constitution requiring all bills for raising revenue to originate in the House of Representatives. . . .

THE VICE PRESIDENT: The point of order is well taken. The Chair is ready to rule.

The present occupant of the chair has at no time declined to construe the rules of the Senate; and if this were a matter of the rules of the Senate, he would not hesitate for a moment to express his opinion about it and make a ruling.

It seems to the Chair, however, that this is purely a constitutional question; and under the rulings and under the precedents for more than a hundred years, where constitutional questions are involved as to the right of the Sen-

ate to act, the Chair has universally submitted the question to the Senate.

The Chair thinks the logic of that rule is correct, the reasoning of it is good, because the Chair might undertake to interpret the Constitution when a majority of the Senators would have a different viewpoint. So the Chair is going to follow a long line of precedents and submit to the Senate the question whether or not it is constitutional for the Senate to propose this amendment; and it occurs to the Chair that the only question involved is, Is this a bill to raise revenue?

So the Chair is going to submit to the Senate of the United States the question as to whether or not the Senate, under the Constitution, has a right to propose this amendment.

MR. [WILLIAM E.] BORAH [of Idaho]: Mr. President, must that question be determined without debate?

MR. [HUEY P.] LONG [of Louisiana]: No: it is subject to debate.

THE VICE PRESIDENT: The point of order has been made by the Senator from Mississippi [Mr. Harrison] to the amendment of the Senator from Wisconsin [Mr. La Follette]. The question before the Senate is whether or not the point of order shall be sustained. That question is debatable.⁽¹⁵⁾

In connection with his ruling on the point of order made by the Senator from Mississippi, the Chair asks unanimous consent to insert in the Record some decisions and precedents prepared by the parliamentary clerk. Is there objection? The Chair hears none.

The matter referred to is as follows:

13. See also § 19.4, *infra*, for further debate on this question.

[FROM THE CONSTITUTION OF THE UNITED STATES, AS REVISED AND ANNOTATED, 1924]

ARTICLE I SECTION 7, CLAUSE 1,
REVENUE BILLS

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

“All bills for raising revenue.”

“The construction of this limitation is practically settled by the uniform action of Congress confining it to bills to levy taxes in the strict sense of the word, and it has not been understood to extend to bills for purposes which incidentally create revenue.”

U.S. v. Norton (91 U.S. 566) [1875].

Twin City Bank v. Nebeker (167 U.S. 196) [1897].

Millard v. Roberts (202 U.S. 429) [1906].

QUESTIONS INVOLVING CONSTITUTIONALITY OF BILLS ARE SUBMITTED TO SENATE

Wednesday, January 16, 1924

The Senate, in a call of the calendar under rule VIII, reached the bill (S. 120) to provide for a tax on motor vehicle fuels sold within the District of Columbia, and for other purposes.

Mr. McKellar made a point of order against the bill on the ground that it was a revenue measure and that under the Constitution of the United States all revenue-raising measures must originate in the House of Representatives, and that the bill had no place on the Senate Calendar.

The question was argued, and Mr. Lenroot made the contention that it was not the function of the Chair to

pass upon the question of whether bills are or are not in violation of the Constitution.

After further argument, the President pro tempore (Albert B. Cummins, of Iowa) made the following ruling:

“The Chair is of the opinion that he has no authority to declare a proposed act unconstitutional. The only precedent which the Chair has been able to find since the question arose was presented to the Senate in 1830, and the Vice President then in the chair ruled in accordance with the suggestion which the Chair has just made, holding that it was a question which must be submitted to the Senate and one which could not be ruled upon by the Chair, which entirely concurs with the views of the present occupant of the chair in the matter. The question before the Senate, therefore, is, Shall the point of order which is made by the Senator from Tennessee [Mr. McKellar], which is that the bill now under consideration is unconstitutional and should have originated in the House of Representatives, be sustained? [Putting the question.] The ayes have it, and the point of order is sustained. The bill will be indefinitely postponed.”

January 22, 1925⁽¹⁴⁾

The Senate had under consideration the bill (S. 3674) reclassifying the salaries of postmasters and employees of the Postal Service, readjusting their salaries and compensation on an equitable basis, increasing postal rates to provide for such readjustment, and for other purposes.

Pending debate,

14. The incident of Jan. 22, 1925, is discussed at 6 Cannon's Precedents §317.

Mr. Swanson raised a question of order, viz, that that portion of the bill dealing with increased postal rates proposed to raise revenue, and, under the Constitution, must originate in the House of Representatives, and was therefore in contravention of the Constitution.

The Presiding Officer (Mr. Jones of Washington) held that the Chair had no authority to pass upon the constitutionality of a bill, and submitted to the Senate the question, Shall the point of order be sustained?

On the following day the Senate, by a vote of 29 yeas to 50 nays, overruled the point of order.

The bill was subsequently passed and transmitted to the House of Representatives. On February 3 the House returned the bill to the Senate with the statement that it contravened the first clause of the seventh section of the first article of the Constitution and was an infringement of the privileges of the House.

The message and bill were referred to the Committee on Post Offices and Post Roads, and no further action taken. A House bill, H.R. 11444, of an identical title, was subsequently passed by both Houses and became a law. . . .

March 2, 1931⁽¹⁵⁾

Mr. Capper moved that the Senate proceed to the consideration of the bill (S. 5818) to regulate commerce between the United States and foreign countries in crude petroleum and all products of petroleum, including fuel

15. The incident of Mar. 2, 1931, is discussed at 6 Cannon's Precedents § 320.

oil, and to limit the importation thereof, and for other purposes.

Mr. Ashurst made the point of order that the bill was a revenue-raising measure, and, under the Constitution, should originate in the House of Representatives.

The Vice President submitted the point of order to the Senate.

Mr. Capper's motion was subsequently laid on the table, and the point of order was not passed upon.

December 17, 1932

The Senate had under consideration the bill (H.R. 7233) to enable the people of the Philippine Islands to adopt a constitution and provide a government for the Philippine Islands, to provide for the independence of the same, and for other purposes.

Mr. Dickinson offered an amendment imposing on imports of pearl buttons or shells, in excess of 800,000 gross in a year, the same rates of duty imposed on like articles imported from foreign countries.

Mr. Walsh of Montana raised a question of order, viz, that the amendment proposed to raise revenue and could not, under the Constitution, originate with the Senate.

The Vice President submitted to the Senate the question, Is the point of order well taken? and

It was determined in the affirmative.

Subsequently, Mr. Dickinson stated that the amendment above indicated was identical, except as to the commodity, with the language in the bill dealing with sugar and coconut oil; when

The President pro tempore ruled that in view of the language contained

in the House text, the amendment was in order.

After debate, and other proceedings, the following occurred:⁽¹⁶⁾

MR. HARRISON: Mr. President, I ask for a vote on the point of order raised by me.

THE PRESIDING OFFICER:⁽¹⁷⁾ The question is, Shall the Senate sustain the point of order raised by the Senator from Mississippi [Mr. Harrison] against the amendment proposed by the Senator from Wisconsin [Mr. La Follette] on the ground that it contravenes the constitutional provision? [Putting the question.] The "ayes" have it, and the point of order is sustained.

Committee Jurisdiction of Bill Incidentally Producing Revenue

§ 19.2 The Presiding Officer of the Senate held that the Senate Committee on Banking and Currency did not exceed its jurisdiction in reporting an original bill with a revenue-producing measure to amend the Internal Revenue Code therein, because that measure was incidental to the main purpose of the bill, making equity capital and long-term credit more readily available for small business concerns.

16. 79 CONG. REC. 4613, 74th Cong. 1st Sess.

17. Harry S Truman (Mo.).

On June 9, 1958,⁽¹⁸⁾ the Presiding Officer, William Proxmire, of Wisconsin, held that the Senate Committee on Banking and Currency did not exceed its jurisdiction in reporting S. 3651 with a revenue producing measure to amend the Internal Revenue Code, because that measure was incidental to the main purpose of the bill.⁽¹⁹⁾

MR. [JOHN J.] WILLIAMS [of Delaware]: Mr. President, I should like to have the attention of the chairman of the committee. The text of the bill, beginning on page 50, line 10, and extending to page 52, through line 17, embraces a proposed amendment to the Internal Revenue Code. I am wondering if the committee did not make a mistake when it placed this provision in the bill, because, in the first place, measures of such nature should be considered by the Senate Finance Committee. Secondly, revenue measures should originate in the House. . . .

Mr. President, I call attention to the fact that, under paragraph (d) of rule XXV, the Committee on Banking and Currency may not deal with any revenue-producing measure. . . .

I next invite the attention of the Senate to the fact that in this bill the attempt is not made to amend an ordinary House bill; nor even a bill which deals with a revenue-raising provision; nor a bill which had been reported by the Committee on Finance; nor one

18. See the proceedings at 104 CONG. REC. 10522-25, 85th Cong. 2d Sess.

19. *Id.* at pp. 10524, 10525.

which had been considered by the Committee on Ways and Means of the House. What is attempted is an amendment of the Revenue Code on a Senate bill which has been considered only by the Banking and Currency Committee. I shall make the point of order that the Committee on Banking and Currency has exceeded its jurisdiction, and this section of the bill should be stricken. . . .

MR. [FRANCIS H.] CASE of South Dakota: Mr. President the distinguished Senator from Delaware has raised a very important question. He has raised two questions, in fact. He has raised the question of a possible violation of the rule of the Senate with respect to the jurisdiction of the Committee on Banking and Currency in reporting the pending bill. He has also raised the constitutional question as to whether a bill carrying tax provisions must originate in the House of Representatives.

I should like to have the attention of the Parliamentarian while I am speaking on this point. The question first came up in 1955, when the Committee on Public Works was considering the interstate highway bill.

At that time I consulted the Parliamentarian as to whether the Committee on Public Works could report a bill which would raise revenue for the purpose of defraying the cost of the highway program, particularly the standard interstate program. The Parliamentarian called my attention to a decision [*Hubbard v Lowe* 226 F 135 (S.D.N.Y.), appeal dismissed, 242 U.S. 654 (1916)] in the so-called Cotton Futures Act, which held that a bill which had originated in the Senate, but which had a revenue item added to it in the House of Representatives.

The Supreme Court held that that act was not valid, because they could not go behind the number of the bill. Even though in that instance the revenue feature was added by the House of Representatives, the Supreme Court held that the origin of the bill was determined by the number it carried. That bill carried a Senate number. So the Supreme Court invalidated the Cotton Futures Act because section 7 of the Constitution provides that all bills for raising revenue shall originate in the House of Representatives.

On the basis of that Supreme Court ruling, which the Parliamentarian called to my attention, the Committee on Public Works decided that it should not risk the validity of the highway bill by reporting revenue features. In fact, in 1956, when the question of a highway act again was before the Senate, because the House had failed to pass a highway bill in 1955, the Committee on Public Works decided it would defer to the action of the House, and wait until a bill could come over from the House carrying revenue features or carrying a House bill number, so that we would not run into danger. The Committee on Public Works did not want to risk invalidating the proposed legislation by placing a Senate number on a bill which included revenue features.

Under that decision of the Supreme Court, cited to me by the Parliamentarian, I cannot understand why members of the Committee on Banking and Currency would want to risk the fate of this bill by having it continue to carry tax provisions. The Senator from Delaware [Mr. Williams] has already pointed them out. For emphasis, I invite the committee's attention to the

fact that section 308 specifically refers to the Internal Revenue Code of 1954 and then, in parentheses, reads: "relating to deduction of losses." It amends section 165 of the Internal Revenue Code relating to the deduction of losses.

Further, in section 308, subparagraph (c), there is an amendment of section 243 of the Internal Revenue Code, "relating to dividends received by corporations"

In other words, the language of the bill before us very clearly changes the Revenue Code, by changing the provisions which raise revenue and the provisions relating to deductions. Certainly it must be considered a bill to raise revenue or a bill to change the code relating to revenue. Based on the opinions which the Parliamentarian gave in 1955 and 1956, I do not see how this bill, S. 3651, could carry those provisions and still be considered a valid bill. . . .

MR. WILLIAMS. Mr. President, before I raise the question of constitutionality, my first point of order is that the committee exceeded its jurisdiction. It had no authority at all to report a bill dealing with the Revenue Code. Therefore, I make the point of order against that section of the bill on that basis.

The question is, Does the Senate Committee on Banking and Currency have jurisdiction to report measures relating to the Revenue Code? If they have such jurisdiction, other committees likewise have the jurisdiction to report similar bills.

I confine my point of order, first, to that phase of the question. . .

Mr. [J. WILLIAM] FULBRIGHT [of Arkansas]: Mr. President, in regard to

the point of order, it is my position and that of the committee that the revenue provision of the bill is strictly of a subsidiary and incidental nature to the main purpose of the bill itself; that this is a very common practice; and that the point of order is invalid.

THE PRESIDING OFFICER: The Chair has been informed by the Parliamentarian that in the case of *Millard v. Roberts* (202 U.S. 429) decided in 1906, the Supreme Court of the United States made a decision which has a bearing on the present situation.

In that case, a bill which had originated in the Senate provided for the construction of a Union Station in the District of Columbia, and contained a small incidental tax provision. The constitutionality of the bill was attacked on the ground that revenue bills must originate in the House.

The Court, after citing the case of *Twin City Bank v. Nebeker* (167 U.S. 203) [1897], which quoted Mr. Justice Story as holding that "revenue bills are those that levy taxes in the strict sense of the word, and are not bills for other purposes, which may incidentally create revenue," said, "here was no purpose, by the act or any of its provisions, to raise revenue to be applied in meeting the expenses or obligations of the Government."

That situation applies to the bill in question. The Committee on Banking and Currency has jurisdiction over the pending bill and may report some provisions incidental to carrying out the main purposes of the bill.

There are numerous precedents for the establishment of the Small Business Administration and the method of its financing, against which no point of

order was made when bills establishing those corporations or administrations similar in their financing were under consideration in the Senate.

This is the opinion of the Parliamentarian as given to the Chair. The Chair makes it his own opinion and, therefore, the Chair overrules the point of order.⁽²⁰⁾

Amendment to Senate Bill as Infringement

§ 19.3 The Senate rejected a committee amendment to a Senate bill granting independence to the Philippines, on the ground that the amendment invaded the prerogative of the House to originate bills to raise revenue.

On May 31, 1939,⁽²¹⁾ the Senate by a vote of yeas 8, nays 54, decided that a committee amendment to S. 2390 was out of order because it invaded the prerogative of the House to originate bills to raise revenue.

MR. [MILLARD E.] TYDINGS [of Maryland]: Mr. President, I ask unanimous consent for the immediate consideration of Senate bill 2390, to amend an act entitled "An act to provide for the complete independence of the Phil-

20. See § 19.6, *infra*, for a discussion of withdrawing revenue amendments from this bill.

21. 84 CONG. REC. 6331, 6339, 6348-50, 76th Cong. 1st Sess.

ippine Islands, to provide for the adoption of a constitution and a form of government for the Philippine Islands, and for other purposes." . . .

The next amendment was, on page 19, after line 23, to insert a new paragraph, as follows:

"(f) Subsection (a)(1) of section 2470 of the Internal Revenue Code (I.R.C., ch. 21, sec. 2470(a)(1)), is hereby amended by striking out the comma after the words 'coconut oil,' and inserting in lieu thereof the following: '(except coconut oil rendered unfit for use as food or for any but mechanical or manufacturing purposes as provided in paragraph 1732 of the Tariff Act of 1930), and upon the first domestic processing of.' "

MR. [TOM T.] CONNALLY [of Texas]: Mr. President, I make a point of order against the amendment.

THE PRESIDING OFFICER:⁽²²⁾ The Senator from Texas will state his point of order.

MR. CONNALLY: I make the point of order that the amendment proposed is a revenue measure, and, under the Constitution, must originate in the House of Representatives. If the Chair desires argument, I can make an argument; but it is so patent that I feel no argument is necessary.

THE PRESIDING OFFICER: The Chair will state to the Senator from Texas that the present occupant of the chair is always delighted to hear arguments from the Senator from Texas, but, under the long-established usage, practice and precedents of the Senate, a constitutional point is not decided by the Chair, but is submitted to the Senate, and the present occupant of the chair will follow that practice. . . .⁽¹⁾

22. Edwin C. Johnson (Colo.).

1. See § 19.1, *supra*, for a discussion of authorities supporting the principle

MR. [HIRAM W.] JOHNSON of California: Mr. President, I wish to fortify, if I can, the position of the Senator from Arizona. . . .

The latest edition of the Constitution of the United States of America, annotated—oh, it is a presumptuous thing to be referring to the Constitution here—contains notes under the various headings. I will read the notes for what they are worth. I shall not attempt to comment upon them in any way, shape, form, or manner. Other Senators can understand them as well as I can, although they may understand them differently:

Sec. 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

The note says:

All bills for raising revenue: The construction of this limitation is practically settled by the uniform action of Congress confining it to bills to levy taxes in the strict sense of the word, and it has not been understood to extend to bills having some other legitimate and well defined general purpose but which incidentally create revenue.

Under that particular text the following cases are cited: *United States v. Norton* (91 U.S. 566) [1875], *Twin City National Bank v. Nebeker* (167 U.S. 196) [1897], *Millard v. Roberts* (202 U.S. 429) [1906].

Amendments by Senate: It has been held within the power of the

that the Senate and not the Chair decides the constitutional question relating to the prerogative of the House.

Senate to remove from a revenue collection bill originating in the House a plan of inheritance taxation and substitute therefor a corporation tax.

The following cases are cited: *Flint v. Stone Tracy Co.* (220 U.S. 107) [1911], *Rainey v. United States* (232 U.S. 310) [1914].

That is all.

MR. CONNALLY: Mr. President, I have not had the opportunity to read the decisions cited by the Senator from California; but there is no difficulty in that regard. As I understand the rule and the precedents, the language of the Constitution provides that all bills for raising revenue shall originate in the House. However, the Senate, of course, may amend them. When a revenue bill comes to the Senate, the Senate is at liberty, if it desires, to adopt a new tax which is not even contained in the House bill, because it has complete legislative powers, except for the prohibition that it shall not originate the bill.

If the doctrine asserted by Senators on the floor is sound, then the Senate need never pay attention to the constitutional provision about revenue measures, because when any bill comes over from the House a Senator may offer on the floor of the Senate an amendment cutting down the taxation, as this bill does, and say that it does not raise any revenue, and is therefore in order. The bill immediately becomes subject to amendment, and another Senator may offer an amendment raising the revenue, or adding a new tax, thus rendering absolutely nugatory the constitutional provision.

There was a reason for the constitutional provision that revenue bills

should originate in the House. The theory was that the Members of the House of Representatives are representatives of the people, and that Senators are representatives of the States, formerly being elected by the legislatures of the States. The old theory, upon which the Revolution itself was founded, was that taxation without representation was cause for revolution. Therefore, the makers of the Constitution wisely provided that no tax should be laid upon the backs of the people unless their Representatives in the House of Representatives should propose the bill seeking to levy the tax; but the Constitution says that when that bill comes to the Senate the Senate may amend it, or change it, or do what it pleases with it, once the House has opened the door.

We have before us a bill which did not even originate in the House. The whole bill originated in the Senate. It is now proposed to take off a tax. It does not make any difference whether the bill raises or lowers the tax; it is still a revenue measure. It still relates to the revenue. I could offer in a moment an amendment raising the tax, instead of repealing the 3-cent tax, as is proposed. I could offer an amendment to make it 5 cents. Such an amendment would be in order. Then we should unquestionably have a bill raising revenue.

Mr. President, we ought not to adopt the pending amendment. I think everyone ought to know that it is violative of the spirit of comity, good will, and respect for the prerogatives of the two Houses. We ought not to add a revenue measure by a committee amendment.

. . .

THE PRESIDING OFFICER: To the committee amendment the Senator from

Texas raised the point of order that the committee amendment is itself a revenue measure and may not originate in the Senate. The question now occurs, Is the committee amendment in order? Those Senators who think it is in order will vote "aye"; those who think the point of order is well taken will vote "no."

MR. [ALBEN W.] BARKLEY [of Kentucky]: Mr. President, a parliamentary inquiry.

THE PRESIDING OFFICER: The Senator will state it.

MR. BARKLEY: Is not the question whether the point of order is well taken, on which those who believe it well taken will vote "aye"?

THE PRESIDING OFFICER: The present occupant of the chair will say that he entertains the same idea as that of the Senator from Kentucky, but he submitted the question to the Parliamentarian, and the Parliamentarian advised the occupant of the chair that the better practice is to submit the question, "Is the committee amendment in order?" Therefore, so that it may be understood, the Chair will repeat the question, Is the committee amendment in order? Those who think it is in order will vote "aye," and those who think it is not in order will vote "no". [Putting the question.] By the sound, the "noes" appear to have it.

MR. [CARL] HAYDEN [of Arizona]: Mr. President, I ask for a division.

Mr. Harrison, Mr. Barkley, and Mr. La Follette called for the yeas and nays.

The yeas and nays were ordered.

. . .

The result was announced—yeas 8, nays 54, as follows: . . .

So the Senate decided the committee amendment to be out of order.

Amendment to House Bill as Infringement

§ 19.4 The Senate sustained a point of order that a Senate amendment to a House bill to repeal certain provisions relating to publicity of certain statements of income invaded the constitutional prerogative of the House to originate revenue-raising bills.

On Mar. 28, 1935,⁽²⁾ the Senate by voice vote sustained a point of order that a Senate amendment to H.R. 6359 invaded the constitutional prerogative of the House to originate revenue-raising bills.

The Senate resumed the consideration of the bill (H.R. 6359) to repeal certain provisions relating to publicity of certain statements of income.

THE VICE PRESIDENT:⁽³⁾ The question is on the amendment offered by the Senator from Wisconsin [Mr. La Follette].

The amendment offered by Mr. La Follette is after line 5 insert a new section reading as follows:

Sec. 2. (a) Section 11 of the Revenue Act of 1934, relating to the normal tax on individuals, is amended by striking out "4 percent" and inserting in lieu thereof "6 percent."

2. 79 CONG. REC. 4583-87, 4613, 74th Cong. 1st Sess.

3. John N. Garner (Tex.).

(b) Section 12(b) of the Revenue Act of 1934, relating to rates of surtax, is amended to read as follows:

"(b) Rates of surtax: There shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual a surtax as follows:

"Upon a surtax net income of \$4,000 there shall be no surtax; upon surtax net incomes in excess of \$4,000 and not in excess of \$8,000, 6 percent of such excess. . . ."

MR. [PAT] HARRISON [of Mississippi]: Mr. President, I make a point of order against the amendment offered by the Senator from Wisconsin. I do not think I normally made it yesterday, because the Senator from Wisconsin said he desired to make a brief statement. He made that statement yesterday afternoon, and I now make the point of order that the pending bill is not, in a strict sense, a revenue bill, and that for the Senate to attach a tax proposal to the bill at this time would be contrary to that provision of the Constitution requiring all bills for raising revenue to originate in the House of Representatives. . . .

Mr. President, I was of the opinion that perhaps the question was so clear upon its face that it would require no argument to convince anyone that we would be violating precedents and not acting in accordance with the Constitution if we should attempt to write a revenue amendment upon a bill which seeks merely to repeal the "pink slip" provision of the law.

It will be noted that the title of House bill 6359 is "To repeal certain provisions relating to publicity of certain statements of income." Those provisions deal solely with administrative purposes and features of the existing

law; in no way, not by the wildest stretch of the imagination, can they be construed to affect the raising of revenue.

Mr. Story, in section 880 of his works on the Constitution, makes this statement with reference to the constitutional provision:

What bills are properly "bills for raising revenue", in the sense of the Constitution, has been matter of some discussion. A learned commentator supposes that every bill which indirectly or consequently may raise revenue is, within the sense of the Constitution, a revenue bill. He therefore thinks that the bills for establishing the post office and the mint, and regulating the value of foreign coin, belong to this class, and ought not to have originated—as in fact they did—in the Senate. But the principal construction of the Constitution has been against his opinion. And, indeed, the history of the origin of the power already suggested abundantly proves that it has been confined to bills to levy taxes in the strict sense of the words, and has not been understood to extend to bills for other purposes, which may incidentally create revenue. No one supposes that a bill to sell any of the public lands, or to sell public stock, is a bill to raise revenue, in the sense of the Constitution. Much less would a bill be so deemed which merely regulated the value of foreign or domestic coins, or authorized a discharge of insolvent debtors upon assignments of their estates to the United States, giving a priority of payment to the United States in cases of insolvency, although all of them might incidentally bring revenue into the Treasury.

In one of the most important cases decided by the courts of the United States, the case of *Twin City Bank v. Nebeker* (167 U.S. 202) [1897], the court said:

The case is not one that requires either an extended examination of precedents, or a full discussion as to the meaning of the words in the Constitution, "bills for raising revenue." What bills belong to that class is a question of such magnitude and importance that it is the part of wisdom not to attempt, by any general statement, to cover every possible phase of the subject. It is sufficient in the present case to say that an act of Congress providing a national currency secured by a pledge of bonds of the United States and which, in the furtherance of that object, and also to meet the expenses attending the execution of the act, imposed a tax on the notes in circulation of the banking associations organized under the statute, is clearly not a revenue bill which the Constitution declares must originate in the House of Representatives. Mr. Justice Story has well said that the practical construction of the Constitution and the history of the origin of the constitutional provision in question proves that revenue bills are those that levy taxes in the strict sense of the word, and are not bills for other purposes which may incidentally create revenue (1 Story on Constitution, sec. 880). The main purpose that Congress had in view was to provide a national currency based upon United States bonds, and to that end it was deemed wise to impose the tax in question.

Throughout the decisions the same construction of the constitutional provision has been given by the courts.

I desire to cite a few precedents relative to what has been done with reference to bills which originated in the House which were not revenue bills, upon which some revenue amendment was tacked by the Senate, and the House later refused to accept the amendment, returning the bill to the Senate.

In the Sixty-fourth Congress, second session, February, March 1917, the Senate added an amendment to the naval appropriation bill (H.R. 20632) authorizing the Secretary of the Treasury to borrow certain sums on the credit of the United States and to prepare and issue bonds therefor (proposed by Mr. Swanson).

The House, on March 2, 1917, returned the bill and amendment to the Senate with the statement that it contravened the first clause of section 7 of article I of the Constitution and was an infringement of the privileges of the House.

The Senate subsequently reconsidered the vote on the passage and engrossment of the bill and amendments, and a motion was agreed to whereby the amendment providing for the bond issue was stricken from the bill. . . .

On June 30, 1864,⁽⁴⁾ the bill (H.R. 549) further to regulate and provide for the enrolling and calling out of the national forces was passed by the Senate with an amendment, among others, providing for a 5-percent duty on incomes. The House ordered the bill returned to the Senate with the statement that the amendment in question contravened the first clause of section 7 of article I of the Constitution and was an infringement of the privileges of the House.

The Senate on the same day reconsidered the bill and eliminated the objectionable amendment.

Mr. President, so it goes on down the line. I submit that the bill now before us, which deals solely with the repeal of an administrative provision of law,

namely, the pink-slip provision, affects in no way the revenues of the Government.

Mr. Justice Story and the courts say a bill must go further than incidentally to affect the revenues of the Government and must deal directly with the revenues before the Senate may take cognizance to the extent of adding revenue provisions.

It seems to me it is without question that the Senate ought to sustain the point of order, if submitted, or, if the Chair desires to rule without submitting the question to the Senate, he should sustain the point of order. Certainly the Senate of the United States ought not to assume, in view of the provision of the Constitution to which I have invited attention, the privilege and the right of writing a revenue bill in this way.

Sooner or later at the present session of Congress we may be forced to consider a revenue bill which might have a tendency to increase taxes or to extend the application of those taxes which by operation of law would otherwise lapse on June 30. Certainly, when that time comes the House ought to be given its privilege and right, which it has always exercised, to construct its own revenue bill without the Senate assuming in the beginning to write a revenue bill and send it to the House. I think the House would have just cause to feel it was an abuse of their privilege, and, so far as I am concerned, I am not willing to go that far. Therefore, I have made the point of order. . . .

THE VICE PRESIDENT: The point of order is well taken. The Chair is ready to rule.

4. This instance is discussed at 2 Hinds' Precedents § 1486.

The present occupant of the chair has at no time declined to construe the rules of the Senate; and if this were a matter of the rules of the Senate, he would not hesitate for a moment to express his opinion about it and make a ruling. . . .⁽⁵⁾

The . . . Chair is going to follow a long line of precedents and submit to the Senate the question whether or not it is constitutional for the Senate to propose this amendment; and it occurs to the Chair that the only question involved is, Is this a bill to raise revenue? . . .

MR. [WILLIAM E.] BORAH [of Idaho]: Mr. President, must that question be determined without debate?

MR. [HUEY P.] LONG [of Louisiana]: No; it is subject to debate.

After debate, and other proceedings, the following occurred:

MR. HARRISON: Mr. President, I ask for a vote on the point of order raised by me.

THE PRESIDING OFFICER:⁽⁶⁾ The question is, Shall the Senate sustain the point of order raised by the Senator from Mississippi [Mr. Harrison] against the amendment proposed by the Senator from Wisconsin [Mr. La Follette] on the ground that it contravenes the constitutional provision? [Putting the question.] The "ayes" have it, and the point of order is sustained.

Deletion of Tariff Schedule Amendments

§ 19.5 After the House returned a Senate bill con-

5. See §19.1, supra, for the full text of the ruling regarding the submission of the question for decision by the Senate on constitutional issues.
6. Harry S Truman (Mo.).

taining a provision which infringed upon the constitutional power of the House to originate revenue measures, the Senate, by unanimous consent, reconsidered the vote by which the bill had passed, adopted an amendment deleting the objectionable provision, and then passed the bill as so amended.

On May 4, 1971,⁽⁷⁾ the Senate reconsidered the vote on S. 860, deleted title 4, a tariff schedule which contravened the prerogatives of the House, and passed the bill as so amended.

MR. [MICHAEL J.] MANSFIELD [of Montana]: Mr. President, I ask that the Chair lay before the Senate a message from the House on S. 860.

The President pro tempore laid before the Senate a message from the House of Representatives that the bill of the Senate (S. 860) relating to the Trust Territory of the Pacific Islands in the opinion of this House contravenes the first clause of the seventh section of the first article of the Constitution of the United States, and is an infringement of the privileges of this House, and that the said bill be respectfully returned to the Senate with a message communicating this resolution.⁽⁸⁾

MR. MANSFIELD: Mr. President, I ask unanimous consent that the Senate re-

7. 117 CONG. REC. 13273, 92d Cong 1st Sess.
8. See §15.6, supra, for House disposition of this matter.

consider the vote by which S. 860 was passed, together with third reading.

THE PRESIDENT PRO TEMPORE:⁽⁹⁾ Is there objection? Without objection, it is so ordered. The bill is open to amendment.

MR. MANSFIELD: Mr. President, I send to the desk an amendment to strike title 4 of the bill.

THE PRESIDENT PRO TEMPORE: The amendment will be stated.

The amendment was read, as follows:

Beginning on page 15, line 1, strike all language through line 10, page 17.

THE PRESIDENT PRO TEMPORE: The question is on agreeing to the amendment of the Senator from Montana (Mr. Mansfield).

The amendment was agreed to.

THE PRESIDENT PRO TEMPORE: The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 860) was ordered to be engrossed for a third reading, was read the third time, and passed.

Withdrawal of Internal Revenue Code Amendments

§ 19.6 Amendments to the Internal Revenue Code, incorporated in a Senate bill designed to make equity capital and long-term credit more readily available for small business concerns, were on motion deleted from the bill during debate.

9. Allen J. Ellender (La.).

On June 9, 1958,⁽¹⁰⁾ the Chairman of the Committee on Banking and Currency, J. William Fulbright, of Arkansas, moved to delete proposed amendments to the Internal Revenue Code from S. 3651, a bill to make equity capital and long-term credit more readily available for small business concerns.

MR. [JOHN J.] WILLIAMS [of Delaware]: I now make the point of order on the ground that it is not constitutional for the Senate to originate revenue measures. Certainly this point of order should be sustained. I suggest the absence of a quorum.

The clerk proceeded to call the roll.

THE PRESIDING OFFICER:⁽¹¹⁾ A quorum is present. The Senator from Delaware has raised a point of order that the bill is not constitutional in its tax provision at page 50. . . .

. . . Does the Senator from Delaware wish to make an observation?

MR. WILLIAMS: I understand the Committee on Banking and Currency has decided that it will withdraw the disputed section of the bill, and strike it out. With that understanding I withdraw my point of order.

MR. [HOMER E.] CAPEHART [of Indiana]: Mr. President, will the Senator yield?

MR. WILLIAMS: I yield.

MR. CAPEHART: As I understand, the Senator from Delaware is withdrawing his point of order, with the under-

10. 104 CONG. REC. 10525-27, 85th Cong. 2d Sess. See also § 19.2, *supra*, for a precedent relating to committee jurisdiction of this bill.

11. William Proxmire (Wis.).

standing that the complete section will be taken out. . . .

MR. WILLIAMS: Mr. President, I withdraw the point of order. . . .

THE PRESIDING OFFICER: Will the Senator from Arkansas inform the Chair how much of the language he wishes to have stricken? . . .

MR. FULBRIGHT: All the tax provisions which are involved in this matter are included in section 308, beginning at page 50, and continuing to section 309. That is the part which, as the manager of the bill, I ask to have stricken.

MR. [JOSEPH S.] CLARK [of Pennsylvania]: And that the subsequent sections be renumbered.

MR. FULBRIGHT: Yes. . . .

THE PRESIDING OFFICER: The question is on agreeing to the motion of the Senator from Arkansas [Mr. Fulbright] to strike out section 308, beginning in line 10, on page 50, and down to and including line 17, on page 52.

The motion was agreed to.

Parliamentarian's Note: The portion of the bill, relating to the Internal Revenue Code, which was stricken by the Senate, was as follows:

TAX PROVISIONS

Sec. 308. (a) Section 165 of the Internal Revenue Code of 1954 (relating to deduction for losses) is amended by adding at the end of subsection (h) the following new paragraphs:

"(3) For special rule for losses on stock in a small business investment company, see section 1242.

"(4) For special rule for losses of a small business investment company, see section 1243."

(b) Subchapter P of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new sections:

"Sec. 1242. Losses on small business investment company stock.

"In the case of a taxpayer if—

"(1) A loss is on stock in a small business investment company operating under the Small Business Investment Act of 1958, and

"(2) Such loss would (but for this section) be treated as a loss from the sale or exchange of a capital asset, then such loss shall be treated as a loss from the sale or exchange of an asset which is not a capital asset.

"Sec. 1243. Loss of small business investment company.

"In the case of a small business investment company, if—

"(1) A loss is on convertible debentures (including stock received pursuant to the conversion privilege) acquired pursuant to section 304 of the Small Business Investment Act of 1958, and

"(2) Such loss would (but for this section) be treated as a loss from the sale or exchange of a capital asset, then such loss shall be treated as a loss from the sale or exchange of an asset which is not a capital asset."

(c) Section 243 of the Internal Revenue Code of 1954 (relating to dividends received by corporations) is amended as follows:

(1) by striking from subsection (a) the following language "In the case of a corporation" and inserting in lieu thereof the following language "In the case of a corporation (other than a small business investment company operating under the Small Business Investment Act of 1958)".

(2) By adding at the end thereof the following new subsection:

“(c) Small business investment company. In the case of a small business investment company, there shall be allowed as a deduction an amount equal to 100 percent of the amount received as dividends (other than dividends described in paragraph (1) of section 244, relating to dividends on preferred stock of a public utility) from a domestic corporation which is subject to taxation under this chapter.”

(d) Section 246(b)(1) of the Internal Revenue Code of 1954 (relating to limitation on aggregate amount of deductions for dividends received) is amended by striking “243” wherever appearing and inserting in lieu thereof “243 (a) and (b)”.

§ 20. Authority to Make Appropriations

The precedents in this section relate to the efforts of the Senate to originate appropriation measures.⁽¹²⁾ Mr. Clarence Cannon has observed:⁽¹³⁾

Under immemorial custom the general appropriation bills, providing for a number of subjects⁽¹⁴⁾ as distinguished from special bills appropriating for single, specific purposes,⁽¹⁵⁾ originate in

12. See 2 Hinds' Precedents §§ 1500, 1501; and 6 Cannon's Precedents §§ 319–322, for earlier precedents.
13. Cannon's Procedure (1959) p. 20.
14. 4 Hinds' Precedents §§ 3566–3568.
15. Cannon's Precedents § 2285.

the House of Representatives and there has been no deviation from that practice since the establishment of the Constitution.

Following the view expressed by Mr. Cannon, the House has returned Senate-passed general appropriation bills.⁽¹⁶⁾

The Senate has not always accepted the view that the House has the exclusive right to originate appropriation measures.⁽¹⁷⁾

Resolution Regarding Authority to appropriate

§ 20.1 The Senate has adopted a resolution asserting that the power to originate appropriation bills is not exclusively in the House of Representatives but is shared by the Senate, and suggesting that an appropriate commission be established to study article I, section 7, clause 1, of the Constitution.

On Oct. 13, 1962,⁽¹⁸⁾ the Senate by voice vote agreed to Senate Resolution 414, asserting the

16. See § 20.3, *infra*.

17. See § 20.1, *infra*. See also Authority of the Senate to Originate Appropriation Bills, S. Doc. No. 17, 88th Cong. 1st Sess., Apr. 30, 1963.

18. 108 CONG. REC. 23470, 87th Cong. 2d Sess.