

Chapter XCVII.

LEGISLATION IN GENERAL APPROPRIATION BILLS.

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3810. A provision changing existing law is not in order in any general appropriation bill.—Section 2 of Rule XXI⁵ provides:

* * * Nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto.

3811. The House established many years ago the practice of striking out of an appropriation bill in Committee of the Whole such portions as contained legislation—On February 15, 1842,⁶ the House voted that the Committee of the Whole on the state of the Union, to which had been referred the civil and diplomatic appropriation bill (H. R. 74), be instructed to strike out every clause or item of appropriation which was not authorized by existing laws.

On February 18,⁷ in Committee of the Whole, a question was raised as to the execution of the order, and the Chairman⁸ said that the bill would be read by

¹ Reserving points of order as to legislation. Sections 6921–6926 of Vol. V.

² See also section 3862 of this volume.

³ See also section 3761 of this volume.

⁴ See also section 5230 of Vol. V.

⁵ For full form and history of this rule see section 3578 of this volume.

⁶ Second session Twenty-seventh Congress, Journal, p. 404; Globe, p. 239.

⁷ Globe, p. 251.

⁸ George N. Briggs, of Massachusetts, Chairman.

clauses, and when any of the items referred to by the instructions should be reached, they would be stricken out.

On April 28,¹ the bill having been reported from committee, and the question before the House being on concurring with the Committee of the Whole in striking out one of the items of the bill included within the instructions,² Mr. Nathan Clifford, of Maine, made the point of order that as the item was stricken out without examination or debate, it was not competent for the House to reinstate it until the instruction had been repealed or the section had been considered in Committee of the Whole. Mr. Clifford gave six reasons in support of his point of order: That the House and not the committee had directed the clause to be stricken out; because it would operate as a fraud on the right of free discussion in the committee; because the clause was no part of the bill reported from the committee, having been stricken out by order of the committee; because it was in violation of the rule of the House requiring appropriations to be considered in Committee of the Whole; because it would compel the House to vote on large appropriations under the operation of the previous question, which had never been examined or discussed in Committee of the Whole; because the question, if put, would be whether the House would concur in its own order, which would be unparliamentary.

The Speaker³ overruled the point of order made by Mr. Clifford.

Mr. Clifford having appealed, the appeal was laid on the table, yeas 86, nays 75.

3812. The enactment of positive law where none exists is construed as a “provision changing existing law” such as is forbidden in an appropriation bill.—On February 4, 1896,⁴ the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and Mr. Henry M. Baker, of New Hampshire, offered this amendment:

For the support and medical treatment of medical and surgical patients who are destitute in the city of Washington, under a contract to be made with the Providence Hospital by the Surgeon-General of the Army, \$15,000.

For Garfield Memorial Hospital—for maintenance to enable it to provide medical and surgical treatment to persons unable to pay therefor, \$15,000.

Mr. Franklin Bartlett, of New York, made the point of order that this would be a change of existing law.

After debate the Chairman⁵ ruled:

In the opinion of the Chair, it is no answer to a point of order that the amendment changes existing law to say there is at present no statute law upon the subject. In the absence of statute law there is still a rule established by custom. That is the law, and any proposition which enacts positive law is a change of existing law in that respect. The enactments of law where none now exists is a change of existing law. It is acknowledged by the mover of this amendment that it does enact positive law where none now exists, and in that it changes existing law; and the point of order is sustained.

3813. On January 31, 1893,⁶ the House was in Committee of the Whole House on the state of the Union considering the sundry civil appropriation bill.

¹Journal, p. 725; Globe, p. 433.

²Under the present practice portions of a bill in violation of existing law are ruled out by the Chairman, are not reported when the committee rises, and the House takes no action in regard to them.

³John White, of Kentucky, Speaker.

⁴First session Fifty-fourth Congress, Record, p. 1306.

⁵Sereno E. Payne, of New York, Chairman.

⁶Second session Fifty-second Congress, Record, p. 1020.

Mr. Newton M. Curtis, of New York, offered an amendment to provide that in the awarding of contracts for materials purchased by the Government, "when the home material or product is equal in quality, is offered at an equal or lower price, the preference shall be given to the home article,"

Mr. Charles Tracey, of New York, made the point of order that the amendment changed existing law and did not retrench expenditures.¹

It was argued that the amendment was simply a limitation upon expenditures; but the Chairman² ruled:

The Chair thinks that if this is not a change of old law, it at least makes a new law, which is certainly a change of law. Therefore the Chair sustains the point of order.

3814. A paragraph in an appropriation bill reenacting verbatim an existing law is not subject to a point of order.—On February 5, 1904,³ the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Morris Shepherd, of Texas, proposed the following amendment:

Provided, That the purchase and distribution of seeds and plants by the Department of Agriculture shall be confined to such seeds as are rare, untried, and uncommon to the country, or such as can be or have been made more useful and more profitable by special breeding, or such seeds and plants as may be improved by transplantation from one part of the country to another.

Mr. Sydney J. Bowie, of Alabama, made a point of order that the proposed amendment involved legislation.

After debate, the Chairman⁴ said:

The Chair is ready to rule upon this amendment. If the Chair has made no mistake, it is a verbatim copy of the law as it now exists. That being the case, it has been held that while it is unnecessary and perhaps almost not good form, yet is not strictly subject to a point of order. It is simply reenacting a portion of the United States statutes.

3815. On March 8, 1906,⁵ the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

That no purchase of supplies for which appropriations are herein made, exceeding in the aggregate \$500 in value at any one time, shall be made without first giving at least three weeks' public notice by advertisement, except in case of exigency, when, in the discretion of the Secretary of the Interior, who shall make official record of the facts constituting the exigency, and shall report the same to Congress at its next session, he may direct that purchases may be made in open market in amount not exceeding \$3,000 at any one purchase: *Provided*, That supplies may be purchased, contracts let, and labor employed for the construction of artesian wells, ditches, and other works for irrigation, in the discretion of the Secretary of the Interior, without advertising as hereinbefore provided: *Provided further*, That as far as practicable Indian labor shall be employed and purchase in the open market made from Indians, under the direction of the Secretary of the Interior.

Mr. Edgar D. Crumpacker, of Indiana, made the point of order that the provisos embodied legislation.

¹The form of the rule (see sec. 3578 of this work) at the time this precedent was made permitted legislation which would retrench expenditures.

²Rufus E. Lester, of Georgia, Chairman.

³Second session Fifty-eighth Congress, Record, p. 1687.

⁴Llewellyn Powers, of Maine, Chairman.

⁵First session Fifty-ninth Congress, Record, p. 3541.

Mr. James S. Sherman, of New York, stated that the provisos in this language exactly had been carried in several previous appropriation bills.

Mr. Crumpacker said:

The point I make is that each appropriation bill, in so far as it contains such provisions as this constitutes the law for the fiscal year for which that appropriation obtains and no more. * * * I understand the rule to be that the fact that a provision is contained in a succession of appropriation bills does not constitute law in the sense of the rules of the House.

The Chairman¹ said:

The Chair would state to the gentleman from Indiana that that is the opinion of the Chair in ordinary cases, but legislation can be enacted in an appropriation bill, and the Chair think that if this provision was carried in the last appropriation bill it would not be necessary in this bill at all; that it is existing law; and the Chair overrules the point of order.

3816. A paragraph in an appropriation bill reenacting a permanent provision of law may not be amended.—On January 15, 1902,² the Committee of the Whole House on the state of the Union was considering the bill (H. R. 8581) “making appropriations for pensions, and for other purposes,” when a paragraph was read providing for the fees of examining surgeons, with certain stipulations in the form of legislation prescribing the duties and rates of compensation of such surgeons.

To this paragraph Mr. William A. Calderhead, of Kansas, offered an amendment still further defining the duties of the said surgeons.

Mr. Samuel S. Barney, of Wisconsin, made a point of order against the amendment.

After debate, the Chairman³ held:

The Chair has examined the last general appropriation bill and is informed that several previous appropriation bills are in the same form. It is sufficient, however, for us to go back to the last appropriation bill, which is in the exact language of the present bill, and which appropriates a given sum of money to be paid out as now authorized by law, and then unnecessarily recites what the law in fact now is. It copies the existing law verbatim; it neither enlarges nor amends it. Therefore it is immaterial whether this provision is in the bill or out of it. It is existing law, and is not affected by this bill, because the language is copied word for word from the existing law.

The proposed amendment would change existing law, and would do so to the same extent whether that law were quoted in the bill or omitted. The bill does not change existing law; the amendment offered by the gentleman from Kansas proposes to make such a change, and is therefore subject to a point of order. The Chair sustains the point of order.

3817. An existing law being repeated verbatim in an appropriation bill, the slightest change, as substituting “may” for “shall,” is out of order.—On March 21, 1890,⁴ the House was in Committee of the Whole House on the state of the Union, considering the pension appropriation bill, when an amendment was proposed to strike out the word “may” and insert “shall”, so that the paragraph might read: “The accrued pension due on said certificate to the date of the death of said pensioner shall be paid to the legal representatives of said pensioner.”

¹ Frank D. Currier, of New Hampshire, Chairman.

² First session Fifty-seventh Congress, Record, pp. 704, 705.

³ John F. Lacey, of Iowa, Chairman.

⁴ First session Fifty-first Congress, Record, p. 2493.

The point of order being made, and the debate having developed the fact that the language of the paragraph was precisely the language of the existing statute, the Chairman¹ sustained the point of order.

3818. Instance wherein the Committee of the Whole struck out a paragraph for the reenactment of a provision already permanent law.—On April 30, 1906,² the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

PENALTY FOR COUNTERFEITING FORECASTS.

Any person who shall knowingly issue or publish any counterfeit weather forecasts or warnings of weather conditions, falsely representing such forecasts or warnings to have been issued by the Weather Bureau or other branch of the Government service, or shall molest or interfere with any weather or storm flag or weather map or bulletin displayed or issued by the United States Weather Bureau, shall be deemed guilty of a misdemeanor, and on conviction thereof, for each offense, be fined in a sum not exceeding \$500 or be imprisoned not to exceed ninety days, or be both fined and imprisoned, in the discretion of the court.

Mr. Edgar D. Crumpacker, of Indiana, said:

I move to strike out the paragraph just read. I see no objection to the paragraph except that it is already permanent law. It was enacted into law, I think, on an agricultural appropriation bill several years ago, and it has been continued and carried in the annual appropriation bill from time to time, and it does not add anything to the force or the efficiency of the penal provision to keep repeating it in every agricultural appropriation bill. * * * There is nothing better settled under the rules of the House and the decisions of the Chair than that a provision in a general appropriation bill that is general in its character and continuing or permanent in its nature is as much law and as much permanent law as if enacted independently. I made the motion, not that I am especially interested in the matter, but to call the attention of the gentlemen who are on this important committee to the fact that it does not add anything to the law and requires the Government to pay a few dollars every year for the printing of this unnecessary and superfluous paragraph. We had about as well include all the penal statutes in a general appropriation bill, so as to remind Congress and the country once a year at least that there are penalties for violating the law. That is the only good I can see it can possibly serve.

After debate, the motion was agreed to.

3819. A proposition which would in effect change a rule of the House was held to be a change of existing law and not in order on an appropriation bill.

Effect of a provision of law as related to the constitutional right of the House to choose its own officers.

On June 11, 1886,³ the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read the following paragraphs relating to employees in the office of Doorkeeper:

For one employee (John T. Chancey), \$1,500.

And also the following:

Assistant Doorkeeper (George A. Bacon), to be employed in the document room, \$2,000.

Mr. Eustace Gibson, of West Virginia, made the point of order that employees might not thus be designated on an appropriation bill.

¹ Julius C. Burrows, of Michigan, Chairman.

² First session Fifty-ninth Congress, Record, pp. 6140, 6141.

³ First session Forty-ninth Congress, Record, pp. 5572–5575.

After debate, the Chairman¹ said:

The Constitution gives to each House the right to select its own officers. The rules of this House prescribe the mode of choosing its officers here designated, to wit: The Doorkeeper shall designate his subordinates. It is done by virtue of the Constitution and has the full force of law, which will be disputed nowhere. Therefore the Chair thinks it is not in order to attempt on an appropriation bill to change a rule of this House. There is a way of changing the rule, and only one, which is in order. Rule XVIII prescribes * * *

It has been shown that Mr. Bacon, for instance, might be designated in this way by virtue of the following resolution adopted by the House in 1881:

Resolved, That George A. Bacon be authorized to act as a Second Assistant Doorkeeper of the House of Representatives, and to receive the same pay as the present Assistant Doorkeeper of the House, until further orders."

The Chair can not understand that in any other way than as related to that House. It can not be believed the purpose of the resolution was to be perpetuated in other Houses in violation of the Constitution providing each House shall appoint its own officers.

The Chair therefore sustains the point of order on all portions of the pending paragraph against which it was made in designation of names of those who are to hold the positions for which appropriations are made.

3820. The creation of an investigating committee to examine a Department of the Government was held not to be in order on an appropriation bill.

The Committee of the Whole declined to heed an appeal that it overrule its Chairman in order to place legislation urged as desirable on an appropriation bill.

On March 24, 1904,² the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

For salaries of clerks and laborers at division headquarters, miscellaneous expenses at division headquarters, traveling expenses of inspectors without per diem, and of inspectors in charge, expenses incurred by field inspectors not covered by per them allowance, and traveling expenses of the Fourth Assistant Postmaster-General and chief post-office inspector, \$85,000: *Provided*, That of the amount herein appropriated not to exceed \$2,000 may be expended, in the discretion of the Postmaster-General, for the purpose of securing information concerning violations of the postal laws, and for services and information looking toward the apprehension of criminals.

To this Mr. John S. Williams, of Mississippi, offered the following amendments:

On page 22, line 20, strike out "\$85,000" and insert "\$112,000."

On page 22, in line 21, after the word "exceed," strike out the following: "\$2,000 may be expended, in the discretion of the Postmaster-General," and insert "\$17,000 shall be expended, or so much thereof as may be necessary, by the Postmaster-General."

After the word "criminals," in line 25 on page 22, add the following: "*Provided further*, That the Postmaster-General shall expend said sum of money, or so much thereof as is necessary, in the payment of clerks, stenographers, accountants, and detectives, and for other necessary expenses for the purpose of securing information concerning the violation of the postal laws and for services and information looking toward the apprehension of criminals guilty of crimes committed in or in connection with the Post-Office Department. The examination of all witnesses, records, and accounts for this purpose shall be conducted before a select committee of eight, five of whom shall be Members of the House, to be appointed by the Speaker, and three of whom shall be Senators appointed by the Senate, and this committee shall have full power to send for persons and papers and enforce the production of the same, to examine witnesses under oath, to sit during the sessions of the House and Senate, and to exercise all

¹James H. Blount, of Georgia, Chairman.

²Second session Fifty-eighth Congress, Record, pp. 3633-3638.

functions necessary to complete investigation of all frauds and irregularities alleged to exist in said Department, and the Postmaster-General shall render to said committee all necessary assistance. And said committee shall report the result of its investigation to Congress as soon as practicable, with such recommendations as to it may seem advisable;" so that the section as amended shall read as follows:
* * *

Mr. Jesse Overstreet, of Indiana, made the point of order that the amendment was not germane and that it involved new legislation.

After debate the Chairman¹ held:

The proposed amendment, which, of course, must be taken in its entirety, discloses the fact that it is not in the language of a limitation. It contains mandatory directions to the Postmaster-General. It therefore is new legislation or changes existing law. Further than that the Chair does not consider that the creation of a joint committee of both Houses of Congress, with power to administer oaths, to conduct a judicial or semijudicial examination, is a subject which can be considered germane to a bill "which, in the words of the title, is a bill making appropriations for the service of the Post-Office Department" for the coming fiscal year. Because this is new legislation, and because it does not appear to the Chair in any proper light as a limitation, but is a direct legislative enactment, and is not germane either to the paragraph or the bill, the Chair sustains the point of order.

Mr. Williams having appealed, said in the course of debate on the appeal:

Mr. Chairman, the duty of a man sitting in that chair is one thing; the duty of this House of Representatives, which can change its rules in detail or in general, is another thing. Now I decline to be put in the position of being a final court of arbitration upon the indefinite subject of parliamentary law. I do say that this House of Representatives can secure an investigation by outside authority, not intercommingled with the corruptions existing in the Post-Office Department, only in one of two ways: One way is by the gentleman withdrawing his point of order, and the other is by the House overruling a decision of the Chair.

The question being taken on the appeal, the decision was sustained on a vote by tellers, ayes 133, noes 99.

3821. On February 27, 1885,² the sundry civil appropriation bill was under consideration, and an amendment was pending providing for an appropriation of \$300,000 for the World's Industrial and Cotton Centennial Exposition at New Orleans, to be used—first in payment of the outstanding indebtedness, and secondly, in payment of premiums—and to be disbursed under the direction of the Secretary of the Treasury.

To this Mr. Reuben Ellwood, of Illinois, offered this amendment:

A committee of three Members of the House shall be appointed by the Speaker to inquire into the expenditures by and money received by the managers of the World's Industrial Cotton and Centennial Exposition. The said committee are hereby empowered to administer oaths, to compel the attendance of witnesses, and to send for persons and papers; and it shall report the result of its investigation to the Forty-ninth Congress on or before December 10, 1885.

Mr. Richard P. Bland made a point of order against the amendment.

The Speaker³ sustained the point of order.

3822. The reenactment from year to year of a law intended to apply during the year of its enactment only does not relieve the provision from the point of order.—On January 19, 1905,⁴ the army appropriation bill was under

¹H. S. Boutell, of Illinois, Chairman.

²Second session Forty-eighth Congress, Record, p. 2249; Journal, p. 694.

³John G. Carlisle, of Kentucky, Speaker.

⁴Third session Fifty-eighth Congress, Record, pp. 1093, 1094.

consideration in Committee of the Whole House on the state of the Union, when the Clerk read the paragraph providing for the "Transportation of the Army and its supplies," which included a clause as follows:

the expenses of sailing public transports on the various rivers, the Gulf of Mexico, and the Atlantic and Pacific oceans (no steamship in the transport service of the United States shall be sold or disposed of without the consent of Congress having been first had or obtained) for procuring water.

Mr. William E. Humphrey, of Washington, made the point of order that the words in the parentheses involved legislation.

Mr. John A. T. Hull, of Iowa, stated that the provision had been carried in the army appropriation bill for the last three years. He would not claim that it was statute law in the sense that it would continue in force if dropped from the present bill, as the word "hereafter" was not in the phraseology. But he urged that it was existing law because it had been included in the current army appropriation law. Concluding, Mr. Hull urged:

If a point of order will lie against this, it will lie against half of this bill, for the only law authorizing the expenditure of money is for the purpose of continuing it from year to year.

The Chairman¹ said:

It is not quite clear to the Chair that the distinction is well founded. On the contention of the gentleman from Iowa [Mr. Hull] the appropriation—the actual amount of money appropriated in the last appropriation bill—will become stereotyped and be the existing law. The aim of the appropriation bill is to furnish the necessary money for carrying on the department, subject to the condition of limitation of existing law. Any injection into an appropriation bill of limitation upon an appropriation not existing in the present statute law would seem to the Chair obnoxious to the rule. And although this provision may have been carried for a number of years, it never has been carried in the form of a statutory enactment, but as a provision always subject to a point of order governing the appropriation for a single year. The Chair, therefore, sustains the point of order.

Mr. Hull having appealed, the decision of the Chair was sustained, ayes, 57, noes, 31.

3823. A paragraph which proposes legislation in a general appropriation bill being permitted to remain, it may be perfected by a germane amendment.—On December 21, 1896,² the House in Committee of the Whole House on the state of the Union, was considering the legislative, executive, and judicial appropriation bill and the paragraph relating to the organization of the Library of Congress had been reached, when Mr. Frederick H. Gillett, of Massachusetts, offered this amendment:

All the above appointments, except the Librarian and two assistants are to be made from lists of eligibles to be submitted by the Civil Service Commission, under their rules, who are hereby empowered to hold examinations for all the above positions.

Mr. William A. Stone, of Pennsylvania, made the point of order that the amendment changed existing law.

After debate, the Chairman³ ruled:

This bill when reported to the House contained, in the paragraph relating to the Library of Congress, that which is manifestly on its face new legislation. This would have been subject to a point of

¹H. S. Boutell, of Illinois, Chairman.

²Second session Fifty-fourth Congress, Record, p. 390.

³John Dalzell, of Pennsylvania, Chairman.

order under the provisions of Rule XXI, section 2. No such point of order was made, and the bill therefore was sent by the House to the Committee of the Whole for consideration just as it was reported and in its entirety. Under these circumstances, as has been heretofore several times ruled, no point of order could be made in the committee against the paragraph on the ground that it contained new legislation. The committee, in other words, could not refuse to consider what the House had sent to it for consideration. But the right of consideration involves also the right of amendment; that is to say, the committee has the right to perfect as it may see fit the matter submitted to it. For these reasons the point of order is overruled.¹

3824. On March 17, 1898,² the House was in Committee of the Whole House on the state of the Union considering the Post-Office appropriation bill, and had reached the paragraph appropriating for the rural free-delivery service, with certain limitations specified in a proviso which formed a portion of the paragraph.

Mr. Charles H. Grosvenor, of Ohio, having raised a point of order against the proviso after debate had begun, the point was overruled on the ground that it was made too late.

A little later Mr. Claude A. Swanson, of Virginia, offered an amendment to the paragraph, as follows:

After the word "allowance" insert "and necessary equipments or mechanical appliances;" so as to read:

"And provided further, That no portion of the above sum provided for the support of the rural free-delivery service shall be used for any other purpose than for payment of salaries and clerk-hire allowance and necessary equipments or mechanical appliances."

Mr. Grosvenor then made the point that if this amendment should be adopted it would restore the right to make a point of order against the entire paragraph.

After debate, the Chairman³ held:

The Chair is ready to rule on the question. The authorities, the Chair thinks, are uniform in regard to the fact that if a provision is inserted in a bill that does change existing law—that is, not a limitation, but an absolute change of existing law—and if that is permitted to stand without the point of order being raised at the time when it might be raised, thereafter an amendment is in order. Speaker Carlisle, in deciding the question a few years ago, said:

"If the Appropriations Committee should report an appropriation containing within it a provision not directly authorized by law, and if this should be considered—that is, no point of order made against it—amendments proposed to such provision should not be ruled out of order upon the point of order because the subject upon which they are predicated, having been virtually before the House, is a legitimate subject for amendment."

The decision is very exhaustive, and many reasons are given for such ruling. That already cited is so manifestly fair the Chair will not take time to read further.

The gentleman from Pennsylvania [Mr. Dalzell], in passing upon the same question, held the same as Mr. Carlisle, and very elaborately argued it. The Chair overrules the point of order and holds that the amendment is in order.

3825. On January 24, 1901,⁴ the naval appropriation bill (H. R. 13705) was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read a paragraph beginning as follows:

¹A similar ruling was made by Speaker pro tempore William M. Springer, of Illinois, on May 22, 1888. (First session Fiftieth Congress, Journal, p. 1656.)

²Second session Fifty-fifth Congress, Record, p. 2941.

³John A. T. Hull, of Iowa, Chairman.

⁴Second session Fifty-sixth Congress, Record, pp. 1414–1428.

That for the purpose of further increasing the naval establishment of the United States, the President is hereby authorized to have constructed by contract two unsheathed seagoing battle ships, carrying the heaviest armor and most powerful ordnance for vessels of their class, upon a trial displacement of about 14,000 tons each, and to have the highest practicable speed, etc.

Mr. John J. Fitzgerald, of New York, moved to amend by inserting after the word "contract" the words "or in the navy-yards of the United States under the direction and supervision of the Secretary of the Navy."

Mr. Alston G. Dayton, of West Virginia, raised a point of order on the amendment.

After debate as to the terms of section 3709 of the Revised Statutes, the Chairman¹ held:

The amendment offered by the gentleman from New York seeks to amend this section in such a way that the President be authorized to construct these ships enumerated in the section either by contract or in the navy-yards of the United States. The provision reported by the committee only authorizes the construction of the ships by contract. There has been no general law suggested to the Chair which would be altered by the amendment proposed by the gentleman from New York. The Chair, therefore, is compelled to think that it is in order, in the absence of any such statute, and therefore overrules the point of order.

3826. On February 7, 1902,² the Committee of the Whole House on the state of the Union was considering the legislative appropriation bill, when, to a paragraph relating to certain temporary clerks in the Departments, Mr. Lucius N. Littauer, of New York, offered the following amendment:

Amend section 3 by adding:

Provided, That the President may at any time transfer clerks and other employees herein referred to the classified service."

No point of order was made against this amendment, and after debate Mr. John J. Jenkins, of Wisconsin, offered the following amendment to the amendment, in the nature of a substitute:

Provided, That the President may at any time during the fiscal year 1903 transfer all such additional clerks and other employees herein referred to the classified service.

Mr. Thetus W. Sims, of Tennessee, made the point of order that the amendment to the amendment involved a change of law.

After debate the Chairman³ said:

The Chair will take occasion to say that if the original amendment was before the Chair with a point of order pending it would require all the eloquence of the distinguished gentleman from New York to disabuse the mind of the Chair of some prejudice that he might have against that amendment.

The Chair is quite clear that if the point had been raised that the Chair would have sustained it against the original amendment. The Chair can not be responsible for the negligence of Members of the House who sleep on their rights. * * * The substitute being in the opinion of the Chair substantially the same as the amendment itself, the Chair overrules the point of order, and the question is on the substitute.

3827. On February 23, 1904,⁴ while the naval appropriation bill was under

¹ William H. Moody, of Massachusetts, Chairman.

² First session Fifty-seventh Congress, Record, pp. 1468-1473.

³ Eugene F. Loud, of California, Chairman.

⁴ Second session Fifty-eighth Congress, Record, pp. 2278, 2279.

consideration in Committee of the Whole House on the state of the Union, the Clerk read this paragraph:

The Secretary of the Navy is hereby authorized, in his discretion, to consolidate the several power plants in any or all of the several navy-yards and stations at each navy-yard and station under the Bureau of Yards and Docks for the generation and distribution of light, heat, and power for all the purposes of the Navy. To the above end all such plants may be transferred from other bureaus to the Bureau of Yards and Docks, and all appropriations heretofore made for power houses and power plants for bureaus other than Yards and Docks are hereby reappropriated and made available under the Bureau of Yards and Docks for the consolidations herein provided for; and to further carry out the purposes of this provision there is hereby appropriated the sum of \$300,000.

To this paragraph Mr. Farish C. Tate, of Georgia, offered the following amendment:

Amend by striking out all of the paragraph after the word "dollar," in line 18 on page 35, to the word "and," in line 5, page 36, and insert the following in lieu thereof:

"The Secretary of the Navy is hereby authorized, in his discretion, to consolidate any or all of the several plants, shops, and works of the several bureaus in the several navy-yards and stations at each navy-yard and station. To the above end all such plants, shops, and works may be transferred from one bureau to another, or all the several bureaus at the several navy-yards may be consolidated into one central bureau at each navy-yard and station, and all appropriations heretofore made for any bureau is hereby reappropriated and made available for the consolidation of the bureaus herein provided for."

Mr. Alston G. Dayton, of West Virginia, made the point of order that the amendment was in violation of existing law.

The Chairman¹ held:

It has been held that a paragraph which changes existing law being allowed by general consent to remain may be perfected by any germane amendment. If a point of order had been made to the original paragraph, the point would have been sustained, but by common consent it was retained in the bill. Therefore the Chair holds that this amendment, being germane, is not obnoxious to the rule. The point of order is overruled.

3828. On February 25, 1904,¹ the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

And the contract for the construction of said vessels shall be awarded by the Secretary of the Navy to the lowest best responsible bidder, having in view the best results and most expeditious delivery; and in the construction of all of said vessels the provisions of the act of August 3, 1886, entitled "An act to increase the naval establishment," as to materials for said vessels, their engines, boilers, and machinery, the contracts under which they are built, the notice of any proposals for the same, the plans, drawings, specifications therefore, and the method of executing said contracts shall be observed and followed, and, subject to the provisions of this act, all said vessels shall be built in compliance with the terms of said act, and in all their parts shall be of domestic manufacture; and the steel material shall be of domestic manufacture, and of the quality and characteristics best adapted to the various purposes for which it may be used, in accordance with specifications approved by the Secretary of the Navy; and not more than three of the vessels provided for in this act shall be built by one contracting party: *Provided*, That the Secretary of the Navy may build any or-all of the vessels herein authorized in such navy-yards as he may designate, and shall build any of the vessels herein authorized in such navy-yards as he may designate, should it reasonably appear that the persons, firms, or corporations, or the agents thereof, bidding for the construction of any of said vessels have entered into any combination,

¹William F. Hepburn, of Iowa, Chairman.

²Second session Fifty-eighth Congress, Record, pp. 2388, 2389.

agreement, or understanding the effect, object, or purpose of which is to deprive the Government of fair, open, and unrestricted competition in letting contracts for the construction of any of said vessels.

Mr. William E. Humphrey, of Washington, proposed the following amendment:

On page 71, line 24, after the word "party," insert the following:

"One armored cruiser and one scout cruiser, herein provided for, shall be built on or near the coast of the Pacific Ocean, or the waters connecting therewith; but if it shall appear to the satisfaction of the Secretary of the Navy, from the bidding for such contracts, that said vessels can not be constructed on or near the coast of the Pacific Ocean at a cost not exceeding 4 per cent above the lowest accepted bid for the corresponding vessel provided for in this act, he shall authorize the construction of said vessel elsewhere in the United States, subject to the limitations as to cost herein before provided."

Mr. John F. Rixey, of Virginia, made the point of order that this amendment proposed a change of existing law:

After debate the Chairman¹ said:

The amendment offered by the gentleman from Washington [Mr. Humphrey] would be subject to the point of order made by the gentleman from Virginia were it not for the fact that the paragraph as read (and which, no point having been made against it, must be considered as having been agreed to by unanimous consent) is itself subject to the point of order, or would have been had the point been made, that it changes existing law in several particulars. It provides specifically that the contract shall be awarded by the Secretary of the Navy to the lowest and best responsible bidder, but that not more than three of the vessels provided for in this act shall be built by one contracting party, which is legislation and a change of existing law.

Now, it has been held, as may be seen by reference to page 348 of the Manual, that a paragraph which changes existing law being allowed by general consent to remain, it may be perfected by any germane amendment. The Chair therefore overrules the point of order.

3829. On March 23, 1904,² the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

For acting clerks, in place of clerks injured while on duty, and to enable the Postmaster-General to pay the sum of \$1,000, which shall be exempt from the payment of debts of the deceased, to the legal representatives of any railway postal clerk or substitute railway postal clerk who shall be killed while on duty or who, being injured while on duty, shall die within one year thereafter as the result of such injury, \$110,000.

To this Mr. James A. Tawney, of Minnesota, proposed this amendment:

After the word "deceased," "in line 14, page 17, insert the following: "to the widow and children of the deceased, and in case there is no surviving widow or children, then."

Mr. Jesse Overstreet, of Indiana, made a point of order against the amendment. The Chairman³ held:

The Chair will state to the gentleman from Indiana that there is no danger of that contingency arising, because the paragraph having been passed by unanimous consent, even though it were originally subject to the point of order, is now before the committee for perfection, and the Chair finds a long line of unanimous decisions to that effect. It does not become necessary for the Chairman to pass upon whether the amendment would have been obnoxious to the point of order if it had been made under other circumstances. The paragraph is before the committee for perfection. The Chair therefore overrules the point of order.

¹Marlin E. Olmsted, of Pennsylvania, Chairman.

²Second session Fifty-eighth Congress, Record, pp. 3591, 3593, 3594.

³H. S. Boutell, of Illinois, Chairman.

A little later, on the same day, the Clerk read:

For inland transportation of mail by electric and cable cars, \$550,000: *Provided*, That the rate of compensation to be paid per mile shall not exceed the rate now paid to companies performing said service.

Mr. Irving P. Wanger, of Pennsylvania, proposed an amendment to insert after the word "exceed" the words "by more than 33 $\frac{1}{3}$ per cent."

Mr. Jesse Overstreet, of Indiana, made a point of order against the amendment, saying:

The law to-day in the bill passed for the fiscal year 1904 contains the provision:

"That the rate of compensation to be paid per mile shall not exceed the rate now paid to companies performing said service."

That is the law now. If, therefore, in this bill, which seeks to make appropriations for the fiscal year 1905, a limitation is offered which will increase that rate, it is necessarily in violation of existing law.

The Chairman said:

The Chair thinks that the proviso in lines 14 to 16, inclusive, applies only to this bill, and if this same language was in the last bill it applied only to that bill. If the word "hereafter" had been used after the word "that," so as to read: "*Provided*, That hereafter the rate of compensation," etc., the Chair would be inclined to think that that language being included in the last appropriation bill would make it statute law, but the Chair thinks that the present proviso applies only to this bill, and that the point of order might have been made against the proviso, but the paragraph having been passed unanimously without the point of order having been made any amendment which is germane in perfecting the paragraph the Chair thinks would be in order, and the Chair therefore overrules the point of order.

3830. On February 20, 1905,¹ the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

And the contract for the construction of said vessels shall be awarded by the Secretary of the Navy to the lowest best responsible bidder, having in view the best results and most expeditious delivery; and in the construction of all of said vessels the provisions of the act of August 3, 1886, entitled "An act to increase the naval establishment," as to materials for said vessels, their engines, boilers, and machinery, the contracts under which they are built, the notice of any proposals for the same, the plans, drawings, specifications therefor, and the method of executing said contracts shall be observed and followed, and, subject to the provisions of this act, all said vessels shall be built in compliance with the terms of said act, and in all their parts shall be of domestic manufacture; and the steel material shall be of domestic manufacture, and of the quality and characteristics best adapted to the various purposes for which it may be used, in accordance with specifications approved by the Secretary of the Navy; and not more than two of the vessels provided for in this act shall be built by one contracting party: *Provided*, That the Secretary of the Navy may build any or all of the vessels herein authorized in such navy-yards as he may designate, and shall build any of the vessels herein authorized in such navy-yards as he may designate, should it reasonably appear that the persons, firms, or corporations, or the agents thereof, bidding for the construction of any of said vessels have entered into any combination, agreement, or understanding the effect, object, or purpose of which is to deprive the Government of fair, open, and unrestricted competition in letting contracts for the construction of any of said vessels.

Mr. William E. Humphrey, of Washington, offered this amendment:

On page 68, line 5, after the word "party," insert the following:

"One of the battle ships herein provided for shall be built on or near the coast of the Pacific Ocean, or the waters connecting therewith; but if it shall appear to the satisfaction of the Secretary of the Navy from the bidding for such contracts that said vessels can not be constructed on or near the coast of the

¹Third session Fifty-eighth Congress, Record, pp. 2943, 2945.

Pacific Ocean at a cost not exceeding 4 per cent above the lowest accepted bid for the corresponding vessel provided for in this act he shall authorize the construction of said vessel elsewhere in the United States, subject to the limitations as to cost herein before provided.”

Mr. George E. Foss, of Illinois, made the point of order that the amendment involved new legislation.

The Chairman ¹ held:

The Chair will say that the whole paragraph is new legislation, and up to this time there has been no point of order against it, and therefore any amendment which is germane is in order. In the opinion of the Chair this amendment is germane.

3831. On February 1, 1905,² the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Jesse Overstreet, of Indiana, offered this amendment:

Insert after line 8, page 1, the following:

“For compensation and expenses of United States delegates to the Universal Postal Congress to convene at Rome, Italy, \$10,000.”

To this an amendment in the nature of a substitute was offered, and to that substitute Mr. Gilbert M. Hitchcock, of Nebraska, offered this amendment:

Provided, That one of said delegates shall be especially assigned while abroad to gather information and report to the Postmaster-General on the operation of the postal savings banks in European countries.

Mr. Overstreet made the point of order that this amendment involved legislation.

The Chairman ³ ruled:

The Chair will state that no point of order having been raised to the original proposition, any germane amendment would be in order, and that the point of order that the amendment to the substitute is new legislation comes too late.

3832. On March 29, 1906⁴ the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union when, to a paragraph appropriating for a law clerk in one of the departments, Mr. Charles L. Bartlett, of Georgia, proposed this amendment:

In line 17, page 110, after “law clerk,” insert “who shall be a lawyer who has been admitted to practice at least five years prior to his appointment.”

Mr. Lucius N. Littauer, of New York, made the point of order that the amendment proposed legislation.

In the debate it was conceded that the proposed law clerk would be a new officer, authorized only by the pending paragraph.

The Chairman ⁵ held:

The Chair thinks that in that event, this being entirely a new provision creating a new office, it is in order to define the qualifications of the office thus created. The paragraph is in violation of Rule XXI, but being permitted to remain in the bill without a point of order urged against it, it is in order to perfect the paragraph by a germane amendment. The point of order is overruled.

¹ John Dalzell, of Pennsylvania, Chairman.

² Third session Fifty-eighth Congress, Record, p. 1733.

³ George P. Lawrence, of Massachusetts, Chairman.

⁴ First session Fifty-ninth Congress, Record, p. 4462.

⁵ Marlin E. Olmsted, of Pennsylvania, Chairman.

3833. On May 8, 1906,¹ the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Ernest E. Wood, of Missouri, proposed this amendment to a paragraph which had been read on the preceding day, just before the rising of the Committee of the Whole:

Strike out, on page 3, beginning at line 21, the following: "*Provided*, That hereafter, in cases where orders for travel are given to officers of the Navy or the Marine Corps, the Secretary of the Navy, in his discretion, may direct that either mileage or else their actual and necessary expenses only shall be allowed," and insert in lieu thereof the following: "*Provided*, That hereafter, in cases where orders for travel are given to officers of the Navy or Marine Corps, no mileage shall be allowed, but that such officers shall be paid their actual and necessary expenses."

Mr. George E. Foss, of Illinois, made the point of order that the paragraph had been passed, and that the amendment involved legislation.

The Chairman² held:

The amendment is a substitute for the proviso contained in the paragraph. The proviso itself appears to be new legislation. * * * That being the case, the only question in relation to this amendment would be, Is it germane? Because the rule is, where a bill contains new legislation and no objection is made to it, it may be amended by anything that is germane to the subject contained in the paragraph. The Chair is of the opinion that this amendment is in order, because it is germane to the proviso. * * * The section had not been passed. The committee rose on the previous day immediately after the paragraph was read, and a paragraph is not passed for purposes of amendment until the reading of the next one is entered upon. So the Chair overrules the point of order.

3834. On May 16, 1906,³ the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

The Secretary of the Navy is hereby authorized, in his discretion, to contract for or purchase sub-surface or submarine torpedo boats, to an amount not exceeding \$1,000,000, after such competitive tests as he shall see fit to prescribe, to determine the comparative efficiency of the different boats for which bids may be submitted: *Provided*, That such competitive tests shall take place within six months from the date of the passage of this act.

Mr. Oscar W. Underwood, of Alabama, offered this amendment:

Strike out the proviso, in lines 16, 17, and 18, page 74, and insert: "*Provided further*, That the Secretary of the Navy is hereby authorized to consider designs for improved submarine torpedo boats presented by any individual or corporation who may have patented or designed or built submarine torpedo boats; and if, after careful consideration, the Secretary is of the opinion that any of said designs embody features which indicate clearly the development of greater efficiency in actual service than has been or probably can be obtained in submarine boats hitherto built or in course of construction for the United States Navy, then in such case the Secretary of the Navy is authorized, in his discretion, to have constructed by contract or in navy-yards, under such conditions as he may prescribe, one or more submarine boats upon such designs hereinbefore mentioned as fulfill the foregoing requirements as to superior efficiency; and the Secretary of the Navy is furthermore authorized to purchase said designs at such reasonable compensation as may, in his discretion, appear suitable, if said purchase is considered to be necessary for the best interests of the naval service; and in the event of said purchase of designs by the Secretary of the Navy, the designer shall specifically guarantee the Navy Department, by suitable bond or otherwise, to the satisfaction of the Secretary of the Navy, against all liability for the use of any and all patents which are embodied or used in said designs.

¹ First session Fifty-ninth Congress, Record, pp. 6519, 6520.

² Edgar D. Crumpacker, of Indiana, Chairman.

³ First session Fifty-ninth Congress, Record, p. 6987.

Mr. Ernest W. Roberts, of Massachusetts, made the point of order that the amendment involved legislation:

In that it permits and authorizes the Secretary of the Navy to purchase plans of boats. There is no law to-day allowing the Secretary of the Navy to purchase the plans of any boat. That point of order on that part of the amendment is clearly good; and if one part of the amendment is subject to the point of order the whole amendment is bad.

The Chairman¹ said:

The paragraph authorizes the Secretary of the Navy to contract for the purchase of subsurface or submarine torpedo boats to an amount not exceeding \$1,000,000, and provides for a competitive test to determine the better type of boat. It is probable, although the Chair does not undertake to decide that question, that the provision for competitive tests is not in order, but no point of order having been made to it, that provision is subject to amendment by any proposition that is germane to the idea of competition; and the Chair construes this amendment to mean the elaboration of that proposition, and therefore holds it in order.

3835. On February 15, 1907,² the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

And the contract for the construction of said vessels shall be awarded by the Secretary of the Navy to the lowest best responsible bidder, having in view the best results and most expeditious delivery; and in the construction of all of said vessels the provisions of the act of August 3, 1886, entitled "An act to increase the naval establishment," as to materials for said vessels, their engines, boilers, and machinery, the contracts under which they are built, the notice of any proposals for the same; the plans, drawings, specifications therefor, and the method of executing said contracts shall be observed and followed, and, subject to the provisions of this act, all said vessels shall be built in compliance with the terms of said act, and in all their parts shall be of domestic manufacture, and the steel material shall be of domestic manufacture, and of the quality and characteristics best adapted to the various purposes for which it may be used, in accordance with specifications approved by the Secretary of the Navy; and not more than one of the vessels provided for in this act shall be built by one contracting party: *Provided*, That the Secretary of the Navy may build any or all of the vessels herein authorized in such navy-yards as he may designate, and shall build any of the vessels herein authorized in such navy-yards as he may designate should it reasonably appear that the persons, firms, or corporations, or the agents thereof, bidding for the construction of any of said vessels have entered into any combination, agreement, or understanding, the effect, object, or purpose of which is to deprive the Government of fair, open, and unrestricted competition in letting contracts for the construction of any of said vessels.

To this Mr. Everis A. Hayes, of California, offered an amendment:

On page 81, line 21, after the word "delivery," insert the following:

Provided, That any bid for the construction of any of said vessels upon the Pacific coast shall have a differential of 4 per cent in its favor, which shall be considered by the Secretary of the Navy in awarding contracts for the construction of said vessel."

Mr. James R. Mann, of Illinois, made a point of order against the amendment.

The Chairman³ held:

The Chair is of the opinion that the amendment of the gentleman from California is not in the nature of a limitation. It is legislation, and the Chair would have no hesitation in sustaining the point of order but for the fact that the paragraph to which the amendment is offered is itself out of order. It would have been so held had a point been made against it. The amendment appears to be germane

¹Edgar D. Crumpacker, of Indiana, Chairman.

²Second session Fifty-ninth Congress, Record, pp. 3063, 3064, 3065, 3066.

³Marlin E. Olmsted, of Pennsylvania, Chairman.

to the paragraph. It has often been ruled that a paragraph that is itself out of order, having been by unanimous consent permitted to remain in the bill, may be perfected by any germane amendment. The Chair, therefore, overrules the point of order.

Mr. William W. Kitchin, of North Carolina, soon thereafter offered to the paragraph this amendment:

Insert in line 23, page 82, after the word "vessel," the following:

Provided further, That in securing the armor of the best quality for the two battle ships mentioned in the paragraph herein, under the head of 'Increase of the Navy,' the Secretary of the Navy shall not contract to pay greater prices per ton than the prices contracted to be paid for the battle ships South Carolina and Michigan."

Mr. Mann made a point of order.

After debate the Chairman held:

The preceding paragraphs, under the head of "Increase of the Navy," authorize the construction of a battle ship and certain other vessels. It is true that the cost is limited to a certain amount exclusive of armor, but the paragraph authorizes the entire vessel. Now, the paragraph under discussion and to which the amendment is offered says "and the contract for the construction of said vessels"—without any limitation as to the armor or armament and without excluding the same—shall be let so and so. It then provides general legislation for the construction of said vessels, how the contracts for their construction shall be awarded, etc., and requires that they "in all their parts shall be of domestic manufacture." It seems to the Chair to cover all parts of the vessel. This is made even more clear by the provision in the paragraph that their construction shall be in accordance with the act of 1886, which specifically includes armor and provides for testing it. The paragraph itself, to which the amendment is offered, contains many provisions changing existing law, and must have been ruled out had a point of order been made against it; but having been permitted to remain in the bill, no point having been made against it, its perfection by any germane amendment is in order. The Chair is of opinion that the amendment offered by the gentleman from North Carolina is germane, and therefore overrules the point of order.

3836. In an appropriation bill a paragraph embodying legislation may be perfected by a germane amendment, but this does not permit an amendment which adds additional legislation.—On March 29, 1904,¹ the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Enforcement of the Chinese-exclusion act: To prevent unlawful entry of Chinese into the United States, by the appointment of suitable officers to enforce the laws in relation thereto, and for expenses of returning to China all Chinese persons found to be unlawfully in the United States, including the cost of imprisonment and actual expense of conveyance of Chinese persons to the frontier or seaboard for deportation, \$600,000, of which sum \$1,000 per annum shall be paid to the Commissioner-General of Immigration as additional compensation: *Provided,* That so much of the amount hereby appropriated, or hereafter appropriated for similar purposes, as may be necessary shall be available for the establishment and maintenance of the Bertillon system of identification at the various ports of entry; but this proviso shall not apply to persons embraced in Article III of the treaty with China of 1894.

To this Mr. E. J. Livernash, of California, proposed the following as an amendment:

Amend by striking out the period in line 8, page 65, substituting a colon, and adding the following:

Provided further, That \$10,000 of this appropriation shall be for enforcement of said laws so far as they prohibit entry and harboring of Chinese as seamen aboard vessels of American register."

¹ Second session Fifty-eighth Congress, Record, pp. 3958–3961.

Mr. James A. Hemenway, of Indiana, made the point of order that the proposed amendment would change existing law.

In the debate it was claimed that there were laws such as those for which the amendment would provide enforcement; but this was denied, and no such law was exhibited.

At the conclusion of the debate the Chairman¹ held:

The Chair will state that the general rule, apparently established, is as stated in the Digest:

“A paragraph which changes existing law being allowed by general consent to remain, it may be perfected by any germane amendment.”

Now, it appears that a proviso was included here and passed without objection which would have been subject, the Chair believes, to a point of order. To that an amendment was proposed. There have been, as the Chair is informed, conflicting decisions, and it is desirable that a uniform rule be established. The rule has been applied that where a provision is inserted which changes existing law it may be perfected by an amendment (which is germane), even though not in accordance with existing law.

The Chair, though somewhat doubtful, thinks this the best rule: That if a paragraph has been included in the bill which has in it a taint of illegality or of being contrary to existing law, that paragraph can be corrected or perfected by an amendment; but if the further paragraph which is proposed as an amendment carries a further degree of illegality affecting the whole paragraph as amended, then it is not in-order.

So, if the amendment of the gentleman from California simply pertained to the proviso which was out of order—that pertaining to the Bertillon system of identification, which was allowed to enter the bill—it would be in order, but if it pertains to the whole paragraph relating to the enforcement of the Chinese-exclusion act it is not in order.

It would appear from the reading that this is not an amendment to the proviso, which is in these words:

“*Provided*, That so much of the amount hereby appropriated, or hereafter appropriated for similar purposes, as may be necessary shall be available for the establishment and maintenance of the Bertillon system of identification at the various ports of entry; but this proviso shall not apply to persons embraced in Article III of the treaty with China of 1894.”

To this it is proposed to add the amendment of the gentleman from California:

“*And provided further*, That \$10,000 of this appropriation shall be for the enforcement of said laws so far as they prohibit the entry and harboring of Chinese as seamen aboard vessels of American register.”

This proposed amendment clearly does not refer to the immediately preceding paragraph. It refers to the whole provision, beginning on the preceding page. Such being the case, the Chair sustains the point of order.

3837. On May 19, 1902,² the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union and the following paragraph had been read:

That for the purpose of further increasing the naval establishment of the United States, the President is hereby authorized to have constructed by contract, except as herein otherwise provided, two first-class battle ships, carrying the heaviest armor and most powerful ordnance for vessels of their class upon a trial displacement of about 16,000 tons and to have the highest practicable speed and great radius of action and to cost when built by contract, exclusive of armor and armament, not exceeding \$4,212,000 each; two first class armored cruisers of about 14,500 tons trial displacement, carrying the heaviest armor and most powerful armament for vessels of their class and to have the highest practicable speed and great radius of action and to cost, when built by contract, exclusive of armor and armament, not exceeding \$4,659,000 each; two gunboats of about 1,000 tons trial displacement, to cost,

¹Theodore E. Burton, of Ohio, Chairman.

²First session Fifty-seventh Congress, Record, pp. 5643–5648.

when built by contract, exclusive of armament, not exceeding \$382,000 each; and the contract for the construction of each of said vessels so contracted for shall be awarded by the Secretary of the Navy to the lowest best responsible bidder, having in view the best results and most expeditious delivery.

To this Mr. Ernest W. Roberts, of Massachusetts, offered the following amendment:

Provided, That the Secretary of the Navy shall build at least one of the battle ships, one of the armored cruisers, and one of the gunboats herein authorized in such Government navy-yard or navy-yards as he may designate; and for the purpose of preparing and equipping such navy-yard or navy-yards as may be so designated for the construction of such ships the sum of \$175,000 or so much thereof as may be necessary, is hereby appropriated for each of the navy-yards in which the Secretary of the Navy may direct any such ship or ships to be built.

Mr. Robert Adams, jr., of Pennsylvania, made the point of order that the amendment provided for new legislation; that it changed existing law, and that it limited the discretion of the officer at the head of a Department of the Government. Mr. Adams cited the provision of the Revised Statutes relating to purchases of supplies by contract.

In opposition to the point of order, it was argued that the paragraph in the bill would have been subject to a point of order, but that, as the point of order had been waived, the paragraph was open to amendment.

At conclusion of the debate, the Chairman ¹ said:

The Chair thinks that the section of the Revised Statutes to which the gentleman from Pennsylvania [Mr. Adams] refers does not control in this case. In the opinion of the Chair that section does not cover such a provision as is included in this section of the bill; but the universal holdings of Speakers and Chairmen—that in the absence of any statute the creation of a statute is a change of existing law—does apply in this case. Now, the gentleman from Massachusetts [Mr. Roberts] argues, and properly argues—to that extent—that this provision was susceptible to a point of order had the point of order been raised.

That point of order not having been raised, his contention is that it can be amended in any way, and he cites, among other rulings in support of that contention, a ruling of Mr. Speaker Carlisle, a most eminent parliamentarian; but the Chair notices in reading that decision that Speaker Carlisle expressly says that a provision before the committee which would have been out of order had the point been raised, the point not having been raised is amendable; but he says that that amendment may be made either by increasing or diminishing the amount of the appropriation, clearly showing that in Speaker Carlisle's mind there was this idea, that the section could be amended in any germane manner within its original scope.

Nothing in Speaker Carlisle's opinion indicated any thought that the scope of an amendment could be enlarged by an amendment if the provision originally would have been susceptible to a point of order. Now, the amendment offered by the gentleman from Massachusetts, as a separate proposition, clearly would be susceptible to a point of order. The Chair thinks the gentleman from Massachusetts himself would admit this. Therefore it seems to the Chair that the question has resolved itself into this: Can the committee do by indirection that which it can not do directly? It seems to the Chair it is a very dangerous precedent to establish to permit such a thing to be done.

The Chair admits that the disposition of this point of order is embarrassing to him. As the Chair remembers, this is the first time he has disposed of a point of order while occupying this chair about which he did not feel absolutely clear, and certainly the Chair must admit that there is some little doubt in his mind about this question; and yet he thinks that the fact that the committee ought to be prevented from doing by indirection that which it can not do directly ought to prevail. This amendment, had it originally been in the text of the bill, unquestionably would have been held out of order. Therefore the Chair sustains the point of order against the amendment.

¹James S. Sherman, of New York, Chairman.

Mr. Roberts having appealed, the question was put "Shall the decision of the Chair stand as the judgment of the Committee?"

And on a vote by tellers there were ayes 86, noes 109. So the decision of the Chair was overruled.

3838. A paragraph in an appropriation bill changing existing law may be perfected only by germane amendments.—On April 25, 1900,¹ the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the paragraph providing the pay of the Railway Mail Service was under consideration, sums being, appropriated for the clerks by classes, indicated as classes 4b, 5b, etc.

To this paragraph Mr. James A. Tawney, of Minnesota, offered an amendment dividing the clerks of the service into ten classes, regulating periods of appointment, promotions, etc., and in general providing for a complete organization of the service.

Mr. Eugene F. Loud, of California, made the point of order against the amendment.

Mr. Tawney argued that the paragraph in the bill constituted classes, and therefore was legislation, and hence might be perfected in accordance with the ruling of June 14, 1884.

The Chairman² held:

The Chair has no doubt that the proposition of the gentleman from Minnesota [Mr. Tawney] is correct, that where a committee on a general appropriation bill undertakes to legislate in violation of the rule the Committee of the Whole has the right either to make the point of order or, passing the point of order, has the right to perfect that legislation by amendment.

It must, however, be perfected by some amendment or proposition that is germane to the paragraph to which the amendment is offered.

The Chair does not think that in the paragraph under consideration there is any reclassification. There is a change of existing law with respect to at least one salary, but so far as classification is concerned there is no change of existing law. That is to say, the salaries in the classes which are mentioned in the paragraph are all, as to amount, within the limit allowed by existing law.

It is perfectly competent under existing law to authorize salaries at one rate to a portion of a class and salaries at another rate to another portion of that class, and that is all that is attempted to be done here. There is no reclassification. The terms "a" and "b" as used in the paragraph, are used simply for the purpose of convenience, and they may be stricken out without affecting the legislation in any respect. So that, so far as classification is concerned, there is, in the judgment of the Chair, no new legislation in this paragraph. There is new legislation, however, with respect to the increase of salaries outside of the classes named, and this makes the paragraph amendable, provided the amendment offered is germane.

Now, the subject-matter of this paragraph is simply an appropriation for salaries to certain Government employees, recognized by law. The amendment offered is an independent bill now pending before the Committee on Post Offices and Post-Roads, entitled "A bill to reclassify postal clerks and prescribe their salaries," and it undertakes to establish an entirely new system. The provisions of the bill, after the first paragraph, perhaps, have no relation to reclassification or increase of salaries, but have relation to the duties of the Postmaster-General and to the duties of employees and to a great many details that are not germane to the paragraph now under consideration. To be admissible the amendment must be germane as a whole. It is not so germane. Therefore the Chair sustains the point of order.

¹ First session Fifty-sixth Congress, Record, pp. 4678–4690.

² John Dalzell, of Pennsylvania, Chairman.

3839. The House sometimes, by agreeing to a resolution reported by the Committee on Rules, authorizes in a general appropriation bill legislative provisions.—On February 7, 1893,¹ the House was in Committee of the Whole House on the state of the Union considering the legislative, executive, and judicial appropriation bill.

One paragraph of the bill provided for the creation of a joint commission to examine into the condition of the public service in the Executive Departments of the Government at the national capital.

Mr. John A. Pickler, of South Dakota, having made a point of order against this paragraph, the Chairman² ruled:

The Chair calls attention to the fact that early in the session the gentleman from Missouri [Mr. Dockery] introduced a resolution providing for a commission. That resolution was referred, regularly, by the House to the Committee on Rules. The Committee on Rules considered the resolution, which is identical with the provision inserted in this appropriation bill. The language is identical. The Committee on Rules reported that resolution of Mr. Dockery back to the House on the 26th day of January, and with the report submitted this resolution:

Resolved, That the resolution of Mr. Dockery be, and the same is hereby, referred to the Committee on Appropriations, and said committee is hereby authorized to insert in one of the general appropriation bills a provision authorizing the creation of a commission for the purpose indicated in said resolution.”³

Here is a resolution * * * reported in an appropriation bill that is in identically the language of the resolution considered by the House. The Committee on Rules reported the resolution and submitted a report instructing or authorizing the Committee on Appropriations to include these words in an appropriation bill. The Chair hardly thinks that it would be proper, or in order, for a committee of the House to undertake to say that the House did wrong in instructing the Committee on Appropriations to report this provision. * * * The Chair overrules the point of order.

3840. On February 3, 1897,⁴ Mr. David B. Henderson, of Iowa, from the Committee on Rules, reported this resolution, which was agreed to by the House.:

Resolved, That it shall be in order to offer and consider as an amendment to the bill (H. R. 10167) making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1898, and for other purposes.

“That the act approved February 13, 1895, entitled ‘An act to amend an act entitled ‘An act to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction upon the Court of Claims to hear the same, and for other purposes,’ approved June 16, 1880,’ be, and the same is hereby, repealed.

“And all proceedings pending shall be vacated, and no judgment heretofore rendered in pursuance of said act shall be paid.”

Which amendment shall be subject to amendment under the rules of the House.

3841. On January 26, 1906,⁵ Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, presented the following resolution, which was agreed to by the House yeas 145, nays 102:

Resolved, That it shall be in order to offer as an amendment to the urgent deficiency bill (H. R. 12320), either in the House or in the Committee of the Whole House on the state of the Union, even although the paragraph to which it is germane may have been passed, the following amendment:

¹ Second session Fifty-second Congress, Record, pp. 1302, 1306.

² James D. Richardson, of Tennessee, Chairman.

³ Authorizations of this nature have also been offered and agreed to under suspension of the rules.

⁴ Second session Fifty-fourth Congress, Record, pp. 1501, 1505.

⁵ First session Fifty-eighth Congress, Record, pp. 1603–1608.

“The provisions of the act entitled ‘An act relating to the limitations of the hours of daily service of laborers and mechanics employed upon the public works of the United States and of the District of Columbia,’ approved August 1, 1892, shall not apply to alien laborers employed in the construction of the isthmian canal within the Canal Zone.”

Thereafter, on the same day,¹ in Committee of the Whole House on the state of the Union, the amendment was offered and agreed to.

3842. On January 10, 1907,² Mr. John Dalzell, from the Committee on Rules, submitted the following resolution, which was agreed to by the House:

Resolved, That in considering in Committee of the Whole House on the state of the Union the bill H. R. 23551, “A bill making appropriations for the support of the Army for the fiscal year ending June 30, 1908,” it shall be in order to consider as an amendment thereto the following: “When the office of Lieutenant-General shall become vacant it shall not thereafter be filled, but said office shall cease and determine, but nothing in this provision shall affect the retired list.”

3843. On April 30, 1902,³ the Committee on Rules reported the following resolution, which was agreed to by the House:

Resolved, That it shall be in order to amend the bill (H. R. 14019) making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year 1903, by the insertion, on the recommendation of the Committee on Appropriations, of legislation providing for the assessment and collection of taxes on personal property in the District of Columbia.

3844. Pending the engrossment of a general appropriation bill an amendment proposing legislation may be authorized by the adoption of a report from the Committee on Rules.—On February 20, 1907,⁴ the Committee of the Whole House on the state of the Union, rose and reported the bill (H.R. 25483) making appropriations for the service of the Post-Office Department, with sundry amendments thereto.

The amendments recommended by the Committee of the Whole were agreed to by the House.

Thereupon Mr. John Dalzell, of Pennsylvania, submitted the following privileged report:

The Committee on Rules having had under consideration sundry resolutions relating to the bill H. R. 25483, the post-office appropriation bill, report the following substitute therefor:

Resolved, That immediately on the adoption of this resolution it shall be in order to consider as an amendment to the bill H. R. 25483, the post-office appropriation bill, the following:

“That hereafter clerks in offices of the first and second class shall be divided into seven grades, as follows: First grade, salary \$600–1 second grade, salary \$700; third grade, salary \$800; fourth grade, salary \$900; fifth grade, salary \$1,000; sixth grade, salary \$1,100; seventh grade, salary \$1,200,” etc.

The resolution reported from the Committee on Rules was agreed to.

The Speaker then announced that the question was on the amendment to the post-office bill proposed in the resolution just agreed to.

The amendment was agreed to; and then the bill was ordered to be engrossed, read a third time, and passed.

¹ Record, pp. 1609, 1610.

² Second session Fifty-ninth Congress, Record, p. 897.

³ First session Fifty-seventh Congress, Journal, p. 663; Record, p. 4894.

⁴ Second session Fifty-ninth Congress, Record, pp. 3492–3494.

3845. Instance wherein, on a motion to suspend the rules, the House ordered the Clerk to incorporate in the engrossment of a general appropriation bill already passed, a provision embodying legislation.

The House, on a motion to suspend the rules, may authorize another motion to suspend the rules on a future day not a suspension day under the ordinary rules. (Footnote.)

On February 20, 1907,¹ the bill (H. R. 25483) making appropriation for the service of the Post-Office Department had passed the House when Mr. Jesse Overstreet, of Indiana, moved to suspend the rules² and agree to the following:

Ordered, That in the engrossment of the bill (H. R. 25483) making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1908, and for other purposes, the Clerk be directed to insert after the paragraph of appropriation "for inland transportation by railroad route, \$44,660,000;" the following:

"The Postmaster-General is hereby authorized and directed to readjust the compensation to be paid from and after the 1st day of July, 1907, for the transportation of mail on railroad routes carrying their whole length an average weight of mails per day of upward of 5,000 pounds by making," etc.

The rules were suspended and the order was made.

3846. A proposition directly taking away from a Department officer an authority conferred by law is not in order on a general appropriation bill, being in the nature of legislation.—On June 3, 1892,³ the House was in Committee of the Whole House on the state of the Union considering the Post-Office appropriation bill.

The subject of the act to "provide for an ocean mail service between the United States and foreign ports, and to promote commerce," approved March 3, 1891, being considered, Mr. George W. Fithian, of Illinois, offered this amendment:

Provided, That no further contract shall be entered into by the Postmaster-General under said act.

Mr. Nelson Dingley, Jr., of Maine, made the point of order that it was new legislation and did not come within either of the exceptions provided by the rule.

¹ Second session Fifty-ninth Congress, Record, p. 3494.

² This day was not a suspension day, but on the last preceding suspension day, which had been February 18, on motion of Mr. Overstreet the House had suspended the rules and agreed to an order, as follows:

Resolved, That immediately upon the final passage of the bill (H. R. 25483) making appropriations for the Post Office Department for the fiscal year ending June 30, 1908, and for other purposes, it shall be in order in the House to offer the following, under the conditions prescribed in Rule XXVIII, covering suspension of the rules:

Ordered, That in the engrossment of the bill (H. R. 25483) making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1908, and for other purposes, the Clerk be directed to insert after the paragraph of appropriation "for inland transportation by railroad route, \$44,660,000;" the following:

"The Postmaster-General is hereby authorized and directed to readjust the compensation to be paid from and after the 1st day of July, 1907, for the transportation of mail on railroad routes carrying their whole length an average weight of mails per day of upward of 5,000 pounds by making, etc."

Hence it happened that a motion to suspend the rules was authorized on a day not regularly a suspension day. (Record, p. 3232.)

³ First session Fifty-second Congress, Record, p. 5005.

The Chairman¹ ruled—

The amendment offered by the gentleman from Illinois changes existing law because it repeals the power conferred upon the Postmaster-General by the first section of the act of March 3, 1891. As an amendment to an appropriation bill it must be germane to the subject-matter and must retrench expenditure in one or more of the methods pointed out in the rule.² The Chair is of the opinion that it does not do this unless by inference, and therefore is not in order.

3847. On April 24, 1900,³ the Post-Office appropriation bill being under consideration in Committee of the Whole House on the state of the Union, Mr. Charles Curtis, of Kansas, offered this amendment to the paragraph relation to “experimental rural free delivery:”

That the carriers on rural free-delivery routes shall be paid at the rate of not less than \$600 per annum.

Mr. Eugene F. Loud, of California, having made a point of order, the Chairman⁴ held:

As the Chair understands it, under existing law there is a discretion in the Post-Office Department as to the amount of salaries to be allowed to these carriers. Should this amendment be adopted, that discretion will be taken away from the Post-Office Department, and to that extent it is a change of existing law and new legislation. The Chair sustains the point of order.

3848. A limitation on the discretion exercised under law by a bureau of the Government is a change of law.—On January 12, 1899,⁵ the House was in Committee of the Whole House on the state of the Union considering the consular and diplomatic appropriation bill. The paragraph appropriating for the support of the Bureau of American Republics was read, including this paragraph:

And provided further, That the Public Printer be, and he is hereby, authorized to print an edition of the Monthly Bulletin, not to exceed 5,000 copies, for distribution by the Bureau, every month during the fiscal year ending June 30, 1900.

Mr. Alexander M. Dockery, of Missouri, made the point of order that this would involve a change of law.

During the debate Air. George D. Perkins, of Iowa, chairman of the Committee on Printing, explained:

An appropriation is made for the public printing, and from time to time Congress makes provision for printing particular documents under that appropriation. * * * We make no appropriation in these cases; the expense comes out of the appropriation already made to the Public Printer for this purpose. * * * An appropriation is made for the Bureau of American Republics, and within the limit of that appropriation the Bureau can print such numbers of the bulletins as may be possible. * * * Now, the effect of the proviso is to increase the amount of the appropriation to be taken out of the public-printing fund to the extent of the amount that will be required to enable the Public Printer to print the 5,000 additional copies.

Mr. Perkins further stated that the number printed at present was limited by the discretion of the Bureau.

¹ William L. Wilson, of West Virginia, Chairman.

² The rule at that time was in a form which permitted legislation which would retrench expenditures. See section 3578 of this volume.

³ First session Fifty-sixth Congress, Record, p. 4633.

⁴ John Dalzell, of Pennsylvania, Chairman.

⁵ Third session Fifty-fifth Congress, Record, pp. 625–628.

The Chairman¹ ruled:

In respect to the point of order raised by the gentleman from Missouri regarding the issuance of the Monthly Bulletins, it is impossible for the Chair to speak with any confidence in his own opinion. Very little information has been given as to the existing law on the subject. If the Chair has apprehended correctly what was said by the gentleman from Iowa [Mr. Perkins], it is that the number of these bulletins is, by existing law, regulated by the discretion of the Bureau of American Republics.

Now, then, if Congress undertakes to regulate or limit or in any way affect that discretion so vested in the Bureau of American Republics by permanent law, it seems to the Chair that in that respect it is a change in existing law. For that reason the Chair sustains the point of order on the latter part of the section.

3849. On March 23, 1904,² the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

For necessary and special facilities on trunk lines from Washington to Atlanta and New Orleans, \$142,728.75: *Provided*, That no part of the appropriation made by this paragraph shall be expended unless the Postmaster-General shall deem such expenditure necessary in order to promote the interest of the postal service.

Mr. E. Y. Webb, of North Carolina, proposed this amendment:

Add after the word "service," line 23, page 18, the words "and if the Postmaster-General shall, expend said amount, or any part thereof, he shall state his reasons for the necessity of such expenditure in his next annual report."

Mr. Jesse Overstreet, of Indiana, having made a point of order, the Chairman³ said:

The amendment offered by the gentleman from North Carolina, it seems to the Chair, changes existing law, in that it alters the discretion now vested in the Postmaster-General, and also the provision of existing law in reference to his annual report. The Chair therefore sustains the point of order.

3850. On March 24, 1904,⁴ the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read a paragraph appropriating for the pay of rural free-delivery agents.

To this Mr. William W. Kitchin, of North Carolina, proposed as an amendment the following:

On page 24, after the word "dollars," in line 18, insert:

"No rural agent shall recommend against the establishment of a route on account of the condition of the roads over which a proposed route extends in any case in which a suitable carrier can be obtained for the usual compensation."

Mr. Jesse Overstreet, of Indiana, made a point of order.

After debate the Chairman³ held:

The amendment offered by the gentleman from North Carolina is clearly new legislation in that it takes away discretion from the Postmaster-General given under the general law. The Chair sustains the point of order.

¹ William H. Moody, of Massachusetts, Chairman.

² Second session Fifty-eighth Congress, Record, p. 3594.

³ H. S. Boutell, of Illinois, Chairman.

⁴ Second session, Fifty-eighth Congress, Record, p. 3646.

3851. On March 18, 1904,¹ the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. William P. Hepburn, of Iowa, offered this amendment:

Provided, That whenever the business of a post-office can not be performed by one person the business of said office shall be deemed to be unusual business under the provisions of this act.

Mr. James R. Mann, of Illinois, made a point of order that the amendment involved legislation.

The Chairman² held:

If this amendment is in order, it is in order under section 3863 of the Revised Statutes, which the Chair will read:

“SEC. 3863. Whenever unusual business accrues at any post-office, the Postmaster-General shall make a special order allowing reasonable compensation for clerical service, and a proportionate increase of salary to the postmaster during the time of such extraordinary business.”

The paragraph very clearly vests in the Postmaster-General a complete and absolute discretion to determine when the business is “unusual,” when the unusual character begins, and when it terminates. The amendment offered by the gentleman from Iowa [Mr. Hepburn] in the opinion of the Chair determines by law what that unusual business is, and therefore it takes away from the Postmaster-General a discretion vested in him by this statute. The Chair, therefore, is constrained to sustain the point of order on the ground that it changes existing law which gives the Postmaster-General absolute discretion. The question now recurs on the amendment offered by the gentleman from Indiana.

3852. On March 18, 1904,³ the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

For separating mails at third and fourth class post-offices, \$1,000,000.

Mr. E. H. Hinshaw, of Nebraska, proposed this amendment:

After the word “dollars,” in line 9, page 11, insert:

Provided, That this item shall be construed to include separating mails from and to rural mail routes.”

Mr. Jesse Overstreet, of Indiana, made the point of order that the amendment proposed legislation.

After debate the Chairman² held:

It is quite clear to the Chair that this amendment places a construction upon the existing law, and takes from the Postmaster-General the general discretion which he now has under existing law, and therefore is new legislation, and the Chair sustains the point of order.

3853. Although a law may give an executive officer authority to do a certain thing, a provision directing him so to do is legislative in nature and not in order on a general appropriation bill.—On February 12, 1907⁴ the naval appropriation bill was under consideration in Committee of the Whole House

¹ Second session Fifty-eighth Congress, Record, pp. 3435, 3436.

² Henry S. Boutell, of Illinois, Chairman.

³ Second session Fifty-eighth Congress, Record, p. 3440.

⁴ Second session Fifty-ninth Congress, Record, pp. 2785, 2786.

on the state of the Union, when Mr. George E. Foss, of Illinois, proposed this amendment:

On page 13, line 22, after the word "dollars," insert the following:

“Provided, That immediately after the passage of this act all ammunition and other supplies already on hand under appropriation ‘Increase of the Navy, armor and armament,’ shall thereby be transferred to the appropriation ‘Ordnance and ordnance stores,’ the same as if purchased under that appropriation, and that this change of title shall be effected without a charge against the appropriation ‘Ordnance and ordnance stores.’”

“Provided further, That after the passage of this act all ammunition and other supplies now contracted for under the appropriation ‘Increase of the Navy, armor and armament,’ shall be transferred to the appropriation ‘Ordnance and ordnance stores’ immediately after such ammunition and other supplies have been delivered and paid for; that this change of title shall be effected without a charge against the appropriation ‘Ordnance and ordnance stores.’”

Mr. John J. Fitzgerald, of New York, made the point of order against the amendment that it proposed legislation.

On the succeeding day, February 13,¹ Mr. Foss quoted authorities to show that the Secretary of the Navy already had the authority to do those things proposed in the amendment, and hence to argue that no change of existing law was contemplated.

The Chairman² held:

The Chair begs to suggest that what the gentleman from Illinois has read indicates or shows that the Secretary of the Navy has authority to make certain classifications, etc. The amendment which the gentleman on yesterday offered is a direction to the Secretary—a statutory, mandatory direction to the Secretary to do something which under the law he has authority to do in his discretion. This, then, is a direction where the statute gives the Secretary discretion; therefore it seems to the Chair that it is a legislative provision, and obnoxious to the rule. * * * The Chair, of course, does not enter into the question of the propriety of the legislative provision, but the matter as to whether or not it can be done upon an appropriation bill and the Chair thinks it can not be done, and sustains the point of order.

3864. A proposition to establish affirmative directions for an executive officer constitutes legislation, and is not in order on a general appropriation bill.—On December 12, 1906,³ the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union when Mr. Edgar D. Crumpacker, of Indiana, raised a question of order against a portion of the bill appropriating for the service in the Government Printing Office. After debate the Chairman⁴ stated the question and ruled as follows:

The language assailed by the point of order is as follows:

“Hereafter in printing documents authorized by law or ordered by Congress or either branch thereof, the Government Printing Office shall follow the rules of orthography established by Webster’s or other generally accepted dictionaries of the English language.”

That language is assailed by a clause of Rule XXI, which is as follows:

“Nor shall any provision changing existing law be in order in any general appropriation bill, or in any amendment thereto.”

The language of the provision I have read is either an enactment or it is a legislative construction of what we generally term the common law. The attention of the Chair has not been called to any

¹ Record, p. 2901.

² James S. Sherman, of New York, Chairman.

³ Second session Fifty-ninth Congress, Record, pp. 312–318.

⁴ William P. Hepburn, of Iowa, Chairman.

statute upon this subject, and if there is any law upon the subject it is simply the law of usage or of custom. If it is an enactment, it is obnoxious to many of the precedents established in this House. For instance, it has been held that the enactment of positive law where none exists is a change of existing law within the meaning of Rule XXI. Again, it has been generally held that provisions giving new construction of law or limiting the discretion which has been exercised by the officers charged with the duties of administration are changes of law within the meaning of the rule.

Again, a provision authorizing or directing an officer of the Government to do things involves legislation. The language of this statute requires the Public Printer hereafter to pursue a particular line of action or to do things. It has been held that in the pension appropriation bill a paragraph proposing a construction of existing law different from that adhered to by the Department was legislation and not a limitation. Again, it has generally been held that provisions giving a new construction of law or limiting the discretion which has been exercised by officers charged with the duties of administration are changes of law within the meaning of the rule.

In view of these precedents, the point of order will be sustained.

3855. On February 20, 1907,¹ the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union when the Clerk read:

For substitutes for clerks on vacation, \$50,000: *Provided*, That the Postmaster-General may allow railway postal clerks whose duties require them to work six days or more per week, fifty-two weeks per year, an annual vacation of fifteen days with pay.

Mr. Ashbury F. Lever, of South Carolina, proposed to amend the proviso so as to read:

That the Postmaster-General may allow railway postal clerks an annual vacation of fifteen days with pay.

Mr. Jesse Overstreet, of Indiana, made the point of order that the amendment involved a change of law.

After debate the Chairman² ruled:

Under the act of 1906 the Postmaster-General may allow railway postal clerks whose duties require them to work six days or more a week and fifty-two weeks in the year an annual vacation of fifteen days with pay. That is permanent law, and would still be in force even though the paragraph just read or the proviso were omitted entirely. But the amendment offered by the gentleman from South Carolina strikes out certain words and would change the permanent provision of law. It therefore violates the rules of the House, and the Chair sustains the point of order.

3856. On May 16, 1906,³ the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

And provided further, That the Secretary of the Navy shall cause a thorough inquiry to be made as to the cost of armor plate and of an armor plant, the report of which shall be made to Congress.

Mr. John Dalzell, of Pennsylvania, made a point of order against the amendment, that it involved new legislation.

Mr. John F. Rixey, of Virginia, stated that this provision was carried in the naval appropriation bill which was passed about a year ago, and was the present law. When the Secretary of the Navy was before the committee, he had stated that he had not made the investigation, that his attention had not been called to it.

¹ Second session Fifty-ninth Congress, Record, p. 3477.

² Marlin E. Olmsted, of Pennsylvania, Chairman.

³ First session Fifty-ninth Congress, Record, p. 6991.

The Chairman¹ sustained the point of order.

3857.—On February 14, 1901,² the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read the paragraph providing for the rent of certain offices in the old custom-house in New York City.

Mr. William A. Jones, of Virginia, thereupon offered this amendment:

But the Secretary of the Treasury is hereby directed to deduct from this sum of \$371,047.12 the sum of \$50,000, the same being the amount still due and unpaid by the National City Bank to the United States upon the purchase price of the said old custom-house.

Mr. Joseph G. Cannon, of Illinois, made the point of order that the amendment proposed legislation.

After debate, the Chairman³ held:

The paragraph under consideration, on page 5 of the bill, provides for the appropriation of \$371,047.12 in payment for the rental of the old custom-house in New York City from August 28, 1899, to June 30, 1902. The amendment offered by the gentleman from Virginia provides that from this payment shall be deducted the deferred payment of \$50,000 remaining unpaid by the City National Bank of New York City to the United States Government as the final payment on the purchase price of this property.

The Chair has before it the act of March 2, 1899, entitled "An act to supplement and amend an act entitled 'An act for the erection of a new custom-house in the city of New York, and for other purposes.'" This act provides for the erection of a new custom-house and for the sale of the old building. The provisions relating to the sale of the old custom-house are found in section 4 of this act. The act is mandatory. It directs the Secretary of the Treasury to sell this property upon certain terms. It also directs what some of the terms of this sale shall be—among others, that the United States Government shall be entitled to retain control and possession of this property until the completion of the new custom-house, paying as a rental therefor 4 per cent of the purchase price of the property.

In reference to the method of the payment of the purchase price this act provides:

"And the Secretary of the Treasury is hereby authorized to accept the said purchase price in several payments, from time to time, as he may deem most advantageous: *Provided, however,* That the use, occupation, and possession of said property shall not be surrendered until the new custom-house is ready for occupation and the final payment fully made."

A certain discretion is distinctly vested in the Secretary of the Treasury in reference to the method by which he shall exact the payment of this purchase price. Pursuant to this act, a contract was entered into between the United States Government and the City National Bank of New York. That contract provided that the deed should be delivered to the bank upon the payment of the balance of said purchase price when a new custom-house, to be erected by the United States on the so-called Bowling Green site, shall be occupied by the United States.

The delivery of the deed as provided by this contract is to depend upon two things—the payment of the final installment of the purchase price and the occupancy of the new custom-house at Bowling Green. That contract, the Chair submits, was entered into under the discretion clearly vested in the Secretary of the Treasury by section 4 of the act of 1899. As the Chair recollects, there is a long line of decisions, which hold that a limitation of a discretion duly vested by law in an executive officer is new legislation. Under these circumstances, considering the distinct discretion vested in the Secretary of the Treasury by this act—considering the terms of the contract which he entered into pursuant to the discretion vested in him by that act, which terms are that the deed is to be delivered on the consummation of two things, the completion of the new custom-house and the final payment of the purchase price—the Chair is constrained to rule, whatever opinion he may have in reference to the merits of the question, that this amendment offered by the gentleman from Virginia does affect and limit the discretion of the

¹Edgar D. Crumpacker, of Indiana, Chairman.

²Second session Fifty-sixth Congress, Record, pp. 2432–2434.

³Henry S. Boutell, of Illinois, Chairman.

Secretary of the Treasury as conferred upon him by section 4 of the act referred to. The Chair therefore sustains the point of order made by the gentleman from Illinois.

3858. On February 26, 1904,¹ the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

That the Secretary of the Navy is hereby authorized to procure by contract armor of the best quality for any or all vessels herein authorized, provided such contracts can be made at a price which, in his judgment, is reasonable and equitable; but in case he is unable to make contracts for armor under the above conditions he is hereby authorized and directed to procure a site for and to erect thereon a factory for the manufacture of armor, and the sum of \$4,000,000 is hereby appropriated toward the erection of said factory.

Mr. John Dalzell, of Pennsylvania, made the point of order that the paragraph was legislation.

The Chairman² ruled:

The Chair finds, in section 531 of the Parliamentary Precedents, the general principle thus stated: "It has generally been held that provisions giving a new construction of law or limiting the discretion which has been exercised by officers charged with the duties of administration are changes of law within the meaning of the rule."

A number of precedents are there cited, the first one being a ruling by Hon. John G. Carlisle, of Kentucky, upon an amendment to the deficiency appropriation bill, in this language:

Provided, That the Commissioner of Pensions shall not withhold a pension from any soldier or pensioner of the war of 1812 who was granted a pension under the act of Congress of 1871 and was dropped for charges of disloyalty and reinstated under the act of 9th March, 1878, and their pension shall be paid from 9th March, 1878."

In the course of his ruling Mr. Carlisle said:

"The Chair thinks that it will change the law within the meaning of the rule, because, undoubtedly if the amendment be adopted the Commissioner of Pensions will hereafter be required by the express letter of the law to do what he has not been heretofore required to do by express letter of the law."

Now, the Chair thinks that this provision, against which the point of order is made, authorizing and directing the Secretary of the Navy upon certain conditions to procure a site and erect thereon a factory for which there is not now authority of law, requires him to do "what he has not been heretofore required to do by express letter of the law," and the ruling of Mr. Carlisle is directly in point.

The Chair also finds that Mr. William H. Hatch, of Missouri, in 1894, ruled an amendment out of order because it limited the discretion of the Postmaster-General. This amendment clearly proposes to limit the discretion of the Secretary of the Navy. There is a long line of authorities, which the Chair will not take time to cite.

In the third session of the Fifty-fifth Congress, the naval appropriation being then as now bill under consideration, a proposition was offered in an amendment making an appropriation for the establishment of an armor-plate factory—the very proposition which is now before the committee—ruling upon the point of order against that, the gentleman from New York [Mr. Sherman] said:

"It is so clear to the Chair that this proposed amendment is obnoxious to Rule XXI, the Chair thinks it unnecessary to make any statement. The Chair therefore sustains the point of order."

In a later Congress a similar proposition was again ruled out, Mr. Payne, of New York, in the chair.

Following these precedents, and for these reasons, it clearly appearing that in a number of particulars this paragraph not only changes existing law but provides for an appropriation for a purpose not authorized by law, the Chair sustains the point of order made by the gentleman from Pennsylvania.

Mr. William W. Kitchin, of North Carolina, having appealed, the decision of the Chair was sustained, ayes 131, noes 93.

¹ Second session Fifty-eighth Congress, Record, pp. 2438–2440.

² Marlin E. Olmsted, of Pennsylvania, Chairman.

3859. On April 2, 1902,¹ while the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, Mr. Richard W. Parker, of New Jersey, made a point of order on the following paragraph in the bill:

The Secretary of War is authorized and directed to prepare and submit in the annual estimates, at the next session of Congress, a proposition providing for the consolidation of the existing commissions having charge of the several national military parks, or substituting therefor a commission consisting of one or more members to have charge and direction, under the War Department, of the future improvement, care, and maintenance of all of said military parks. The Secretary of War shall also submit estimates for each of said parks in accordance with the proposition herein required to be submitted.

It was urged against the point of order that the provision contained no existing law, and was in effect merely a provision of inquiry.

The Chairman² held:

The pending paragraph authorizes and directs the Secretary of War to do certain things which in the opinion of the Chair he is not now authorized and directed to do by existing law. In other words, it is an effort to enact law where no law now exists, and is thus a change of existing law and obnoxious to the rules, that—

“no provision changing existing law shall be in order on any general appropriation bill or in any amendment thereto.”

While the Chair has a great deal of sympathy with the spirit and purpose of the paragraph, he feels constrained to sustain the point of order.

3860. Where an executive officer has general discretion as to the application of an appropriation for a public work, an appropriation limited to a specific detail has been held to involve legislation.—On February 3, 1898,³ the fortifications appropriation bill being under consideration in the Committee of the Whole House on the state of the Union, Mr. Israel F. Fischer, of New York, offered this amendment:

For preliminary work necessary for the erection of a fortification on Romers Shoals, in the harbor of New York, \$25,000.

Mr. J. A. Hemenway, of Indiana, made the point of order against the amendment.

After debate the Chairman⁴ ruled:

The appropriations provided for in this bill are to be expended under the direction of the War Department. The amendment limits and controls the discretion of the Department. It directs to be done what the Secretary of War or the proper officer in the War Department, in the discharge of his duties in expending the appropriations provided for in this bill, might think to be unnecessary or unwise, and in that respect is in violation of Rule XXI, section 2, which provides that—

“No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, etc., * * * nor shall any provision changing existing law be in order in any general appropriation bill or in amendment thereto.”

The Chair thinks there is a clear line of distinction between an appropriation contemplated in the amendment offered by the gentleman from New York and the appropriations provided for in the pending bill for certain specified places. Those appropriations are permissible under section 2, Rule

¹ First session Fifty-seventh Congress, Record, pp. 3569, 3570.

² George P. Lawrence, of Massachusetts, Chairman.

³ Second session Fifty-fifth Congress, Record, p. 1420.

⁴ Albert J. Hopkins, of Illinois, Chairman.

XXI, which provides that such appropriations are authorized in a bill of this character where they are in continuation of appropriations for public works and the object already in progress. The places mentioned by the gentleman from New York in the bill as being of the same character as the appropriations contemplated in his amendment are appropriations for continuing works already begun at those specified places. His amendment is for a place heretofore unappropriated for. It is the creation of a new public work, and, inasmuch as it directs the Department to expend money for this purpose, is in violation of the rule just quoted. For these reasons the Chair will sustain the point of order.¹

Mr. Wallace T. Foote, jr., of New York, having appealed, the decision of the Chair was sustained, 98 ayes to 40 noes.

3861. On February 24, 1898,² the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union. The paragraphs relating to the Geological Survey being read, Mr. Marcus A. Smith, of Arizona, proposed an amendment to provide that \$5,000 of the appropriation should "be expended in the county of Yuma, Territory of Arizona."

Mr. Joseph G. Cannon, of Illinois, having made a point of order, after debate the Chairman³ ruled:

The Chair understands that the Secretary of the Interior is given a general discretion as to how and in what localities he shall use the appropriation. This amendment would limit that discretion, and therefore the Chair sustains the point of order.

3862. The law providing that the Secretary of the Navy should name battle ships, a proposition to name one in an appropriation bill was held to be legislation.

A legislative paragraph which remains in an appropriation bill without objection may be perfected by any germane amendment which does not add more legislation.

On April 1, 1898,⁴ the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read the paragraph providing for the construction of new battle ships, one to be named the *Maine*.

Mr. Robert N. Bodine, of Missouri, offered this amendment:

And one of said battle ships to be named the *Missouri*.

Mr. Nelson Dingley, of Maine, made the point of order against the amendment. After debate the Chairman⁵ ruled:

It seems to the Chair that while the law expressly provides that the Secretary of the Navy shall name the battle ships, the provision inserted in the bill was subject to a point of order if it had been raised; but not having been raised, it would be permissible to strike out the word *Maine* and insert any other name. That does not, however, permit the changing of the law so as to name more than one ship. Therefore the Chair sustains the point of order.

3863. A requirement that the Secretary of the Navy should have certain new vessels constructed in navy-yards was held to be legislation and

¹For another ruling relating to this subject see Record, pp. 1730, 1731, second session Fifty-fourth Congress.

²Second session Fifty-fifth Congress, Record, pp. 2142, 2143.

³Sereno E. Payne, of New York, Chairman.

⁴Second session Fifty-fifth Congress, Record, p. 3474.

⁵James S. Sherman, of New York, Chairman.

not a limitation.—On April 20, 1900,¹ the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. J. J. Fitzgerald, of New York, offered to the provision for building new vessels the following amendment:

To be constructed under the supervision and direction of the Secretary of the Navy in such of the navy-yards of the United States as are best adapted therefor.

Mr. George E. Foss, of Illinois, made a point of order against this amendment. After debate the Chairman² said:

It appears to the Chair that the natural interpretation of the language just read by the gentleman from New York [Mr. Fitzgerald] is that under the construction of the present law by the Secretary of the Navy there is no law for building any of these vessels in the navy-yards, but that legislation would be necessary in order to authorize that. This is the interpretation the Chair would put upon the language which the gentleman has just read.

Aside from that, however, the question now before the Committee of the Whole is whether this provision is new legislation or whether it is a limitation of the appropriation. There are several decisions to which the attention of the Chair has been called. One of them reads in this way:

“Provisions that bids for the construction of naval vessels should be limited to bidders having adequate plants and not having over a specified number of vessels under construction were held to be in the nature of legislation and not a limitation.”

That decision would seem to throw a good deal of light upon the question of order on this amendment, which provides that the Secretary of the Navy shall construct these vessels “in such navy-yards of the United States as are at present established therefor.” This would seem to be a parallel case. The Chair therefore, following the decision made in the Fifty-fifth Congress, sustains the point of order.

Mr. Fitzgerald having appealed, the decision was sustained on a vote by tellers, ayes 82, noes 74.

3864. An amendment to the description of the object for which an appropriation is made is not legislation.—On March 1, 1905,³ the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

For pay of bailiffs and criers, not exceeding three bailiffs and one crier in each court, except in the southern district of New York: *Provided*, That all persons employed under section 715 of the Revised Statutes shall be deemed to be in actual attendance when they attend upon the order of the courts: *Provided further*, That no such person shall be employed during vacation; of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; expenses of judges of the circuit courts of appeals, not to exceed \$10 per day; of meals and lodgings for jurors in United States cases, and of bailiffs in attendance upon the same, when ordered by the court; and of compensation for jury commissioners, \$5 per day, not exceeding three days for any one term of court, \$35,000.

Mr. Marlin E. Olmsted, of Pennsylvania, offered this amendment:

After the word “district,” strike out the words “not to exceed \$10 a day;” and insert in lieu thereof the following:

“The liquidated sum of \$10 for each day necessarily occupied in traveling and attending at any term of court so held by any such judge outside of his own district.”

Mr. James A. Hemenway, of Indiana, made a point of order against the amendment, that it involved legislation.

¹ First session Fifty-sixth Congress, Record, p. 4493.

² Sereno E. Payne, of New York, Chairman.

³ Third session Fifty-eighth Congress, Record, pp. 3802–3804.

Mr. Hemenway explained that there was no law on the subject other than this provision, which had run in appropriation bills of previous years:

Of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed \$10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States.

Mr. Olmsted said:

If there be no existing law authorizing this, it is of itself new legislation; but no point of order having been made against the new legislation already in the bill an amendment germane thereto is in order.

At the conclusion of the debate the Chairman ¹ said:

Section 596 of the Revised Statutes of 1878 prohibits the payment of anything toward the expense of a district judge holding court in another district, except in one case, which is not covered by the present amendment. So that the item itself in the bill, if there has been no change of law since section 596 was enacted, was subject to a point of order. And that point of order not having been raised, any germane amendment to the paragraph would now be in order. But the Chair is of the opinion that the language in reference to this item is clearly a matter of description of the appropriation, is not continuing law, has no effect upon anything except the money carried by this item, and, being a mere matter of description of the item, may be changed by amendment in the committee. The Chair therefore overrules the point of order.

3865. A limit of cost on a public work may not be made or changed on an appropriation bill.—On May 2, 1906,² the Military Academy appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the clerk read:

For completing the necessary improvements at the United States Military Academy at West Point, N. Y., in accordance with the general plan approved by the Secretary of War, the limit of the total expenditure for this work fixed in the act of Congress approved June 28, 1902, is extended \$1,500,000, and the Secretary of War is authorized to proceed with the work under the conditions already prescribed for it by law: *Provided*, That all limitations and restrictions in the act approved June 28, 1902, shall apply to this increased authorization.

Mr. Henry W. Palmer, of Pennsylvania, made the point of order that the paragraph proposed legislation.

In the debate it was urged that the act of 1902 did not provide a fixed limit of cost by permanent law, but merely a limitation to the appropriation therein carried:

To increase the efficiency of the United States Military Academy at West Point, N. Y., and to provide for the enlargement of buildings and for other necessary works of improvement in connection therewith, and to provide for an increased water supply at a cost not to exceed \$100,000, made necessary by the increased number of cadets now authorized by law, immediately available and to remain so until expended, \$2,000,000: *Provided*, That before any part of this amount is expended, except so much as may be necessary to provide an immediate increased water supply, to install a heating and lighting plant, and to complete the improvements begun on the cadet mess building, complete plans shall be prepared and approved by the Secretary of War, covering all necessary buildings and improvements at West Point, and for each and every purpose connected therewith, which plans shall involve a total expenditure of not more than \$5,500,000, including the sum herein appropriated: *Provided further*, That alter the preparation and approval of the plans herein provided, the Secretary of War is authorized to enter into a contract or contracts for any part or all of the improvements herein authorized within the

¹James R. Mann, of Illinois, Chairman.

²First session Fifty-ninth Congress, Record, pp. 6288–6295.

said limit of cost, to be paid for from the appropriations annually made for this purpose: *Provided further*, That no money shall be expended or obligation incurred for architects after the plans for improvement above provided for have been approved by the Secretary of War, except that the Secretary of War is hereby authorized to employ, in his discretion, a consulting architect at a compensation not exceeding \$5,000 per annum.

It was also urged that the provision of the pending bill was in the nature of the continuation of a public work or object.

As to the contention that the act of 1902 did not make permanent law the Chairman¹ held:

It is in the appropriation bill, it is true, but it is general law, and this bill provides that the limit of total expenditure for this work fixed in the act of Congress of June 28, 1902, is extended. The bill itself states that it is fixed—fixed by a previous law. It is also fixed by the act of 1904 and also by the act of 1905, so that there are three different bills fixing the cost not to exceed five and a half million dollars. If there is no existing law on the subject, then this bill creates a law, and if there is an existing law then this bill changes it. In either event it is new legislation.

As to the contention that the provision was admissible as in continuation of a public work, the Chairman said:

The Chair would call the attention of the gentleman from New York to the fact that this is not a continuation of the appropriation. This is a change of limit. It says that the limit is extended \$1,500,000. It is not an appropriation for a million and a half of dollars, but it is a change from the limit of \$5,500,000 to \$7,000,000.

Therefore the point of order was sustained.

3866. On May 12, 1892,² the House was in Committee of the Whole House on the state of the Union considering the sundry civil appropriation bill.

Mr. John L. Wilson, of Washington, offered the following amendment:

At Grays Harbor, Washington, a first-order light-house and fog signal, at a cost not to exceed \$60,000, in addition to the appropriation of \$15,500 made in the act approved July 7, 1884, for a harbor light at this point.

Mr. Joseph D. Sayers, of Texas, having made a point of order, the Chairman³ inquired:

The Chair understands it to be the fact that a certain amount has been appropriated by law for a light-house, and the amendment proposes to increase the limit which was authorized before. Is that the fact?

The mover of the amendment having admitted this to be the fact, the Chair sustained the point of order.

3867. On February 21, 1901,⁴ the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. David H. Mercer, of Nebraska, offered the following amendment:

To enable the Secretary of the Treasury of the United States to give effect to and execute the provisions of existing legislation authorizing the purchase of sites and the erection thereon of public buildings in the several cities hereinafter enumerated, the limit of cost heretofore fixed by Congress therefor be, and the same is hereby, increased, respectively, as follows, and the Secretary of the Treasury

¹ John F. Lacey, of Iowa, Chairman.

² First session Fifty-second Congress, Record, pp. 4227, 4228.

³ Rufus E. Lester, of Georgia, Chairman.

⁴ Second session Fifty-sixth Congress, Record, pp. 2793, 2794.

is hereby authorized to enter into contracts for the completion of each of said buildings within its respective limit of cost, including site, hereby fixed:

United States post-office and court-house at Aberdeen, S. Dak., from \$87,000 to \$100,000.

United States post-office and court-house at Abilene, Tex., from \$75,000 to \$100,000, etc.

Mr. Joseph G. Cannon, of Illinois, having made a point of order, the Chairman¹ held:

This evidently increases the limit of expenditure, and therefore is new legislation, and the Chair sustains the point of order.

Mr. Mercer having appealed, the decision of the Chair was sustained.

3868. A proposition to authorize a contract for future expenditures on public works was held to propose legislation.—On April 10, 1890,² the House was in Committee of the Whole House on the state of the Union considering the naval appropriation bill.

Mr. Joseph Wheeler, of Alabama, offered as an amendment the following proviso to a paragraph relating to the construction of ships:

Provided, That the Secretary of the Navy be, and is hereby, authorized to make contracts with one or more ship building or owning companies by which the said company or companies shall agree to construct two vessels of such type and speed as shall render them specially suitable for service as armed cruisers, said vessels to be built in accordance with plans and specifications to be submitted by the Navy Department. Said contract shall stipulate that in the event of war the Government shall have the right to charter or purchase said vessels upon such reasonable terms as the Secretary of the Navy may prescribe in the said contract: *Provided further*, That in consideration of the privileges given to the Government by said contract the owners of vessels so constructed shall be entitled to receive from the Government a sum not greater than \$4 per gross registered ton per annum for a period of five years from the date of the commencement of the first voyage of said vessels.

Mr. Charles A. Boutelle, of Maine, having made a point of order against the amendment, after debate the Chairman³ ruled:

On examination, the Chair is satisfied that the amendment proposes legislation not authorized on an appropriation bill. The clause of the amendment providing for payment of so much per ton is not a limitation on an appropriation to be devoted to the construction of ships. The Chair sustains the point of order.⁴

¹ George P. Lawrence, of Massachusetts, Chairman.

² First session Fifty-first Congress, Record, pp. 3262–3264.

³ Benjamin Butterworth, of Ohio, Chairman.

⁴ On April 9, 1896 (first session Fifty-fourth Congress, Record, p. 3783), the District of Columbia appropriation bill, which had been recommitted with certain instructions, was reported back to the House with this new paragraph:

“For the relief and care of the poor and destitute, and for such charitable and reformatory work, and such care and medical and surgical treatment of poor and destitute patients in the District of Columbia as have been heretofore usually provided for by direct appropriations to private institutions, and as the District Commissioners may deem necessary, the sum of \$94,700, to be expended under the direction of said Commissioners, either under contract with responsible and competent persons or institutions or by employing for the purpose the public institutions or agencies of said District, where practicable: *Provided*, That no such contract shall extend beyond the 30th day of June, 1897, and that no payment shall be made under any such contract except for service actually rendered, for which compensation shall be provided in said contract; and that said Commissioners shall report to Congress on or before the first Monday of December in each year a detailed statement of their expenditures theretofore made under this appropriation, and of all contracts made by them hereunder, giving the names of the persons and institutions contracted with, and stating what further expenditures will be

3869. On June 7, 1906,¹ the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Toward the construction of a steam vessel specially fitted for and adapted to service at sea in bad weather, for the purpose of blowing up or otherwise destroying or towing into port wrecks, derelicts, and other floating dangers to navigation, said vessel to be operated and maintained by the Revenue-Cutter Service, under such regulations as the Secretary of the Treasury may prescribe, as authorized by the act of Congress approved May 12, 1906, to be immediately available, \$100,000; and the Secretary of the Treasury is hereby authorized to enter into a contract or contracts for such construction at a cost not to exceed \$250,000, the limit fixed by said act.

Mr. James R. Mann, of Illinois, made the point of order that the last clause, authorizing the making of a contract, was contrary to existing law.

In the debate it appeared that the construction of the vessel had been authorized; and also the following sections of the Revised Statutes were read:

3679. No Department of the Government shall expend in any one fiscal year any sum in excess of appropriations made by Congress for that fiscal year, or involve the Government in any contract for the future payment of money in excess of such appropriation.

3772. No contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment, except in the War and Navy Departments, for clothing, subsistence, forage, fuel, quarters, or transportation, which, however, shall not exceed the necessities of the current year.

After debate the Chairman² held:

The Chair is clearly of the opinion that the paragraph is obnoxious to the rule, and the point of order is sustained.

3870. On May 11, 1906,³ the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Naval training station, Great Lakes, buildings: Toward the construction of buildings, and for other necessary improvements at the naval training station, Great Lakes, \$750,000: *Provided*, That

required thereunder: *And provided further*, That no part of the money herein appropriated shall be paid for the purpose of maintaining or aiding, by payment for services or expenses, or otherwise, any church or religious denomination, or any institution or society which is under sectarian or ecclesiastical control."

Mr. Franklin Bartlett, of New York, made a point of order against the section.

After debate, the Speaker (Thomas B. Reed, of Maine, Speaker) held:

"The ultimate thing to be sought after in this matter is what the appropriation is. The appropriation is for the care of the poor and destitute, and for charitable and reformatory work. It is evident that such an appropriation as that is not contrary to law; at any rate not for the present purposes. That question has been fully considered in Committee of the Whole, and no point of order was made in regard to it. Hence, for the purpose of this decision, it must be taken to be true that Congress has the right to make the appropriations named, as it has already been making such appropriations. If it has the right to appropriate, then it has the right to select whatever instrumentalities it thinks suitable for the purpose; and the fact that the Commissioners are officers, also, of the Government does not, in the judgment of the Chair, interfere with the matter at all, because Congress can impose that duty upon individuals, and certainly upon the Commissioners. As to the absurdity, or supposed absurdity, involved in the appropriation for the Industrial Home School, that is a matter for the House to pass upon, as it would be upon a constitutional question, the Chair not being able to decide upon either a constitutional question conclusively or upon a question of absurdity. The Chair overrules the point of order."

¹First session Fifty-ninth Congress, Record, pp. 8020–8022.

²James E. Watson, of Indiana, Chairman.

³First session Fifty-ninth Congress, Record, pp. 6747, 6904–6906.

before any of this sum is expended complete plans shall be prepared and approved by the Secretary of the Navy covering the contemplated new buildings at the naval training station, Great Lakes, which plans shall involve a total expenditure of not more than \$2,000,000: *Provided further*, That after the preparation and approval of the plans herein provided for the Secretary of the Navy is authorized to enter into contract or contracts for the buildings on plans as approved to an amount not to exceed \$2,000,000, to be paid for as appropriations may from time to time be made by law.

Mr. Oscar W. Underwood, of Alabama, made a point of order against the last proviso, on the ground that it involved legislation.

In the course of the debate the attention of the Chair was directed to certain sections of the Revised Statutes relating to the making of contracts.

On May 15 the debate was continued, Mr. George E. Foss, of Illinois, stating in the course of his argument precedents as follows:

Now, we come to the general proposition of whether it is in order to authorize the Secretary of the Navy to enter into a contract for a greater sum than the appropriation provided in the bill, and that is the real proposition before the committee. In 1883,¹ when we started in to build a new Navy, in the act of that year a point of order was raised by Mr. Blount, of Georgia, upon the paragraph for the increase of the Navy, and the point of order was made to the whole paragraph. That section provided for the construction of the steel cruiser of not less than 4,000 tons displacement, now specially authorized by law; two steel cruisers of not more than 3,000 or less than 2,500 tons displacement each, and one dispatch boat, as recommended by the naval advisory board in its report of December 20, 1882; and this section further provides the limit of cost for those ships as found to be proper by this advisory board; and, furthermore, this provision contains an appropriation for \$1,300,000 less than the total cost of the construction of those ships, so that the question is fairly presented here whether or not it is proper or in order to authorize a contract for a greater amount than the sum appropriated in the bill. Now, Mr. Chairman, this was at a time, as I stated, when we first started the construction of our new Navy and related to those ships, the *Atlanta*, the *Boston*, the *Chicago*, and *Dolphin*, sometimes called the A, B, C, and D of the new Navy. Mr. Blount raised the identical point which is raised here, and on the point of order he said:

"I think we will save time by having the questions of order passed upon at the outset. I raise the question of order on the following language: 'Two steel cruisers, of not more than 3,000 nor less than 2,500 tons displacement each, and one dispatch boat, as recommended by the naval advisory board in its report of December 20, 1882, \$1,300,000.' I make the point of order that there is no authority of law for the construction of those vessels, that this is a new item, and therefore is out of order in this bill; and further, under the law as it now stands the Secretary can not make a contract binding the Government beyond the appropriations made by law, and yet there is a proposition providing a portion of the sum and giving him authority to make a contract for more. The language is explicit."

So that this proposition was fairly brought to the attention of the Chair, and the Chair ruled, Mr. Page, of California, then being Chairman of the Committee of the Whole:

"The Chair is of the opinion that the point of order is not well taken. The Chair thinks that under section 717 of the Revised Statutes this House may make appropriations or not, as it chooses, for the construction of new vessels of war. That is what this paragraph does, and it only limits the appropriation, as has always been the rule. It has always been held by former chairmen that a bill making an appropriation for a specific purpose might limit the purpose."

And from that decision Mr. Blount took an appeal to the committee, and the committee sustained the opinion of the Chair.

Now, Mr. Chairman, from that time down, for twenty-two years, the precedents are all one way upon this question of whether you can authorize a battle ship, authorize the making of a contract for a battle ship, fix the limit of cost upon it, and yet not appropriate a single dollar. That has been decided time and time again. I can call special attention to two decisions, one by Mr. Butterworth, as Chairman of the Committee of the Whole in the first session of the Fifty-first Congress² on page 3221, volume

¹January 24, 1883, second session Forty-seventh Congress, Record, p. 1561.

²First session Fifty-first Congress, Record, pp. 3221, 3222. April 9, 1890.

106, where he decides in substance the same question. I will not read that decision, but if the Chair desires to read the decision I would be pleased to have him. Then the same decision was made by Mr. Sherman in the second session of the Fifty-fifth Congress (p. 3458, vol. 172, Congressional Record), all sustaining the point that you can authorize a ship without appropriating a single dollar for it, authorize the making of a contract, and fixing thereon the limit of cost.

At the conclusion of the debate the Chairman ¹ ruled:

The paragraph provides for the construction of buildings and other necessary improvements at the naval training station on the Great Lakes and carries an appropriation of \$750,000, and, among other things, provides that, before any part of the sum is expended, complete plans are to be prepared and approved by the Secretary of the Navy covering the contemplated new buildings at the naval training station, which shall involve a total expenditure of not more than \$2,000,000.

No question is raised respecting the provisions in the paragraph so far as I have read, but the question of order is raised to the second proviso, which reads as follows:

“That after the preparation and approval of the plans herein provided for the Secretary of the Navy is authorized to enter into contract or contracts for the buildings on plans as approved to an amount not to exceed \$2,000,000, to be paid for as appropriations may from time to time be made by law.”

The question raised by the point of order is whether it is in order on an appropriation bill of this character to authorize an executive officer of the Government to contract for a building or public improvement over and in excess of the amount of the appropriation. A general statute upon the subject, section 3733 of the Revised Statutes of 1878, provides:

“No contract shall be entered into for the erection, repair, or furnishing of any public building or for any public improvement which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose.”

Then section 5503 of the Revised Statutes provides that—

“Every officer of the Government who knowingly contracts for the erection, repair, or furnishing of any public building or any public improvement, to pay a larger amount than the specific sum appropriated for such purpose shall be punished by an imprisonment of not less than six months nor more than two years, and shall pay a fine of \$2,000.”

Now, it is clear that in the absence of express legal authority the Secretary of the Navy would not have the right to contract for the erection of buildings mentioned in the paragraph above the specific amount appropriated. All contracts in excess of that sum would be void. The Chair is of the opinion that the provision in last year's deficiency act to which his attention has been called is not applicable. If the law as it now exists prohibits contracts for more than the amounts appropriated, any provision that would confer that authority would of necessity change existing law.

The Chair is somewhat familiar with the decision cited by the gentleman from Illinois [Mr. Foss] respecting contracts for the construction of war vessels. Without passing upon that particular question it may be suggested that the statutes that have been quoted do not mention and probably do not include war vessels. Those statutes apply to public buildings and improvement, and it is a matter of serious doubt, at least, whether war vessels come within the designation of public buildings and public improvements.

The rules of the House permit appropriations for objects already authorized by law. The naval training station on the Great Lakes may be assumed for the purposes of this decision to be authorized by law. But the rules provide that no provision changing existing law shall be in order in any general appropriation bill or any amendment thereto. The existing law unqualifiedly prohibits contracts for public buildings and improvements beyond the amount specifically appropriated. The proviso in question clearly changes existing law. It repeals pro tanto the two sections of the statute which the Chair has read to the committee. Whether the rule of the House respecting legislation in general appropriation bills will operate beneficially in this particular case or otherwise is a matter the Chair is not at liberty to consider. The law forbids the contracts sought to be provided for. No limitation contrary to existing law can be put upon an appropriation in a general appropriation bill. The point of order is sustained.

¹Edgar D. Crumpacker, of Indiana, Chairman.

3871. A provision making conditions as to the rate of compensation of certain employees appropriated for on an appropriation bill was held to be legislation.—On February 18, 1901,¹ the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk read a paragraph providing an appropriation to meet the expenses of protecting timber on the public lands, etc., with this proviso:

Provided, That agents and others employed under this appropriation shall be selected by the Secretary of the Interior and allowed per diem, subject to such rules and regulations as he may prescribe, in lieu of subsistence, at a rate not exceeding \$3 per day each and actual necessary expenses for transportation, including necessary sleeping-car fares.

Mr. James R. Mann, of Illinois, made the point of order that the proviso proposed legislation.

Mr. Joseph G. Cannon, of Illinois, urged that this language had been in the appropriation bills for many years, and that it simply provided a limitation on the expenditure.

The Chairman² held:

The Chair is constrained to hold the point is well taken. The language of the proviso clearly states that agents and others employed under this appropriation shall be selected by the Secretary of the Interior. That is new legislation, and the Chair will sustain the point of order.³

3872. Under the present rule a proposition to regulate the public service, as by transfer of a portion of it from one Department to another, may not be included in an appropriation bill.—On December 16, 1896,⁴ the House was in Committee of the Whole House on the state of the Union considering the army appropriation bill, when this paragraph was reached:

Construction and repair of hospitals: For construction and repairs of hospitals at military posts already established and occupied, including the extra-duty pay of enlisted men employed on the same: *Provided*, That the Army and Navy Hospital at Hot Springs, Ark., is hereby abandoned and all improvements on Government reservation are surrendered and turned over to the Interior Department, except quarters for the officers, \$75,000.

¹Second session Fifty-sixth Congress, Record, pp. 2610, 2611.

²Albert J. Hopkins, of Illinois, Chairman.

³On February 9, 1893 (second session Fifty-second Congress, Record, p. 1394), the House was in Committee of the Whole House on the state of the Union considering the legislative, executive, and judicial appropriation bill.

The Clerk had read a section of the bill regulating the hours of labor in the Executive Departments of the Government and allowing sixty days' annual leave and sixty days' sick leave to clerks under certain conditions.

Mr. James D. Richardson, of Tennessee, offered an amendment extending the same regulations to employees of the Government Printing Office.

Mr. Alexander M. Dockery, of Missouri, having made a point of order, the Chairman (John C. Tarsney, of Missouri, Chairman) ruled:

"The Chair understands that by law leave of absence is granted to the employees of several of the Departments and bureaus of the Government and that the Printing Office is not included in existing law. The amendment offered by the gentleman from Tennessee [Mr. Richardson] extends such leave of absence to the employees of the Printing Office, and carries in this appropriation the obligation to pay such employees for the time they are absent, which obligation now exists as to certain other bureaus. This is clearly new legislation, and changes existing law, and is therefore obnoxious to the point of order. The Chair therefore holds that the amendment is out of order."

⁴Second session Fifty-fourth Congress, Record, p. 218.

Mr. John S. Little, of Arkansas, having made a point of order that the proviso changed existing law, the Chairman¹ ruled:

The law provides an appropriation of \$100,000 to be appropriated for the erection of an army and navy hospital at this place, and that it shall be erected by and under the direction of the Secretary of War, in accordance with plans and specifications to be prepared and submitted to the Secretary of War by the Surgeons-General of the Army and Navy, etc. The Chair is of the opinion that it can not be transferred from the War Department to the Interior Department in an appropriation bill, and will sustain the point of order made by the gentleman from Arkansas.

3873. On January 26, 1897,² the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union. and Mr. Frank W. Mondell, of Wyoming, offered the following amendment:

And in connection with every Indian school hereafter erected and established there shall be provided a completely equipped manual-training department.

Mr. James S. Sherman having raised the point or order. after debate the Chairman¹ sustained it.

3874. A paragraph providing for a new department in the District government was held to involve legislation.—On March 15, 1900,³ the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the following paragraph had been read:

Electrical department: For electrical engineer, \$2,400; superintendent of lamps, \$1,000; superintendent of telegraph and telephone service, \$1,600; electrician, \$1,200; chief operator, \$1,200; chief inspector, \$1,200; machinist, \$800; 3 telegraph operators, at \$1,000 each; 3 inspectors, at \$900 each; clerk, \$800; clerk, \$600; 3 telephone operators, at \$600 each; 3 assistant telephone operators, at \$360 each; driver, \$480; laborer, \$480; expert repairman, \$960; 3 repairmen, at \$720 each; 2 laborers, at \$400 each; telephone messenger, \$360; in all, \$24,440.

Mr. Mitchell May, of New York, made the point of order that the paragraph created a new department in the District government. And was therefore legislation.

After debate the Chairman⁴ said:

It seems to the Chair that this provision contemplates the establishment of a new department in the District government, and to that extent is new legislation and obnoxious to the rule. There are certain items in this paragraph that have been provided for by former appropriation bills, and so far as those items are concerned, they are not obnoxious to the rule; but the paragraph as a whole is.

3875. An amendment proposing a change in the organization of the Navy Department was ruled out of order on the naval appropriation bill.—On January 23, 1901,⁵ the naval appropriation bill (H. R. 13705) was under consideration in the Committee of the Whole House on the state of the Union, and the following paragraph was read:

There shall be detailed, temporarily, as assistant to the Chief of each of the Bureaus of the Navy Department, a commissioned officer of the Navy. This officer shall be detailed from the same corps from which the Chief of the Bureau is appointed. Such officer, during said detail, shall receive the highest pay and allowances of his grade, and in the case of the death, resignation, absence, or sickness

¹ Albert J. Hopkins, of Illinois, Chairman.

² Second session Fifty-fourth Congress, Record, pp. 1190, 1191.

³ First session Fifty-sixth Congress, Record, pp. 2947, 2948.

⁴ James S. Sherman, of New York, Chairman.

⁵ Second session Fifty-sixth Congress, Record, pp. 1362, 1363.

of the Chief of the Bureau, shall, unless otherwise directed by the President, perform the duties of the Chief of the Bureau until the appointment of a successor or until such absence or sickness shall cease: *Provided further*, That in case the Chief of any Bureau and the assistant thereof shall be for any reason incapacitated, the chief clerk shall act temporarily as Chief of the Bureau.

Mr. Joseph G. Cannon, of Illinois, made a point of order that the paragraph included legislation.

After debate, the Chairman¹ held:

This provision, as the Chair understands, provides for the detail of naval officers to the position of assistants to the chiefs of bureaus in the Navy Department. It prescribes for the officer thus detailed his duties in that office and provides that he shall be detailed from the corps from which the chief of bureau is appointed. It provides that in case of the absence, death, resignation, or sickness of the chief of bureau the assistant shall be, until the President intervenes, in the line of succession, and perform the duties of the chief of the bureau. The Secretary of the Navy would make this detail. Either that officer at the present time has authority, in his discretion, to make such a detail or he has not.

If he has, then this provision, which declares that he "shall" make the detail, would abridge and restrict that discretion. In accordance with many precedents which the Chair will not cite, but to which he will call the attention of the gentleman from West Virginia (they are to be found on page 338 of the Manual and Digest), a provision in an appropriation bill which abridges and restricts the discretion vested by law in an officer of the Government is legislation, and as such is obnoxious to the point of order now invoked. If, on the other hand, the Secretary of the Navy has not the right, in his discretion, to make such a detail as this, then that right would be created by the very words of this provision. It seems to the Chair, with due regard to the opinion of the gentleman from West Virginia, that, taking either horn of the dilemma, this provision is legislation and is subject to the point of order. Accordingly, the point is sustained.

3876. An amendment proposing a reorganization of the Agricultural Department was ruled out of order on the agricultural appropriation bill.—On January 30, 1901,² the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Leonidas F. Livingston, of Georgia, offered this amendment:

Provided further, That the Secretary of Agriculture is hereby authorized to make such further reorganization of his Department as will in his judgment be conducive to the interests of the public service: And *provided further*, That the total expenditure shall not exceed the aggregate amount hereby appropriated.

Mr. William H. Moody, of Massachusetts, made the point of order against the amendment.

Mr. Livingston, in debate, urged that the original act constituting the Department of Agriculture provided (see. 4, chap. 72, Laws of 1862) that the Commissioner of Agriculture should—

appoint such other employees as Congress may from time to time provide.

The Chairman² said:

The Chair will call the attention of the gentleman to the fact that the act says "as Congress may from time to time provide." How can Congress provide except by legislation? * * * The Chair sustains the point of order.

¹ William H. Moody, of Massachusetts, Chairman.

² Second session Fifty-sixth Congress, Record, p. 1707.

³ Sereno E. Payne, of New York, Chairman.

3877. A direction to the Secretary of the Navy to appoint a commission to consider the proposed establishment of a dry dock was held to be legislation and not in order on an appropriation bill.—On March 30, 1898,¹ the House was in Committee of the Whole House on the state of the Union considering the naval appropriation bill, when this paragraph was reached:

And the Secretary of the Navy is hereby authorized and directed to appoint a board of naval officers to determine the desirability of locating and constructing a dry dock in the harbor of Galveston, Tex., and to report such finding to the next session of the present Congress, and the sum of \$1,000, or so much thereof as may be necessary, is hereby appropriated to defray the expenses of said board.

Mr. Joseph G. Cannon, of Illinois, made a point of order against the paragraph. The Chairman² ruled:

The Chair is ready to rule. The question raised by the point of order to this section is not identical with the other question raised against the provision for more battle ships or the provision for building dry docks. This is a section providing for neither of those purposes. It simply provides for the appointment of a board to determine the desirability of locating and constructing a dry dock at a particular point. It seems to the Chair that that is entirely different from either of the other decisions, and those decisions need not be reviewed in coming to a conclusion upon the point of order here raised, which, it seems to the Chair, must be sustained, because the provision is clearly obnoxious to the rules. The Chair sustains the point of order.

3878. A specific appropriation for designated officials of an exposition at stated salaries, there being no prior legislation establishing such positions or salaries, was held out of order, although a general appropriation for the exposition was authorized by law.—On February 28, 1898,³ the House was in Committee of the Whole House on the state of the Union considering the sundry civil appropriation bill, when the section making an appropriation of \$100,000 for participation of the United States in the Paris Exposition was reached. This section provided also for the appointment of a commissioner-general and other officials, with specified duties and salaries; authorized certain heads of Departments to prepare exhibits under certain conditions and regulations, etc.

Mr. Levin I. Handy, of Delaware, made the point of order that this was legislation on an appropriation bill.

After debate, during which the act of 1897, in which the invitation of the French Government was accepted and a special commissioner was authorized to make report on the subject, was referred to as authority for the provisions of the section, the Chairman⁴ ruled:

“The Chair thinks the act of 1897 is sufficient foundation for an appropriation, but not for legislation. The Chair is unable to see wherein it authorizes the office of commissioner-general or assistant commissioner from the reading of the law by the gentleman from Illinois. The rule in regard to the continuation of public works simply authorizes an appropriation in the continuance of public works and not the appointment of officers. * * * The rule would simply authorize an appropriation, but would not authorize legislation upon the subject in a general appropriation bill. There are in this paragraph several clauses which are distinctly new legislation, and if in a paragraph any clause or provision is out of order the point of order against the whole paragraph must be sustained. Of course after the paragraph had gone out it would be in order to offer any provision relating to the same subject which might

¹ Second session Fifty-fifth Congress, Record, p. 3390.

² James S. Sherman, of New York, Chairman.

³ Second session Fifty-fifth Congress, Record, p. 2287.

⁴ Sereno E. Payne, of New York, Chairman.

be in order; but when the point is raised against the whole paragraph, and the paragraph contains a clause obnoxious to the rule, the whole paragraph must go out. * * * The gentleman from Illinois speaks of the matter of limitation. Now, a limitation on an appropriation has been held to be in order; but it must be purely a limitation. Under the guise of a limitation it is not competent to insert in an appropriation bill new legislation, affirmative legislation.

Therefore the Chair sustained the point of order.

3879. A paragraph constituting a commission to make plans for the reconstruction of buildings at a public institution, and suspending a law authorizing a partial construction, was held to involve legislation.—On February 17, 1899,¹ the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read a paragraph providing for the constitution of a joint select committee of Congress to examine the buildings of the Naval Academy and report to the next Congress a plan for reconstruction of them; authorizing the committee to employ expert assistance, to call for persons and papers, etc.; appropriating \$10,000 for expenses; and suspending and making inoperative the paragraph in the naval appropriation bill for the fiscal year ending June 30, 1899, providing for the construction of an armory, boat house, and power house at the Academy.

Mr. Sidney E. Mudd, of Maryland, made a point of order against this paragraph under section 2 of Rule XXI.

After debate, and on the succeeding day, the Chairman² held:

During the discussion of the point of order much has been said of the merits of the proposition. However meritorious or advisable or absolutely necessary any legislation may be or appear to be, it is not the province of the Chair to take that into consideration. And that fact, it seems to the present occupant of the chair, has been emphasized during the earlier days of this week. It is the province of the Chair simply to apply the rules which the House has heretofore adopted to the proposition now before the Chair.

Under the second section of Rule XXI, which need not be reread, because all members of the committee are very familiar with it, the House is prohibited from putting on a general appropriation bill any provision changing existing law or to make any appropriation except for the continuance of objects already in progress. It seems to the Chair, and those who have discussed the proposition, including members of the Naval Committee, have admitted, that this is a legislative proposition. It seems to the Chair perfectly clear that this is a provision materially changing existing law; and so understanding, the Chair is constrained to sustain the point of order.

3880. An amendment permitting a change in the manner of appointment of clerks provided for in an appropriation bill was held to be legislation.—On February 16, 1900,³ the legislative, etc., appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

For additional force for bringing up work of assorting and checking money orders one year or more in arrears, and for increased business, namely: For 5 clerks of class 4; 4 clerks of class 3; 5 clerks of class 2; 8 clerks of class 1; 12 clerks, at \$1,000 each; and 5 clerks, at \$900 each; in all, \$48,500.

Mr. George W. Steele, of Indiana, offered an amendment striking out the word “additional” and inserting “temporary.”

¹Third session, Fifty-fifth Congress, Record, pp. 2010, 2011–2016, 2067.

²James S. Sherman, of New York, Chairman.

³First session Fifty-sixth Congress, Record, p. 1890.

Mr. Frederick H. Gillett, of Massachusetts, made the point of order that the existing law provided the manner of appointing these clerks, and that the substitution of the word "temporary," which had received a construction such as might enable the clerks to be appointed in a manner different from that now provided by law, would change that existing law.

The Chairman¹ sustained the point of order.

3881. An amendment changing the compensation received by Government employees under the law was held not in order on the post-office appropriation bill.—On January 31, 1901,² the post-office appropriation bill (H. R. 13729) was under consideration in Committee of the Whole House on the state of the Union, when Mr. John B. Corliss, of Michigan, offered this amendment:

Provided, That the compensation of substitute letter carriers and clerks required to be in daily attendance for the service shall be allowed and paid, in lieu of per diem compensation, \$50 per month.

Mr. Eugene F. Loud, of California, made a point of order that this proposed a change of existing law.

After debate, the Chairman³ held:

It is claimed by the gentleman from California [Mr. Loud], and conceded by the gentleman from Michigan [Mr. Corliss], that the amendment if adopted would change the compensation that this class of employees now receive under the law. Whether that would be desirable or not is not for the Chair to discuss. This is a general appropriation bill. The last clause of Rule XXI says:

"Nor shall any provision changing existing law be in order in any general appropriation bill or any amendment thereto."

The amendment is clearly subject to a point of order; and the point is sustained.

3882. A treaty with Indians is not in order for ratification on the Indian appropriation bill.—On January 28, 1897,⁴ the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union and the Clerk had begun the reading of an agreement with "the Shoshone and Arapahoe tribes of Indians in the State of Wyoming."

Mr. Joseph G. Cannon, of Illinois, having made the point of order that the agreement was legislation, the Chairman,⁵ decided:

In the opinion of the present occupant of the chair these sections are not germane to this appropriation bill, and so the Chair will sustain the point of order.⁶

3883. A proposition that payments for interest and sinking fund for the debt of the District of Columbia should be paid out of the revenues of the District was held to be a change of law and not in order on an appropriation bill.—On February 4, 1896,⁷ the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, and this paragraph was read:

For interest and sinking fund on the funded debt, exclusive of water bonds, \$1,213,947.97.

¹James S. Sherman, of New York, Chairman.

²Second session Fifty-sixth Congress, Record, pp. 1753, 1754.

³Joseph G. Cannon, of Illinois, Chairman.

⁴Second session Fifty-fourth Congress, Record, p. 1266

⁵Albert J. Hopkins, of Illinois, Chairman.

⁶Such treaties are usually ratified on the Indian appropriation bill, the point of order being rarely raised. For status of these treaties under the Constitution, see sections 1534–1536 of Vol. II of this work.

⁷First session Fifty-fourth Congress, Record, p. 1310.

To this Mr. D. A. De Armond, of Missouri, proposed this amendment:

To be paid out of the revenues of the District of Columbia.

A point of order having been made, the Chairman¹ ruled:

The proposition of the amendment is that this sum shall be paid out of the revenues of the District of Columbia. The Chair has been cited to a number of laws regarded as relating to this matter. He has examined all of them carefully, and, in the opinion of the Chair, none of them are applicable to this question except what is contained in the law of 1878 and the law of 1879. The law of 1878 is the law which provides that the expenses of the District of Columbia shall be reported by the Commissioners to the Secretary of the Treasury, and his estimates shall be sent to Congress. Then follows this provision:

“To the extent to which Congress shall approve of said estimates Congress shall appropriate the amount of 50 per cent thereof, and the remaining 50 per cent of such approved estimate shall be levied and assessed upon real and personal property in the District of Columbia other than the property of the United States and of the District of Columbia.”

In this same act there is a reference to the expenses of the District of Columbia in these words:

“Hereafter the Secretary of the Treasury shall pay the interest on the 3.65 bonds of the District of Columbia issued in pursuance of the act of Congress approved June 20, 1874, when the same shall become due and payable, and all amounts so paid shall be credited as a part of the appropriation for the year by the United States toward the expenses of the District of Columbia as hereinafter provided.”

The Chair thinks that provision makes the interest due upon these bonds a charge against the appropriation which the United States makes toward the expenses of the District of Columbia, and it is to be credited upon the amount of that appropriation. Of course, if the appropriation is such that it shall equal the amount raised by taxes on property in the District of Columbia, it will result in the United States paying half of this interest and the District of Columbia the other half. But, however that may be, here is a positive enactment by statute that the interest shall be paid by the United States and credited by the United States upon the appropriation of one-half the expenses of the District of Columbia.

In the following year, the year 1879, a similar provision was made, which includes both the interest on the bonds and their principal. It is in these words:

“And there is hereby appropriated out of the proportional sum which the United States may contribute toward the expenses of the District of Columbia in pursuance of the act of Congress approved June 11, 1878,” the act from which I have just read, “for the fiscal year ending June 30, 1879, and annually thereafter, such sums as will, with the interest thereon at the rate of 3.65 per cent per annum, be sufficient to pay the principal of the 3.65 bonds of the District of Columbia issued under the act of Congress approved June 30, 1874, at maturity.”

In other words, it is provided that out of this appropriation made by the Government of the United States toward the expenses of the District of Columbia there shall be paid an amount equal to the interest on the bonds and also an amount which will provide for a sinking fund to pay their principal. The Chair is therefore of the opinion that the amendment would change existing law and is subject to the point of order. The point of order is sustained.

3884. A proposition that certain specified amounts to be severally appropriated for certain specified objects, should be to a limited extent interchangeable among those several objects, was held to be in order.— On February 16, 1901,² the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when, in the portion relating to the Fish Commission, the Clerk read this paragraph:

And 10 per cent of the foregoing amounts for the miscellaneous expenses of the work of the Commission shall be available interchangeably for expenditure on the objects named, but no more than 10 per cent shall be added to any one item of appropriation.

¹ Sereno E. Payne, of New York, Chairman.

² Second session Fifty-sixth Congress, Record, pp. 2539–2541.

Mr. William P. Hepburn, of Iowa, made the point of order that this paragraph proposed a change of the law embodied in section 3678 of the Revised Statutes:

All sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no other.

After debate, during which the point was made by Mr. William H. Moody, of Massachusetts, that the statute cited was intended not to regulate appropriations, but to regulate their expenditure after they were made, the Chairman¹ held:

Since the gentleman from Massachusetts has called the attention of the Chair to that, the Chair will state to the gentleman from Iowa that there is a decision upon that point which would materially modify the views of the Chair. The statute itself relates to expenditures, and under that view the Chair will modify his decision and will overrule the point of order.

3885. Under the former rule admitting legislation on appropriation bills, if it were germane and retrenched expenditures, questions used to arise over propositions to regulate the public service.—On April 28, 1876,² the House was considering the legislative appropriation bill, upon the fourth section of which a point of order had been made in Committee of the Whole, and the decision of which had been referred to the House. The section in question proposed to transfer the management of Indian affairs from the Interior to the War Department, and the point of order was made by Mr. Julius H. Seelye, of Massachusetts, that it changed existing law and did not retrench expenditures.

After debate the Speaker³ ruled, saying:

In the first place, to what considerations in the making of a ruling has the Chair a right to look? Can he go outside of this bill and inquire generally, as it is the right and duty of a Member on the floor of this House to do, what will be the effect of this fourth section; or is it his duty to limit his inquiries to the face of the bill, to the specific terms of the section in question, the law of the land so far applicable, and the parliamentary rules and practices of this House? In the judgment of the Chair the range of his investigation is the latter, and he can not properly go beyond these three considerations. The language of the amended rule⁴ is:

“No appropriation shall be appropriated in such general appropriation bills, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects “are already in progress, nor shall any provision in any such bill or amendment thereto changing existing law be in order except such as, being germane to the subject-matter of the bill, shall retrench expenditures.”

Much has been said on the question whether this fourth section is germane to the subject-matter of this bill. The subject-matter of the bill is indicated in its title, “A bill making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June 30, 1877, and for other purposes.” The purpose of the bill further is to regulate the salaries of officers, and in some cases to retrench expenditures by the abolition of offices, and necessarily of their salaries. In other words, in the judgment of the Chair, the subject-matter of this bill is so comprehensive that it can not be said that a provision proposing in specific terms the abolition of numerous offices is not germane to a bill which regulates many offices and fixes the salaries thereto attached and abolishes other offices and their salaries. The Chair has to say, therefore, in conclusion on this point that he is not embarrassed by the question whether or not this section is germane to the subject-matter of this bill.

¹ Albert J. Hopkins, of Illinois, Chairman.

² First session Forty-fourth Congress, Record, p. 2822.

³ Michael C. Kerr, of Indiana, Speaker.

⁴ For various forms of this rule see section 3578 of this work. The form of rule on which this and the accompanying rulings were made is not now in use.

The embarrassment of the Chair arises out of the latter portion of the amended rule, "shall retrench expenditures." Does this section retrench expenditures? To answer that inquiry the Chair can only look at the section itself, to the existing law, and to the rules of parliamentary practice and proceedings in this House. The Chair sees that in this bill there is no provision for the practical management of the Bureau of Indian Affairs, if it shall be transferred as proposed by this section; there is no appropriation for that purpose, no regulation of and no indication how the duties of that Bureau after it is transferred shall be performed or by whom those duties shall be performed, other than in the somewhat general language of the section itself. It is true the section provides—

"That the office of Commissioner of Indian Affairs is hereby abolished, and the execution of all laws and parts of laws applicable to the management of Indian affairs and of matters arising out of Indian relations is hereby lodged with the Secretary of War; and that the duties now being intrusted to and performed by Indian agents and other officials and employees of every kind and description will be performed by officers, soldiers, and employees of the Army."

It is entirely apparent upon the face of this section that the section itself contemplates, distinctly and unequivocally, further and additional important legislation on this same subject, in order to effectuate the intention of the House as evidenced in this provision. * * * It can not be said, therefore, that, if enacted, it will be such an amendment as "shall retrench expenditures" as the mere result of its own enactment in this bill, unaided by future essential and appropriate legislation. The inquiry then recurs, Is this amendment such a one as by its own force and the other provisions of this bill retrenches expenditures? Does that appear? The Chair might answer that to abolish an office is the retrenchment of expenditure; and if such abolition were begun and perfected in this bill, the Chair would have no hesitation in holding that such an abolition did accomplish a retrenchment of expenditure; there would then be no doubt on the point. The Chair might hold that, because it requires the duties now intrusted to Indian agents to be hereafter performed by soldiers, it is the intention of the framers of the provision to require those duties to be performed by those persons without additional compensation; but that does not appear—that is not a perfected result that can follow the enactment of this section into law. Nothing of that kind can result except by the aid of further and additional legislation. * * * In other words, the Chair desires it to be distinctly understood that the point upon which his decision in this case turns is that from the face of the section it does not appear that the provision comes within the requirement of this rule, which is that it shall be germane to the subject matter of the bill and "shall retrench expenditures." It does not, affirmatively, appear upon the face of the bill or the laws of the land or the usual and customary mode of proceeding of this body that this section, if enacted in this bill, will retrench expenditures. * * * The Chair therefore sustains the point of order.

3886. On June 8, 1892,¹ the House was in Committee of the Whole House on the state of the Union, considering the agricultural appropriation bill.

Mr. Benton McMillin, of Tennessee, having made a point of order against this provision in the paragraph relating to quarantine stations—

Provided, That the supervision of the importation of animals for breeding purposes under paragraph 482 of the act of October 1, 1890, is hereby transferred from the Secretary of the Treasury to the Secretary of Agriculture—

The Chairman² ruled:

The Chair, sustains the point of order on the ground that it contains new legislation.

3887. On February 10, 1893,³ the House resolved itself into Committee of the Whole House on the state of the Union for the consideration of the bill making appropriations for the payment of invalid and other pensions. The bill having been

¹ First session Fifty-second Congress, Record, p. 5167.

² Alexander B. Montgomery, of Kentucky, Chairman.

³ Second session Fifty-second Congress, Record, pp. 1429, 1690, 1691.

read, Mr. William Mutchler, of Pennsylvania, from the Committee on Appropriations, offered a series of amendments to the bill, providing (1) for the transfer of the Bureau of Pensions from the Interior to the War Department, abolishing the offices of Commissioner and Deputy Commissioner of Pensions, and designating army officers to perform these duties without additional pay; (2) to substitute for the examining surgeons of pensions medical examiners in the Record and Pension Office of the War Department and a limited number of special medical examiners, such examiners and special examiners to be assigned to various suitable localities in the United States; and (3) for regulating the rating of pensioners, limiting the construction of the law of 1890 to persons incapable of manual labor and having an annual income of less than \$600, and defining the status of certain soldiers' widows with the effect of limiting the pensionable class.

Various points of order having been made on these amendments. after debate, on February 16, the Chairman¹ ruled:

At the rising of the committee yesterday points of order had been made and debated upon sundry amendments proposed to be offered successively to this bill by the Committee on Appropriations, which reported the bill. It is now the duty of the Chair to rule upon those points of order and to decide as best he may whether, under the rules of the House and the parliamentary practice heretofore prevailing, those amendments are in order upon a bill like this, or whether they must be excluded from the consideration of the committee by the action of the Chair.

The Chair has nothing to do with the question whether these amendments or any of them are wise or unwise, whether they might work hardship on the one hand or be wise and proper reforms upon the other, or whether their ultimate effect might be to save the expenditure of public money. He is called upon to repeat the interpretation given to the rule of the House and to endeavor to apply that rule in turn to these amendments.

Fortunately for the Chair, the rule allowing amendments to appropriation bills was the subject of a very thorough debate in the first Congress which adopted it—the Forty-fourth—a debate participated in by such men as Mr. Garfield, Mr. Randall, Mr. McCrary of Iowa, Mr. Seelye of Massachusetts, and others, and of a careful construction by the Speaker of that Congress, Mr. Kerr, who was universally recognized as an able and learned parliamentarian. Speaker Kerr held that the rule should have a liberal construction in the interest of retrenchment.

"The purpose of the rule is most beneficent and proper, and the Chair, under any circumstances not attended with extreme doubt, would hold it to be his duty to enforce the rule."

By which I understand he meant to admit an amendment.

The second clause of Rule XXI provides that no amendment to an appropriation bill changing existing law shall be in order unless it be germane to the subject-matter of the bill and retrenches expenditures in one of three modes prescribed in that rule. The rule upon which Speaker Kerr made his decision was in the same language, except that the modes of retrenching expenditures had not then been specified.

The first question that the Chair is called upon to decide is whether the first amendment offered by the Committee on Appropriations is germane to the subject-matter of this bill, and, if germane, whether it retrenches expenditures in any of the modes required by the rule. It was argued with great force by the gentleman from Maine, Mr. Dingley, that it was not germane to the subject-matter of the bill, because this is a bill making appropriations for the payment of invalid and other pensions under existing laws, whereas the amendment refers to the administration of the Pension Bureau itself, and it has been the practice of the House to appropriate for the salaries of the officers of the Pension Bureau in the legislative, executive, and judicial appropriation bill.

There is much force in the argument. But it must be observed, when we come to examine the subject-matter of the bill, that it not only makes appropriations for the payment of pensions, but deals with a part of the machinery or official staff through which these appropriations are to be administered.

¹William L. Wilson, of West Virginia, Chairman.

Can it be held that to such a bill, carrying, as does the present, appropriations of more than \$166,000,000, an amendment which merely prescribes or deals with the administrative machinery through which those appropriations are to reach their beneficiaries is not germane? The Chair thinks not, and he accordingly rules that the amendment under consideration is germane to the subject-matter of this bill.

The question next arises, Does it retrench expenditures in any of the modes prescribed by the rule? And here the Chair finds himself greatly relieved by decisions heretofore had in a similar case, or in one so nearly like to that now before this committee as to furnish a good precedent.

Speaker Kerr laid down the rule that in considering the question whether an amendment operates to retrench expenditures the Chair can look only to what is properly of record before him—that is, the pending bill, the specific section under consideration, the law of the land, so far as it is applicable, and the parliamentary rules and practice of the House; and beyond these he is not permitted to go in deciding the question.

When the general legislative, executive, and judicial appropriation bill was pending in the House in the Forty-fourth Congress an amendment was offered transferring the Indian Bureau to the War Department; and upon the point of order made against that amendment Speaker Kerr's decision was given. He held, in substance, that as the amendment operated to reduce the number and the salaries of officers paid out of the Treasury of the United States it would have been in order if it had been in itself a perfect and complete piece of legislation, but that on the face of the amendment it was clear that it would have to be perfected by further and additional legislation, and it was not possible for the Chair to determine whether this necessary additional legislation would operate to retrench or to increase expenditures. He based his decision in favor of the point of order strictly upon that ground.

When the Indian appropriation bill came before the House a few days later an amendment making this transfer was again offered. It was then in itself a complete piece of legislation. The Chair could see by an examination of it that it would operate, of its own force, to effect this transfer and to abolish certain offices and then bring about a retrenchment of expenditures; and Mr. Springer, of Illinois, then occupying the Chair, delivered a careful and elaborate opinion, which had been submitted to and concurred in by Speaker Kerr, holding the amendment to be in order. In accordance with these precedents, the Chair holds that the first amendment proposed to this bill by the Committee on Appropriations is in order, and overrules the point of order made by the gentleman from Maine, Mr. Dingley.

The second amendment proposed by the Committee on Appropriations is to abolish two members, as the Chair understands, of all the local examining boards, and in their stead to authorize the appointment of a certain number of medical examiners, one hundred and twenty in number, with fixed salaries, who, in connection with the remaining member of each board, are to perform the duties now committed to the local examining boards.

The Chair may believe as an individual that the effect of this amendment would very probably be to save a considerable sum of money to the Treasury of the United States. He may see as an individual that such would be its effect; but he can not see by the record to which he is now confined that the amendment *propria, vigore* would necessarily bring about such a result. Under the practice, or perhaps under the law as it exists to-day, members of the local examining boards are paid according to the services they perform. They have no fixed salaries and the amount that is to be paid is entirely one of estimate and conjecture based upon past experience. How abolishing two-thirds of the membership of boards, which today have no fixed salaries, but receive fees depending entirely on the number of examinations they make, and substituting 120 salaried officers, who are each to receive \$1,500 a year as salary and \$3 per day for subsistence when traveling on duty, together with an allowance for actual and necessary expenses for transportation and assistance—an indefinite charge upon the Treasury—will necessarily retrench expenditures, the Chair is unable to see, looking only to such things as the Chair can properly look in ruling on this point. The Chair sustains the point of order to the second amendment.

The next amendment is as follows:

“That the rating of all pensions for like disabilities shall be uniform, and that all pensions heretofore granted or hereafter to be granted in pursuance of the act of June 27, 1890, shall be rated upon the inability of the pensioner to earn a living by manual labor.”

The Chair also sustains the point of order made to that amendment, because it is not in the power of the Chair from the proper record to determine whether it will operate a decrease or an increase of expenditures

As to the amendments numbered 6 and 7 in the printed bill, the Chair finds that it has already been held by occupants of the chair in Committee of the Whole, notably the gentleman from Ohio, Mr. Outhwaite, presiding at the first session of the present Congress, that an amendment to the pension appropriation bill tending to increase the class of persons prohibited from the benefits of the pension laws is in order, because its effect will be to reduce expenditures.

Adopting that ruling, which has heretofore been made, the Chair overrules the point of order to the amendments numbered 6 and 7, holding * * * that payments of pensions are made in pursuance of statutes already enacted. A pension is a claim to which the pensioner has a right by virtue of existing law; and while, perhaps technically, it may not come under the head of "compensation," the Chair, deferring to the ruling already made, would hold that pensions, being legal claims ascertained and declared by law, might come under that head; and, furthermore, that the effect of these amendments would necessarily be to reduce the amount carried by a pension bill.

Mr. Burrows having appealed from the decision of the Chair on the first amendment, the decision of the Chair was sustained, after debate—103 yeas to 63 nays.

3888. On March 15, 1894,¹ the House was in Committee of the Whole House on the state of the Union considering the sundry civil appropriation bill.

Mr. Benjamin A. Enloe, of Tennessee, offered an amendment for abolishing the Bureau of the Coast and Geodetic Survey in the Treasury Department and transferring the duties of the Bureau to the Navy Department and to the Interior Department.

Mr. Joseph D. Sayers, of Texas, having made the point of order, the Chairman² ruled:

The point of order is made that this is new legislation and does not come within the exception of Rule XXI in reference to legislation on an appropriation bill. * * *

Now, so far as the first portion of this amendment is concerned, which strikes out all of the provision in reference to the Survey, there can be no question but that it would be in order, and would, of course reduce expenditures—that is, the amount of money carried by the bill. That would do it, and therefore would come under that exception in the rule with reference to the amount of money covered by the bill.

But the amendment is offered as a whole. It is an amendment that makes legislation and changes existing law. It is doubtful if this part of it is germane to the bill. But besides that, it is clear that, when taken by itself, it makes new legislation. In other words, it changes the law in reference to the Coast and Geodetic Survey, and transfers it to the Navy Department. It also abolishes a certain office, which might bring it under the rule as reducing the "number of officers" and reducing the expenditures "by the reduction of the number of officers." But the trouble about the amendment is this: Does the legislative part of this amendment, that which changes the law in reference to existing law, of itself reduce expenditure by the reduction of offices? The Chair thinks it does not; and therefore does not come within the exceptions mentioned in the rule, which says such legislation may be in order in appropriation bills when the number of officers are reduced; that is to say, when the number of officers are reduced by it.

But the new legislation which is proposed does not reduce the number of officers. The provision of the amendment which does reduce them is disconnected altogether from the legislative part of the amendment.

Now, if part of an amendment is subject to a point of order, then the whole of it is. The fact that an amendment reduces expenses must clearly appear upon the face of the amendment. The Chair thinks that the legislative portion of this amendment does not come within the exception of the rule, because it does not appear that the legislation proposed by the amendment of itself reduces expenditures. The Chair, therefore, sustains the point of order.

Mr. Enloe having appealed, the decision of the Chair was sustained.

¹ Second session Fifty-third Congress, Record, pp. 2997, 3002.

² Rufus E. Lester, of Georgia, Chairman.

3889. Interpretations of the former rule which admitted legislation to a general appropriation bill when germane and effecting retrenchment of expenditures.—On February 9, 1893,¹ the House was in Committee of the Whole House on the state of the Union considering the legislative, executive, and judicial appropriation bill.

Mr. Nelson Dingley, jr., of Maine, moved to amend the appropriate paragraph of the bill by striking out a portion and inserting the following:

Three clerks, at \$1,200 each, and one messenger; in all, \$33,440: *Provided*, That so much of an act “to afford assistance and relief to Congress and the executive Departments in the investigation of claims and demands against the Government,” approved March 3, 1883, as authorizes any committee of the Senate or House of Representatives to refer any claim against the Government to the Court of Claims, is hereby repealed.

Mr. Benjamin A. Enloe, of Tennessee, having made the point of order that the amendment changed existing law and did not reduce expenditures, the Chairman² ruled:

The amendment proposed by the gentleman from Maine [Mr. Dingley] provides, first, for a reduction of the clerical force in the Court of Claims, and then provides for the repeal pro tanto of what is known as the Bowman Act. The rule of the House provides that before a proposition changing existing law shall be in order in an appropriation bill it must be germane to the subject-matter of the bill and retrench expenditures, etc.³

The first question for the Chair to decide is whether this proposition is germane to the pending bill. Now, the first part of this amendment, so far as it reduces the clerical force, or the number of employees, is clearly germane. The latter part of it, which repeals or modifies the Bowman Act, it seems to the Chair, is not germane to a general appropriation bill. * * *

Now, the amendment certainly covers two substantive propositions. One is in order, and retrenches expenditures in the manner provided in the rule, the other does not. The amendment therefore is obnoxious to the rule, because the latter clause is obnoxious; but it may be divided, if the gentleman sees fit to divide it. * * * If the gentleman proposed to accomplish simply the repeal of the Bowman Act by a provision in the appropriation bill, it seems to the Chair that he would be compelled to hold immediately that it was not in order. Now, when he seeks to couple with it a reduction of the employees of the Government, with a view of making the latter part of it within the rule, it seems to the Chair it can not be done.

If this can be done, then the whole internal-revenue law could be repealed in this appropriation bill, because the bill provides for paying some of the employees or clerical force of the internal-revenue service. Now, if the gentleman moved to strike out the appropriation for one clerk in that Bureau, he could, if this amendment is in order, hang upon that a provision repealing the internal-revenue law and other laws where clerical forces are appropriated for in this bill.

The Chair thinks that the gentleman from West Virginia [Mr. Wilson] decided this question properly when he held, in the first session of this Congress, as referred to by the gentleman from Louisiana [Mr. Blanchard], in a similar case, that both branches of a proposed amendment must be germane to the bill or the amendment would not be in order.

Now, as the Chair has already stated, while the first part of this amendment is clearly germane, the latter part is not germane to an appropriation bill.

The further proposition is maintained that the amendment retrenches expenditures. How? It is insisted that if this amendment be adopted there will be fewer claims referred to the Court of Claims by the Senate and by the House, acting jointly or acting separately.

In order for the Chair to reach that conclusion, he is asked to hold that the committees of the House improvidently refer claims, but that the House or Senate would not improperly do so. If the

¹ Second session Fifty-second Congress, Record, pp. 1386, 1392.

² James D. Richardson, of Tennessee, Chairman.

³ See section 3578 of this volume for the form of this rule.

House and Senate act lawfully in referring claims and the committees of the two Houses act lawfully, the same number would be referred by the committee that are referred by the two Houses. Therefore the Chair can not conclude that the committees would not do their duty, and that they would refer more cases than the two Houses would refer and thereby create a larger demand for clerical force for the Court of Claims, and if not, there would be no retrenchment in fact.

3890. On May 12, 1892,¹ the House was in Committee of the Whole House on the state of the Union considering the sundry civil appropriation bill.

In the paragraph of the bill providing for the supply of the Light-House Establishment was this proviso:

Provided, That all articles imported for the use of the Light-House Establishment shall be admitted without the payment of duties.

Mr. Julius C. Burrows, of Michigan, having made the point of order, the Chairman² ruled:

The point of order is made upon the proviso at the end of this paragraph that it is not germane to the bill; that it changes existing law and does not come within the exception mentioned in paragraph 2 of Rule XXI. * * * It is very clear to the Chair that the proviso in the bill changes existing law and does not come within any of these exceptions, the exceptions being provisions which "retrench expenditures," first, "by the reduction of the number and salary of the officers of the United States;" second, "by the reduction of the compensation of any person paid out of the Treasury of the United States;" third, "by the reduction of the amounts of money covered by the bill." This proviso does not reduce the salary of any officers; it does not reduce the compensation of any person paid out of the Treasury, nor does it reduce the amounts of money covered by the bill; neither does it come within the proviso in section 2 of Rule XXI, in relation to amendments, because it is not an amendment, and therefore the proviso in the rule does not apply. The Chair therefore sustains the point of order.

3891. On June 2, 1892,³ the House was in Committee of the Whole House on the state of the Union considering the post-office appropriation bill.

The paragraph relating to inland transportation by railroad routes having been reached, Mr. James H. Blount, of Georgia, offered as an amendment the following proviso:

That the Postmaster-General be, and he is hereby, authorized and directed to readjust the compensation to be paid from and after the 1st day of July, 1893, for transportation of mail on railroad routes by reducing the compensation to all railroads for the transportation of mail 10 per cent per annum from the rate for the transportation of mail on the basis of the average weight fixed and allowed by the act of June 17, 1878.

Mr. Christopher A. Bergen, of New Jersey, having made the point of order that this changed existing law, the Chairman,⁴ having caused the section of Rule XXI to be read, ruled:

This clause of the rule seems to require, in the first place, that the proposition offered shall be germane to the subject-matter of the bill; secondly, that it shall reduce either the number of employees, or the salaries paid to such employees, or the amount of money covered by the bill. The paragraph of the bill now under consideration provides for the compensation of the railroads of the United States for carrying the mails. The amendment proposes to limit that compensation by a reduction of 10 per cent. It seem to the Chair that it is clearly within the first requirement of the rule, which is that the amendment shall be germane. Further than that, the provision for a reduction of 10 per cent of the present compensation brings the amendment within the other requirement of the rule, that it shall

¹ First session Fifty-second Congress, Record, pp. 4229, 4232.

² Rufus E. Lester, of Georgia, Chairman.

³ First session Fifty-second Congress, Record, pp. 4971-4974.

⁴ Alexander M. Dockery, of Missouri, Chairman.

reduce the "amount of money covered by the bill." The Chair, therefore, without any reference whatever to the merits of the proposition overrules the point of order, and holds the amendment to be in order under the rule.

3892. Instance of introduction of amendments carrying legislation under the old "rider" rule.—On May 5, 1880,¹ the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. George D. Robinson, of Massachusetts, offered this amendment to the paragraph providing \$9,500,000 for transportation of mails on railroad routes:

Strike out all in the sixtieth and sixty-first and sixty-second lines between the word "namely," in the sixtieth line, and the word "provided," in the sixty-second line, and substitute the following:

"For transportation on railroad routes, \$9,490,000, of which sum \$150,000 may be used by the Postmaster-General to maintain and secure from railroads necessary and special facilities for the postal service for the fiscal year ending June 30, 1881."

Mr. James H. Blount, of Georgia, made a point of order against the amendment, under Rule XXI,² as it then existed in a modified form adopted at that session of Congress:

Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as, being germane to the subject-matter of the bill, shall retrench expenditures by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill.

After debate the Chairman³ said:

Although the meaning of the words "necessary and special facilities for postal service" is not very clear, yet the Chair held yesterday, after giving the subject some consideration, that the effect of such an amendment would be to change existing law. The Chair still adheres to that opinion. But under the third clause of Rule XXI an individual Member upon the floor may offer an amendment changing existing law provided it retrenches expenditures in one of three modes: First, by reducing the number and salaries of the officers of the United States; or, secondly, by reducing the compensation of persons paid out of the Treasury of the United States; or, thirdly, by reducing the amounts covered by the bill. The amendment offered by the gentleman from Massachusetts does not propose to add an appropriation of \$150,000 to the bill; but it provides that of the amount appropriated by the bill the sum of \$150,000 may be used for certain purposes, and it diminishes the amount covered by the bill by striking out "19,500,000" and inserting "\$9,490,000." So that the Chair is bound to hold that the amendment conforms strictly to the language of the rule. Whether the language actually used in this rule accomplishes the exact purpose which the House had in view in adopting it is not a question for the Chair to decide; but taking the language of the rule as it stands and putting upon it the construction which ordinarily would be put upon such language in a statute or in a rule of the House, the Chair is compelled to hold that the amendment comes within the rule, and is in order.

3893. In appropriating for a bridge it is not in order by provisos determine conditions of future use of it.—On March 2, 1904,⁴ the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk read this paragraph:

For the reconstruction of the Anacostia Bridge, under direction of the Commissioners of the District of Columbia, \$100,000, and the said Commissioners are authorized to enter into a contract or

¹ Second session Forty-sixth Congress, Record, pp. 3023, 3024.

² See section 3578 of this volume.

³ John G. Carlisle, of Kentucky, Chairman.

⁴ Second session Fifty-eighth Congress, Record, pp. 2699, 2700.

contracts for the reconstruction of said bridge, to be completed within two years from July 1, 1904, at a cost not to exceed \$250,000, to be paid from time to time as appropriations therefor may be made by law: *Provided, however*, That before the Anacostia and Potomac River Railroad Company shall use or have any right whatever to use the new bridge it shall pay to the collector of taxes of the District of Columbia the entire cost of the pavement lying between the exterior rails of the tracks and for a distance of 2 feet from the said exterior rails of said tracks on each side thereof and the entire floor system supporting said pavement, and said collector shall deposit one-half of same in the United States Treasury to the credit of the District of Columbia and one-half to the credit of the United States: *Provided further*, That hereafter one-half the cost of maintenance and repair of said new bridge shall be borne by the Anacostia and Potomac River Railroad Company, etc. * * *

Mr. Charles R. Davis, of Minnesota, made a point of order against the whole in paragraph.

After debate the Chairman¹ said:

This is a paragraph making an appropriation for the reconstruction of the Anacostia Bridge. Coupled with this appropriation are certain provisos. The first is:

"That before the Anacostia and Potomac River Railroad Company shall use or have any right whatever to use the new bridge it shall pay to the collector of taxes of the District of Columbia the entire cost of certain paving."

The second proviso stipulates that hereafter one-half of the cost of the maintenance and repair of said new bridge shall be borne by the Anacostia and Potomac River Railroad Company.

The third proviso is—

"That said railroad company and all other railroad companies that may hereafter cross said bridge, as hereinafter provided, shall, in addition to the taxes imposed upon said railroads by existing law, pay to the collector of taxes the sum of one-fourth of 1 cent for each and every passenger carried by said railroads on said bridge."

The fourth proviso is that steam power shall not be used on said bridge for traction purposes.

The final proviso is—

"That any other railroad company now or hereafter authorized by Congress to use said bridge shall have the right to use the tracks of the Anacostia and Potomac River Railroad Company thereon upon such reciprocal trackage and such compensation as may be mutually agreed upon."

The Chair has read, he thinks, sufficient of the provisos to show that they are all legislative in that they propose to enact law where none now exists; and the enacting of law where none now exists has always been construed to be a change of existing law. The Chair must hold that these provisos are new legislation, and thus obnoxious to Rule XXI. The point of order is therefore sustained.

3894. A provision for the appointment of a commission to consider the proposed establishment of a naval training station is new legislation.—On February 24, 1904,² the House was considering the naval appropriation bill in Committee of the Whole House on the state of the Union, when Mr. Henry A. Cooper, of Wisconsin, offered the following as an amendment:

Naval training station: The President is hereby authorized and empowered to appoint a board of not less than three members, none of whom shall reside in a State adjoining the Great Lakes, whose duty it shall be to select on one of the Great Lakes a suitable site for a naval training station, and having selected such site, if it be upon private lands, to estimate its value and ascertain as newly as possible the cost for which it can be purchased or acquired, and to make a full and detailed report of their actions and proceedings to the President, who shall transmit such report, with his recommendations thereon, to Congress for its action; and to defray the expenses of said board the sum of \$5,000, or so much thereof as may be necessary, to be immediately available, is hereby appropriated out of any moneys in the Treasury not otherwise appropriated.

¹ George P. Lawrence, of Massachusetts, Chairman.

² Second session Fifty-eighth Congress, Record, p. 2329.

Mr. Alston G. Dayton, of West Virginia, made a point of order against the paragraph.

The Chairman¹ sustained the point of order.

3895. The Committee of the Whole, overruling its chairman, decided that a provision for the purchase and distribution of rare and valuable seeds was in order on the agricultural appropriation bill.—On January 29, 1907,² the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union when, to a paragraph providing for the purchase of rare and valuable seeds and their distribution through the Department of Agriculture, Mr. Ezekiel S. Candler, jr., of Mississippi, proposed an amendment³ as follows:

Strike out the paragraph and insert:

“Purchase and distribution of valuable seeds: For the purchase, propagation, testing, and distribution of valuable seeds, bulbs, trees, shrubs, vines, cuttings, and plants; for rent and repairs; the employment of local and special agents, clerks, assistants, and other labor required, in the city of Washington and elsewhere; all necessary office fixtures and supplies, fuel, transportation, paper, twine, gum, postal cards, gas, and electric current, traveling expenses, and all necessary material and repairs for putting up and distributing the same, and to be distributed in localities adapted to their culture, \$238,000, of which amount not less than \$202,000 shall be allotted for Congressional distribution. And the Secretary of Agriculture is hereby directed to expend the said sum, as nearly as practicable, in the purchase, testing, and distribution of such valuable seeds, bulbs, shrubs, vines, cuttings, and plants, the best he can obtain at a public or private sale, and such as shall be suitable for the respective localities to which the same are to be apportioned, and in which same are to be distributed as hereinafter stated, and such seeds so purchased shall include a variety of field, vegetable, and flower seeds suitable for planting and culture in the various sections of the United States. An equal proportion of five-sixths of all seeds, bulbs, shrubs, vines, cuttings, and plants shall, upon their request, after due notification by the Secretary of Agriculture that the allotment to their respective districts is ready for distribution, be supplied to Senators, Representatives, and Delegates in Congress for distribution among their constituents, or mailed by the Department upon the receipt of their addressed franks, in packages of such weight as the Secretary of Agriculture and the Postmaster-General may jointly determine, to the Postmaster-General; and the person receiving such seeds shall be requested to inform the Department of the results of the experiments therewith: *Provided*, That all seeds, bulbs, plants, and cuttings herein allotted to Senators, Representatives, and Delegates in Congress for distribution remaining uncalled for on the 1st of April shall be distributed by the Secretary of Agriculture, giving preference to those persons whose names and addresses have been furnished by Senators and Representatives in Congress, and who have not before, during the same season, been supplied by the Department: *And provided also*, That the Secretary shall report, as provided in this act, the place, quantity, and price of seeds purchased, and the date of purchase; but nothing in this paragraph shall be construed to prevent the Secretary of Agriculture from sending seeds to those who apply for the same. And the amount herein appropriated shall not be diverted or used for any other purpose but for the purchase, testing, propagation, and distribution of valuable seeds, bulbs, mulberry and other rare and valuable trees, shrubs, vines, cuttings, and plants: *Provided, however*, That upon each envelope or wrapper containing packages of seeds the contents thereof shall be plainly indicated, and the Secretary shall not distribute to any Senator, Representative, or Delegate seeds entirely unfit for the climate and locality he represents, but shall distribute the same so that each Member may have seeds of equal value, as near as may be, and the best adapted to the locality he represents: *Provided, also*, That the seeds allotted to

¹ William P. Hepburn, of Iowa, Chairman.

² Second session Fifty-ninth Congress, Record, pp. 1898–1899.

³ The text of Mr. Candler's amendment was identically the provision for Congressional seed distribution that had been carried in preceding bills, but which the Committee on Agriculture had stricken out of this bill.

Senators and Representatives for distribution in the districts embraced within the twenty-fifth and thirty-fourth parallels of latitude shall be ready for delivery not later than the 10th day of January: *Provided further*, That \$36,000 of which sum, or so much thereof as the Secretary of Agriculture shall direct, may be used to collect, purchase, test, propagate, and distribute rare and valuable seeds, bulbs, trees, shrubs, vines, cuttings, and plants from foreign countries or from our possessions for experiments with reference to their introduction into and cultivation in this country; and the seeds, bulbs, trees, shrubs, vines, cuttings, and plants thus collected, purchased, tested, and propagated shall not be included in general distribution, but shall be used for experimental tests, to be carried on with the cooperation of the agricultural experiment stations.”

Mr. James R. Mann, of Illinois, made a point of order that the amendment proposed legislation.

The Chairman¹ held:

This question was raised before the committee in almost similar terms a year ago, and was discussed fully. It was admitted at that time that it was a close question. Finally the point of order was withdrawn, and the Chair, therefore, was not called upon to rule. If this were a new question, it seems to the Chair that there could be no doubt in any mind as to the duty of the Chair to sustain the point of order. While, owing to some decisions and some precedents in the past, the question is somewhat complicated and there is some doubt about it, the Chair feels that this question should be determined by the House, once and for all, and therefore the Chair sustains the point of order.

Mr. Candler having appealed, the decision of the Chair, on a vote by tellers was overruled, ayes 84, noes 136.

3896. On February 5, 1904,² the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union when the Clerk read the following paragraphs:

Purchase and distribution of valuable seeds: For the purchase, propagation, testing, and distribution of valuable seeds, bulbs, trees, shrubs, vines, cuttings, and plants; for rent of building, not to exceed \$3,000; the employment of local and special agents, clerks, assistants, and other labor required, in the city of Washington and elsewhere; all necessary office fixtures and supplies, fuel, transportation, paper, twine, gum, printing, postal cards, gas, and electric current; traveling expenses, and all necessary material and repairs for putting up and distributing the same, and to be distributed in localities adapted to their culture, \$290,000, of which amount not more than \$48,000 shall be expended for labor in the city of Washington, D. C., and not less than \$202,000 shall be allotted for Congressional distribution.

And the Secretary of Agriculture is hereby directed to expend * * * etc. [as given in the preceding section].

Mr. Morris Sheppard, of Texas, made a point of order against the second and third sections on the ground that they were in violation of the existing law, section 527 of the Revised Statutes:

The purchase and distribution of seeds by the Department of Agriculture shall be confined to such seeds as are rare and uncommon to the country or such as can be made more profitable by frequent changes from one part of the country to another.

After debate the Chairman³ held:

The question raised by the gentleman from Texas [Mr. Sheppard] presents some difficulties. The Chair is inclined to construe the bill somewhat as if it read in a little different manner—as if it read thus:

“And the Secretary of Agriculture is hereby directed to expend the said sum, as nearly as practicable, only on the following conditions: For the purpose of testing and distribution,” etc.

¹ David J. Foster, of Vermont, Chairman.

² Second session Fifty-eighth Congress, Record, pp. 1683–1685.

³ Llewellyn Powers, of Maine, Chairman.

And while admitting that you can not place a limitation upon the discretion of the Secretary where the law gives him a right to exercise it, yet construing this paragraph not as a limitation upon his discretion, but rather an addition, and a limitation upon which the appropriation is granted, I shall not sustain the point of order to the whole section, yet there is one provision in the section that the Chair holds to be clearly subject to the point of order. That is that part of the section commencing with the word "such," in line 2, and ending with the word "direct," in line 7, page 25:

"Such franks to be furnished by the Public Printer as is now done for document slips with the names of Senators, Members, and Delegates printed thereon, and the words "United States Department of Agriculture, Congressional seed distribution," or such other phraseology as the Secretary may direct."¹

It seems to the Chair that this is new legislation, and that it is legislation on an appropriation bill, directing what the printing department shall do, and as the Chair understands the rules of the House, that portion of the section being subject to the point of order, it vitiates the whole section. Therefore the Chair sustains the point of order made by the gentleman from Texas.

Thereupon Mr. James W. Wadsworth, of New York, proposed an amendment identical with the paragraphs ruled out, except that the provision relating to the furnishing of franks was eliminated.

Mr. John Lind, of Minnesota, made the point of order that the amendment was a change of existing law, the section of the Revised Statutes already quoted.

The Chairman ruled:

As the Chair stated at first, this is a somewhat difficult question to decide, but in the opinion of the Chair the point of order raised by the gentleman from Minnesota against this amendment is not well taken, as a careful reading of the whole section of the statute will show. The Chair will read for the instruction of the House the whole of the section of the statute of which the gentleman from Minnesota read only a part. It is as follows:

"SEC. 527. The purchase and distribution of seeds by the Department of Agriculture shall be confined to such seeds as are rare and uncommon to the country, or such as can be made more profitable by frequent changes from one part of our own country to another; and the purchase or propagation and distribution of trees, plants, shrubs, vines, and cuttings shall be confined to such as are adapted to general cultivation and to promote the general interests of horticulture and agriculture throughout the United States."

So the committee will see that the statute is somewhat broader than that part of it which was read by the gentleman from Minnesota. Now, the provisions here in the proposed amendment, the Chair think, are not necessarily in conflict with the statute when all of it is considered and its scope and purpose considered. The amendment reads:

"And the Secretary of Agriculture is hereby directed to expend the said sum as nearly as practicable in the purchase, testing, and distribution of such valuable seeds, bulbs, shrubs, vines, cuttings, and plants, the best he can obtain at public or private sale, and such as shall be suitable for the respective localities to which the same are to be apportioned."

The Chair does not think there is anything in that portion of the amendment which I have read which necessarily changes the original statute, or is it a change of existing law; and the Chair therefore overrules the point of order.

A similar question of order arose on May 1, 1906,² and was debated at length; but was not decided, the point of order being withdrawn.

3897. The river and harbor bill not being one of the general appropriation bills, the rule relating to legislation on such bills does not apply to it.—On February 7, 1907,³ the river and harbor appropriation bill was under

¹ A law making a similar but not identical provision was in existence, but was not cited. (32 Stat. L., p. 741.)

² First session Fifty-ninth Congress, Record, pp. 6211, 6222–6224.

³ Second session Fifty-ninth Congress, Record, pp. 2469, 2470.

consideration in Committee of the Whole House on the state of the Union, when Mr. J. Warren Keifer, of Ohio, offered an amendment providing legislation to establish a board of inspection for river and harbor work.

Mr. David E. Finley, of South Carolina, made the point of order that the amendment proposed legislation.

The Chairman¹ said:

But the gentleman must recollect that the river and harbor bill is not a general appropriation bill within the meaning of clause 2, Rule XXI. Legislation is proper on a river and harbor bill, and the chair overrules the point of order.

3898. On February 7, 1907,² the river and harbor appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Edward De V. Morrell, of Pennsylvania, proposed this amendment:

Add as an additional section the following:

SEC. 7. That it is the sense and desire of this Congress that hereafter the appropriation bill for the rivers and harbors shall be given the same consideration and shall be on the same scale as those for the Army, Navy, and other large appropriation bills, and constant large appropriations being necessary to enable the United States to keep pace with the other nations of the world, and being for the good of the country at large, that this appropriation shall hereafter be an annual one."

Mr. Theodore E. Burton, of Ohio, made the point of order that the amendment was not in order.

After debate, the Chairman¹ held:

This is a proposition which is germane to the river and harbor bill. The only question is a question of germaneness or a question of jurisdiction. On the river and harbor bill there is a perfect right to legislate on any question germane to the bill, and the Chair overrules the point of order and recognizes the gentleman from Pennsylvania to discuss his amendment.

3899. On May 27, 1890,³ in Committee of the Whole House on the state of the Union, Mr. James B. McCreary, of Kentucky, made a point of order against a section of the river and harbor bill providing a penalty of fine and imprisonment for the offense of having a bridge obstructing free navigable waters of the United States. Mr. McCreary urged that under Rule XI the jurisdiction of the Committee on Rivers and Harbors was confined to the subject of the "improvement of rivers and harbors," and that under Rule XXI this was legislation not authorized on a general appropriation bill.

The Chairman,⁴ having called attention to the fact that the river and harbor bill was not a general appropriation bill, overruled the point of order.

3900. On February 15, 1881,⁵ the House was in Committee of the Whole House on the state of the Union considering the river and harbor appropriation bill.

The Clerk had read the paragraph—

Improving harbor at Olcott, N. Y., \$3,000—

When Mr. William A. J. Sparks, of Illinois, made the point of order that this was not an appropriation authorized by law. and therefore not in order on a general appropriation bill.

¹ Frank D. Currier, of New Hampshire, Chairman.

² Second session Fifty-ninth Congress, Record, p. 2470.

³ First session Fifty-first Congress, Record, pp. 5362, 5397.

⁴ Julius C. Burrows, of Michigan, Chairman.

⁵ Third session Forty-sixth Congress, Record, pp. 1618–1624.

In response to this point of order Mr. William Lounsbery, of New York, claimed that the river and harbor bill was not “a general appropriation bill.”

After debate the Chairman¹ ruled:

The Chair is ready to decide this question. At first he was very much disposed to entertain the opinion that this bill was to be included among the general appropriation bills, and treated as such under the rules of the House; but subsequent investigation of the subject has satisfied the Chair that such a decision would not have been correct. Of course, if it were not for the express provision of the rules, there would be no difference between a general appropriation bill and any other bill brought into the House, so far as parliamentary law would be applicable; in other words, all bills would be governed by precisely the same rules and the same principles under general parliamentary law. Therefore this question depends entirely upon the provisions of the rules.

Now, it is true that the Committee on Rules, in making its report to the House as the last session of Congress, said in one part of the report that the bill for the improvement of rivers and harbors had become by long usage one of the general appropriation bills. But in another part of that report the committee used this language: “The river and harbor appropriation bill, although not one of the general appropriation bills (see Rule 77)—the Chair will in a moment refer to Rule 77—“has for many years past been one of the regular annual appropriation bills and has been reported by the Committee on Commerce.”

Then follows a concise history of the river and harbor bills in the past.

The House determined that this river and harbor bill should not be reported by the Committee on Appropriations, as the Committee on Rules had recommended in its first report, but should be reported by the Committee on Commerce. Of course that fact alone would not prevent it from being a general appropriation bill if it were in substance such. But the whole matter depending, as the Chair has said, upon the rules, the Chair looks at the rules and finds that there is a distinction recognized all the way through between the general appropriation bills and the river and harbor bill. That distinction is recognized twice in Rule XI; it is recognized distinctly in the sixth clause of Rule XXI, and again distinctly in the fourth clause of Rule XXIII, where these various bills are spoken of. The Chair is therefore compelled to hold that the river and harbor bill is not, under the new revision of the rules, as it was not under the old Rule No. 77, a general appropriation bill. The Clerk will read Rule 77 of the old code of rules.

“It shall also be the duty of the Committee on Appropriations, within thirty days after their appointment, at every session of Congress, commencing on the first Monday of December, to report the general appropriation bills for legislative, executive, and judicial expenses; for sundry civil expenses; for consular and diplomatic expenses; for the Army; for the Navy; for the expenses of the Indian Department; for the payment of invalid and other pensions; for the support of the Military Academy; for fortifications; for the service of the Post-Office Department, and for mail transportation by ocean steamers; or, in failure thereof, the reasons of such failure.”

It will be observed that there is a specific enumeration in the rule itself of all the general appropriation bills, and that the bill appropriating money for public works upon rivers and harbors is not included. Now, whatever may be the consequences of this ruling, the Chair, of course, is not responsible for them. He feels that in making this decision he is governed by the express provisions of the rules themselves, which he can not fail to observe.

3901. On January 16, 1901,² the river and harbor bill (H. R. 13189) was under consideration in Committee of the Whole House on the state of the Union, when a paragraph was read providing for the organization of a board of engineer officers in the War Department to pass upon projects of improvement. The paragraph specified the size and qualifications of the board, and its duties.

Mr. Oscar W. Underwood, of Alabama, made the point of order that the paragraph involved legislation, and was therefore not in order on the bill.

¹John G. Carlisle, of Kentucky, Chairman.

²Second session Fifty-sixth Congress, Record, p. 1091.

The Chairman¹ said:

The Chair will state to the gentleman that that point will not lie to a river and harbor bill. There is a distinction made between a general appropriation bill and the river and harbor bill. Under the rules any new legislation is obnoxious to the point of order raised by the gentleman; but that does not apply to a river and harbor appropriation bill.

3902. On January 16, 1901,² the river and harbor bill (H. R. 13189) was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read a paragraph providing for the creation of a board of engineers in the War Department to pass upon projects of improvement for rivers and harbors.

Mr. William H. King, of Utah, made the point of order that the paragraph contained legislation not germane to the bill, and infringing on the jurisdiction of the Committee on Levees and Improvements of the Mississippi River.

After debate the Chairman I said:

The Chair will state that the rule with reference to appropriations that there shall be no new legislation does not apply to the river and harbor bill, and has been so decided again and again by gentlemen who have presided at the time the bill was considered in Committee of the Whole. The Chair thinks, also, that the section against which the point of order has been made does not infringe upon any of the rights of the Committee on Levees and Improvements of the Mississippi River. At the time of the revision of the rules, in 1880, it was sought to give this committee on the levees the authority that is now claimed by it by the gentleman from Utah, but by an express vote of the House the authority was denied the committee and, inferentially, was given to the Committee on Rivers and Harbors. The Chair thinks the provision against which the point of order has been made is in harmony with the general objects and purposes of the bill, that it is within the jurisdiction of the Committee on Rivers and Harbors, and, therefore, overrules the point of order.

3903. On February 23, 1905,³ the river and harbor appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a paragraph was read providing for certain locks and dams and the granting of a franchise to private parties.

Mr. John W. Gaines, of Tennessee, raised a question of order that the paragraph involved legislation.

The Chairman⁴ held:

The Chair will state to the gentleman from Tennessee that as this is not a general appropriation bill the point does not lie. * * * The rule which the gentleman invokes would apply only to a general appropriation bill, and this is not so regarded under the rule.

3904. In 1898 a Senate committee reported against a proposition to add to a general appropriation bill legislation on an important public question, holding it not proper to attempt thus to coerce the House of Representatives.—On February 14, 1898,⁵ in the Senate, Mr. John T. Morgan, of Alabama, from the Committee on Foreign Relations, submitted this report:

The Senate referred to the Committee on Foreign Relations an amendment intended to be proposed to the consular and diplomatic appropriation bill, passed by the House of Representatives and now under consideration by the Senate Committee on Appropriations, in these words:

¹ Albert J. Hopkins, of Illinois, Chairman.

² Second session Fifty-sixth Congress, Record, pp. 1094, 1095.

³ Third session Fifty-eighth Congress, Record, p. 3202.

⁴ William A. Smith, of Michigan, Chairman.

⁵ Second session Fifty-fifth Congress, Senate Report, No. 577.

“That a condition of public war exists between the Government of Spain and the government proclaimed and for some time maintained by force of arms by the people of Cuba, and that the United States of America shall maintain a strict neutrality between the contending powers, according to each all the rights of belligerents in the ports and territory of the United States.”

In terms this proposed amendment is identical with a joint resolution which passed the Senate on the 20th day of May, 1897, was sent to the House of Representatives and referred to a standing committee of that body, where it is still pending.

In the adoption of that joint resolution the Senate, after full debate and mature consideration, performed what it conceived to be a solemn duty to our country that was demanded by a proper regard for the rights and welfare of our own people. Their love of justice, humanity, liberty, and independence of foreign oppression constrained our people to regard the persecuted native people of Cuba with earnest sympathy, and caused them to admire and applaud their heroism in the defense of their homes and family against the most atrocious violence. In this demonstration of sympathy with the cause of the Republic of Cuba our people, almost with one accord, admitted their obedience to the obligations and duties of Christian civilization, and demanded the intervention of our Government against their cruel abuse and abandonment by Spain in the war of extermination now being conducted against the Cuban people.

The committee has found no reason for suggesting the modification of the action of the Senate on that resolution in any part of the history of the war in Cuba. The necessity for that action has been made more manifest, since the passage of this resolution by the terrible and unexampled wrongs to humanity in process of perpetration by Spain against her former subjects, and now more fully realized in the extermination of noncombatants by tens of thousands, and their starvation, by military orders, in groups of hundreds of thousands, who, lingering, still live.

The Senate has nothing to regret or to modify as to the action that was taken in the adoption of the resolution now again presented for its action, and still hopefully invites the concurrence of the House of Representatives. In all parliamentary usage, and in accord with the spirit of our institutions, the Houses, in their action upon all questions presented to them, are entirely free and independent in their deliberations and votes. It is needless to say that any attempt to coerce one of the Houses of Congress by the action of the other is derogatory to the welfare of the country; and it is a high duty of each House to avoid giving to the other any reasonable ground of complaint or apprehension of such a purpose.

It is, on the contrary, an imperative duty that such a suspicion should be made fairly impossible. The Government must be supported, and the necessary appropriations for the consular and diplomatic service are of vital importance. Under existing conditions it is not an unreasonable supposition that it will be in the nature of compulsion or coercion of the House of Representatives if the Senate should place upon that bill an amendment in the same terms with the joint resolution heretofore adopted by the Senate, which is still pending in the House of Representatives.

It is more clearly a reasonable inference that such would be the purpose of the Senate, because the same effort was made in the House of Representatives, on the passage of the consular and diplomatic appropriation bill, to place this proposed amendment upon that bill, and the motion was lost through the action of that body.

The desire of the committee that the joint resolution adopted by the Senate should be adopted by the House of Representatives is earnest and unanimous, but they do not recommend that any action should be taken in the Senate that will or can in any way be considered by that honorable body as an interference with their perfect freedom and independence in their deliberations upon any measure.¹

The committee recommends that the proposed amendment be laid upon the table.²

¹This question was fully discussed in 1876 (first session Forty-fourth Congress, Record, pp. 4343, 4345, 4423) when the Senate refused to permit certain legislation intended to retrench the expenditures of the Government to be placed on an appropriation bill. In the discussion at that time reference was made to the precedent of 1856. Also on March 27, 1879 (first session Forty-ninth Congress, Record, p. 77) the subject was brought up in the Senate by Mr. George F. Hoar, of Massachusetts.

²On February 9, 1885, the subject of legislation on appropriation bills was debated at length in the Senate. (Second session Forty-eighth Congress, Record, pp. 1464–1474.)

The subject of legislation on appropriation bills, especially when the object thereof is to coerce the other branch of Congress or the Executive, was elaborately debated in 1879 when the party in control of the House and Senate strove to obtain an alleged redress of grievances as to certain Federal laws relating

3905. It was very early insisted on as a principle that, where one House proposes to an appropriation bill an amendment firmly resisted by the other, the proposing House should recede.

In the early practice of the House conference committees did not make identical reports to the two Houses, and the reports were not signed.

On February 6, 1818,¹ the House insisted on their disagreement to the first amendment of the Senate to the bill "making appropriations for the military service of the United States, for the year 1818." A conference was asked with the Senate, and Messrs. William Lowndes, of South Carolina; Samuel Smith, of Maryland, and Timothy Pitkin, of Connecticut, were appointed managers on the part of the House. On the same day the Senate agreed to the conference, and Messrs. George W. Campbell, of Tennessee; John Williams, of Tennessee, and James Barbour, of Virginia, were appointed conferees on the part of the Senate.

On February 12 the managers reported in their respective Houses that the conference, after being continued as long as there was any prospect of arriving at a favorable result, terminated without the conferees of the two Houses being able to come to any agreement on the subject thereof. Both Senate and House conferees made to their respective Houses long written reports, but these reports were not identical, and were not signed even by the conferees of the one House.

The House conferees in their report state their ground for disagreeing to the Senate amendment, which proposed to appropriate for pay to brevet officers on a basis that the House could not agree to.

The committee of the House of Representatives,
says their report,

consider it necessary to a fair and free legislation, that appropriations, in regard to the propriety or extent of which the two Houses find, after deliberation that they still differ, should be separated from those which both consider necessary to the public service. If either branch of the Legislature determine that it will

to juries, elections, etc., by legislation on the appropriation bills, which were vetoed. The Congressional Record, first session Forty-sixth Congress, has these debates, speeches being made by J. R. Tucker (Va.), p. 238; J. A. Logan (Ill.), p. 435; J. A. Beck (Ky.), p. 471; H. M. Teller (Colo.), p. 512; J. G. Carlisle (Ky.), p. 527; W. M. Springer (Ill.), p. 938 (citing precedents); W. D. Kelley (Pa.), p. 527.

Also Hoar's resolution, pp. 64, 162, 372. Also page 266 for reference to Benton's protest on the California bill.

President Hayes in veto messages discussed subject, pp. 994, 1709.

Henry Clay in 1819 had proposed coercion by rider, second session Fifteenth Congress, Congressional Annals, p. 471.

The Wilmot proviso was also a rider (1946), Globe, first session Twenty-ninth Congress, p. 1217.

On August 21, 1856, Mr. Speaker Banks ruled that the provision in the army appropriation bill just reported from the Ways and Means Committee providing in relation to the use of troops in the Kansas troubles, was not a violation of the rule prohibiting change of law on an appropriation bill, but this ruling was evidently an act of force, at the end of a long contest. (Second session Thirty-fourth Congress, Journal, pp. 1555-1557; Globe, p. 6.)

¹First session Fifteenth Congress, Journal, pp. 220, 238, 246, 249; Annals, pp. 172, 188, 883, 894.

not make the great mass of necessary appropriations while there remains one unprovided for, which it considers to be proper it throws upon the other branch the necessity of concurring in an appropriation which it may believe that neither the law nor the public interest requires, or of endangering all the appropriations of the Government.

As the conferees of the Senate thought the objections urged by the House of Representatives to the course pursued by the Senate, that it made the passage of the large number of appropriations in which both Houses concur, depend upon that of one in respect to which they differ—an objection inapplicable to the subject—the committees were obliged to separate without agreeing on the subject of the Senate's amendment.

The Senate conferees in their report admitted that generally it would not be the most correct course to amend a law establishing salaries or authorizing an expenditure by a provision in a general appropriation law, though they believed that there was no constitutional or legal objection to it. They also admitted, as stated by the House conferees, that it would not be advisable generally to embarrass a measure embracing the mass of appropriations deemed necessary by insisting on one of a doubtful nature, but they did not consider that the amendment under consideration came within the scope of this principle.

On February 13, after considering the report of their conferees the House voted to adhere to their disagreement to the first amendment of the Senate.¹ On February 16 a message from the Senate announced that they had receded from their amendment. Thereupon the bill was enrolled and duly signed.

3906. The principle seems to be generally accepted that the House proposing legislation on a general appropriation bill should recede if the other House persist in its objection.—On June 10, 1896,² a condition of prolonged disagreement between the House and Senate was existing as to certain Senate amendments to the sundry civil appropriation bill. These amendments were legislative in their nature, proposing an increase in the limit of cost of certain public buildings already authorized by prior law.

In the House, when this disagreement was under discussion, Mr. Joseph G. Cannon, of Illinois, chairman of the Committee on Appropriations, and the Member in charge of the bill, said:

Under all parliamentary precedents the body proposing legislation, when the other body will not assent, recedes; and if the Senate, proposing legislation in this case, lets this bill fail because the House will not assent to the legislation, then let the responsibility be upon the Senate. * * * The man who has read the history of his country understandingly in the parliamentary contests in 1878, 1879, and 1880 understands—and this contest began before the breaking out of the late war—that the rule is unvarying that the body proposing legislation as a rider upon a money bill must recede if the other body will not assent.

In the Senate, in the discussion of the same disagreement, Mr. John Sherman, of Ohio, said:

It has always been, so far as I know, the custom in the Senate, and also in the House of Representatives as well, where there is a disagreement between the two Houses threatening to defeat the passage

¹The practice in this respect should be noted. Had there been an agreement the papers should have been left with the Senate conferees (see sections 6571–6585 of Vol. V of this work) as the Senate agreed to the conference. Thus the first action should have been in the Senate where the papers might be supposed to be. But there is evidently a distinction in case a conference breaks up without result, and may not the asking House with propriety keep the papers? For as they have taken the last positive action on the papers they may with propriety be expected to have the opportunity at once to say whether they adhere to or recede from that action.

²First session Fifty-fourth Congress, Record, pp. 6379, 6417, 6422.

of an important appropriation bill—and it is the only true rule that can be applied to such a case—that the House proposing the amendment which is firmly resisted by the other House ought to recede from the amendment. No provision ought to be ingrafted in a law by Congress which has not been assented to by both Houses. Therefore, if there is a particular proposition—for instance, the erection of a public building at any place—the Senate proposing the amendment and the House saying firmly that they will not agree to it, the Senate ought to recede, and the amendment be stricken out. That is the established rule. The two Houses of Congress can only legislate upon the firm rule, adopted by the Houses, that no proposition whatever shall be forced upon the House by the Senate or upon the Senate by the House.

In the British Parliament the House of Commons will not allow the House of Lords to propose amendments upon the question of appropriating money. That is the right of the Commons, the representatives of the people there, and the House of Lords have never been allowed in any case to say whether or not an appropriation should be made for any purpose whatever. Whatever appropriations may be proposed by the House of Commons go to the House of Lords, and are accepted as a matter of course; but here such is not the case. We have equal power with the House of Representatives; we have the power to propose amendments to their bills; we have the power to originate appropriation bills, for they are not in any constitutional sense bills for raising revenue. They are simply bills appropriating money supposed to be in the Treasury.

I remember one striking case where the two Houses were at outs with each other and there was a condition somewhat similar to that which now exists, only at that time public feeling was much more heated than it is now. In 1860 the House of Representatives undertook to reduce as much as possible the appropriations for the support of the Government. Then the war, with the difficulties that came after, was foreseen and everybody was very anxious to prevent any large appropriations of public money, the House of Representatives especially taking the lead. During that session when an appropriation bill came to the Senate the Senate attached an appropriation for the expenditure of half a million dollars for a public building at New Orleans and a half million dollars for a public building at Charleston.

When the bill was returned to the other House with the amendment, the House struck out the amendment and insisted upon its action. When a gentleman who I might say is known to you all, by reputation at least, who was then a Senator from Georgia and was a very positive man, met the committee of conference and said to them distinctly that unless the appropriation was made for these two public buildings in the South the appropriation bill could not pass at all, that was promptly resented by the House of Representatives; and upon the meeting of the conferees again the Senate of its own accord receded and took the position, upon the ground that I have stated, that it had no right to force the House to agree to that to which the House was opposed. That was put upon broad national grounds. That is this case. Wherever the Senate of the United States undertakes to force upon the House of Representatives an appropriation it goes beyond the limits of its power. It may insist; it may hold on and continue debating until probably the House will be wearied; but, after all, if the House of Representatives says “No” definitely, the appropriation ought not to be made; and it is equally true that if the House should insist upon an appropriation to which the Senate is opposed, and the Senate says, “We will not agree to that; we are opposed to it; it is wrong,” or “It should not be appropriated at this time,” as a matter of course the House would have to recede.

It is only by the adoption by the two Houses of such a rule that we can get along at all with our appropriations. We may insist and insist, but when the time comes when we must choose between the passage or the defeat of an appropriation bill, then, as a matter of course, the House proposing the disputed proposition must withdraw it.

The Senate, however, voted to insist on its amendments, and the House, by a vote of yeas 100, nays, 88, voted to recede from its disagreement and concur in the amendments.

3907. On June 29, 1898,¹ a condition of disagreement was in existence between the House and Senate over certain amendments of the Senate to the sundry civil appropriation bill. These amendments proposed the construction of several public buildings and a soldiers' home at Hot Springs, S. Dak.

¹Second session Fifty-fifth Congress, Record, pp. 6490–6492.

After several futile conferences the House voted, ayes 117, noes, 0, to insist further on its disagreement to the Senate amendments, and did not ask another conference.

On June 30¹ the message stating the action of the House was considered at length in the Senate. Mr. Arthur P. Gorman, of Maryland, criticized the system of partial instead of complete conference reports, and then urged that the House's demand that the Senate recede from its position was not respectful to the Senate.

On the other hand, Mr. George F. Hoar, of Massachusetts, said:

Contrary to the custom in Great Britain at the time when we established our Constitution, these appropriation bills are made up of a number of different items absolutely independent of one another. The House having originated the bill, if the Senate has a different opinion in regard to the amount or in regard to the method of accomplishing the purpose of any one item, the two Houses stand, and ought to stand, on an equality, and there is no more reason why we should yield our judgment to them than that they should yield their judgment to us. But when an entirely new, distinct subject of legislation, as is the case here, is inserted in one of these bills, either originally or by way of amendment, if either House do not assent to it the other ought, of course, to yield. Otherwise you have legislation by one House and not by two.

We have nothing to do with the reasonableness or the unreasonableness of the opinion of the House of Representatives. That is their affair. They are responsible only to themselves and their constituents. If they do not approve it, we have no business to press it by saying that the legislation which both Houses agree is necessary for the country shall fail. That is coercion; that is logrolling; that is utterly indefensible as a matter of principle.

So, after we have in conference brought again and again to the attention of the House of Representatives our reasons, if they fail to convince that body, we ought to yield to the point; and in the same way with regard to items put in by the House of Representatives and sent here, if they fail to convince this body, they ought to yield the point, whether they originate them or whether we originate them.

The Constitution requires two bodies—not one body—selected in different ways and representing different constituencies, to assent to all legislation. That is for the protection of the people. So, whatever we may think of the wisdom or the unwisdom of the opinion of the House of Representatives, unless we can change that opinion, we have no right to put constraint upon that body by saying that the public interests shall suffer in some way if you do not yield your conscientious convictions.

The Senate voted to recede from its amendments.

3908. On June 27, 1906,² in the Senate, a discussion arose as to the respective duties of House and Senate as to receding from legislative amendments to appropriation bills.

Mr. James A. Hemenway, of Indiana, said:

I desire to put this question to the Senator from Maine [Mr. Hale], who has had long experience on conference committees: Is it not the rule of conferences that where legislation is placed upon an appropriation bill the body seeking to legislate must recede if the other body dissent? There is no place upon an appropriation bill, as a rule, for legislation. We talk about things getting through the Congress of the United States without notice. They get through sometimes by putting them into a bill of perhaps 300-odd pages, and driving them through. I am not in sympathy with the idea that legislation can be placed upon an appropriation bill as this legislation was, whether it be good or bad, without discussion.

Mr. Eugene Hale, of Maine, said:

Mr. President, as I have been appealed to by the Senator from Indiana [Mr. Hemenway] to state what is my experience, I will state that when either House puts in an appropriation bill legislation it

¹ Record, pp. 6536–6544.

² Second session Fifty-ninth Congress, Record, p. 9378.

can not force the other House to agree, but it must in the end recede if the proposition is one that the other House will not at all agree to. In this case it seems to me, from the very clear and guarded statement of the Senator from Vermont, that it is not a question of the House resisting absolutely and declaring that nothing shall go on the bill, but it is a question of agreeing between the two bodies as to what legislation shall be adopted different from what the Senate has put on. I do not think we take any profit by further inflaming the situation. To test the sense of the Senate that for the present this matter shall stand, I move that the Senate adjourn.

3909. A proposition germane but involving legislation has sometimes been admitted as an amendment to a Senate amendment to an appropriation bill and sometimes ruled out.—On January 9, 1855,¹ the House was considering the following Senate amendment to the pension appropriation bill:

SEC. 3. *And be it further enacted*, That the widows of the officers, noncommissioned officers, marines, or mariners, who served in the Navy of the United States during the Revolutionary war, and who were married since the 1st day of January, 1800, shall be entitled to pensions in the same manner, and to the same extent, as the widows of the officers and soldiers of the Army of the Revolution, under the second section of the act of February 3, 1853; and the pensions granted by this act and those under the said second section of the act of February 3, 1853, shall commence on the 4th day of March, 1848.

To this Mr. Reuben E. Fenton, of New York, offered the following amendment:

And be it further enacted, That any woman who was the wife or widow of an officer, noncommissioned officer, musician, private, seaman, or marine, who served in the Army or Navy of the United States in the Revolutionary war or any subsequent war, or has since died in the land or naval service of the United States, shall also be entitled to the benefits of the pension laws, or of this act, but no woman shall receive a pension for any time during which her husband received one.

Mr. George S. Houston, of Alabama, made the point of order that this amendment proposed a change of existing law.

The Speaker² held:

The rule to which the gentleman refers is couched in the following language:

“No appropriation shall be reported in such general appropriation bills, or be in order as an amendment thereto, for any expenditure not previously authorized by law.”

That rule would certainly control in an original bill, and in an amendment proposed to an original bill of this body; but the amendment offered by the gentleman from New York being consistent with the amendment of the Senate, the Chair considers it to be in order, governed as he must be by the action of the Senate in relation to the amendment passed by that body.

3910. On March 2, 1855,³ during consideration of the Senate amendments to the post-office appropriation bill in Committee of the Whole House on the state of the Union, an amendment providing for the payment of a private claim was offered to a Senate amendment.

Mr. George S. Houston, of Alabama, raised a question of order.

The Chairman⁴ said:

The Chair states that the amendment of the Senate would not have been in order under the rules of the House as an original proposition. If such a proposition had been offered, the present occupant of the chair would have ruled it to be out of order. Now, the same rules apply in reference to amendments to the Senate amendments that would apply when the bill was originally before the House.

¹Second session Thirty-third Congress, Globe, p. 218.

²Linn Boyd, of Kentucky, Speaker.

³Second session Thirty-third Congress, Globe, p. 1077.

⁴James L. Orr, of South Carolina, Chairman.

And, therefore, although the amendment of the gentleman from Kentucky as far as language is concerned is germane to the Senate amendment, yet the Chair decides that it is a private claim, that it proposes to change the existing law, and that, according to the eighty-first rule of the House, it is not in order.

An appeal being taken, the decision was sustained, ayes 94, noes 30.

3911. On April 30, 1864,¹ the House was considering a Senate amendment to the army appropriation bill providing for the rate of emolument of colored troops in the service of the United States, and allowing the payment of bounties to them at the discretion of the President.

Mr. William S. Holman, of Indiana, proposed to amend the Senate amendment by adding thereto a provision raising the pay of the white soldiers in the service of the United States.

Mr. Thaddeus Stevens, of Pennsylvania, having raised a point of order that the amendment proposed a change of existing law, Mr. Holman urged that the Senate amendment changed existing law, and that a modification of it was in order.

The Speaker² decided that the proposed modification was not in order, on the ground that it changed an existing law, which by the rules of the House was prohibited in an amendment to an appropriation bill, and was not germane to the Senate amendment.

Mr. Holman having appealed, the appeal was laid on the table, yeas 95, nays 25.

3912. On June 4, 1900,³ the House had agreed to a partial conference report on the sundry civil appropriation bill and was considering the amendment making appropriation for the work of the Mississippi River Commission.

Mr. Theodore E. Burton, of Ohio, moved to recede and concur, with an amendment directing the Commission to prepare and report a comprehensive plan of improvement of Mississippi River.

Mr. Thaddeus M. Mahon, of Pennsylvania, made the point of order that the amendment proposed new legislation and was not germane.

The Speaker⁴ said:

The point of order is overruled. If the point were to be sustained, it would entirely disarm the House from the treatment of amendments of the Senate. The Senate amendment has reference to the Mississippi River and its improvements and the Mississippi River Commission, and the amendment offered by the gentleman from Ohio [Mr. Burton] treats of the same matter. The question is on the motion of the gentleman from Ohio [Mr. Burton] to recede and concur, with an amendment.⁵

¹First session Thirty-eighth Congress, Journal, p. 598; Globe, p. 1998.

²Schuyler Colfax, of Indiana, Speaker.

³First session Fifty-sixth Congress, Record, pp. 6565–6568; Journal, pp. 669, 670.

⁴David B. Henderson, of Iowa, Speaker.

⁵On December 4, 1873, Mr. James A. Garfield, of Ohio, proposed the following rule, which was referred to the Committee on Rules:

Resolved, That the rules be so amended as to provide that when a House bill returns to the House with Senate amendments points of order may be made in the House against any such amendments whenever the same are not germane to the subject-matter of the bill or when such amendment contains an appropriation not authorized by law. (First session Forty-third Congress, Journal, p. 56; Record, p. 69.)

On January 24, 1883, in the Senate, Mr. Benjamin Harrison, of Indiana, proposed in the Senate a joint rule to prevent legislation on appropriation bills. (Second session Forty-seventh Congress, Record, p. 1525.)

3913. Where a Senate amendment proposes on a general appropriation bill an expenditure not authorized by law or legislation, it is in order in the House to perfect it by germane amendments.—On June 14, 1884,¹ the House was considering Senate amendments to the post-office appropriation bill, among which was the following: “For special facilities in trunk lines, \$185,000.”

It was moved to recede and concur in this amendment, with an amendment making the sum \$250,000.

Mr. William S. Holman, of Indiana, made the point of order that this amendment was not in order.

The Speaker² held:

While the Chair supposes there is no permanent provision of law authorizing this expenditure, still the proposition to expend a certain amount of money for that purpose is now properly before the House, and the Chair thinks that the proposition, being properly before the House, is amendable, without regard to the rule applying to an original amendment proposed in the House. In other words, as an illustration, if the Committee on Appropriations should report a bill containing within it a provision not directly authorized by law, amendments proposed to such a provision should not be ruled out upon the point of order, because the subject upon which they are predicated, being virtually before the House, is a legitimate subject of amendment, either by increasing or diminishing the amount of the appropriation. The Chair therefore overrules the point of order.

3914. On February 28, 1889,³ in connection with a conference report on the District of Columbia appropriation bill, the House was considering an amendment of the Senate relating to the Zoological Park. An amendment having been offered to this Senate amendment, Mr. John J. Hemphill, of South Carolina, proposed as an amendment in the second degree a provision appropriating \$1,000,000 for a national park in the District, adjacent property holders to be charged for betterments.

Mr. Samuel J. Randall, of Pennsylvania, made a point of order against the amendment of Mr. Hemphill.

The Speaker² said:

The gentleman from Pennsylvania makes a point of order against this amendment. The Chair thinks that while no point of order can be made in the House against any provision inserted in a conference report, except upon the ground that it changes or strikes out some provision previously agreed to by both Houses, yet when the House itself comes to adopt amendments to Senate amendments the amendments offered here must be germane and are governed by the rules which govern the ordinary proceedings of the House in the consideration of appropriation bills. * * * This is a proposition to agree to a Senate amendment with an amendment which the Chair thinks is not germane to the Senate amendment. * * * Anything relating to the Zoological Park, which is the subject of the Senate amendment, would be in order if germane to the provisions of that amendment, which the Chair has not yet read.

Thereupon Mr. Hemphill proposed to amend his amendment by inserting the words “zoological park” instead of “national park.”

Mr. James Buchanan, of New Jersey, made the point of order that the amendment changed existing law, and Mr. Randall suggested that the amendment would not have been in order if offered to the bill before it went to the Senate.

¹ First session Forty-eighth Congress, Record, p. 5146; Journal, p. 1450.

² John G. Carlisle, of Kentucky, Speaker.

³ Second session Fiftieth Congress, Journal, p. 667; Record, p. 2454.

The Speaker said:

That is the very point which the Chair is examining, for the Chair thinks, as he has already stated, that if the committee of conference should embrace in its report to the House an agreement upon some proposition which would not have been in order in the House originally a point of order could not be made against it; but when it is proposed that the House shall concur in a Senate amendment with an amendment, the latter must be of such a character that it would have been in order if the original proposition were before the House. Upon this ground the Chair thinks that the amendment offered by the gentleman from South Carolina is not in order; * * * and it is not in order simply as an amendment to the Senate amendment, because it proposes to change existing law in regard to the payment for this property. The law now provides that the expenditures in connection with the District shall be borne one-half by the United States and one-half by the District of Columbia.

3915. On March 2, 1885,¹ the House was considering certain Senate amendments to the legislative, executive, and judicial appropriation bill, one of which was as follows:

For clerks to Senators who are not chairmen of committees, at \$6 per day, \$39,432.

Mr. J. Warren Keifer, of Ohio, moved to concur in this Senate amendment with an amendment which would make it read as follows:

For clerks to Senators and Representatives who are not chairmen of committees, at the rate of \$100 per month during the session, \$209,300.

Mr. William M. Springer, of Illinois, made the point of order that the proposed amendment of Mr. Keifer was a change of existing law and did not retrench expenditures.

The Speaker² said:

The question was presented at the last session of Congress and the Chair made a ruling upon it then, but has never been entirely satisfied that it was altogether correct. The Chair will cause the Journal entry to be read:

“The House then proceeded as the regular order of business (as a privileged question) to the consideration of the bill of the House (H. R. 5459) making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1885, and for other purposes, and amendments of the Senate thereto, pending when the House took a recess on yesterday, the pending question being on the following amendment of the Senate, namely: ‘Page 74, after line 27, insert: “For necessary and special facilities on trunk lines, one hundred and eighty-five.”’ Pending which Mr. Horr moved that the House recede from its disagreement to the said amendment and agree to the same with the following amendment:

“Strike out the words “one hundred and eighty-five” and insert in lieu thereof “two hundred and fifty.’”

“Pending which Mr. Holman made the point of order that the said amendment, under clause 3 of Rule XXI, was not in order, for the reason that said appropriation was for a purpose not authorized or specified by law or for work already in progress.”

“The Speaker overruled the said point of order on the ground that the appropriation to which the amendment was offered was properly before the House and was amendable without regard to the rule applicable to an original amendment proposed in the House.”

It will be observed that the question presented in that case was on an amendment which proposed simply to increase the amount appropriated by the Senate amendment for the same purpose provided for in the Senate amendment. The gentleman from Ohio now submits a proposition which is to make an appropriation for a different purpose from that provided for in the Senate amendment. * * *

¹ Second session Forty-eighth Congress, Record, pp. 2421, 2422.

² John G. Carlisle, of Kentucky, Speaker.

The Speaker went on to say that the amendment was, however, germane, and that the Chair had held during the last session that when a Senate amendment providing for an appropriation not authorized by existing law came to the House it was in order for the House to amend it by adding other appropriations relevant to it, although not authorized by existing law, because otherwise the House would have no power to amend a Senate amendment which proposed to appropriate money for purposes not previously authorized by law.¹

3916. On June 17, 1898,² the House having under consideration a Senate amendment (No. 74) to the District of Columbia appropriation bill relating to electric lighting in the District, Mr. Mahlon Pitney, of New Jersey, moved to recede and concur in the Senate amendment with an amendment relating to a conduit system for electric-light wires.

Mr. William H. King, of Utah, having made a point of order, the Speaker pro tempore³ held:

The gentleman from New Jersey [Mr. Pitney] moves to recede from the House disagreement to the amendment No. 74 and to agree with an amendment. The gentleman from Utah [Mr. King] makes the point of order that the amendment offered by the gentleman from New Jersey is new legislation. The Chair is very clearly of opinion that the point of order is not well taken. It is conceded that the amendment offered by the gentleman from New Jersey is germane to the Senate amendment, and the point that it is new legislation can not be raised at this stage of the proceeding, inasmuch as the new legislation originated in the Senate. If that was not the rule, it would be in the power of the Senate at any time to originate new legislation and deprive the House of any judgment with reference to it. If new legislation originates in the Senate, the House has the right to agree or disagree or to agree with an amendment, and the point of order is therefore overruled.

¹ On March 3, 1887 (second session Forty-ninth Congress, Record, p. 2736), Mr. Speaker Carlisle made a similar decision.

² Second session Fifty-fifth Congress, Record, p. 6098.

³ John Dalzell, of Pennsylvania, Speaker pro tempore.