

Chapter XCVIII.

LIMITATIONS IN GENERAL APPROPRIATION BILLS.

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3917. The House may by limitation on a general appropriation bill provide that no part of an appropriation shall be used for a certain purpose.—On January 20, 1906,² the urgent deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

To enable the President to meet unforeseen emergencies arising in the diplomatic and consular service, and to extend the commercial and other interests of the United States, to be expended pursuant to the requirement of section 291 of the Revised Statutes, \$50,000, or so much thereof as may be necessary, no part of which sum shall be disbursed for services rendered or expenses incurred within the District of Columbia.

To this Mr. Lucius N. Littauer, of New York, proposed this amendment:

After the word “Columbia,” insert “except for the entertainment of foreign dignitaries.”

Mr. John S. Williams, of Mississippi, having made a point of order, the Chairman³ held:

This is a limitation on the appropriation which the amendment attempts to perfect. The Chair overrules the point of order. The question is on agreeing to the amendment.

3918. On January 20, 1906,⁴ the urgent deficiency bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

Collecting the revenue from customs: To defray the expenses of collecting the revenue from customs, being additional to the permanent appropriation for this purpose, for the fiscal year ending June 30, 1906, \$1,500,000.

¹ See also section 3641 of this volume.

² First session Fifty-ninth Congress, Record, pp. 1320, 1321.

³ James S. Sherman, of New York, Chairman.

⁴ First session Fifty-ninth Congress, Record, p. 1323.

Mr. Robert B. Macon, of Arkansas, proposed to this an amendment:

Amend by adding the following: "*Provided*, That no part of the sum herein appropriated shall be used for the payment of expenses of a customs office where the expenses of said office are in excess of the revenue receipts therefrom."

Mr. James A. Tawney, of Minnesota, made a point of order against the amendment.

The Chairman ¹ held:

It is apparent to the Chair that the amendment proposed is a limitation on the appropriation, and is not obnoxious to the rule; therefore the Chair overrules the point of order. Now, the Chair will recognize the gentleman from Massachusetts to discuss the merits of the amendment.

3919. On May 15, 1906,² the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read the paragraph providing salaries for the staff of instructors at the Naval Academy.

To this paragraph Mr. John J. Fitzgerald, of New York, offered an amendment:

Provided, That no part of the appropriations herein made for the support of the Naval Academy or for buildings and grounds of the Naval Academy shall be expended for compensation of clerks or clerical service of any nature except as herein provided for, unless the clerks and clerical service are specifically authorized and appropriations therefor specifically made.

After debate the Chairman ³ held:

The Chair is of opinion that the amendment is clearly a limitation upon the appropriation contained in the paragraph to which it refers. It does not repeal any provision of law and does not purport to. It is within the power of the House to so amend appropriation bills as to limit appropriations to one particular line of objects and exclude another particular line of objects, even though they be authorized by law, and the Chair therefore overrules the point of order.

3920. On June 15, 1906⁴ the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

To continue the construction of the Isthmian Canal, to be expended under the direction of the President in accordance with an act entitled "An act to provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans," approved June 28, 1902, as follows.

Mr. Lucius N. Littauer, of New York, thereupon offered an amendment as follows:

Provided, That no part of the sum herein appropriated shall be used for the construction of a canal of the so-called "sea-level type."

Mr. Charles L. Bartlett, of Georgia, made the point of order that as discretion was vested in the President by the act of 1902 this provision would restrict that discretion. Mr. Bartlett cited this provision of that act:

The President shall then, through the Isthmian Canal Commission hereinafter authorized, cause to be excavated, constructed, and completed, utilizing to that end, as far as practicable, the work heretofore done by the New Panama Canal Company, of France, and its predecessor company, a ship

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

² First session Fifty-ninth Congress, Record, p. 6913.

³ Edgar D. Crumpacker, of Indiana, Chairman.

⁴ First session Fifty-ninth Congress, Record, pp. 8581, 8597.

canal from the Caribbean Sea to the Pacific Ocean. Such canal shall be of sufficient capacity and depth as shall afford convenient passage for vessels of the largest tonnage and greatest draft now in use, and such as may be reasonably anticipated, and shall be supplied with all necessary locks and other appliances to meet the necessities of vessels passing through the same from ocean to ocean, and he shall also cause to be constructed such safe and commodious harbors at the termini of said canal and make such provisions for same as may be necessary for the safety and protection of said canal and harbors.

After further debate the Chairman¹ held:

The Chair is clearly of the opinion that the words of the amendment constitute a limitation on the appropriation, and not a change of existing law. The precedents are so numerous and the rule is so well established and clearly defined that the Chair does not feel obliged to cite a ruling at length or cite the precedents. The Chair therefore overrules the point of order.

3921. On May 17, 1902,² the naval appropriation bill being under consideration in Committee of the Whole House on the state of the Union, Mr. Sidney E. Mudd, of Maryland, offered this amendment:

Provided, however, That no part of the money appropriated in this paragraph or elsewhere in this bill, or to be hereafter appropriated, shall be expended in the purchase of any history of the Spanish-American war written by Edgar Stanton Maclay, for use at the Naval Academy, in ships' libraries, or in any other part of the naval establishment of the United States.

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

The Chairman³ said:

The amendment is clearly obnoxious to the rule. The Chair sustains the point of order.

Thereupon Mr. Mudd offered the following amendment:

On page 62, after line 14, add as follows:

“Provided, however, That no part of the money appropriated in this paragraph or elsewhere in this bill shall be expended in the purchase of any history of the Spanish-American war written by Edgar Stanton Maclay, for use at the Naval Academy, in ships' libraries, or in any other part of the naval establishment of the United States.”

Mr. Dayton made a point of order.

The Chairman said:

It is perfectly clear to the Chair that the amendment is a limitation and not legislation, and that the amendment is in order. The point of order is overruled.

3922. On January 21, 1905,⁴ the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union, a paragraph relating to schools being under consideration.

Mr. John J. Fitzgerald, of New York, proposed this amendment:

After line 15, page 50, insert:

“Provided, That no part of the moneys hereby appropriated shall be expended for the transportation of any pupil or pupils to any Indian school located without the boundaries of the reservation wherein such child resides, without the consent of the parents or guardians of such child or children being first had in writing.”

¹James E. Watson, of Indiana, Chairman.

²First session Fifty-seventh Congress, Record, p. 5607.

³James S. Sherman, of New York, Chairman.

⁴Third session Fifty-eighth Congress, Record, p. 1194.

Mr. James S. Sherman, of New York, raised a point of order against the amendment, but afterwards, in the course of debate, conceded that it was a limitation.

The Chairman¹ overruled the point of order.

3923. On January 19, 1905,² the army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, the paragraph providing for the transportation of the Army having been read.

Mr. John A. T. Hull, of Iowa, offered this amendment:

Provided, That no part of the \$12,000,000 hereby appropriated shall be paid to any steamship company for the transportation of supplies or enlisted men or officers of the United States from the Philippine Islands to the United States or from the United States to the Philippine Islands.

Mr. William E. Humphrey, of Washington, made a point of order against the amendment.

The Chairman³ held:

The Chair is quite clear that this is simply a limitation of an appropriation made in this section, and therefore overrules the point of order. The question is on agreeing to the amendment offered by the gentleman from Iowa [Mr. Hull].

3924. On February 18, 1904,⁴ the fortifications appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. James M. Robinson, of Indiana, proposed the following amendment:

On page 10, after the word "Government," in line 19, insert:

"No money herein appropriated shall be expended in the construction or test of the Langley aerodrome."

Mr. Lucius N. Littauer, of New York, made a point of order, saying:

The duties of the Board of Ordnance and Fortification are specified by existing law:

"To enable the Board of Ordnance and Fortification to make all needful purchases of whatever, in the judgment of the board, may be necessary in the proper discharge of the duties devolved upon it by the act approved September 22, 1888."

The duties of this board are thus provided for by statute.

The Chairman⁵ said:

The Chair begs to call the attention of the gentleman from New York to the fact that the House of Representatives is not compelled to appropriate for every lawful purpose. It may appropriate or not as it sees fit; and it may in making any appropriation place a limitation upon the expenditure of that appropriation. In the opinion of the Chair the amendment of the gentleman from Indiana [Mr. Robinson] is purely a limitation upon this appropriation, and in the opinion of the Chair is in order. The Chair overrules the point of order.

3925. On March 30, 1904,⁶ the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

California Débris Commission: For defraying the expenses of the Commission in carrying on the work authorized by the act of Congress approved March 1, 1893, \$15,000.

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

² Third session Fifty-eighth Congress, Record, pp. 1094, 1095.

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

⁴ Second session Fifty-eighth Congress, Record, p. 2052.

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

⁶ Second session Fifty-eighth Congress, Record, p. 4016.

To this Mr. Marlin E. Olmsted, of Pennsylvania, offered as an amendment the following:

Amend by adding at the end of line 22, page 114, the following words, viz:

"No part of the said sum shall be expended except in the reimbursement of the Commission or members thereof for expenses actually incurred in the performance of their duties in carrying on said work, which said expenses shall not have been paid nor be payable from any other fund."

Mr. James A. Hemenway, of Indiana, made the point of order that the amendment was in violation of law.

After debate, the Chairman¹ held:

The amendment seems to provide, first, that nothing shall be paid from this appropriation except the expenses of the Commission or members thereof; second, that no expenses shall be paid except those which have not been paid or provided for from some other fund. Both these branches of the amendment would seem to be a limitation on the appropriation, and the point of order is overruled.

3926. 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 compensation to twenty-five rural agents, at \$1,600 each; fifteen rural agents, at \$1,500 each; fifteen rural agents, at \$1,400 each; nineteen rural agents, at \$1,300 each; sixty-five rural agents, at \$1,200 each; and ten rural agents, at \$1,000 each, \$196,200.

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

Insert, in line 18, page 24, after the word "dollars," *Provided*, That no part of this appropriation shall be paid to any rural agent who after the 1st day of July, 1904, shall make a recommendation against the establishment of any route on account of the condition of the road over which said route extends or is proposed to extend."

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

The Chair has not been referred to any law prescribing the duties of these agents or to any law directing the Postmaster-General to designate the duties of these agents so employed. The Chair can only consider the general law conferring upon the Postmaster-General the power to distribute the duties of his Department where these duties are not distributed by law, and this amendment, * * * although vague in its terms and although it might seem to contain provisions which in the mind of the Chair would be difficult of enforcement, still, as the Chair understands those questions they should be submitted to the discretion of the committee, the Chair can not see that this amendment is anything else but an appropriation for certain agents, omitting others, a discrimination which Congress has of course the right to make, and the Chair, therefore, is constrained to overrule the point of order.

3927. A limitation may be attached only to the money of the appropriation under consideration, and may not be made applicable to moneys to be appropriated in other acts.

A ruling in which are discussed the principles of the former rule admitting to appropriation bills legislative provisions reducing expenditures.

On March 21, 1892,⁴ the House was in Committee of the Whole House on the

¹Theodore E. Burton, of Ohio, Chairman.

²Second session Fifty-eighth Congress, Record, pp. 3646, 3647.

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

⁴First session Fifty-second Congress, Record, p. 2282.

state of the Union, considering the Army appropriation bill, when the Chairman¹ ruled as follows on a point of order made by Mr. William H. Crain, of Texas:

The point of order made by the gentleman from Texas [Mr. Crain] is against the second proviso on page 16 of the bill, which declares—

“That hereafter no money appropriated for army transportation shall be used in payment of the transportation of troops and supplies of the Army over any of the nonbonded lines owned, controlled, or operated by the Union Pacific Railway Company (including the lines of the Oregon Short Line and Utah Northern Railway Company), or by the Southern Pacific Company over lines embraced in its Pacific system.”

Under the view taken by the Chair, the relations between the Government and these railroad companies, as determined by the Supreme Court, or otherwise, can not affect the decision of this point of order.

The gentleman from Indiana [Mr. Holman] contends that this proposed new legislation is in order in an appropriation bill under the proviso of the second section of Rule XXI, which says:

“It shall be in order further to amend such bill upon the report of the committee having jurisdiction of the subject-matter of such amendment, which amendment, being germane to the subject-matter of the bill, shall retrench expenditures.”²

The Chair is of opinion that a motion of that kind should come officially from the committee having jurisdiction, and can not be brought before the Committee of the Whole House on the state of the Union as an integral part of an appropriation bill reported by the regular Committee on Appropriations.

The question then arises, Is this proviso in order under the previous paragraph of section 2, which allows legislation on appropriation bills changing existing law in three cases, first, such as, being germane to the subject-matter of the bill, retrench expenditures by the reduction of the number and salary of the officers of the United States?

It is admitted that this provision does not apply, nor, on the other hand, does this proviso “reduce the compensation of persons paid out of the Treasury of the United States,” as contemplated in the second case, but the point is made with considerable force—and upon that point the Chair confesses that his mind is not as clear as he would like it to be—that this is legislation coming under the third exception, in that it reduces the amount of money covered by the bill.

If it is such a provision, it is in order., and it is asserted by the chairman of the committee that that would be the effect of the provision. But the Chair is inclined to the opinion that such effect should not be inferred by way of argument, but should appear from the face of the bill itself. Now, the Chair has no doubt that the committee, acting under the rules, in making an appropriation, can so limit that appropriation as to direct who shall and who shall not be its beneficiaries; that in making appropriations for the transportation of the Army for the next fiscal year it can fail or refuse to make appropriations for its transportation over the particular lines mentioned in the bill; just as it might fail or refuse, in its judgment, to make appropriations for the transportation of the artillery, or of the cavalry, or of the infantry branch of the service.

But on examining the proviso in the bill the Chair finds that it is something more than a limitation upon the appropriation made in this appropriation bill, for it proposes to make a permanent law, the language of the proviso being:

“*Provided*, That hereafter no money appropriated for army transportation shall be used in payment of transportation of troops and supplies.”

And because it proposes a permanent provision of law, and not a limitation upon the present appropriation, the Chair feels constrained to sustain the point of order.

3928. On February 21, 1899,¹ the House was considering the naval appropriation bill in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

Armor and armament: Toward the armament and armor of domestic manufacture for the vessels authorized by the act of July 26, 1894, of the vessels authorized under the act of March 2, 1895, of those

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

² The form of rule in use at the present time does not have this provision. See section 3578 of this volume.

³ Third session Fifty-fifth Congress, Record, pp. 2164, 2165.

authorized by the act of June 10, 1896, of those authorized by the act of March 3, 1897, of those authorized by the act of May 4, 1898, and of those authorized by this act, \$4,000,000. In all future contracts for armor for any of the vessels above mentioned, the Secretary of the Navy is hereby authorized and directed to procure armor of the best obtainable quality at an average cost not exceeding \$545 a ton of 2,240 pounds, including all royalties.

Against the last sentence of this paragraph, beginning with the words "In all future contracts," Mr. Albert J. Hopkins, of Illinois, made a point of order.

The Chairman¹ said:

The Chair, rather than to rule, desires to make a suggestion. It seems to the Chair perfectly clear that it is in order to put a limitation upon the appropriation contained in this bill only; but this appropriation provides:

"Toward the armament and armor"—and so forth, indicating that it is expected that a future appropriation must be necessary in order to complete this armament. And in reference to this future appropriation, it is not proper to put a limitation in this bill.

The Chair suggests that if the gentleman from Illinois [Mr. Hopkins] would withdraw his point of order the wording might be changed, so that, in line 12, the words "all future" be stricken out, and after the word "armor," in line 13, the words "herein appropriated for" be inserted, and that would bring the provision where it would not be obnoxious to the rule. It would be a limitation upon the appropriation and would be admissible under the rule.

Mr. Hopkins having declined to withdraw the point of order, the Chairman said:

If the gentleman from Illinois declines to withdraw his point of order, the Chair, for the reasons that he has stated, will sustain the point of order.

3929. A limitation must apply solely to the present appropriation, and may not be made as a permanent provision of law.—On March 20, 1906,² the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a paragraph was read including appropriations for pay of janitors to certain committees, and also the following provision:

And said janitors shall be appointed by the chairmen, respectively, of said committees, and shall perform, under the direction of the Doorkeeper, all of the duties heretofore required of messengers detailed to said committees by the Doorkeeper, and shall be subject to removal by the Doorkeeper at any time after the termination of the Congress during which they were appointed.

Mr. George W. Prince, of Illinois, made a point of order against the words which would make the janitors subject to removal by the Doorkeeper.

Mr. Lucius N. Littauer, of New York, urged that this was simply a limitation.

After debate the Chairman³ ruled:

This paragraph appropriates the money absolutely, and then follows the provision "and shall be subject to removal by the Doorkeeper at any time after the termination of the Congress during which they were appointed."

It seems to the Chair that it is not a condition of the appropriation, or a limitation upon it, but a provision of law which is intended to be continuing even beyond the term of the present Congress or after the expiration of the year for which the appropriation is made. It seems to the Chair that it is in violation of the rule, and the Chair therefore sustains the point of order.

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

² First session Fifty-ninth Congress, Record, pp. 4046, 4047.

³ Marlin E. Olmsted, of Pennsylvania, Chairman.

3930. As to the line of distinction between limitations applying only to the appropriation for the year and a permanent provision of law.—On January 26, 1907,¹ the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

For meat inspection: That hereafter, for the purpose of preventing the use in interstate or foreign commerce, as hereinafter provided, of meat and meat food products which are unsound, unhealthful, unwholesome, or otherwise unfit for human food, the Secretary of Agriculture, at his discretion, may cause to be made, by inspectors appointed for that purpose, an examination and inspection of all cattle, sheep, swine, and goats before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment, in which they are to be slaughtered and the meat and meat food products thereof are to be used in interstate or foreign commerce; and all cattle, swine, sheep, and goats found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine, or goats, and when so slaughtered the carcasses of said cattle, sheep, swine, or goats shall be subject to a careful examination and inspection, all as provided by the rules and regulations to be prescribed by the Secretary of Agriculture, as herein provided for.

Mr. James R. Mann, of Illinois, made a point of order that the insertion of the word “hereafter” in the first line, brought the paragraph within the rule as to legislation, although with the exception of that word the paragraph was a verbatim repetition of an existing law. Mr. Mann said:

If the old existing law is permanent legislation, then there is no necessity for the provision in this bill. I understand it to be the position of the distinguished gentleman from New York in charge of the bill that the old law, in fact, is permanent legislation, and that this item had been inserted in the bill at this time not because he believed, and probably not because the committee believed, that there is any doubt of it, but because a gentleman now in the position of Solicitor to the Department of Agriculture has had some doubts about the matter. Now, Mr. Chairman, I have no doubt myself, not the slightest, and I do not believe that any lawyer wherever he may be placed will have any doubt, that the legislation of last year is permanent legislation, although it appeared in an appropriation act.

The legislation of last year provides not for something in connection with appropriations of that year, but it provides legislation in the form not as a proviso, but as a positive enactment and follows it up with the statement that there is permanently appropriated for each year \$3,000,000. * * * The word “hereafter” does not appear, and it is not necessary. I call the attention of the Chairman to the decision of the Comptroller, found in 6 Comptroller’s Decisions, page 904, where there was a proviso reading like this, after an appropriation of \$1,900,000 had been made for certain expenses in connection with the collection of revenue:

“Provided, That the compensation of the chief of the internal-revenue agents should not exceed \$10 per day and all the other agents not exceeding \$7 per day, etc.”

The question raised was whether that proviso was a limitation upon that appropriation or whether it was permanent legislation. The word “hereafter” did not occur in the provision. The Comptroller said:

“By necessary implication these provisos repeal and abrogate what was then existing law. They appear to be permanent and general in their scope and not intended to affect only the expenditure of this particular appropriation. I therefore conclude that this provision of law is general and permanent in its nature.”

In a case where the Comptroller held that, the word “hereafter” not being inserted, it was not permanent legislation, he expressly held that if it appeared to be the intention of Congress to make permanent legislation, it was or would be permanent legislation although in an appropriation act. This decision made in reference to the word “hereafter” was a decision arising in reference to the Light-House Board and light-house expenditures. In the act of Congress it was provided in the expenditures of the Light-House Board in the sundry civil appropriation bill as follows:

“Provided, That lenses and lense glass for the use of the Light-House Establishment may be imported free of duty.”

¹Second session Fifty-ninth Congress, Record, pp. 1768, 1769.

The question arose whether that was a limitation on that appropriation or whether that was a permanent enactment of lawmaking free lenses and lense glass. The question was as to whether this proviso and it was in the nature of a proviso, was permanent legislation affecting the tariff laws or whether it simply applied to that appropriation, and it is worth while to read what the Comptroller said and decided in respect to the matter. I read from volume 7, Decisions of the Comptroller of the Treasury, at page 839:

“But the practice of Congress of inserting general and permanent legislation in annual appropriation acts in the form of a proviso has become so extensive that it is frequently difficult to determine whether a particular proviso in such an act is intended to apply only to the appropriation for the fiscal year to which it is attached or is intended to be permanent legislation and apply to future appropriations for the same object. In view of this practice it would not be permissible to presume that a proviso in such an act is limited in its application to the particular fiscal year for which the appropriation is made merely because the provision is in the form of a proviso. In general, I think a proviso in such an act, which is itself limited in its duration, should not be construed as permanent legislation unless the language used in the proviso or the nature of the provision renders it clear that such was the intention of Congress.

“Usually the word ‘hereafter,’ when used in a proviso in such an act, indicates an intention to extend the application of the proviso to future appropriations. The absence of this word and of other words indicating futurity from the language of this proviso is to be observed. Where, however, the provision is in its nature general, and bear no particular relation to the object of the appropriation to which the proviso is attached, it may clearly indicate an intention of general and permanent legislation. For example, if this proviso had excepted from duty all articles imported for the use of the Government, I think I should infer that such a provision was intended to be general and permanent legislation, although included in a particular annual appropriation, and although it did not use the word ‘hereafter.’ But the proviso under consideration is limited to a few articles pertaining to the branch of the service for which the particular appropriation to which the proviso is attached was made.

“I am therefore of opinion that neither the language nor the nature of this proviso indicates an intention to enact general and permanent legislation, and that it must be construed to be limited in its operation to the particular appropriation of which it forms a part.”

The Chairman¹ held:

The Chair is clearly of the opinion that the introduction of the word “hereafter” is new legislation, and therefore sustains the point of order to the whole paragraph.

3931. Legislation may not be proposed under the form of a limitation.—On January 8, 1890,² the House was in Committee of the Whole House on the state of the Union, considering the District of Columbia appropriation bill. The House was at this time proceeding under general parliamentary law; but by special order this bill was considered under the rules of the Fiftieth Congress.³

The Clerk having read the paragraph providing for lighting the streets of Washington, Mr. Louis E. Atkinson, of Pennsylvania, made the point of order against so much of the section as the following words included:

And no overhead wires for public or private electric lighting shall be permitted on or over any of the streets or avenues of the cities of Washington or Georgetown after September 30, 1890.

The point he made was, first, that the Committee on Appropriations had no jurisdiction over the subject-matter, and, second, that this changed the existing law.

The Chair⁴ sustained the point of order, and the portion objected to was stricken out.

¹ David J. Foster, of Vermont, Chairman.

² First session Fifty-first Congress, Record, pp. 433, 467, 468.

³ The rule was the same in the Fiftieth Congress as at present.

⁴ Julius C. Burrows, of Michigan, Chairman.

Thereupon Mr. Louis E. McComas, of Maryland, offered the following amendment:

And no overhead wires for public electric lighting shall be permitted on or over any of the streets or avenues of the cities of Washington or Georgetown after September 30, 1890.

Mr. Atkinson having made the same point of order, the Chairman ruled that the amendment was something more than a limitation upon the expenditure of public money, and sustained the point of order.

Then Mr. McComas offered the following amendment, upon which no point of order was made:

Provided, That no more than 60 cents per night shall be paid for any light burning from sunset to sunrise, and no more than 40 cents per night shall be paid for any light burning from sunset to sunrise and operated wholly or in part by overhead wires, and each arc light shall be of not less than 1,000 actual candlepower; and no part of this appropriation shall be used for electric lighting after September 30, 1890, by means of wires that may exist on or over any of the streets or avenues of the cities of Washington and Georgetown.

3932. On February 1, 1896,¹ the District of Columbia appropriation bill being under consideration in Committee of the Whole House on the state of the Union, and the paragraph relating to street lighting having been read, the Chairman² ruled as follows on a point of order made against a proviso by Mr. Henry M. Baker, of New Hampshire:

The proviso is: "That in case such lowest responsible bidder be not provided with an underground system of wires and conduits in the streets and other places covered by such service the Commissioners of the District of Columbia may, under such reasonable conditions as they may prescribe, authorize such bidder to lay down an approved system of underground conduits and wires for electric lighting in and along such streets and other public places as may be necessary for said service, such privilege as may be granted hereunder to be revocable at the will of Congress without compensation."

This proviso does not materially differ from the provision that was ruled out on the point of order yesterday. In order to carry it out the same disturbance of the streets would be required, the same digging and interference with public travel, and in that respect it does not differ substantially from the paragraph that was ruled out. The Chair does not understand that any provision of law has been cited which makes it lawful for any electric-lighting company to dig up the streets of the city of Washington, especially any company which may happen to be the lowest bidder—a new company organized for that purpose. Any such interference with the streets and any authorization of such an interference with the streets of the city would be, in the opinion of the Chair, a change of existing law.

The Chair quoted yesterday a decision made in the Fifty-first Congress which has been criticized this morning. On returning to that question the Chair's recollection is confirmed. In the first place, the bill upon which the question rose was considered under the rules of the Fiftieth Congress, and the rule of the Fiftieth Congress upon that subject is in these words:

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

The particular clause in that bill to which the point of order was directed was this:

"And no overhead wires for public or private electric lighting shall be permitted on or over any of the streets or avenues of the cities of Washington and Georgetown after September 30, 1890."

That was confined exclusively to wires for public or private electric lighting and did not apply to telegraph or telephone wires or to any other wires than those belonging to this special class. The point of order was made against that provision that it was a change of existing law. The Chair yesterday cited that case, not upon that particular ground, but because it was contended here that the provision then under consideration was in order because it was simply a limitation upon the expenditure

¹First session Fifty-fourth Congress, Record, p. 1224.

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

of public money, a limitation of the appropriation made in the bill to a particular object. It was upon that point that the Chair quoted the decision made in the Fifty-first Congress.

In the Fifty-first Congress the point was made by those who contended in favor of the provision in the bill that it was simply a limitation upon the expenditures of the Government. But at that time, notwithstanding the objection, it was directly held by the occupant of the chair that it was not merely a limitation upon the expenditure of the public money and was therefore out of order as being in contravention of the existing law and as changing existing law. The Chair sustains the point of order.

3933. On March 18, 1898,¹ the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and a paragraph relating to transportation of mails being reached, Mr. C. A. Barlow, of California, offered this amendment, as a limitation:

Provided, That all contracts for the transportation of mail required by the service in the future may be paid for at a price not to exceed the rates charged individuals or corporations for performing a similar service; such rates to be ascertained from sworn statements to be furnished by the managers of the transportation companies.

Mr. John J. Gardner, of New Jersey, made a point of order against the amendment.

The Chairman² sustained the point of order.

3934. On January 23, 1901,³ the bill (H. R. 13575), the District of Columbia appropriation bill, was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read this paragraph:

For board and care of all children committed to the guardianship of said board by the courts of the District, and for the temporary care of children pending investigation or while being transferred from place to place, \$30,000.

At this point Mr. John F. Fitzgerald, of Massachusetts, offered this as an amendment:

That the children in the care or control of the Board of Children's Guardians may be placed in private families: *Provided, however*, That in case of illness, or change of place, or while awaiting trial, they may be placed in any suitable institution: *And provided also*, That every child in the care of the Board of Children's Guardians shall, as far as practicable, be placed only in such family as is of the same religious denomination or faith as the parents of last surviving parent of the child.

Mr. William W. Grout, of Vermont, made a point of order against the amendment.

After debate the Chairman⁴ held:

The point of order is made against the amendment proposed by the gentleman from Massachusetts that it is new legislation, and the gentleman answers it by saying that it is a limitation upon the legislation here proposed in the matter of the appropriation of money.

The distinction between the limitation and enlargement of appropriations has been the subject of a great deal of discussion in the Committee of the Whole. The question arose in the Fifty-fourth Congress, when a very able and exhaustive opinion⁵ was rendered by Mr. Dingley, of Maine, then chairman of the Committee of the Whole House on the state of the Union. One paragraph of that opinion seems to the present occupant of the chair to be pertinent here:

"The Chair is aware that in a few exceptional cases this principle of limitation has been improperly construed to include an enlargement of the objects for which an appropriation may be used; but the

¹ Second session Fifty-fifth Congress, Record, p. 2979.

² John A. T. Hull, of Iowa, Chairman.

³ Second session Fifty-sixth Congress, Record, pp. 1349, 1350.

⁴ Charles H. Grosvenor, of Ohio, Chairman.

⁵ See section 3936 of this chapter.

exceptions have so clearly disregarded the theory on which limitations rest that they only serve to prove the correct rule.”

Now, here is an appropriation for the board and care of children committed to the guardianship of the Board of Children’s Guardians by the courts. Is the proposition of the gentleman from Massachusetts a limitation or is it an enlargement? It does not lessen the directions in which these children may be sent, but it does enlarge the provision by providing that they may be sent to private families, and then proceeds to the very questionable kind of legislation that they shall be sent to the families of the same religious type.

If the objection had been made upon the ground of the indefiniteness of the proposition, the Chair thinks it would have had to be sustained on that ground. It is difficult in this age and day to institute comparisons about religions so as to segregate one belief from another on some occasions; but that is unnecessary for the Chair to decide here. On the question as to whether this is new legislation, it was introduced in the House of Representatives as an original bill, proposing to pass an act, and it is entitled here “to place children in the care or control of the Board of Children’s Guardians in private families.” Therefore, in the estimation of the author of the bill, it was intended to be recognized as new legislation. The Chair is of opinion that the result of all this would be to enlarge and not to limit, to enlarge the scope of the provision of the existing law, and in effect to make new legislation. The point of order is therefore sustained.

3935. On June 16, 1906,¹ the House had passed the sundry civil appropriation bill to be engrossed, and the bill had been read a third time, when Mr. John A. Sullivan, of Massachusetts, moved to recommit with instructions to insert the following as to the construction of the Panama Canal:

Provided, That no part of this appropriation shall be expended for materials and supplies which are manufactured or produced in the United States unless said articles are sold to the Isthmian Canal Commission at export prices whenever such export prices are lower than the price charged consumers in the United States.

Mr. James A. Tawney, of Minnesota, made the point of order that the instructions proposed legislation.

Debate arising, Mr. Marlin E. Olmsted, of Pennsylvania, distinguished between this proposition and the one offered the previous day and held in order in Committee of the Whole, saying:

While the amendment which he offered yesterday was merely a limitation upon the appropriation itself, this amendment, if I correctly heard it as read by the Clerk, imposes upon the Isthmian Canal Commission, or those who purchase these supplies, an additional duty. The amendment yesterday which the gentleman offered provided that no part of the appropriation should be expended except as the result of bids advertised in the manner now established by the Isthmian Canal Commission under existing law—that is to say, it imposed upon them no duties except those already existing under present law.

At the conclusion of the debate the Speaker² held:

It is conceded that under the law as it is at this time these supplies may be bought anywhere, without regard to where they may be produced, whether in the United States or elsewhere in the world. Now, this is an appropriation for supplies and equipment for the construction and engineering and administration departments of the Isthmus of Panama, \$9,000,000. The motion to recommit made by the gentleman from Massachusetts is as follows:

“To recommit the bill with instructions to report the same back with the following provision: After line 2 of page 165:

Provided, That no part of this appropriation shall be expended for materials and supplies which are manufactured or produced in the United States unless said articles are sold to the Isthmian Canal

¹First session Fifty-ninth Congress, Record, pp. 8652–8654.

²Joseph G. Cannon, of Illinois, Speaker.

Commission at export prices whenever such export prices are lower than the prices charged consumers in the United States.”

Gentlemen say this fixes a standard. It is not necessary for the Chair to discuss the merits of the measure.” Consumer in the United States.” If the Chair was to discuss them, and it was a question of fixing a standard, would it be consumers by retail or wholesale?

The merits of the proposition are not involved in the point of order. What is the object of the motion and of the instruction? If it does not change existing law, then it is not necessary. If it does change existing law, then it is subject to the point of order. Much has been said about limitation; and the doctrine of limitation is sustained upon the proposition under the rule that, as Congress has the power to withhold every appropriation, it may withhold the appropriation upon limitation. Now, that is correct. But there is another rule, another phase of that question. If the limitation, whether it be affirmative or negative, operates to change the law or to enact new law in effect, then it is subject to the rule that prohibits legislation upon a general appropriation bill; and the Chair, in view of the fact that the amendment would impose upon officials new duties as to purchasing canal supplies, has no difficulty in arriving at the conclusion that the instructions are subject to the point of order for the reasons stated.

Mr. John S. Williams, of Mississippi, having appealed from the decision of the Chair, the appeal was, on motion of Mr. Tawney, laid on the table, yeas, 156, nays, 69.

3936. A provision proposing to construe existing law is in itself a proposition of legislation, and therefore not in order on an appropriation bill as a limitation.

The fact that a paragraph on an appropriation bill would constitute legislation for only a year does not make it admissible as a limitation.

As an appropriation bill may deny an appropriation for a purpose authorized by law, so it may by limitation prohibit the use of money for part of the purpose, while appropriating for the remainder of it.

On January 17, 1896,¹ the House was considering the general pension appropriation bill in Committee of the Whole House on the state of the Union, when this section was read:

During the fiscal year 1897, in expending this appropriation, it shall not be necessary for a widow, in establishing her claim to a pension under the provisions of the act of June 27, 1890, to prove that she is without other means of support than her daily labor: *Provided*, That before she shall be entitled to a pension under the provisions of said law she shall prove that her net income does not exceed \$500 per annum.

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

After debate the Chairman² ruled:

The question of order which has been raised assumes special importance because of the fact that, if there should be any variation from the construction of the rule as it has always governed in Committee of the Whole on account of the sympathy that we may have for the particular legislation proposed, it would be a precedent that would rise to trouble us in all subsequent propositions looking to legislation in appropriation bills. The Chair will endeavor, therefore, to consider the question from the parliamentary point of view, and endeavor to follow what he believes to be the almost uniform practice of the House.

The gentleman from New York [Mr. Bartlett] raises the point of order that the pending paragraph is in violation of clause 2 of Rule XXI, the last paragraph of which—that bearing on the point of order that has been raised—reads as follows:

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

That has been the rule in the consideration of a general appropriation bill in the Committee of the Whole for many years. The rule has been modified several times with a view to reducing expenditures,

¹First session Fifty-fourth Congress, Record, pp. 764–769.

²Nelson Dingley, of Maine, Chairman.

but never so far as this particular point is concerned. The grounds of public policy on §3936 which this rule rests are—

First. That inasmuch as general appropriation bills carry the appropriations necessary to maintain the Government, and only appropriations already authorized by existing law, it is of the highest importance that they should not be impeded or jeopardized by differences in the House, or differences between the House and Senate, or differences between the two Houses and the Executive over any legislative propositions that may be proposed as amendments to such bills, each of which should be tried out on its own merits in separate bills.

Secondly. That in view of the fact that the Committee on Appropriations can only consider the question of appropriations—the subject committed to them by the rules—and that each particular subject of legislation is required to be considered by a standing committee which has jurisdiction of that subject, each committee should be held to attend to its particular work. If general legislation on the subject of pensions is proposed, the rule requires that such proposition of legislation shall go to the Committee on Invalid Pensions, and that committee, having the right to report at any time, may on any day bring in any amendment of the pension laws and present it for the consideration of the House, after due consideration as to the effect of such legislation. It is supposed that a special committee having in charge that particular subject has given special attention to such legislation, has looked into all its parts, and is able to bring in a bill of a comprehensive character, which when brought into the House may then be subject to amendments in the ordinary way. It has been found by experience that legislation on appropriation bills is usually exceedingly narrow and unsatisfactory, because of the fact that it had not been considered by the committee having the special subject in charge.

Thirdly, another ground of objection to legislation on an appropriation bill lies in the fact that even if an amendment should be admitted here which is in the nature of general legislation, changing existing law, our rules would so restrict amendments to it that it would be almost impossible to perfect it.

For these three reasons this rule, controlling the action of the Committee of the Whole with reference to proposed new legislation, has been found necessary not only to prevent the delay or failure of general appropriation bills, but also to secure good legislation, and only legislation in which there was general concurrence has as a rule, been included in such bills. Having stated the grounds on which this rule rests, the question arises whether the pending provision is, as a matter of fact, a change of existing law.

There has been more or less discussion of that point, but there is one vital fact to which I desire to call the attention of the committee, because it presents in a nutshell the whole question at issue. The pension act of 1890, which this paragraph proposes to either amend or construe—whichever view is adopted—does not provide that the widow of an enlisted man who served ninety days in the Army or Navy shall receive a pension simply upon proof of her husband's death, without proving his death to have been the result of his service. That act requires something more. That something more is the occasion of the legislation proposed by this paragraph, and the occasion of the deserved complaint which has been made against the administration of the Pension Office with reference to its construction of the law. This additional condition or fact, which must be shown by competent proof in order to entitle such a widow to a pension, is expressed in the law of 1890 in these words: "Leaving a widow without other means of support than her daily labor."

Now, that provision means something. It was intended to mean something when the act of 1890 was passed. I think the Commissioner of Pensions has not given that language the construction which the Congress that enacted the law intended it should bear, but nevertheless it means something. It is certainly a limitation of law to some extent and a restriction or condition of law which must be met by some proof. And as the Pension Office can not be expected to furnish proof to show that any applicant is entitled to a pension, it necessarily follows that the law of 1890 contemplates that the widow should present the proof required by law.

Now, what does the paragraph under consideration propose? It proposes to give a pension to any widow of a soldier who has died from a cause not originating in his service without requiring any kind of proof with respect to her having other means of support than her daily labor, and by a proviso to establish a new rule, namely, that when a widow shall have shown that her net annual income does not exceed \$500 she shall be entitled to a pension.

While I have great sympathy with that amendment, it does seem to me to be clearly a change of existing law. It is a change in the right direction, but nevertheless it is a change of existing law.

It has been contended that the pending paragraph is merely a construction of existing law, and that a construction of the meaning and intent of a law which has been heretofore enacted is not the "new legislation" prohibited by the rule. Everyone knows that no legislative construction can be given to a law that is upon the statute book without a legislative enactment. A construction of an existing law by an act of Congress must be itself a piece of legislation that has been passed by the two Houses of Congress and received the approval of the President. In fact, it is new legislation in every sense, because if it should be held that any act of legislation could be put upon an appropriation bill simply because it professed to construe anterior law, any gentleman could propose an amendment giving any kind of construction to an anterior law, whether right or wrong, thus opening up in the consideration of an appropriation bill in Committee of the Whole any proposition for new legislation under the guise of construing the law.¹

It does not seem to me that there can be any distinction made in this respect between different legislative acts. If an act is in fact new legislation, it seems to the Chair that it is subject to the point

¹Two rulings in opposition to this undoubtedly sound principle are to be noted:

On April 6, 1894 (second session Fifty-third Congress, Record, pp. 3507–3512), the House was in Committee of the Whole House on the state of the Union considering the post-office appropriation bill.

Mr. William M. Springer, of Illinois, offered an amendment providing that the publications of benevolent or fraternal societies, trades unions, and professional and scientific societies should, under certain conditions, be admitted to the mails as second-class matter.

Mr. John S. Henderson, of North Carolina, having made a point of order, the Chairman (William H. Hatch, of Missouri), ruled:

"In the mind of the Chair there is but a single question to be determined in passing upon this point of order, and that is as to whether the amendment offered by the gentleman from Illinois does in fact and in effect change an existing law, or whether it simply declares what the existing law is; in other words, whether it makes a change of existing law or merely a change of the interpretation and construction of that law by the Post-Office Department.

"The Postmaster-General, as the executive officer of that Department, having the responsibility of the execution of all laws relating to the Department, has, in the judgment of the Chair, the same right of interpretation and construction of an existing statute that a court of competent jurisdiction has in passing upon a law, and that construction or interpretation becomes a part of the law until the law is repealed, modified, changed, or declared to be otherwise by the one power that has the right to overrule a construction or interpretation made by an Executive Department—the Congress of the United States. The House having jurisdiction of this appropriation bill, and this amendment being, in the judgment of the Chair, germane to the bill, it seeks, in the opinion of the Chair, to declare what the existing statute is. It is simply declaratory in its terms, and it differs, of course, from the construction and interpretation placed upon the statute by the Postmaster-General. Holding this view, the Chair overrules the point of order, and will submit the amendment upon its merits to the committee."

On May 21, 1894 (second session Fifty-third Congress, Record, p. 5049), the House was in Committee of the whole House on the state of the Union considering the legislative, executive, and judicial appropriation bill, Mr. Walter I. Hayes, of Iowa, having submitted the following amendment:

"And it is hereby declared that section 6 of the act approved August 16, 1856, and section 40 of the Revised Statutes have been heretofore repealed."

A point of order having been made, the Chairman (James D. Richardson, of Tennessee), ruled:

"The Chair thinks that the point of order against this amendment ought to be sustained, for the reason that if, as a fact, section 6 of the act of 1856, which is brought forward and has become section 40 of the Revised Statutes, has not been repealed, then this amendment would operate to repeal those sections, and would be a change of existing law without complying with the rules of the House as to an appropriation bill. If, however, the declaration of the amendment is true, and section 6 and section 40 of the Revised Statutes have been repealed, then this amendment would not be germane to this bill, and it maybe added, unnecessary. Therefore the Chair thinks the point of order must be sustained, regardless of the merits of the proposition."

Mr. Hayes having appealed from the decision of the Chair, and the question "Shall the decision of the Chair stand as the judgment of the Committee?" being put, the ayes were 99 and nays 113. So the decision of the Chair was reversed.

of order under the rule that it is new legislation or (what is the same thing) a change of existing law as construed by the authority that can alone construe it, subject to appeal to the courts, unless Congress shall step in and construe it by a new law.

Another point has been raised—and it is a point of importance—that this legislation is only a limitation or restriction on the expenditure of the money appropriated by the pending bill during the fiscal year in which it will be operative.

Before considering this point the Chair desires to say that the fact that this legislation is limited in operation to one year does not change its character at all. It is still new legislation for one year, a change of existing law for one year, or, if you please to style it an act suspending existing legislation for one year, the fact still remains that it is, pro tanto, a change of existing law.

There can be no doubt about that. Otherwise the tariff law which passed the House the other day might be proposed as an amendment to the sundry civil appropriation bill, to the paragraph providing for customs, on the ground that it did not propose to change permanently the existing law—only to suspend it—and was limited in its operation to two and a half years. If an act of the legislative power changes a law upon the statute book for a single year or a single month, or for any period longer or shorter, it seems to the Chair that it must be a change of existing law.

The argument so strongly urged that this paragraph proposes merely a limitation or restriction on the use of the appropriation for pensions, and that it comes, therefore, under a well-settled practice of the House in Committee of the Whole seems to the Chair to not be well founded. The gentleman from Pennsylvania [Mr. William A. Stone] has quoted what may, perhaps, be said to be a precedent which practically establishes the principle of limitation; that is the proviso which was ruled to be in order on an appropriation bill, and which was in this language:

“Provided, That the Secretary of the Treasury shall not use any of the money appropriated by this paragraph for the printing of greenbacks of a larger denomination than those that are canceled.”

Now, look for a moment at the principle of limitation or restriction as established by that proviso. In that case the law authorized the printing of greenbacks of any denomination in the discretion of the Secretary of the Treasury. The proviso limited the use of the money which was appropriated for that single year to the printing of denominations which should not be smaller than those that were canceled. Now, observe that the limitation was simply this: The appropriation could not be used for a purpose authorized by law; that is all the limitation there was to it. The proviso did not undertake to say that the appropriation could be used for printing or doing something not already authorized by law. In order to be considered as a limitation or restriction, a provision must prohibit the use of the money for some purpose already authorized by law.

The reason for that rule of limitation is simply this: The House in Committee of the Whole has the right to refuse to appropriate for any object which it may deem improper, although that object may be authorized by law; and it has been contended, and on various occasions sustained by the Committee of the Whole, that if the committee has the right to refuse to appropriate anything for a particular purpose authorized by law it can appropriate for only a part of that purpose and prohibit the use of the money for the rest of the purpose authorized by law. That principle of limitation has been sustained so repeatedly that it may be regarded as a part of the parliamentary law of the Committee of the Whole.¹

¹This is the correct principle, although it was not taken into consideration when the following ruling was made:

On April 24, 1890 (first session Fifty-first Congress, Record, p. 3790), the House was in Committee of the Whole on the state on the Union considering the legislative, executive, and judicial appropriation bill. The paragraph relating to the Civil Service Commission having been reached, Mr. George W. E. Dorsey, of Nebraska, offered an amendment to strike out the words “for three commissioners, at \$3,500 each” and insert “one commissioner, \$3,500.”

Mr. Louis E. McComas, of Maryland, made the point of order against the amendment.

After debate, the Chairman (Lewis E. Payson, of Illinois) ruled:

“The Civil Service Commission is provided for by statute, and that it shall be composed of three members. The rules of this House provide that no provision changing existing law shall be in order in any general appropriation bill or in any amendment thereto. The amendment proposed by the gentleman from Nebraska changes the general statutes of the United States, which is obnoxious to the point of order under the rules, in the judgment of the Chair, and the point of order is sustained.”

But observe that the provision now under consideration is not a limitation or restriction; it is an extension. It provides not that the money herein appropriated shall not be used for a purpose authorized by law, but that it may be used for a purpose not already authorized by law. It is an extension, not a limitation. If it should be held that propositions of this character could be presented and entertained as in order on the ground that they are limitations, there is no possible legislation that might not be presented on an appropriation bill and be held to be in order, thus obstructing the passage of appropriation bills.

The Chair is aware that in a few exceptional cases this principle of limitation has been improperly construed to include an enlargement of the objects for which an appropriation may be used; but the exceptions have so clearly disregarded the theory on which limitations rest that they only serve to prove the correct rule.

So, from every point of view, it seems to the Chair, if this question is to be decided on sound principles of parliamentary law, if a practice that will be safe in the handling of appropriation bills hereafter is to be established, it is exceedingly important that we should start at the beginning of this Congress by laying down correctly the rule with reference to new legislation on appropriation bills.

The Chair confesses that he might have been somewhat embarrassed from the fact that he is in favor of substantially the legislation proposed; but in view of the fact that the Committee on Invalid Pensions can report at any time legislation broadening the operation of the existing laws—legislation going to the extent that legislation ought to go—all embarrassment is removed; for without violating the rules of this House and still maintaining correct principles with reference to the conduct of business in the Committee of the Whole, and without obstructing the passage of general appropriation bills, it is possible to accomplish in other ways much more than what is proposed to be accomplished here.

The Chair is therefore constrained to sustain the point of order against this provision.

3937. On March 18, 1880,¹ the House was in Committee of the Whole House on the state of the Union considering the deficiency appropriation bill.

Mr. George G. Dibrell, of Tennessee, proposed the following amendment:

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 act of 9th March, 1878, and their pensions shall be paid from 9th March, 1878.

Against this amendment Mr. Frank Hiscock, of New York, made the point of order.

The Chairman² ruled:

The fifth section of the act of 1878, after providing for the restoration to the pension rolls of the soldiers of the war of 1812 who had been dropped for disloyalty, goes on to provide—

“That the joint resolution entitled ‘Joint resolution prohibiting payment by any officer of the Government to any person not known to have been opposed to the rebellion and in favor of its suppression,’ approved March 2, 1867, and section 4716 of the Revised Statutes of the United States, shall not apply to the persons provided for by this act: *Provided,* That no money shall be paid to anyone on account of pensions for the time during which his name remained stricken from the rolls.”

Now, as the Chair understands it, the Commissioner of Pensions holds that if a person who otherwise would have been dropped from the rolls under the previous acts of Congress wrongfully received any part of his pension during the time he should have been so dropped, and is now restored to the rolls by reason of this act, then under the act the Commissioner is authorized to withhold or deduct from his pension the amount which he wrongfully received during the time he should have been dropped. Whether that is a correct construction of the statute or not, the Chair is not prepared to give a positive opinion. At any rate, it is the construction which has been put upon it by the officer designated by the law to administer it.

The effect of the amendment of the gentleman from Tennessee [Mr. Dibrell], if adopted, will be to change that law, or perhaps, to state it properly, it will change the construction of that law so as to

¹Second session Forty-sixth Congress, Record, pp. 1674, 1675.

²John G. Carlisle, of Kentucky, Chairman.

prevent the Commissioner of Pensions from charging to these persons who have been restored such money as they may have wrongfully received during the period when they should have been dropped.

The Chair has been informed by the Commissioner of Pensions that this amendment, if adopted, would affect but five or six persons; still, it would change the law as respects a number of persons, whether five or six or more. The Chair therefore 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 the express letter of the law.

Then this amendment is not offered by the instruction of a committee,¹ nor does it retrench expenditures in any one of the three ways provided by the new clause of the rule; that is, it does not retrench expenditures by "the reduction of the number and salaries of the officers of the United States;" it does not retrench expenditures by "the reduction of the compensation of any person paid out of the Treasury of the United States;" and it does not retrench expenditures by "the reduction of amounts of money covered by this bill." It is not, therefore, such an amendment as an individual member can offer, except upon the instruction of his committee. The Chair thinks it does change the law, because without this amendment the proviso of the act of 1878 is a prohibition upon the Commissioner of Pensions paying to any person who has been restored to the pension rolls his pension during the time when he ought to have been dropped from the roll. Under the law as it now stands, when the Commissioner of Pensions discovers that he has paid to a person his pension during the time when he otherwise would have been dropped from the rolls, he simply charges it up to that person and puts him upon identically the same footing as all other persons who did not receive pension during such time as they were dropped from the rolls, which the Chair understands is the general practice, not only in reference to this class of pensioners, but to all pensioners under the law. The Chair therefore sustains the point of order.

3938. On February 24, 1896,² during the consideration of the Indian appropriation bill in Committee of the Whole House on the state of the Union, the following paragraph was reached:

That all children born of a marriage between a white man and an Indian woman shall have the same rights and privileges to the property and annuities of the tribe to which the mother belongs, by blood, as any other member of the tribe; and no prior act of Congress shall be so construed as to debar such child of such right: *Provided*, That nothing herein shall conflict with the provisions of existing treaties.

Mr. Samuel W. McCall, of Massachusetts, made the point of order that the paragraph changed existing law.

It was urged that the paragraph merely placed a construction upon the existing law, which might be done with propriety under the ruling made on the Post-Office bill.³

The Chairman⁴ ruled:

The Chair remembers the case of two years ago, to which attention has been called, in reference to the Post-Office bill and the ruling then made. * * * The Chair recollects the occasion; that it had reference to the transmission through the mails of certain published matter. The present occupant of the chair never had any sympathy with that ruling; but, aside from that, this pending proposition, on which the point of order is made, appears clearly to the Chair to be new legislation. It is a positive enactment by law where at best it is only claimed that none now exists, and the Chair, for that reason, sustains the point of order.

¹The present rule does not have the provisions referred to in this portion of the ruling. (See sec. 3578 of this volume.)

²First session Fifty-fourth Congress, Record, p. 2079.

³See section 3936 (footnote) of this chapter.

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

3939. In appropriating for a general service of charity, a limitation withholding the appropriation from institutions not meeting a specified requirement was held in order.—On February 4, 1896,¹ the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read:

Board of children's guardians: For the board of children's guardians, created under the act approved July 26, 1892, namely: For administrative expenses, including salary of agent, not to exceed \$1,600, expenses in placing and visiting children, and all office and sundry expenses, \$4,000.

For care of feeble-minded children; care of children under 3 years of age, white and colored; board and care of all children over 3 years of age, and for the temporary care of children pending investigation or while being transferred from place to place, \$23,400; in all, \$27,400.

Mr. Eugene J. Hainer, of Nebraska, proposed to strike out all after the words "place to place" in the last line and insert the following:

Sixty-three thousand two hundred dollars; in all, \$67,500: *Provided*, That the institutions for children, including industrial and reformatory, namely, the Church Orphanage of St. John's parish; the German Orphan Asylum; the National Association for the Relief of Destitute Colored Women and Children, including its care of colored foundlings; the St. Ann's Infant Asylum; the St. Joseph Asylum; the House of the Good Shepherd; the Association for Works of Mercy, and St. Rose's Industrial School, heretofore receiving aid by specific appropriation, are hereby remitted, except as herein specifically appropriated for, to the appropriation herein made, and to the said act of July 26, 1892, to provide for the care of dependent children in the District of Columbia, and to create a board of children's guardians for all rights and benefits which they may have under the provisions of the said act.

Mr. William W. Grout, of Vermont, having made a point of order against the amendment, the Chairman² ruled:

The amendment of the gentleman from Nebraska proposes to remit the several institutions named in the bill, except those specifically appropriated for, to the general appropriation under this bill and to the act of July 26, 1892, to the terms of which act these several institutions must conform. This provision is a limitation upon the appropriations, but is in conformity with existing law—the law of July 26, 1892. Though the provision, if adopted, may result, as the gentleman from Texas [Mr. Crain] argues, in cutting off certain institutions from the benefit of the appropriation, still it is a limitation which may properly be made in conformity with existing law. The Chair therefore overrules the point of order. The amendment is before the Committee of the Whole.

3940. On February 4, 1897,³ the District of Columbia appropriation bill being under consideration in Committee of the Whole House on the state of the Union, Mr. William W. Grout, of Vermont, offered this amendment:

That no part of any money appropriated by this act for charities or charitable institutions shall be paid to any institution named in this act until the charter or articles of incorporation thereof shall be so amended as to accord to the Commissioners of the District of Columbia, or to their designated agents, authority to visit and inspect such institutions, and to control and supervise the expenditure therein of all public funds paid out of appropriations made by Congress.

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

¹First session Fifty-fourth Congress, Record, p. 1307.

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

³First session Fifty-fourth Congress, Record, p. 1309.

The Chairman¹ held:

This amendment simply provides that “no part of any money appropriated by this act for charities or charitable institutions shall be paid to any institution named in this act until the charter or articles of incorporation thereof shall be so amended,” and so on. It does not purport to amend any charter, but simply provides that the money here appropriated shall not be paid to any institution until its charter is amended as specified here. The amendment is simply a limitation upon the appropriation. The Chair overrules the point of order.

3941. On February 24, 1896,² the Committee of the Whole House on the state of the Union was considering a paragraph of the Indian appropriation bill providing for the support of Indian schools, when Mr. William S. Linton, of Michigan, offered this amendment:

And it is hereby declared that it is the intention of this act that no money herein appropriated shall be paid for education in sectarian schools; and the Secretary of the Interior is hereby charged with the duty of so using and administering said appropriation as to carry out said object; and he is hereby authorized and required to make all needful rules and regulations necessary to prevent the use of any part of said fund for education in sectarian schools.

A point of order having been reserved against the amendment, the Chairman ruled as follows:

The point is made that the amendment is simply a limitation on the appropriation in the pending paragraph. The Chair is somewhat in doubt whether the latter portion of the amendment, providing for the making of rules and regulations, does not go further than simply limiting the appropriation. But construing the whole of the amendment together, the Chair is of opinion that the amendment simply limits the use of the appropriation, and is not obnoxious to the point of order. The Chair therefore overrules the point of order. The question is on the adoption of the amendment.

3942. While it is not in order to legislate as to qualifications of the recipients of an appropriation, the House may specify that no part of the appropriation shall go to recipients lacking certain qualifications.—On January 30, 1901,³ the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read the paragraph relating to agricultural colleges, when Mr. Charles B. Landis, of Indiana proposed this amendment:

Provided, That no part of the appropriation shall be available for the agricultural college of Utah until the Secretary of Agriculture shall be satisfied, and shall so certify to the Secretary of the Treasury, that no trustee, officer, instructor, or employee of said college is engaged in the practice of polygamy or polygamous relations.

Some debate having taken place, and Mr. William H. King, of Utah, having suggested a point of order, the Chairman¹ said:

There are two reasons why the Chair would be inclined to overrule the point. In the first place it comes rather late, and in the second place the amendment seems to be a limitation upon this appropriation.

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

² First session Fifty-fourth Congress, Record, pp. 2082–2088.

³ Second session Fifty-sixth Congress, Record, pp. 1696–1698.

The amendment having been agreed to, Mr. King offered the following amendment:

And that no person shall be appointed a teacher or trustee in any of said colleges who has been engaged in any lynching and until proof shall have been furnished, to the satisfaction of the Secretary of Agriculture, that such teacher or trustee has not been guilty of adultery or fornication.

Mr. Charles H. Grosvenor, of Ohio, made the point of order that the amendment was not in order.

The Chairman said:

Let the Chair state to the gentleman that the ruling on the other amendment was that that was a limitation upon the appropriation—providing that no part of this appropriation shall be paid to the agricultural college, in general terms, until it was ascertained that no teacher or trustee was a polygamist. That is a general statement of that amendment. That was a limitation upon the appropriation. Then comes this independent proposition, involving legislation. * * * The Chair sustains the point of order.

Thereupon Mr. King offered the following:

Provided, That no part of this appropriation shall be available for the agricultural college of Indiana or any other State or Territory until the Secretary of Agriculture shall be satisfied, and shall so certify to the Secretary of the Treasury, that no trustee, officer, instructor, or employee of said college is engaged in the practice of polygamy or polygamous relations or is guilty of adultery or fornication.

Mr. Grosvenor made the point of order against the amendment.

The Chairman overruled the point of order and held that the amendment was in order.

3943. On February 23, 1907,¹ the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union when the following amendment was offered to the paragraph providing appropriation for the National Homes for Disabled Volunteer Soldiers:

Add the following:

And provided further, That no part of this appropriation shall be apportioned to any National Home for Disabled Volunteers that contains a bar or canteen where intoxicating liquors are sold.”

Mr. Richard Bartholdt, of Missouri, made the point of order that the amendment proposed legislation:

In the course of the debate Mr. James R. Mann, of Illinois, argued:

Here is a situation now proposed where Congress by law is creating Soldiers' Homes. It has by law provided for the government of Soldiers' Homes. At Soldiers' Homes it has vested the government in a Board of Managers in accordance with the provisions of the statute. It is true that Congress can refuse to appropriate, but, Mr. Chairman, it is also true that the Chair has frequently ruled that Congress can not, against a point of order, by a limitation change the organic law. Here is a provision that although Congress has created these Soldiers' Homes by an organic law, although it has provided for the government of the Soldiers' Homes by a Board of Managers, a proposition through the form of a limitation to take away the control of the Board of Managers and by affirmative legislation in the guise of a limitation to change the statute upon that subject. While limitations are usually favored by the Chair, properly, still it is true that the Chair might well rule, it seems to me, that a limitation in this guise, changing the law, giving the Board of Managers the discretion over the management of the Homes, is positive affirmative legislation, as it undoubtedly would be construed by the Comptroller of the Treasury, and therefore subject to a point of order. It is perfectly manifest that an item of this kind in the bill is construed by the Comptroller of the Treasury as positive legislation, although it be in the form of a limitation.

¹Second session Fifty-ninth Congress, Record, pp. 3811, 3812.

After further debate the Chairman, ruled:

The language used in the amendment offered by the gentleman from Kansas is as follows:

“And provided further, That no part of this appropriation shall be apportioned to any National Home for Disabled Volunteers that contains a bar or canteen wherein intoxicating liquors are sold.”

This very proposition was presented in regard to the State Soldiers' Homes in 1904, and the Chair at that time overruled the point of order and held it in order as a limitation. If the Chair were only following the precedent, he would be constrained to overrule the point of order in this case. One year ago this whole question, as most of the Members will remember, was taken up and discussed thoroughly and elaborately, and at that time the gentleman from Kansas offered this proviso:

“That this appropriation shall be available only under the condition that no bar or canteen shall be maintained at said Homes for the sale of beer, wine, or other intoxicating liquors.”

In legislation we look to the substance, and not to the form; and unless there is an affirmative attempt to restrict the administrative power or departmental function, it has always been held that a limitation in negative language is in order.

The present occupant of the chair went fully into the authorities and quoted a large number of decisions by Mr. Hemenway, of Indiana; Mr. Burton, of Ohio; Mr. Payne, of New York, and other eminent parliamentarians who had occupied this chair when questions of similar import had been raised, all sustaining the theory that limitations of this character are clearly in order.

The Chair does not care to go fully into this line of decisions again, because the Chair believes that the ruling at that time was acquiesced in and believed to be the proper ruling under the circumstances. Therefore the Chair overrules the point of order.

3944. On June 12, 1906,² the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the paragraph appropriating for the National Home for Disabled Volunteer Soldiers was read.

Mr. Justin D. Bowersock, of Kansas, moved to amend by adding:

Provided, That this appropriation shall be available only under the condition that no bar or canteen shall be maintained at said Homes for the sale of beer, wine, or other intoxicating liquors.

Mr. James A. Tawney, of Minnesota, made the point of order that the amendment proposed legislation, arguing that the law gave the Board of Managers authority to make regulations, under which regulations the canteens were permitted.

After debate the Chairman¹ held:

The Chair is of the opinion that the amendment offered by the gentleman from Kansas is not subject to the point of order, but is in order. It is very clear that the mere fact that it seeks to impose a limitation upon the appropriation is not a valid objection to it, It has been repeatedly held in this House, and is an invariable precedent, that the House may provide that no part of an appropriation shall be used except in a certain way, even though Executive discretion be thereby restricted. Whatever may have been the opinion of the Chair had this proposition been presented to the present occupant of the chair originally, the precedents limit the present occupant of the chair to this decision. The idea of limitation on an appropriation bill has been, according to the opinion of the present occupant of the chair, carried to extremes in some instances, but precedents on this point are well established, and the Chair will cite one instance that seems to show conclusively that this amendment or any other amendment of a negative character upon an appropriation bill is not subject to the point of order. On the 31st of March, 1904, the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, and this amendment was offered:

“That all carriages and other vehicles used in the public service other than for personal purposes, as authorized in section 2 of the legislative, executive, and judicial appropriation act for the fiscal year

¹ James E. Watson, of Indiana, Chairman.

² First session Fifty-ninth Congress, Record, pp. 8354–8356.

1905, the expense for purchase or maintaining, driving or operating of which are paid for by money appropriated by this act, shall have conspicuously painted thereon at all times the full name of the executive department or other branch of the public service for which the same belong and in the service of which the same are used."

The Chair desires to call attention to the fact that this is an affirmative provision. Mr. James W. Mann, of Illinois, thereupon made the point of order that the paragraph was new legislation. The Chairman sustained the point of order. Thereupon Mr. James A. Hemenway, from Indiana, proposed a new paragraph, and the Chair will call attention to the fact that it is in the negative form, in this language:

"No part of any money appropriated by this act shall be used for purchase, maintenance, driving, or operating of any carriage or other vehicle other than authorized for personal purposes in section 2 of the legislative, executive, and judicial appropriation act for the fiscal year 1905, unless the same shall have conspicuously painted thereon at all times the full name of the Executive Department or other branch of public service to which the same belong and in the service of which the same are used."

And after much discussion the Chair held that this did not change existing law, but was merely a limitation.

"It would seem that this legislative body was very much lacking in power if there could not be a provision in the way of a limitation that carriages used for public purposes should have a designation upon them to that effect. The Chair is not led to think that any parliamentary rule makes that other than a limitation"

But the question under consideration has been squarely presented in this body and has been directly decided. On the 31st of March, 1904, the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union and this amendment was proposed by Mr. Bell, of California:

"That no part of this appropriation shall be apportioned to any State or Territorial Home until its laws, rules, or regulations respecting the pensions of its inmates be made to conform to the provisions of section 4 of an act approved March 3, 1893, entitled 'An act prescribing regulations for the Soldiers' Home located at Washington, in the District of Columbia, and for other purposes;' but the above proviso shall not apply to any State or Territorial Home into which the wives or widows of soldiers are admitted and maintained: *And provided further*, That no part of this appropriation shall be apportioned to any State or Territorial Home that maintains a bar or canteen where intoxicating liquors are sold."

Which is, in substance, the same provision as that now proposed by the gentleman from Kansas. Mr. James A. Hemenway made the point of order that the proposed amendment would change existing law, and thereupon the Chairman, Mr. Burton, of Ohio, rendered an elaborate decision. The Chair will not take time to read it, but the substance of it is in this paragraph:

"The question arises as to whether this is a limitation merely. If so, the amendment is in order. If not, it is out of order. It is maintained that this amendment changes existing law. In a sense, every limitation changes existing law. If any specific condition is mentioned under which an appropriation is to be withheld, that is, pro tanto, a change of existing law, at least to the extent that the whole or a part of the appropriation can not be expended unless the condition is complied with."

And after other suggestions of like character the Chair overruled the point of order.

Directly in point on this proposition the Chair desires to call the attention of the committee to a decision made on the 30th day of January, 1901, when the agricultural appropriation bill was under discussion in the House—a decision rendered by the Hon. Sereno E. Payne, sitting as chairman of the Committee of the Whole House on the state of the Union. An amendment was offered by Mr. Charles B. Landis, of Indiana, of the following tenor:

"*Provided*, That no part of the appropriation shall be available for the Agricultural College of Utah until the Secretary of Agriculture shall be satisfied, and shall so certify to the Secretary of the Treasury, that no trustee, officer, instructor, or employee of such college is engaged in the practice of polygamy or polygamous relations."

After much discussion on this amendment, Mr. Payne held that it was a limitation of an appropriation, which the House had the right to make and Congress had the right to make, and was not new legislation.

Under these holdings, the precedents pointing clearly, in the opinion of the Chair, to the fact that this is not obnoxious to the rule, the Chair overrules the point of order.

3945. On March 22, 1904,¹ the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

For necessary miscellaneous and incidental items directly connected with first and second class post-offices, including furniture, cleaning, and all other matters not specifically provided for in other appropriations, \$225,000: *Provided*, That the Postmaster-General, in his discretion, under such regulations as he shall prescribe, may authorize any of the postmasters of said offices to expend the funds he may allow them for such purposes without the written consent of the Postmaster-General.

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

At the end of line 12 on page 12 insert:

“Provided further, That no part of this appropriation shall be expended for telephone service in any post-office where the postmaster is required, by order of the Postmaster-General or otherwise, to use no other telephone service than that of the Bell Telephone Company or any of the telephone companies connected with or controlled, in whole or in part, by said Bell Telephone Company.”

Mr. Jesse Overstreet, of Indiana, made a point of order that the amendment was destructive of the discretion of the Postmaster-General in this matter, and therefore legislation.

After debate the Chairman² held:

The paragraph under consideration contains an appropriation of \$225,000 “for necessary miscellaneous and incidental items directly connected with first and second class post-offices.” The Chair understands that under the statutes a part of this money may be expended for telephone service. The amendment offered by the gentleman from Minnesota provides that no part of the appropriation shall be expended for telephone service in any post-office where the postmaster is required, by order of the Postmaster-General or otherwise, to use only one kind of telephone.

Now, the Chair would call the attention of the gentleman from Indiana, chairman of the Post-Office and Post-Roads Committee, to the fact that this amendment is not put in as a limitation upon the use of the entire sum appropriated in this paragraph of \$225,000. This limitation is merely a limitation upon the amount which the Postmaster-General may use for telephone services authorized by law, and this amendment simply says in effect, in order that this amount may be available, the Postmaster-General must refrain from saying to the postmaster that he must use one single telephone. The Chair therefore is of opinion that this amendment comes within the rule, and it is simply a limitation upon the expenditure of a part authorized by this paragraph for telephone services, and therefore the Chair overrules the point of order.

3946. On March 23, 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:

For railway post-office car service, \$5,736,000.

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

At the end of line 21, page 15, insert:

“Provided, That no part of the amount hereby appropriated shall be expended for the use of cars in the railway postal service that have been used in said service for a period of more than fifteen years.”

Mr. Jesse Overstreet, of Indiana, raised a question of order, and said:

I want to call the attention of the Chair first to a statute which I think would control relative to the point of order. It is the statute of March 3, 1879, to be found in the Postal Laws and Regulations, section 1177, which reads as follows:

¹Second session Fifty eighth Congress, Record, pp. 3517–3520.

²Henry S. Boutell, of Illinois, Chairman.

³Second session Fifty-eighth Congress, Record, pp. 3578–3581, 3582.

“All cars or parts of cars used by the Railway Mail Service shall be of such style, length, and character, and furnished in such manner as shall be required by the Postmaster-General, and shall be constructed, fitted up, maintained, heated, and lighted by and at the expense of the railroad company.”

I submit to the Chair that under that statute the Department is now operating relative to the character and condition of cars, and while Congress clearly would have the right to legislate in a different way, making different directions, fixing limitations of length and size of the cars and the period of time in which they might be used, yet such legislation can not be had upon an appropriation bill. I direct that to the attention of the Chair.

After further debate, the Chairman¹ said:

The amendment offered by the gentleman from Minnesota is an amendment to the paragraph contained in lines 20 and 21 on page 15 of the bill. That paragraph is as follows:

“For railway post-office car service, \$5,736, 000.”

The amendment is as follows:

“*Provided*, That no part of the amount hereby appropriated shall be expended for the use of cars in the railway postal service that have been in said service for a period of more than fifteen years.”

The Chair has not had his attention called to any provision in the statutes of which the language of this proviso would be a violation if it were a positive enactment, so, without raising the question, and merely the question of limitation, the Chair overrules the point of order. The question now is on the amendment offered by the gentleman from Minnesota.

3947. On the same day, and very soon thereafter, Mr. John S. Williams, of Mississippi, offered this amendment:

Add at the end of the last word of the amendment just adopted:

“*Provided further*, That the annual pay for the use of any postal car shall not exceed 50 per cent of the cost of manufacturing the same.”

Mr. Jesse Overstreet, of Indiana, made a point of order that the proposition involved legislation, and cited the existing law, as follows:

Additional pay may be allowed for every line comprising a daily trip each way of railway post-office cars, at a rate not exceeding \$25 per mile per annum for cars 40 feet in length, and \$30 per mile per annum for 45-foot cars, and \$40 per mile per annum for 50-foot cars, and \$50 per mile per annum for 55 to 60 foot cars.

After debate, the Chairman held:

The amendment offered by the gentleman from Mississippi is to follow the amendment which has just been adopted. This paragraph appropriates for the railway post-office car service \$5,726,000. The amendment offered by the gentleman from Mississippi is as follows:

“*Provided further*, That the annual rental paid for the use of any postal car shall not exceed 50 per cent of the cost of manufacturing the same.”

The Chair will call special attention to the precise language of this amendment. It is not in the form of a limitation upon this annual appropriation, but is in the form of permanent limitation upon the discretion of the Postmaster-General. The Chair therefore sustains the point of order.

3948. On January 20, 1903,² while the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, this paragraph was read:

For chief engineer, who shall have had at least five years' actual experience as a member of some organized municipal fire department, \$2,000; 3 assistant chief engineers, at \$1,200 each.

Mr. Sidney E. Mudd, of Maryland, made a point of order against the line “who shall have had at least five years' actual experience,” etc.

¹Henry S. Boutell, of Illinois, Chairman.

²Second session Fifty-seventh Congress, Record, p. 1016.

The Chairman¹ sustained the point of order.

Then Mr. James T. McCleary, of Minnesota, proposed this amendment:

On page 40, line 8, insert, after the word "dollars," the following: "This sum shall not be available to pay a chief engineer who has not had at least five years' experience as a member of some organized municipal fire department."

Mr. Mudd made the point of order against this point of order.

The Chairman ruled:

The Chair is of opinion that the effect of this language proposed in this amendment is the same as that which, by consent, was ruled out on a point of order. Going back as far as the able opinions delivered on this particular question by Chairman Dingley, the object sought is the real question, and the form of words is unimportant. In their form, in the opinion of the Chair, this language is a limitation upon the expenditure of money and legitimately proper.

3949. It is in order to provide by a limitation that a certain proportion of an appropriation shall be withheld from recipients lacking certain qualifications.—On March 30, 1904² the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

State or Territorial Homes for disabled soldiers and sailors: For continuing aid to State or Territorial Homes for the support of disabled volunteer soldiers, in conformity with the act approved August 27, 1888, including all classes of soldiers admissible to the National Home for Disabled Volunteer Soldiers, \$950,000: *Provided*, That one-half of any sum or sums retained by State Homes on account of pensions received from inmates shall be deducted from the aid herein provided for.

Mr. Edgar D. Crumpacker, of Indiana, raised the question of order that the proviso would change existing law.

After debate, the Chairman³ said:

As stated by the gentleman from Indiana, this statute was passed in 1888. It provided that payment be made to the respective States and Territories having Soldiers' Homes at the rate of \$100 per annum for each soldier who was an inmate. There is a limitation, however, that "the number of such persons for whose care any State or Territory shall receive the said payment under this act shall be ascertained by the Board of Managers of the National Home for Disabled Volunteer Soldiers, under such regulations as they may prescribe." Several years later an amendment was made in the appropriation as it appeared in the sundry civil bill, providing for payment under this statute with the limitation which appears as a proviso:

"Provided, That one-half of any sum or sums retained by State Homes on account of pensions received from inmates shall be deducted from the aid herein provided for."

That proviso has appeared in every sundry civil bill for now more than ten years. That act, however, it must be conceded, is only effective as a change of law for the year for which the appropriation is made.

The question arises, Is this a limitation? It will be admitted that the appropriation bill could create a limitation by refusing the whole amount or a part of it. The question which then arises is, Can a limitation be effected by means of a classification of any kind?

Perhaps there might be a classification that \$100 should be given to a soldier who was 70 years old, or more, and a sliding scale granting lower amounts for those of lesser age. Possibly a classification might be made in accordance with the service of each inmate of the Home.

But it is unnecessary to decide these questions in order to reach a decision in this case. It is perfectly evident that this \$100 was specified because that was regarded as a proper compensation, or donation—for it is more a donation than a compensation—to the State for the care of each soldier.

¹ Charles H. Grosvenor, of Ohio, Chairman.

² Second session Fifty-eighth Congress, Record, pp. 4017, 4018.

³ Theodore E. Burton, of Ohio, Chairman.

Now, certain of the States—twenty-one out of twenty-seven, it is stated by the gentleman from Indiana—reserve a share of any pension of a soldier who is an inmate of one of these State Soldiers' Homes; and in view of the fact that it was thought that \$100 for each was fixed by the statute as a fair amount to be assigned to these respective States, it was considered equitable to make a distinction. If any State received a part of that \$100 from any other source—namely, a pension paid by the United States Government—at least a part of the amount received might be deducted.

It seems to the Chair that this furnishes ground for a proper classification, and that it is a proper ground for a classification which creates a limitation under the rule. It would seem to be hardly fair to pay the full amount of \$100 to States which reserve a very considerable share of the pension, and pay only the same amount to those States which reserve no share of the pension. They are certainly on a different footing, and if no other ground existed the fact would afford a reason why this is a proper limitation.

The Chair overrules the point of order.

3950. On February 13, 1903,¹ the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the following paragraph was read:

State or Territorial Homes: For continuing aid to State or Territorial Homes for the support of disabled volunteer soldiers, in conformity with the act approved August 27, 1888, including all classes of soldiers admissible to the National Home for Disabled Volunteer Soldiers, \$950,000: *Provided*, That one-half of any sum or sums retained by State Homes on account of pensions received from inmates shall be deducted from the aid herein provided for.

Mr. Edgar D. Crumpacker, of Indiana, made a point of order against the paragraph.

After debate, the Chairman² said:

The Chair will say that this paragraph appropriates or authorizes the payment of a certain sum of money in continuing aid to State or Territorial Homes for the support of disabled volunteer soldiers, in conformity with the act approved August 27, 1888, which is now the law. This proviso, in the judgment of the Chair, is clearly a limitation upon that appropriation. It says that "one-half of any sum or sums retained by State Homes on account of pensions received from inmates shall be deducted from the aid herein provided for." This, in the judgment of the Chair, is clearly a limitation in the paragraph on the appropriation which precedes the proviso. Under the rule of the House, and uniformly followed—and, as has been said, this rule has become the parliamentary law of the Committee of the Whole—this proviso being a limitation, it is clearly in order. In view of the statement of the gentleman from Indiana [Mr. Crumpacker], in which he invokes the legal distinction between limitations and conditions, I will read from the precedents an opinion given by the late Mr. Dingley, as Chairman of the Committee of the Whole, in which he says that "in order to be considered as a limitation or restriction a provision must prohibit the use of the money for some purpose already authorized by law." This proviso in effect prohibits the payment of so much of the appropriation as may be equivalent to the amount deducted by these State institutions from the pensions received by inmates thereof. The Chair therefore thinks that the point of order is not well taken, and overrules the same.

3951. On March 31, 1904,³ the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the pending question was a motion to strike out the following:

Provided, That one-half of any sum or sums retained by State Homes on account of pensions received from inmates shall be deducted from the aid herein provided for.

¹Second session Fifty-seventh Congress, Record, pp. 2163, 2164.

²James A. Tawney, of Minnesota, Chairman.

³Second session Fifty-eighth Congress, Record, pp. 4050–4054.

Mr. Theodore A. Bell, of California, proposed the following amendment to perfect the text:

Amend by striking out all after the word "*Provided,*" line 12, page 127, down to and including the word "for," line 14, and insert:

"That no part of this appropriation shall be apportioned to any State or Territorial Home until its laws, rules, or regulations respecting the pensions of its inmates be made to conform to the provisions of section 4 of an act approved March 3, 1883, entitled 'An act prescribing regulations for the Soldiers' Home located at Washington, in the District of Columbia, and for other purposes;' but the above proviso shall not apply to any State or Territorial Home into which the wives or widows of soldiers are admitted and maintained: *And provided further,* That no part of this appropriation shall be apportioned to any State or Territorial Home that maintains a bar or canteen where intoxicating liquors are sold."

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

After debate, the Chairman¹ held:

The appropriation in the paragraph to which this amendment is offered grants to States maintaining Soldiers' Homes \$100 per capita for each inmate. A proviso at the end of the paragraph (which is not of importance, except that a ruling has been made upon it) has been carried for ten years or more in provisions of appropriation bills granting amounts to these State Soldiers' Homes to this effect:

"That one-half of any sum or sums retained by the State Homes on account of pensions received from inmates shall be deducted from the aid herein provided."

On that proviso a point of order was raised yesterday by the gentleman from Indiana [Mr. Crumpacker]. It was overruled on the ground that this proviso was a limitation. An amendment to the paragraph is presented to the committee to-day, to strike out all after the word "*Provided,*" in line 12, page 127, down to and including the word "for," in line 14, and insert the following proviso, which would be a substitute for the one considered yesterday:

"That no part of this appropriation shall be apportioned to any State or Territorial Home until its laws, rules, or regulations respecting the pensions of its inmates be made to conform to the provisions of section 4 of an act approved March 3, 1883, entitled 'An act prescribing regulations for the Soldiers' Home located at Washington, in the District of Columbia, and for other purposes.' But the above proviso shall not apply to any State or Territorial Home into which the wives or widows of soldiers are admitted or maintained."

The last clause just read limits the operation of the proviso to that extent. There is a further limitation (if it may be called such) in this proviso:

"*And provided further,* That no part of this appropriation shall be apportioned to any State or Territorial Home that maintains a bar or canteen where intoxicating liquors are sold."

There are two conditions—first, that the regulations of the State or Territorial Home must conform to the provisions of section 4 of an act relating to the National Home at Washington; and second, that no part of the appropriation shall be apportioned to any State or Territorial Home that maintains a bar or canteen where intoxicating liquors are sold.

The question arises whether these are limitations merely. If so, the amendment is in order; if not, it is out of order. It is maintained that this amendment changes existing law. In a sense every limitation changes existing law. If any specific condition is mentioned under which an appropriation is to be withheld, that is pro tanto a change of existing law, at least to the extent that the whole or a part of the appropriation can not be expended unless the condition is complied with.

The Chair has some hesitancy in ruling upon this subject, because of an opinion that in accordance with some precedents observed in Committee of the Whole, affirmative law has been credited under the form of negative limitations or provisions. The question is, What is a proper limitation. There have been numerous rulings here on this subject. It has been held, for instance, that the following provisions were limitations merely and properly included in an appropriation bill by amendment or otherwise; that an appropriation shall not be available until title has been acquired to the land upon which a building is to be located or until the time for appeal shall have expired; that the cost of an

¹Theodore E. Burton, of Ohio, Chairman.

article appropriated for shall not exceed a certain amount; or that an appropriation shall only be used for purchasing armor of a certain form and quality. It has been held to be a proper limitation, also, that no greater price should be paid than is paid by other governments. And it has been several times held that while it is not in order to legislate as to the qualifications of the recipient of an appropriation, the House may specify that no part of the appropriation shall go to a recipient lacking certain qualifications.

It would seem to the Chair that the language of this proposed amendment, specifying that this appropriation or any part of it shall not go to institutions failing to comply with certain conditions, is within the principle of the rule last stated—namely, that while the House may not legislate as to the qualifications of the recipients of an appropriation, it may specify that no part of the appropriation shall go to recipients lacking certain qualifications.

On one occasion an amendment was proposed by the present Speaker of this House that no part of a sum for hospitals should be expended in the further maintenance of the Army and Navy Hospital at Hot Springs, Ark. The amendment afterwards appeared in this form: That the appropriation shall be available “except at the hospitals at Hot Springs, Ark.,” so that the appropriation would go to all the hospitals except that one. On that occasion the Chair sustained a point of order, but the Committee of the Whole by a vote of 84 to 57 overruled the Chairman and decided that such an amendment was in order.

But there is another precedent in a ruling made by the gentleman from New York [Mr. Payne] in the Fifty-sixth Congress, second session, which would seem to the present occupant of the chair to be entirely conclusive (if it is accepted) of the question which is now before the committee. An amendment was offered in this form:

“Provided, That no part of this appropriation shall be available for the agricultural college of any State or Territory until the Secretary of Agriculture shall be satisfied, and shall so certify to the Secretary of the Treasury, that no trustee, officer, or employee of said college is engaged in the practice of polygamy or polygamous relations, etc.”

To that amendment a point of order was made, and the gentleman from New York [Mr. Payne], occupying the chair, overruled the point of order.

Now, this was an amendment to a law providing appropriations for agricultural colleges, a well-established line of expenditure by the National Government. It was proposed that no part of that appropriation should be available for an agricultural college unless there was an affirmative certificate made to the Secretary of the Treasury that no trustee, officer, inspector, or employee of said college was engaged in the practice of polygamy. That was held to be a proper limitation.

Clearly, if the Committee of the Whole accepted that as parliamentary law, this amendment is in order; and without relying upon this as a precedent solely, but upon the general principles and precedents relating to this subject, it would seem to the Chair that this pending amendment is a proper limitation, and the point of order is overruled.

3952. On June 8, 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:

For maintenance of marine-hospital stations, including subsistence, and for all other necessary miscellaneous expenses which are not included under special heads, \$240,000.

Mr. Swagar Sherley, of Kentucky, proposed to add the following:

Provided, That of this sum such portion equal in amount to the cost of maintenance and subsistence of any given marine-hospital station during the current fiscal year shall not be expended in case the said hospital station be closed during any part of the fiscal year ending June 30, 1907.

Mr. James A. Tawney, of Minnesota, made a point of order against the amendment.

¹First session Fifty-ninth Congress, Record, pp. 8130, 8131.

After debate, the Chairman¹ held:

The Chair would like to ask the gentleman from Minnesota if he thinks an amendment limiting the Secretary of the Treasury to the expenditure of only \$230,000, for example, in case the hospital at Louisville, Ky., should be closed, would be a limitation? The Chair confesses to a great deal of doubt as to this amendment, and, although it is expressed in language more or less circuitous, it would seem to the Chair that the effect of it is such as indicated in the illustration which the Chair has just made. * * * From a careful reading of the amendment itself the Chair is of the opinion that it expresses a mere limitation or a bar upon the expenditure of the amount carried in that paragraph, and therefore the Chair overrules the point of order. The question is on agreeing to the amendment offered by the gentleman from Kentucky.

3953. While it is not in order on an appropriation bill to require lettering on public vehicles, it is in order to withhold the appropriation from all not lettered.—On March 31, 1904,² the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read a paragraph, which, after modification by unanimous consent, was presented in this form:

SEC. 3. That all carriages and other vehicles used in the public service, other than for personal purposes, as authorized in section 2 of the legislative, executive, and judicial appropriation act for the fiscal year 1905, the expenses for purchase, or maintaining, driving, or operating of which are paid from money appropriated by this act, shall have conspicuously painted thereon at all times the full name of the Executive Department or other branch of the public service to which the same belong and in the service of which the same are used.

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

The Chairman sustained the point of order.

Thereupon Mr. James A. Hemenway, of Indiana, proposed as a new paragraph the following:

SEC. 3. No part of any money appropriated by this act shall be used for purchase, maintaining, driving, or operating any carriage or other vehicle other than those authorized for personal purposes in section 2 of the legislative, executive, and judicial appropriation act for the fiscal year 1905, unless the same shall have conspicuously painted thereon at all times the full name of the Executive Department or other branch of the public service to which the same belong and in the service of which the same are used.

Mr. Mann having made the same point of order, the Chairman³ held:

The Chair thinks that this does not change existing law, that it is merely a limitation. It would seem that this legislative body was very much lacking in power if there could not be a provision in the way of a limitation that carriages used for public purposes shall have a designation upon them to that effect. The Chair is not ready to think that any parliamentary rule makes this other than a limitation. The Chair overrules the point of order.

3954. A provision that no part of an appropriation for pay of retired army officers should go to one receiving pay for services as a civil employee was held to be a limitation.—On January 25, 1904,⁴ the army appropriation bill was under consideration in Committee of the Whole House on

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

²Second session Fifty-eighth Congress, Record, p. 4068.

³Theodore E. Burton, of Ohio, Chairman.

⁴Second session Fifty-eighth Congress, Record, p. 1142.

the state of the Union, when Mr. William P. Hepburn, of Iowa, offered the following as an amendment:

Provided, That no part of the money appropriated by this act shall be expended in payment to any retired officer of the Army who receives payment for services as clerk or other civil employee in any of the Departments of the Government.

Mr. John A. T. Hull, of Iowa, raised a question of order against the amendment. The Chairman¹ held:

The Chair is of opinion that as it is in the power of Congress to refuse to appropriate at all for this purpose it is within its power under the rules of the House to limit the appropriation in the manner provided by this amendment, and therefore overrules the point of order.

3955. A limitation is negative in its nature and may not include positive enactments establishing rules for executive officers.—On February 14, 1903,² the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. James D. Richardson, of Tennessee, proposed the following amendment:

After line 15 on page 153 insert the following:

“In expending the sum herein appropriated for printing and binding the following restrictions and limitations shall be enforced:

“Whenever any document or report containing illustrations shall be ordered printed by Congress, such illustrations shall not be printed unless the order to print so specifies; and the heads of the Executive Departments, and the heads of bureaus, not connected with the Departments, before transmitting their annual reports to Congress, shall cause the same to be carefully examined, and shall exclude therefrom all matters, including engravings, maps, drawings, and illustrations, except such as they shall certify in their letters transmitting such reports to be necessary and relate entirely to the transaction of public business; and in no case shall the Public Printer permit the insertion in any document, report, or other Government publication, except those emanating from the Patent Office, of any diagram, photogravures, half-tone, or other picture or illustration, unless express authorization has been given in writing, with the reason therefor, by the head of the Executive Department by which such document, report, or publication is issued; and if the same is issued by any bureau or division not immediately under and a part of any Executive Department, then such authorization therefor must be first given by the Secretary of the Interior.”

Mr. James R. Mann, of Illinois, made the point of order that the proposed amendment involved legislation, and could not be considered a limitation.

After debate, the Chairman³ said:

In the opinion of the Chair the amendment is not necessarily a limitation upon the appropriation for public printing. If the heads of the Departments certify the necessity for printing the matter which is now published, concerning which the gentleman from Tennessee objects, it would be published as now, and in that case there would be no limitation. The same publications could be made under this amendment, if it is adopted, that are now made. It proposes to give authority to the heads of Departments to restrict the expenditure of this money by eliminating or not printing certain things specified in the amendment, but it is discretionary with the heads of Departments whether these things shall be printed or not. Therefore the amendment proposed would be only a conditional limitation, and, in the opinion of the Chair, that is not sufficient. The limitation must be an absolute limitation, not a conditional one, to take the amendment out of the rule which is invoked. The Chair is also of the opinion that the latter part of the amendment is new legislation, changing existing law; and it not being such a limitation as the rule contemplates, the Chair thinks the amendment in the modified form is not in order, and sustains the point of order.

¹Marlin E. Olmsted, of Pennsylvania, Chairman.

²Second session Fifty-seventh Congress, Record, pp. 2197, 2198, 2200.

³James A. Tawney, of Minnesota, Chairman.

Later Mr. Frederick H. Gillett, of Massachusetts, proposed the following:

Provided, That no part of the appropriation herein made for printing and binding shall be used for any illustrations or any engravings in any document or report ordered printed by Congress unless the order to print expressly authorizes the same; nor in any document or report of any executive department or Government establishment until the head of the executive department or Government establishment shall certify in the letter transmitting such report that the illustration is necessary and relates entirely to the transaction of the public business.

Mr. Mann having made the point of order, the Chairman held:

The Chair overrules the point of order. In the opinion of the Chair this amendment as drawn is a limitation upon the appropriation made by this bill for the printing of public documents. It certainly limits the appropriation in so far as the appropriation can be used for the publication of documents that are published by authority of Congress.

3956. On February 19, 1903,¹ the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Sydney E. Mudd, of Maryland, made a point of order against a portion of the paragraph providing for increase of the Navy, as follows:

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 material 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 machinery; 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: *Provided further*, That the Secretary of the Navy may build any or all 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.

The Chairman having ruled the portion objected to out of order, Mr. William W. Kitchin, of North Carolina, appealed.

After debate on the appeal, the Chairman² said, in submitting the question to the House:

Before submitting the question, the Chair would like to make a brief statement as to the meaning of his ruling, because it seems to the Chair, from the remarks made by the gentleman from North Carolina and the gentleman from Alabama, that there is a misapprehension of the basis of the Chair's opinion. If one part of a paragraph against which a point of order is made is out of order, it is the duty of the Chair to rule out the whole paragraph. So, of course, if one part of this clause against which the gentleman from Maryland raises the point of order is obnoxious to it, all goes out. But that does not prevent, afterwards, the germane portion being put in by way of amendment. And the Chair stated to the gentleman from Iowa, perhaps anticipating more than he ought to have, that in the opinion of the Chair it is not at all out of order to put in this appropriation bill a limitation on the manner in which the vessel shall be built and the materials, etc.—in other words, to describe the object to be appropriated for. But the gentleman from North Carolina and the gentleman from Alabama (the Chair does not intend to be controversial) stated, as the basis of their argument, that as there is no existing law for this appropriation it must be new legislation. Now, in the opinion of the Chair, that clearly and incontrovertibly establishes that this clause is out of order, because Rule XXI, under which this proceeds, provides that—

¹Second session Fifty-seventh Congress, Record, pp. 2394–2398, 2399.

²Frederick H. Gillett, of Massachusetts, Chairman.

“No appropriation shall be reported in any general appropriation bill or be in order unless in continuation of an appropriation for such public works and objects as are already in progress.”

It is upon this line for the past fifteen years that it has always been held that the building of ships can be provided for upon an appropriation bill, because they were in continuation of a public work in progress. It is a continuation of the building up of the Navy; but immediately after in that section the rule goes on to say:

“Nor shall any provision changing existing law be in order on any general appropriation bill.”

We may continue the public work, building up the Navy, by building new battle ships. But the same section provides that no provision changing existing law shall be in the appropriation bill. In other words, you may provide to build new ships. That is an appropriation and does not change existing law; but in making that appropriation we shall not change existing law. We can describe the ships to be built; we can by limitations provide how the money shall be expended upon them, but we can not in that connection insert anything which amends any other law. To the Chair it seems perfectly clear that the provision in this section, that the Secretary of the Navy shall build the ships at certain navy-yards, is a change of existing law, because it limits the power which existing laws give him. It has been held again and again—the decisions are uniform upon the subject—that any restriction on the power of an executive officer is a change of existing law. This section clearly limits his discretion, and therefore changes existing law. And it seems to the Chair that the distinction which is not recognized by some gentlemen on the floor is the distinction between a limitation on appropriations and a limitation on the discretion of an executive officer. Appropriations can always be limited, and in an appropriation bill; but the discretion of an executive officer can never be limited in an appropriation bill. * * * The Chair will simply state this one sentence—that it has always been held that where there is no law the passage of a law is a change of existing law. They are synonymous terms and the very first heading of the Digest under that head says:

“The enactment of positive law where none exists is a change of existing law within the meaning of the rule.” That is the line of rulings that has always been held.

The question being taken on the appeal, the decision of the Chair was sustained on a vote by tellers, ayes 109, noes 88.¹

¹The theory of a limitation involves close distinctions in cases like the above.

The appropriation for a new ship for the Navy is admitted solely on the ground that it is in continuation of a public work already in progress.

Of course in appropriating for any object the House may describe the object. If it is a ship, the length, breadth, material, etc., may be specified with any degree of definiteness; provided that none of these specifications violates an existing law. If a law forbids the construction of ships over 300 feet long, an appropriation for a ship 400 feet long would violate existing law and be against the express words of the rule.

But having appropriated for a definitely described object, competency of the appropriation bill as a means of legislation ceases, except for the power to prescribe limitations.

What is the source of this power?

Chairman Dingley said (sec. 3936 of this chapter) that it arose from the undoubted power to refuse appropriations for any object, either in whole or in part, even though that object might be authorized by law.

Thus the power of limitation is solely a negative power, capable of setting up a barrier, and not a positive power, capable of creative functions.

When the appropriation bill describes the ship and grants the money, it has gone to the extent of its powers, and the remainder belongs to the Executive, acting within the legal limitations of his own sphere.

The appropriation may interfere with Executive discretion only in a negative way. It may decline to appropriate for ships to be built in a navy-yard by saying that no part of the appropriation shall be used for that purpose. These negative prohibitions are within the power of the appropriation bill. But they are in principle very different from positive, creative provisions directing the Secretary to build some ships by contract, others in navy-yards, others on the Pacific coast, others abroad, etc. There is substantially the same difference between the two propositions that there is between a veto and an enactment.

Mr. John J. Fitzgerald, of New York, then made the point of order against the words "by contract" in the first lines of the paragraph providing for the increase of the Navy.

increase of the navy.

That for the purpose of further increasing the naval establishment of the United States the President is hereby authorized to have constructed by contract three first-class battleships carrying the heaviest armor and most powerful ordnance for vessels of their class upon a trial displacement of not more than 16,000 tons, and to have the highest practicable speed and great radius of action, and to cost, exclusive of armor and armament, not exceeding \$4,212,000 each; one first-class armored cruiser of not more than 14,500 tons trial displacement, carrying the heaviest armor and most powerful armament for vessels of its class, and to have the highest practicable speed and great radius of action, and to cost, exclusive of armor and armament, not exceeding \$4,659,000; two steel ships, to be used in training landsmen and apprentices, to be propelled by sail, and to cost, exclusive of armament, not exceeding \$370,000 each; one wooden brig, to be used for training landsmen and apprentices at stations, to be propelled by sail, and to cost, exclusive of armament, not exceeding \$50,000; and the contract for the construction of each 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.

The Chairman sustained the point of order.

3957. The limitation must be upon the appropriation and not an affirmative limitation of official functions.—On April 24, 1900,¹ the post-office appropriation bill being under consideration in Committee of the Whole House on the state of the Union, Mr. W. T. Crawford, of North Carolina, offered to the paragraph appropriating for inland transportation by star routes the following amendment:

Of which sum \$50,000 shall be used, under the direction of the Postmaster-General, in supplying temporary service to the newly established offices in cases where the establishment of star routes is contemplated.

Mr. Eugene F. Loud, of California, having raised a point of order, the Chairman² held:

It is not a limitation upon the appropriation; it is a limitation upon the functions of the Post-Office Department. It takes away from the Postmaster-General that discretion that he now has and is, therefore, in the opinion of the Chair, obnoxious to the point of order, and the Chair sustains the point of order.

3968. On April 24, 1900,³ the post-office appropriation bill being under consideration in the Committee of the Whole House on the state of the Union, Mr. John W. Maddox, of Georgia, offered to the paragraph relating to "experimental rural free delivery" the following amendment:

Provided, That this service shall be equally distributed among the several Congressional districts in the United States.

Mr. Eugene F. Loud, of California, having made a point of order, the Chairman² said:

The amendment of the gentleman from Georgia [Mr. Maddox] proposes a limitation, not on the appropriation, but on the functions of the Post-Office Department. Under the existing law the

¹ First session Fifty-sixth Congress, Record, p. 4640.

² John Dalzell, of Pennsylvania, Chairman.

³ First session Fifty-sixth Congress, Record, p. 4636.

Postmaster-General has a discretion to dispose of and apportion this free rural-delivery system as he may think best serves the public interest. To adopt the amendment offered by the gentleman from Georgia would be to take away that discretion, and it is, therefore, obnoxious to the rule. The Chair sustains the point of order.

3959. On May 19, 1902,¹ while the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, the paragraph providing for the increase of the Navy was read, whereupon Mr. Sidney E. Mudd, of Maryland, made a point of order against the following portion of the paragraph:

and not more than two of said battle ships and armored cruisers and not more than one of said gunboats herein provided for shall be built by one contracting party; and in the construction of all said vessels all the provisions of the act of June 7, 1900, entitled "An act making appropriations for the naval service for the fiscal year ending June 30, 1901, and for other purposes," shall be observed and followed; and subject to the provisions hereinafter made not more than one of said battle ships and not more than one of said armored cruisers and not more than one of said gunboats shall be built on or near the coast of the Pacific Ocean or in the waters connecting therewith: *Provided*, That if it shall appear to the satisfaction of the President from the biddings for such contracts when the same are opened and examined by him that said vessels or any of them 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 other vessels provided for in this act, he shall authorize the construction of said vessels, or any of them, elsewhere in the United States, subject to the limitations as to cost hereinbefore provided.

After debate on the point of order the Chairman² held:

The Chair thinks the gentleman from Massachusetts [Mr. Roberts] fails to make a distinction between a limitation upon an appropriation and a limitation upon an officer. It seems to the Chair that the limitation here is upon an officer, not upon an appropriation. Clearly this is a legislative provision. The present occupant of the chair made the ruling to which the gentleman from Maryland has referred in his argument, holding that legislation where none exists is a change of existing law. Still holding that same opinion, the Chair is constrained to sustain the point of order.

3960. On February 25, 1904,³ the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a paragraph was read providing for the construction of certain colliers.

Thereupon Mr. Theodore A. Bell, of California, proposed an amendment:

Amend by adding after the word "each," in line 4, page 71, the following:

"Said colliers shall be built in the navy-yards, one on the Pacific and the other on the Atlantic coast, and the same to be designated by the Secretary of the Navy."

Mr. Sydney E. Mudd, of Maryland, made the point of order that the amendment proposed a limitation on the discretion of the Secretary of the Navy.

After debate the Chairman⁴ said:

The Chair understands that there is at present no law directing where vessels of this character shall be built. This proposed amendment makes law on that subject by directing that they shall be built in the places indicated in the amendment. It has been repeatedly held that a provision in an appropriation bill which makes law where none previously existed does change existing law in violation of the rule. There is some conflict of decision, as has appeared from the rulings cited, upon provisions of this kind. It was ruled in the Fifty-sixth Congress, the present Secretary of the Navy, Mr. Moody, then in the chair, that, there having been "no general law suggested to the Chair which would be

¹ First session Fifty-seventh Congress, Record, pp. 5640-5643.

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

³ Second session Fifty-eighth Congress, Record, pp. 2384, 2385.

⁴ Marlin E. Olmsted, of Pennsylvania, Chairman.

altered by the amendment offered by the gentleman from New York, the Chair is compelled to think it is in order, in the absence of any such statute, and therefore overrules the point of order.”

But that decision itself was in conflict with previous decisions that the making of law in an appropriation bill where none previously existed is itself a change of law, or is, as we say, legislation upon an appropriation bill. In the Fifty-seventh Congress, about one year ago, on February 19, 1903, the naval appropriation bill being then, as now, under consideration, an amendment was offered providing, among other things, that “the Secretary of the Navy may build any or all vessels herein authorized in such navy-yards as he may designate; and shall build the vessels herein authorized in such navy-yards as he may designate,” etc. The gentleman from Massachusetts [Mr. Gillett] in the chair, ruled that the provision was out of order, saying: “To the Chair it seems perfectly clear that the provision in this section that the Secretary of the Navy shall build the ships at certain navy-yards is a change of existing law, because it limits the powers which existing laws give him.” An appeal was taken from his ruling. Upon that appeal very exhaustive debate was had, at the conclusion of which the committee sustained the decision of the Chair by a vote of 109 to 88. That appears to be the last ruling upon this precise point.

The Chair will call attention to the distinction between a limitation upon an appropriation and a positive enactment which limits the powers of Government officers under existing laws. A mere limitation of the appropriation is in order. There is no obligation on the House to appropriate at all, and therefore it may provide that the money appropriated by it shall not be used in any except such manner as may be specified in the bill. A limitation is best expressed in the negative, as that the appropriation shall not be available unless used in a certain way. That leaves an option. The money can be used or not used, but if used it must be in the manner specified. No law is changed, because there is no obligation to expend the money at all. But where an amendment, or the bill itself, goes beyond that and places a limitation which would not otherwise exist upon the discretion of one of the Executive Departments of the Government, forcing the head of that Department to do certain things which otherwise he would not be required to do, that is more than a limitation upon an appropriation. It is substantially a positive enactment requiring him to spend the money, and to expend it as pointed out in the act, which takes away the discretionary power vested in him by previous authority of law. It is, in the opinion of the Chair, a change in existing law and new legislation, and, finding that in this amendment, the Chair is compelled to sustain the point of order.

Mr. Bell thereupon proposed to modify his amendment to read as follows:

Said colliers shall be built in the navy-yards.

Mr. Mudd made the point of order again.

The Chairman said:

In the opinion of the Chair the amendment just offered is open to the objection made by the gentleman from Maryland. This amendment is not a limitation upon the appropriation; it is in the nature of a law—a command to the Secretary of the Navy to build these vessels in a certain place. As the Chair has already attempted to make clear, it is within the power of the House to say, “We will appropriate money for a certain purpose, but no part of it shall be used unless in the way we direct.” But under Rule XXI it is not within the power of the House, having appropriated the money, to accompany the appropriation with a command which is itself legislation changing existing law.

Thereupon Mr. Bell modified his amendment to read as follows:

and none of the appropriation for the foregoing purposes shall be used for any colliers not built in the yards owned by the United States Government.

No point of order was made against the amendment in this form.

3961. 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:

¹ Second session Fifty-eighth Congress, Record, pp. 3961, 3962.

Depredations on public timber, protecting public lands, and settlement of claims for swamp land and swamp-land indemnity: To meet the expenses of protecting timber on the public lands, and for the more efficient execution of the law and rules relating to the cutting thereof; of protecting public lands from illegal and fraudulent entry or appropriation, and of adjusting claims for swamp lands, and indemnity for swamp lands, \$250,000: *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 a point of order against all of the paragraph after the word "*Provided*."

Mr. James A. Hemenway, of Indiana, urged that the proviso contained a limitation merely.

After debate, the Chairman¹ held:

The Chair would state that unless there can be something cited which would justify this provision he will be compelled to sustain the point of order. It is clearly creating a law that does not already exist. The point of order is sustained.

3962. On February 16, 1905,² the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

Reserve guns for auxiliary cruisers: Toward the armament of modern guns for auxiliary cruisers mentioned in the act approved March 3, 1891, and in section 4 of the act approved May 10, 1892, \$50,000.

To this Mr. Ebenezer J. Hill, of Connecticut, offered this amendment:

After the word "ninety-two," page 11, line 5, insert "to be purchased on competitive bids, after due advertisement."

Mr. John J. Fitzgerald, of New York, made the point of order against the amendment.

The Chairman³ sustained the point of order.

3963. On April 13, 1906,⁴ the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

For pay of letter carriers and clerks in charge of substations of rural delivery service, \$28,200,000: *Provided*, That not to exceed \$15,000 of the amount hereby appropriated may be used for compensation of clerks in charge of substations.

Mr. Martin L. Smyser, of Ohio, offered this amendment:

Amend on page 27, lines 17 and 18, by striking out the words "twenty-eight million two hundred thousand dollars" and inserting in lieu thereof the words "thirty-two million four hundred thousand dollars: *Provided*, That not to exceed \$4,200,000 of said sum so appropriated shall be expended for horse hire and wagon equipment in the rural mail service."

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

The Chairman⁵ sustained the point of order.

¹Theodore E. Burton, of Ohio, Chairman.

²Third session Fifty-eighth Congress, Record, p. 2751.

³John Dalzell, of Pennsylvania, Chairman.

⁴First session Fifty-ninth Congress, Record, p. 5247.

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

3964. On May 2, 1906,¹ the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

Irrigation and drainage investigations: To enable the Secretary of Agriculture to investigate and report upon the laws of the States and Territories as affecting irrigation and the rights of appropriators and of riparian proprietors and institutions relating to irrigation and upon the use of irrigation waters at home and abroad; with especial suggestions of the best methods for the utilization of irrigation waters in agriculture, and upon plans for the removal of seepage and surplus waters by drainage, and upon the use of different kinds of power and appliances for irrigation and drainage; and for the preparation, printing, and illustration of reports and bulletins on irrigation and drainage, including employment of labor in the city of Washington or elsewhere; and the agricultural experiment stations are hereby authorized and directed to cooperate with the Secretary of Agriculture in carrying out said investigations in such manner and to such extent as may be warranted by a due regard to the varying conditions and needs and laws of the respective States and Territories as may be mutually agreed upon, and all necessary expenses, \$102,200, \$5,000 of which amount, or so much thereof as may be necessary, shall be expended in making a drainage survey of the Neosho Valley, in the State of Kansas.

Mr. Thetus W. Sims, of Tennessee, made the point of order against the appropriation for the survey of Neosho Valley.

After debate, the Chairman² held that the point of order was well taken, since the language constituted not a limitation on the appropriation, but an affirmative limitation upon the judicial functions of the Secretary of Agriculture,

3965. On May 31, 1906,³ the consular and diplomatic appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Paying for the feeding and keeping of prisoners in China, Korea, Siam, and Turkey, \$9,000: *Provided*, That no more than 50 cents per day for the keeping and feeding of each prisoner while actually confined shall be allowed or paid for any such keeping and feeding. This is not to be understood as covering cost of medical attendance and medicines when required by such prisoners: *And provided further*, That no allowance shall be made for the keeping and feeding of any prisoner who is able to pay or does pay the above sum of 50 cents per day; and the consular officer shall certify to the fact of inability in every case.

Mr. Edgar D. Crumpacker, of Indiana, made the point of order that the last proviso involved legislation.

After debate, the Chairman⁴ held:

The Chair holds that it is a limitation on the office, though not on the money, and sustains the point of order.

3966. On June 8, 1906,⁵ the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

Transportation of notes, bonds, and other securities of the United States, of fractional silver coin, and of minor coin under each of the three foregoing appropriations shall, when practicable, be by registered mail and in such sums as the Secretary of the Treasury may determine and under such rules and conditions as may be agreed upon jointly by him and the Postmaster-General.

¹ First session Fifty-ninth Congress, Record, pp. 6277, 6278.

² David J. Foster, of Vermont, Chairman.

³ First session Fifty-ninth Congress, Record, pp. 7671, 7672.

⁴ Charles Curtis, of Kansas, Chairman.

⁵ First session Fifty-ninth Congress, Record, pp. 8126–8129.

Mr. Jesse Overstreet, of Indiana, made the point of order that the paragraph involved legislation.

After debate, the Chairman¹ sustained the point of order.

Thereupon Mr. James A. Tawney, of Minnesota, proposed an amendment to insert:

This sum and the appropriations for contingent expenses Independent Treasury and for transportation of fractional silver coin shall be available only for transportation of notes, bonds, and other securities of the United States, of silver coin and of minor coin, except when impracticable, by registered mail and not otherwise, and in such sums as the Secretary of the Treasury may determine, and under such rules and conditions as may be agreed upon jointly by him and the Postmaster-General.

Mr. Overstreet made the same point of order.

After debate, the Chairman² held:

A long line of decisions on the question of limitations holds that the limitation, to be in order, must be in effect simply a negative bar that is pressing upon the appropriation of the money, and that any amendment which directly or indirectly vests in any executive officer any discretion or imposes any duty upon the officer, directly or indirectly, in the expenditure of the money would be obnoxious to the point of order. This amendment seems to the Chair to come clearly within the latter class; and therefore the Chair sustains the point of order.

3967. A limitation is negative in its nature and may not include positive enactments establishing rules for executive officers.—On December 9, 1904,³ the legislative appropriation bill for the fiscal year ending June 30, 1906, was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

During the fiscal year 1906 it shall not be lawful to detail clerks or other employees from the Executive Departments or other Government establishments in Washington, D. C., to the Civil Service Commission for the performance of duty in the District of Columbia.

Mr. Henry H. Bingham, of Pennsylvania, made a point of order against the paragraph that it proposed legislation.

Mr. James R. Mann, of Illinois, urged that the paragraph proposed simply a limitation.

The Chairman⁴ said:

The Chair will say in answer to the gentleman from Illinois that this is clearly positive legislation. "That it shall not be lawful to detail clerks or other employees, etc.," which is now lawful under existing law, and the statement that it is merely a limitation does not strike the Chair at all.

3968. The House may provide that no part of an appropriation shall be used in a certain way, even though executive discretion be thereby negatively restricted.

Instance wherein a decision of a chairman of the Committee of the Whole was overruled.

On February 27, 1905,⁵ the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the

¹James E. Watson, of Indiana, Chairman.

²Henry S. Boutell, of Illinois, Chairman.

³Third session Fifty-eighth Congress, Record, pp. 98, 99.

⁴John Dalzell, of Pennsylvania, Chairman.

⁵Third session Fifty-eighth Congress, Record, pp. 3577–3581.

paragraph providing for the construction of a public building at Cleveland, Ohio, was read, and Mr. Theodore E. Burton, of Ohio, offered this amendment:

Page 3, at the end of line 19, add the following:

“Provided, That no part of the money herein appropriated shall be used in the construction of the exterior or outer walls of a material other than granite.”

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

Mr. Hemenway said:

Mr. Chairman, the law authorizing the construction of this building provides that it is to be constructed of material selected under the direction of the Secretary of the Treasury, under the Tarsney Act, as the building material is always selected by the Secretary of the Treasury. In fact, I have no recollection of any public-building bill ever passing that did not provide this. Now, here a bill has passed which provides that the selection of the material shall be under this law. The Secretary of the Treasury has taken action. I understand the contract has been let. Am I mistaken about that?

Mr. Burton replied:

I beg the gentleman's pardon. A contract has been made in which there is an option between granite and sandstone, an option still open and not yet exercised.

Mr. Hemenway continued:

The Secretary of the Treasury, acting under the law, is given the selection of this material. No one who will read this act will contend for a minute that the Secretary of the Treasury has not the power and is not directed by this act to select the material. Now, the gentleman proposes to amend this bill by limiting this appropriation to be expended for granite only. Does not that change the law? Why, it is not an open question. * * *

Mr. Robert W. Miers, of Indiana, said:

I shall refer to the law to which I called the Chair's attention a moment ago. At the close of the section—I will not read it all, and I shall be glad to pass it to the Chair in a moment—that law provides, among other things, as follows:

“To be subject at all times to modification and change relating to plans and arrangement of the building and selection of material thereof as may be directed by the Secretary of the Treasury.”

The law of 1893 provides that the material shall be collected by the Supervising Architect, at the discretion and by the direction of the Secretary of the Treasury, and the law is not only that he has the right to select the material by reason of the enactment of the law that provided for the appropriation which gave him the option to select granite or sandstone, but the law of 1893, which binds not only the Secretary of the Treasury as it relates to this building, but all contracts for the erection of public buildings, and has been on the statute books for twelve years, gives the Secretary the right to select the material.

Then if the Secretary under the law has the right to select the material, can the gentleman under the guise of a limitation say that he shall not use the discretion which is given him in the act that provided for the appropriation, and that he shall not select the material, when existing law says he shall? I grant you the right to change the law, but not by an enactment in an appropriation bill. This amendment is a selection of the material by this House, thereby changing existing law. The law vests the Secretary with the right to select the material. If this House passes the amendment offered by the gentleman from Ohio [Mr. Burton] it would change the statute law. This House can not select the material without changing existing law, and this can not be done by enactment in an appropriation bill. I submit, therefore, Mr. Chairman, that this amendment is more than a limitation on an appropriation. It changes existing law.

The following colloquy occurred between Messrs. Burton and Charles H. Grosvenor, of Ohio:

Mr. BURTON. Is the gentleman not aware that there is a plain option outstanding between the two kinds of materials?

Mr. GROSVENOR. And the Secretary has the right to exercise that option.

Mr. BURTON. Under the contract.

Mr. GROSVENOR. If this bill is passed, is that right left to him?

Mr. BURTON. No.

Mr. Burton cited precedents to show that executive discretion might be limited by a provision on an appropriation bill.

The Chairman ¹ ruled:

The impression of the Chair when the matter was first brought to his attention was that it was dearly a limitation. The Chair has since given the matter a great deal of attention, has examined the law, and listened as best he could to the arguments upon both sides of the proposition, and, without detaining the committee with an elaborate opinion which he has in his head, the Chair will sustain the point of order.

Mr. Burton having appealed, the decision of the Chair was overruled, by a vote of ayes 65, noes 89.

So the amendment was admitted.

3969. On April 12, 1906,² 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:

Page 15, strike out lines 6 to 16 and insert the following:

“For inland transportation by star routes, including temporary service to newly established offices, \$7,100,000: *Provided*, That no part of this appropriation shall be expended for continuance of any star route service the patronage of which shall be served entirely by the extension of rural delivery service, nor shall any of said sum be expended for the establishment of new star route service for a patronage which is already entirely served by rural delivery service: *And provided further*, That out of this appropriation the Postmaster-General is authorized to provide difficult or emergency mail service in Alaska, including the establishment and equipment of relay stations, in such manner as he may think advisable, without advertising therefor.”

Mr. John W. Gaines, of Tennessee, made a point of order against the amendment.

The Chairman ¹ said:

It seems to the Chair that the language of the proviso is a proper limitation, but the language in reference to Alaska might be more happily chosen.

Mr. Overstreet said:

Will the Chair permit me before proceeding further to say I will modify the amendment by striking from the amendment I have sent to the Clerk's desk the language relative to Alaska?

The Chairman then said:

The Chair then overrules the point of order.

3970. On April 12, 1906,³ the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

For railway post-office car service, \$5,875,000.

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

²First session Fifty-ninth Congress, Record, pp. 5163, 5164.

³First session Fifty-ninth Congress, Record, p. 5176.

Mr. Robert B. Macon, of Arkansas, offered this amendment:

Page 18, in line 4, after "dollars," insert: "*Provided*, That no part of the sum herein appropriated shall be expended for the payment of rent of railway post-office cars not in actual use in the service of the transportation of the mail."

Mr. Jesse Overstreet, of Indiana, made a point of order against the amendment. The Chairman¹ overruled the point of order.

3971. On March 27, 1906,² a deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk read as follows:

department of state.

To meet the actual and necessary expenses of the delegates of the United States to the Third International Conference of American States to be held at the city of Rio de Janeiro, beginning on the 21st day of July, 1906, and of their salaried clerical assistants, to be expended in the discretion of the Secretary of State, and to continue available during the fiscal year 1907, \$60,000.

Mr. John A. Sullivan, of Massachusetts, offered the following amendment:

Page 2, after line 5, insert: "That said delegates of the United States are hereby instructed to advocate the establishment of reciprocal tariff relations between the United States and other American States."

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

The Chairman³ sustained the point of order.

After a time Mr. John Fitzgerald, of New York, proposed an amendment as follows:

Provided, That no part of the sum hereby appropriated shall be expended unless the programme for the conference contains provision for a discussion of reciprocal trade relations between the countries participating in the conference.

Mr. Littauer made a point of order.

The Chairman overruled the point of order, holding that the amendment was a limitation merely, and covered by the ruling of Chairman Burton on March 31, 1904.⁴

3972. On February 28, 1906,⁵ the army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a paragraph relating to barracks and quarters for troops was read.

Thereupon Mr. James A. Tawney, of Minnesota, offered the following amendment:

On page 31, at the end of line 20, insert: "*And provided further*, That of the sum herein appropriated for 'Barracks and quarters' the amount expended for construction of any new building or buildings at any established military post shall not exceed, in the aggregate, the sum of \$20,000, and from this appropriation only there shall be paid during the fiscal year 1907 all expenses of plumbing and sewer connections and other like expenses of interior finish or construction of buildings at military posts the construction or repairing of which is chargeable to this appropriation."

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

² First session Fifty-ninth Congress, Record, pp. 4355, 4356, 4357.

³ J. Van Vechten Olcott, of New York, Chairman.

⁴ See section 3953 of this volume.

⁵ First session Fifty-ninth Congress, Record, p. 3177.

Mr. John A. T. Hull, of Iowa, made the point of order that the amendment proposed a change of existing law.

In the course of the debate the law was read providing that permanent barracks or quarters costing more than \$20,000 should not be constructed without special authority of Congress.

The Chairman¹ ruled:

If this amendment said that hereafter no money should be expended except in this way, it might be considered a change of existing law; but this amendment, as it seems to the Chair, does not prescribe anything in reference to the number or character of the buildings, but is a limitation as to what buildings the money shall be used for and what other purposes the money shall be used for. It is a limit of the expenditure of the money, and the Chair so holds, and therefore overrules the point of order.

3973. While a limitation may provide that no part of an appropriation shall be used except in a certain way, yet the restriction of Executive discretion may not go to the extent of an imposition of new duties.—On June 15, 1906,² the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. John A. Sullivan, of Massachusetts, offered to the paragraph relating to the Panama Canal the following:

Provided, That no part of this appropriation shall be expended for materials and supplies to be used in the construction of the canal or in connection therewith except as the result of bids advertised in the manner now established by the Isthmian Canal Commission under existing law.

Mr. James A. Tawney, of Minnesota, made the point of order that the amendment involved legislation.

After debate, the Chairman³ held:

The Chair is of opinion that the amendment is only a limitation on the appropriation and not a change of existing law. Every limitation is, in effect, finally a limitation on the discretion of an officer. It is not permitted that this be affirmatively done, but it may be negatively done, and this amendment while not drawn in the usual form, and therefore because of its language making it a somewhat closer question, is yet in substance but a limitation, in the opinion of the Chair, on the appropriation, and therefore the Chair overrules the point of order.

3974. 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.—On April 13, 1906,⁴ the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Walter I. Smith, of Iowa, proposed this amendment:

Add after the end of line 4, page 25, the following: "All regular periodical publications issued from a known place of publication at stated intervals and as frequently as twelve times a year, by or under the auspices of charitable, educational, or religious institutions, which institutions are not conducted for pecuniary profit, if such publications are made to further the objects and purposes of such institutions and are formed of printed paper sheets, without board, cloth, leather, or other substantial binding, such as distinguished printed books for preservation from periodical publications, are under

¹Henry S. Boutell, of Illinois, Chairman.

²First session Fifty-ninth Congress, Record, pp. 8601, 8602.

³James E. Watson, of Indiana, Chairman.

⁴First session Fifty-ninth Congress, Record, p. 5246, 5247.

the true meaning of existing law entitled to be admitted to the mail as second-class matter and at the rate of postage fixed for second-class matter and no more, and the existing laws with reference to the second-class mail matter shall hereafter be so interpreted."

Mr. Jesse Overstreet, of Indiana, raised a question of order, holding that according to the ruling of Chairman Dingley on January 17, 1896, the amendment was out of order, although on April 6, 1894, Chairman Hatch had held a similar amendment in order.¹

The Chairman,² following the ruling of Chairman Dingley, sustained the point of order.

Mr. Smith appealed, but after the affirmative vote had been taken withdrew the appeal, "the temper of the House evidently being in favor of sustaining the Chair."

3975. The limitation permitted on a general appropriation bill must be in effect a negative prohibition on the use of the money, not an affirmative direction to an executive officer.—On February 15, 1907,³ the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Edwin Y. Webb, of South Carolina, offered to the paragraph providing for new ships for the Navy, the following:

Add after the word "act," in line 14, page 81: "*Provided*, That before the construction of these vessels shall be begun a test shall be made with the service 12-inch projectile fired against a 12-inch Kruppized armor plate at a range of 5,000 yards to ascertain whether such projectile fired with service pressure will penetrate such armor plate."

Mr. Sydney E. Mudd, of Maryland, made a point of order against the amendment.

After debate, the Chairman⁴ held:

The Chair is of opinion that in its present form the amendment would constitute legislation upon an appropriation bill and is in violation of the rule. The Chair, therefore, sustains the point of order.

Later Mr. Webb offered the following:

Add after "dollars," in line 17, page 83:

"*Provided*, That before said money shall be expended, in order to determine the least thickness of armor plate necessary to defeat penetration of armor-piercing shell at a minimum fighting range of 5,000 yards, a test shall be made at the earliest practicable date by the Ordnance Department of the Navy with the service 12-inch gun, employing service powder charges and projectiles, against a target composed of a 10-inch Kruppized armor plate, rigidly backed and located at an actual distance from the gun of 5,000 yards, and the results of such test reported to Congress."

Mr. John Dalzell, of Pennsylvania, having made a point of order, the Chairman held:

The Chair sustains the point of order. The paragraph itself, to which the amendment is offered, is a plain, straight appropriation of money. It does not change existing law. The amendment is new legislation, changing existing law, and violates the rule upon that subject. This is not the case of a germane amendment to a paragraph, itself out of order.

Mr. Webb then offered this form:

Provided, That no part of said money shall be expended until a test shall be made to ascertain whether said plate can be penetrated by a 12-inch service gun at a distance of 5,000 yards from the gun.

¹ See section 3936 and footnote.

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

³ Second session Fifty-ninth Congress, Record, pp. 3062, 3068.

⁴ Marlin E. Olmsted, of Pennsylvania, Chairman.

On Mr. Dalzell's point of order, the Chairman held:

The paragraph appropriates some money, and the amendment implies that the Secretary of the Navy must do certain things before he gets the money. The Chair sustains the point of order.

Then Mr. Webb offered this form:

Provided, That no part of said sum shall be expended for any armor plate that has not been subjected to a test showing said plate can not be penetrated by a 12-inch service gun at a distance of 5,000 yards from such gun.

Mr. Dalzell again made a point of order.

After inquiry by the Chair as to whether or not the armor to be purchased had been contracted for, the Chairman ruled:

In the absence of specific information that the armor appropriated for in this paragraph is under contract, and that this amendment would change existing law or a contract made under existing law, the Chair thinks the amendment is in the nature of a limitation upon the appropriation, and overrules the point or order.

3976. The language of limitation prescribing the conditions under which the appropriation may be used may not be such as, when fairly construed, would change existing law.—On March 22, 1904,¹ the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. E. J. Livernash, of California, proposed this amendment:

Amend by striking out of lines 8 and 9, page 23, the words "twenty million two hundred and fifty thousand dollars" and substitute the following:

"Twenty-three million two hundred and fifty thousand dollars: *Provided*, That no part of this appropriation shall be used for said purpose unless in the use thereof the carriers hereinafter mentioned shall be paid salaries as follows during the year beginning July 1, 1904, viz: In all cities which contain a population of 75,000 or more, carriers who have served more than three years, \$1,200 per annum; in all cities containing a population of less than 75,000, carriers who have served more than two years, \$1,000 per annum."

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

After debate, during which it was shown that the law provided fixed rates of compensation less than the rates proposed in the amendment, the Chairman² ruled:

The amendment offered by the gentleman from California is to strike out the phrase "twenty-two million two hundred and fifty thousand dollars," contained in the amendment offered by the gentleman from Pennsylvania, and substitute therefore the words "twenty-three million two hundred and fifty thousand dollars: *Provided*, That no part of the appropriation shall be used for said purpose unless in the use thereof the carriers hereinafter mentioned shall be paid salaries as follows, during the year beginning July 1, 1904, viz: In all cities which contain a population of 75,000 or more, carriers who have served more than three years, \$1,200 per annum," etc.

The Chair reads only enough of the amendment to illustrate its character. The business of the House is conducted under rules adopted by the House; and it is within the power of the House to withhold an appropriation altogether or to make it and connect with it limitations, even to the extent of rendering the appropriation absolutely nugatory. The House has that power, and the Chair has no right to say the House can not exercise it. If the proposed amendment shall prevail, it will render the appropriation nugatory; the Postmaster-General will not be able to expend a dollar of it.

¹ Second session Fifty-eighth Congress, Record, pp. 3528, 3529.

² Edgar D. Crumpacker, of Indiana, Chairman.

The amendment is a limitation upon the disbursement of the appropriation, and it can not operate to increase the salaries of letter carriers. If it had that effect it would be a change of existing law, and therefore subject to a point of order on that ground. It prevents the expenditure of the appropriation unless the salaries of letter carriers shall be raised. The Postmaster-General has no power to increase the salaries, and he can not disburse the appropriation unless that be done. Therefore, in the absence of further action by Congress along that line, under the proposed amendment the appropriation could not be expended at all.

The House has the undoubted right to impose limitations upon appropriations, and impose conditions by way of limitation that are impossible of performance and defeat the appropriation itself. The power to withhold appropriations altogether carries with it the power to make appropriations with all kinds of limitations. It is not for the Chair to criticize the action of the House, but simply to decide whether, under the rules, it has the right to adopt the proposed amendment. The Chair is of the opinion it has that right, and therefore overrules the point of order.

On March 24,¹ a similar question of order being before the Committee of the Whole, Mr. Crumpacker said in debate on the floor:

That ruling followed what I conceived to be a precedent made by the present occupant of the chair in relation to a rental of a station in the city of New York,² and the ruling was based upon a belief at that time that the amendment did not increase the salaries of the letter carriers in any respect. The law fixes the salaries of carriers, and the amendment was in the form of a limitation. And it occurred to me that in the form in which it was presented it did not increase the salaries of carriers or change existing law, and therefore it was held in order as a limitation.

But upon reflection and subsequent investigation of the provisions of that amendment I have no doubt that the Post-Office Department or any court would hold that it was clearly the intention of Congress to provide an increase of the pay of letter carriers in accordance with the provisions of the proposed amendment. I think any court would hold that to be the clear purpose and intention of Congress in adopting the amendment. And if that be true, of course it, was new legislation, of course it changed existing law, and the amendment was clearly subject to a point of order. I therefore believe that the decision I made on the day before yesterday while occupying the chair, in ruling upon this particular proposition, was erroneous.

3977. On February 20, 1905,³ the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. William Hughes, of New Jersey, offered the following amendment to the paragraph relating to the construction of battle ships:

Amend by striking out the period in line 11, page 67, substituting a colon, and adding immediately thereafter the following:

“Provided, That the authorization to have said battle ships constructed by contract is limited by this condition: No such contract is authorized by this act in which said contract the contractor shall not have covenanted with the United States as follows:

“That no laborer or mechanic doing any part of the work contemplated by the contract, in the employ of the contractor or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work, except upon permission granted by the Secretary of the Navy during time of war or a time when war is imminent or when any great national emergency exists; and that the contractor contracting with the United States shall, in the event of violation of said covenant as to hours of labor, forfeit to the United States the sum of \$5 for each laborer or mechanic for every calendar day for which he shall have been required or permitted to labor more than eight hours upon the work under such contract.”

¹ Record, p. 3638.

² See footnote of section 3979.

³ Third session Fifty-eighth Congress, Record, p. 2932.

Mr. Alston G. Dayton, of West Virginia, having made a point of order, the Chairman¹ held:

The Chair thinks that the amendment offered by the gentleman from New Jersey [Mr. Hughes] is not a limitation on an appropriation, but is attempted legislation. The Chair therefore sustains the point of order.

Later, on the same day,² Mr. Hughes offered the following:

Amend by striking out the period in line 2, page 69, substituting a colon, and adding immediately thereafter the following:

“Provided, That none of said sum be and none is appropriated on account of the hulls, outfits, or machinery of vessels heretofore authorized, for use, payment, or application under any contract hereafter made in which said contract the contractor shall not have covenanted with the United States as follows:

“THAT NO LABORER OR MECHANIC DOING ANY PART OF THE WORK OF THE WORK CONTEMPLATED BY THE CONTRACT, IN THE EMPLOY OF THE CONTRACTOR OR ANY SUBCONTRACTOR CONTRACTING FOR ANY PART OF SAID WORK CONTEMPLATED, SHALL BE REQUIRED OR PERMITTED TO WORK MORE THAN EIGHT HOURS IN ANY ONE CALENDAR DAY UPON SAID WORK, EXCEPT UPON PERMISSION GRANTED BY THE SECRETARY OF THE NAVY DURING TIME OF WAR OR A TIME WHEN WAR IS IMMINENT OR WHEN ANY GREAT NATIONAL EMERGENCY EXISTS; AND THAT THE CONTRACTOR CONTRACTING WITH THE UNITED STATES SHALL, IN THE EVENT OF VIOLATION OF SAID COVENANT AS TO HOURS OF LABOR, FORFEIT TO THE UNITED STATES THE SUM OF \$5 FOR EACH LABORER OR MECHANIC FOR EVERY CALENDAR DAY FOR WHICH HE SHALL HAVE BEEN REQUIRED OR PERMITTED TO LABOR MORE THAN EIGHT HOURS UPON THE WORK UNDER SUCH CONTRACT.”

Mr. George E. Foss, of Illinois, having made the point of order, and Mr. Hughes having referred to a ruling at the last session, the Chairman said:

The Chair is perfectly familiar with the ruling to which the gentleman is going to call his attention.³ * * * The Chair is clearly of opinion that this legislation is subject to the point of order.

¹John Dalzell, of Pennsylvania, Chairman.

²Record, p. 2950.

³The ruling to which reference was made was as follows: On February 26, 1904 (second session Fifty-eighth Congress, Record, pp. 2434, 2438), the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union when the Clerk read this paragraph:

“Construction and machinery: On account of the hulls, outfits, and machinery of vessels, and steam machinery of vessels heretofore authorized, \$19,826,860.”

To this Mr. Edward J. Livernash, of California, proposed an amendment:

“Amend by striking out the period after the word ‘dollars’ in line 2, page 73, substituting a colon, and adding immediately thereafter the following:

‘Provided, That none of said sum be and none is appropriated on account of any of the hulls, outfits, or machinery heretofore authorized for use, payment, or application under any contract for any vessel in which said contract the contractor shall not have covenanted with the United States as follows:

“That no laborer or mechanic doing any part of the work contemplated by the contract, in the employ of the contractor or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work, except upon permission granted by the Secretary of the Navy during time of war or a time when war is imminent or when any great national emergency exists; and that the contractor contracting with the United States shall, in the event of violation of said covenant as to hours of labor, forfeit to the United States the sum of \$5 for each laborer or mechanic for every calendar day for which he shall have been required or permitted to labor more than eight hours upon the work under such contract.”

Mr. George E. Foss, of Illinois, made the point of order that the amendment would be in violation of existing law, since contracts were already made and penalties provided for violation of contracts.

The Chairman (Marlin E. Olmsted, of Pennsylvania) held: The Chair understands that this paragraph as it stands is intended to appropriate for the construction of vessels or parts of vessels heretofore authorized, and learns from the statement of the gentleman from Illinois [Mr. Foss] that contracts have been made for such vessels. Nevertheless, it is within the power of Congress to appro-

3978. On April 12, 1906,¹ the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the paragraph appropriating for pay of certain clerks was read.

Mr. William S. Bennet, of New York, proposed an amendment, as follows:

After the word "dollars" add: "*Provided*, That such appropriation shall be available only when it shall have been provided that the leave of absence of clerks who have been thirty or more years in the service and have reached the age of 60 years, may, in the discretion of the Postmaster-General, be extended for such length of time as he may, in each instance, deem advisable, the service to be performed by a substitute, who shall be paid not more than \$600 per annum, and all sums paid substitutes shall be deducted from the salaries, respectively, of the clerks given such leave."

Mr. Jesse Overstreet, of Indiana, made a point of order against the amendment. Mr. Bennet urged that the amendment was simply a limitation, and said:

I want to call the attention of the Chairman to the ruling of the Chairman of the Committee of the Whole in the Fifty-eighth Congress, on the 22d of March, Mr. Crumpacker in the Chair. But I ought to say in all fairness to the Chair that a day or two after the matter again came up, and Mr. Crumpacker, not then in the Chair, stated that his former ruling was erroneous. The Chairman [Mr. Boutell] considered the question a very close one, and only decided it because the gentleman from California, Mr. Livernash, conceded that it was a change of existing law. That concession I do not make.

The Chairman² held:

The Chair is perfectly clear on the subject. Rulings upon the subject of limitation have not been consistent by any manner of means; they have gone through something of an evolution. The later

appropriate or to withhold this appropriation. Having authority to refuse to make any appropriation at all it may impose limitations, even though they amount practically to a withholding of an appropriation. It does not change existing law for the House to refrain entirely from appropriating, and, of course, does not violate existing law if it makes an appropriation subject to such limitations as amount substantially to a failure to appropriate at all. The Chair is of opinion that this amendment proposes a limitation upon the appropriation and is in order. The point of order is overruled.

After the amendment had been disagreed to by the committee, Mr. Livernash proposed the following:

"Amend by adding the following paragraph after line 2 of page 73:

"None of the contracts for the new vessels authorized by this bill may be awarded to any contractor who shall not have covenanted with the United States as follows:

"That no laborer or mechanic doing any part of the work contemplated by the contract, in the employ of the contractor or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work, except upon permission granted by the Secretary of the Navy during time of war or a time when war is imminent or when any great national emergency exists, and the contractor contracting with the United States shall, in the event of violation of said covenant as to hours of labor, forfeit to the United States the sum of \$5 for each laborer or mechanic for every calendar day for which he shall have been required or permitted to labor more than eight hours upon the work under such contract."

Mr. David J. Foster, of Vermont, made the point of order that the amendment proposed new legislation.

The Chairman held: The Chair has just ruled that an amendment denying an appropriation, except upon certain conditions, as expressed in a previous amendment offered by the gentleman from California, was in order. It being within the power of the House entirely to deny the appropriation if it saw fit to do so, it had the right to deny it except upon certain terms, even though they might amount practically to a withholding of the appropriation.

But this pending amendment is not a limitation upon the appropriation. It is clearly new legislation, and therefore in violation of Rule XXI. The Chair sustains the point of order.

¹ First session Fifty-ninth Congress, Record, pp. 5152, 5153, 5159-5162

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

decisions have tended toward the point indicated, that where the proposed limitation might be construed by the executive or administrative officer as a modification of statute, a change of existing law, it could not be held to be a limitation. The Chair's belief is that the rulings along that line are correct, and so the Chair is constrained to sustain the point of order.

Later, on the same day, Mr. William Sulzer, of New York, offered this amendment:

Amend by striking out in lines 1 and 2, page 14, "\$22,228,000" and substitute the following: "\$24,500,000, or so much thereof as may be necessary: *Provided*, That no part of this appropriation shall be used for said purpose unless in the use thereof the carriers hereinafter mentioned shall be paid salaries as follows, to wit: That after June 30, 1906, the pay of letter carriers in cities of more than 75,000 population for the first year of service shall be \$600; for the second year of service shall be \$800; for the third year of service shall be \$1,000; for the fourth year of service and thereafter shall be \$1,200. And after June 30, 1906, the pay of letter carriers in cities of population under 75,000 for the first year of service shall be \$600; for the second year of service \$800; for the third year of service and thereafter, \$1,000, and that all acts or parts of acts inconsistent herewith are hereby repealed."

Mr. Overstreet having made the point of order, after debate the Chairman held:

A moment ago, in deciding a point of order made by the gentleman from New York [Mr. Bennet], the Chair very briefly attempted to distinguish between the present condition and the condition that existed heretofore in reference to limitation. The same conditions are present now by the amendment offered by the gentleman from New York [Mr. Sulzer], and the Chair for the same reason sustains the point of order.

Mr. Sulzer having appealed from the decision of the Chair, after debate the Chairman said:

The Chair desires simply to call the attention of the House to the fact that the gentleman from New York bases his argument on a decision rendered by the gentleman from Indiana [Mr. Crumpacker] when he was in the chair. The same gentleman, in debate upon the floor two days after rendering the decision, in an explanation in reference to that decision, ended it in these words—I am simply reading his conclusion:

"I therefore believe the decision I made on day before yesterday, while occupying the chair, in ruling upon this particular proposition, was erroneous."

The question is, Shall the decision of the Chair stand as the judgment of the committee?

The question was taken on the appeal; and there were ayes 128, noes 14.

So the decision of the Chair stood as the judgment of the House.

Thereupon Mr. Bennet offered the following amendment:

On page 14 strike out lines 1 and 2 and substitute: "\$23,228,000: *Provided*, That none of such sum so appropriated shall be expended in cities having a population of over 250,000, except to carriers as to whom it has been provided by statute that they shall be paid as follows: Carriers who have served more than three years, whose salaries shall be \$1,200 per annum; carriers who have served more than two years, whose salaries shall be \$1,000 per annum; carriers who have served more than one year, whose salaries shall be \$800 per annum, and carriers who have served less than one year, whose salaries shall be \$600 per annum, and such substitutes as are now provided by law."

Mr. Overstreet having made a point of order, after debate the Chairman held:

The Chair begs to read a little more fully what was said by the gentleman from Indiana [Mr. Crumpacker] in explaining, two days after his decision, why he thought he was in error; and in that connection the Chair desires to say that that statement is found on page 3638 of the Record of the proceedings of the House in the second session of the Fifty-eighth Congress, and the Record discloses the fact that the gentleman from New York [Mr. Sulzer] was on the floor at the time. The distinguished gentleman from Indiana said:

"But upon reflection and subsequent investigation of the provisions of that amendment I have no doubt that the Post Office Department or any court would hold that it was clearly the intention of

Congress to provide an increase of the pay of letter carriers in accordance with the provisions of the proposed amendment. I think any court would hold that to be the clear purpose and intention of Congress in adopting the amendment. And if that be true, of course it was new legislation, of course it changed existing law, and the amendment was clearly subject to a point of order. I therefore believe that the decision I made on the day before yesterday while occupying the chair, in ruling upon this particular proposition, was erroneous."

The Chair sustains the point of order.

3979. 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 the Clerk read:

For rent, light, and fuel for first, second, and third class post-offices, \$2,550,000: *Provided*, That there shall not be allowed for the use of any third-class post-office for rent a sum in excess of \$400, nor more than \$80 for fuel and light in any one year: *And provided further*, That the Postmaster-General may, in the disbursement of this appropriation, apply a part thereof to the purpose of leasing premises for the use of post-offices of the first, second, and third classes, at a reasonable annual rental, to be paid quarterly, for a term not exceeding ten years; and the Postmaster-General is hereby authorized to lease for post-office purposes for a period not exceeding fifty years a building to be erected over the tracks of the New York Central Railroad in the city of New York, State of New York, within the space bounded by Lexington avenue, Madison avenue, Forty-second street, and Forty-sixth street, at an annual rental not exceeding \$90,000.

Mr. John S. Williams, of Mississippi, made the point of order against the portion of the paragraph relating to the post office building in New York City; and later Mr. John H. Stephens, of Texas, renewed the point.

After debate the Chairman² held:

The gentleman from Texas [Mr. Stephens] has raised the point of order against the paragraph in the bill which the Clerk will read, beginning in line 20 on page 11:

"And the Postmaster-General is hereby authorized to lease for post-office purposes for a period not exceeding fifty years a building to be erected over the tracks of the New York Central Railroad, in the city of New York, State of New York, within the space bounded by Lexington avenue, Madison avenue, Forty-second street, and Forty-sixth street, at an annual rental not exceeding \$90,000."

The attention of the Chair has not been directed by any members of the committee favoring this item to any provision in the statutes which confers upon Congress the right to select sites for post-offices, and the Chair has been unable to find any such provision in the statutes. If this item can be sustained at all it must be under the provision of section 3829 of the Revised Statutes, a part of which relating to this subject the Chair will read:

"The Postmaster-General shall establish post-offices at all such places on post-roads established by law as he may deem expedient, and he shall promptly certify such establishment to the Sixth Auditor."

It is very clear from a mere cursory reading of this paragraph that entire and complete discretion has been lodged by Congress in the Postmaster-General to establish post-offices within his discretion. Without considering the other features of this item, it will be sufficient for the purposes of this ruling to call the attention of the House to the fact that this item specifies the exact site which the Postmaster General is directed to lease. This direction to the Postmaster General is of course an amendment or a change in the law which says he shall select the post-offices at such places as he shall deem expedient. It is very clear, therefore, that this one provision in this item makes the paragraph new legislation, or a change in existing law, and the Chair feels impelled to sustain the point of order.³

¹Second session Fifty-eighth Congress, Record, pp. 3441-3445.

²Henry S. Boutell, of Illinois, Chairman.

³After this decision, Mr. Jesse Overstreet, of Indiana, offered the following:

Add in lieu of that stricken out the following:

"For lease of post-office at New York City, \$90,000: *Provided*, That no part of this appropriation shall be used for said purpose unless the Postmaster-General shall lease for post-office purposes for a period

3980. On March 24, 1904,¹ the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read the paragraph providing for the compensation of carriers in the rural free-delivery service.

Mr. John Lind, of Minnesota, offered this amendment:

After the word "substations," in line 25, page 25, insert:

"And provided further, That no money hereby appropriated shall be expended in the payment of salaries to rural free delivery carriers at a less sum for such services than \$720 per annum."

Mr. Jesse Overstreet, of Indiana, made a point of order against the amendment. After debate the Chairman² held:

The general appropriation bill of April 21, 1902, which makes the present statute law regarding rural free-delivery service, prescribes that the salary of the rural carriers shall be \$600 per annum. This law prescribes the statutory salary of rural carriers until the law has been changed. With this law in existence, the gentleman from Minnesota offers the following amendment, which the Chair will read:

"And provided further, That none of the money hereby appropriated shall be expended in the payment of salaries to rural free-delivery carriers at a less sum for such service than \$720 per annum as a maximum Salary."

It is very clear that under clause 2 of Rule XXI, which has been read to the committee to-day, this amendment is not in order if it would change the existing law when incorporated into this act. Would this amendment change the existing law? If the amendment would not change existing law, and would therefore be in order, it would simply work a nonappropriation for the pay of rural carriers. Would this be considered the intention of Congress if this amendment should appear in the act? As the Chair has before said, the best evidence as to the meaning of an act is the intention of the legislature which passed it, and the Chair is justified in taking into consideration the opinion of the mover of the amendment as to its effect. It is the opinion of the Chair, based upon the statements of the gentleman from Minnesota and his admissions as to his object in offering the amendment, that it is the intent of this amendment to change the existing law. The Chair therefore sustains the point of order.

not exceeding fifty years a building to be erected over the tracks of the New York Central Railroad, in the city of New York, State of New York, within the space bounded by Lexington avenue, Madison avenue, Forty-second street, and Forty-sixth street, at an annual rental not exceeding \$90,000."

Mr. Stephens made the same point of order.

The Chairman held: "The amendment offered by the gentleman from Indiana appropriates \$90,000, with the proviso that no part of this sum shall be available except upon certain conditions. This is one of those limitations with which members of the committee are all familiar. It does not take away from the Postmaster-General the discretion vested in him, for the reason that it does not direct him to use any of the money appropriated. This doctrine of limitation, as sustained in parliamentary rules, proceeds upon this theory, as the Chair understands it: That Congress may use arbitrary power in appropriating money, or in not appropriating money, for purposes specified by law. Congress may refuse to appropriate money for any purpose for which the law provides, either a salary or a definite annual payment. If Congress can refuse to appropriate money for any purpose, it is quite clear that Congress may appropriate money for a specific purpose, to be expended only upon certain conditions. In this case the amendment leaves it to the Postmaster-General to decline to use the money on the ground that the amendment makes the appropriation authorized by law with a limitation as to the mode of its expenditure. The Chair therefore overrules the point of order."

On further consideration, however, as is shown by other rulings given in this connection, it has been concluded that such a proviso would be in effect legislation, although clothed in the form of limitation.

¹Second session Fifty-eighth Congress, Record, pp. 3650, 3651.

²Henry S. Boutell, of Illinois, Chairman.

3981. On March 24, 1904,¹ the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Free-delivery service: For pay of letter carriers in offices already established, and for substitute letter carriers, and for temporary carriers at summer resorts, holiday, election, and emergency service, \$20,250,000.

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

Amend by striking out of lines 8 and 9, page 23, the words "twenty million two hundred and fifty thousand dollars" and substituting the following:

"Twenty-three million two hundred and fifty thousand dollars: *Provided*, That no part of this appropriation shall be used for said purpose unless in the use thereof the carriers hereinafter mentioned shall be paid salaries as follows during the year beginning July 1, 1904, viz: In all cities which contain a population of 75,000 or more, carriers who have served more than three years, \$1,200 per annum; in all cities containing a population of less than 75,000, carriers who have served more than two years, \$1,000 per annum."

Mr. Jesse Overstreet, of Indiana, made the point of order that the amendment would change existing law, as the salaries were fixed by law.

After debate the Chairman² said:

Against the amendment offered by the gentleman from California [Mr. Livernash] the gentleman from Indiana [Mr. Overstreet] makes the point of order that it is contrary to existing law or that it changes the existing statute law. Now in passing upon a very difficult question of this sort, on which there may very well be a division of opinion, it becomes the duty of the Chair, so far as possible, to place himself in the position of a judge who would be called upon to express an opinion upon a statute containing a provision such as the amendment offered by the gentleman from California. The Chair will call attention to the rule of the House governing amendments of this character, as found in clause 2 of Rule XXI:

"No appropriation shall be reported in any general appropriation bill, or be in order as in amendment thereto for any expenditure not previously authorized by law unless in continuation of appropriations for such public works and objects as are already in progress, nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto."

The language of the latter part of this rule is very clear and explicit—that on a general appropriation bill no amendment shall be in order that changes existing law. There have been numerous attempts to escape from this rule by placing limitations upon appropriations, and there is a long line of decisions to the effect that certain limitations upon appropriations are in order. But the question must always remain whether the amendment changes existing law or, if placed in the bill, simply renders nugatory the appropriation, or, in the third place, makes a limitation permitted under the present law.

Now, there might be grave doubt in the minds of able parliamentarians and learned judges as to what the effect of this provision would be; but the Chair takes it that in getting at the intention of the legislature the judge would have no better evidence and no surer ground upon which to form his decision than the opinion of the mover of the amendment; and the Chair, in endeavoring to act in a judicial and impartial manner, is not only entitled but bound to take into consideration the opinion of the mover of an amendment or the general consensus of opinion of the committee with reference thereto.

The gentleman from California [Mr. Livernash] has expressed it as his opinion that it is the intention of this amendment to change the salaries now fixed by statute law. Of course if this is the intention, and the court would hold that that intention governed in the interpretation of the statute, then this amendment necessarily would change the existing statute and be very clearly obnoxious to the last clause of this rule. Under the facts as disclosed in the debate as to the intention of this amendment to change the existing law, the present occupant of the chair is compelled to sustain the point of order.

¹Second session Fifty-eighth Congress., Record, pp. 3638, 3639.

²Henry S. Boutell, of Illinois, Chairman.

Thereupon Mr. Livernash offered the following as an amendment:

Amend by striking out of lines 8 and 9, page 23, the words "twenty million two hundred and fifty thousand dollars" and substituting the following:

"Twenty-three million two hundred and fifty thousand dollars: *Provided*, That in the use of this appropriation the carriers hereinafter mentioned shall be paid, in lieu of salaries now fixed by law, salaries as follows during the year beginning July 1, 1904, viz: In all cities which contain a population of 75,000 or more, carriers who have served more than three years, \$1,200 per annum; in all cities containing a population of less than 75,000, carriers who have served more than two years, \$1,000 per annum: *And provided further*, That said salaries shall be paid such carriers after said year."

Mr. Overstreet, having made the point of order, the Chairman held:

The Chair understands that the salaries of letter carriers are now provided by law. The amendments offered by the gentleman from California were in the form of limitations; the present amendment alters the existing law by vesting in the Postmaster-General the discretion to pay increased salaries. No question as to a limitation arises. It is a positive enactment, changing the existing law prescribing the salaries and vesting in the Postmaster-General the discretion to increase them. The Chair therefore sustains the point of order.

3982. On January 23, 1906,¹ the urgent deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

BUREAU OF EQUIPMENT.

Coal and transportation: Purchase of coal and other fuel for steamers and ships' use, and other equipment purposes, including expenses of transportation, storage, and handling the same, and for the general maintenance of naval coaling depots and coaling plants for the fiscal year as follows:

"For the fiscal year 1906, \$500,000."

Mr. John J. Fitzgerald, of New York, offered the following amendment:

Provided, That the amount hereby appropriated shall be expended without regard to the provisions of an act approved April 28, 1904, entitled "An act to require the employment of vessels of the United States for public purposes."

Mr. Lucius N. Littauer, of New York, made the point of order that the amendment would change existing law.

The Chairman² sustained the point of order.

Thereupon Mr. Robert B. Macon, of Arkansas, offered an amendment as follows:

Provided, That no part of said sum herein appropriated shall be used for the payment of transportation charges upon American vessels where said transportation charges are more than 20 per cent in excess of similar transportation charges upon foreign vessels.

Mr. Lucius N. Littauer, of New York, made the same point of order.

Mr. Macon argued that the amendment would be simply a limitation.

The Chairman held:

The Chair believes that the proviso offered by the gentleman from Arkansas may be a change of the statute of April 28, 1904, which is as follows:

"[Public—No. 198.]

"An act to require the employment of vessels of the United States for public purposes.

Be it enacted, etc., That vessels of the United States or belonging to the United States, and no others, shall be employed in the transportation by sea of coal, provisions, fodder, or supplies of any

¹First session Fifty-ninth Congress, Record, pp. 1448-1450.

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

description, purchased pursuant to law, for the use of the Army or Navy unless the President shall find that the rates of freight charges by said vessels are excessive and unreasonable, in which case contracts shall be made under the law as it now exists: *Provided*, That no greater charges be made by such vessels for transportation of articles for the use of the said Army and Navy than are made by such vessels for transportation of like goods for private parties or companies.

“SEC. 2. That this act shall take effect sixty days after its passage.

“Approved April 28, 1904.”

Of course the Chair does not desire to become involved in a discussion of the question of fact as to whether American vessels charge more than 20 per cent in excess of the amount charged for like service by foreign vessels, but believing that the amendment offered by the gentleman may work a change in existing law, the Chair will sustain the point of order.¹

¹There had been made two years previously a ruling which involves a like principle, wherein a different view was taken. On March 5, 1904 (second session Fifty-eighth Congress, Record, pp. 2876, 2877), the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

“SEC. 7. That no part of the moneys herein appropriated for fulfilling treaty stipulations shall be available or expended unless expended without regard to the attendance of any beneficiary at any school other than a Government school.”

Mr. John H. Stephens, of Texas, made the point of order that this was in violation of the existing law which provided: “It is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian schools.”

After debate the Chairman (Henry S. Boutell, of Illinois) held:

“The point of order made against this paragraph by the gentleman from Texas has been made upon two grounds. First, that the matter referred to in this paragraph is not germane to the bill. The gentleman from Texas did not press that point in his argument in favor of the point of order. * * * The Chair, however, deems it best to refer to that point made by the gentleman from Texas. It seems to the Chair that the matter referred to is clearly germane to the provisions of this bill, which is a bill dealing with the education of the Indians, with the whole subject of appropriations for the education and maintenance of the Indians.

The second point made by the gentleman from Texas is that the section is new legislation. It seems to the Chair that this section contains simply a limitation upon the appropriation referred to. A recent occupant of this chair, on the 25th of February last, reviewed all the decisions of the House relating to the distinction between limitations and new legislation. The Chair calls the attention of the committee to the summing up by Mr. Olmsted, of Pennsylvania, in his decision. Mr. Olmsted said:

“The Chair will call attention to the distinction between a limitation upon an appropriation and a positive enactment which limits the powers of Government officers under existing laws. A mere limitation of the appropriation is in order. There is no obligation on the House to appropriate at all, and therefore it may provide that the money appropriated by it shall not be used in any except such manner as may be specified in the bill. A limitation is best expressed in the negative, as that the appropriation shall not be available unless used in a certain way. That leaves an option. The money can be used or not used, but if used it must be in the manner specified. No law is changed, because there is no obligation to expend the money at all.”

It appears therefore that the latest ruling by a chairman of the committee on this question, in summing up all the previous decisions on this point, makes it perfectly clear that an appropriation is subject to such limitation as that expressed in this paragraph. The Chair is of opinion that if this provision stood by itself and did not simply limit the expenditure of an appropriation made by this bill, it would be clearly new legislation and subject to the point of order. But Congress has the right to appropriate money for the purposes authorized by law in any sums it chooses. It has the right to refuse to appropriate any money. It has the right, in accordance with the line of these later decisions, to appropriate money for a specific purpose to be expended on certain conditions, and it is left with the officer having in charge such expenditure to determine himself whether or not the expenditure shall be made. In accordance with the line of decisions relating to limitations, which seem to be uniform, the Chair feels constrained to overrule the point of order.

A little later Mr. John J. Fitzgerald, of New York, proposed to the same paragraph the following amendment:

Provided That no part of the amount hereby appropriated shall be expended for transporting coal between New York, N. Y., and Manila, P. I., at a rate greater than \$5 a ton.

Mr. Lucius N. Littauer, of New York, made a point of order against this amendment.

The Chairman said:

Can the gentleman from New York [Mr. Littauer] point me to any statute relating to this transportation other than the one to which he has referred? The Chair rather inclines to the opinion that this is a limitation.

No law being cited, the Chairman overruled the point of order.

3983. On March 31, 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:

For salaries of United States district attorneys and expenses of United States district attorneys and their regular assistants, \$440,000: *Provided*, That this appropriation shall be available for the payment of the salaries of regularly appointed clerks to United States district attorneys for services rendered during vacancy in the offices of the United States district attorney.

To this Mr. G. M. Hitchcock, of Nebraska, proposed this amendment:

Provided, That no money appropriated in this paragraph as salaries for United States district attorneys shall be paid to any of said attorneys who shall fail, after six months from the passage of this bill, to institute proceedings in equity to restrain and criminal proceedings to punish persons or corporations in his district whom one or more reputable citizens shall charge, in writing, to be violating the laws of the United States against trusts, trade conspiracies, or combinations in restraint of interstate commerce, or to monopolize the same, unless said United States district attorney shall on investigation find, and so report to the Department of Justice in writing, that there is no reasonable ground to believe that the complaint can be established by proof.

Mr. James A. Hemenway, of Indiana, made the point of order that the amendment proposed legislation.

After debate the Chairman² held:

The limitation ceases to be such when by its terms, whether expressed in affirmative or negative language, it necessarily changes existing law. When there is expressed in the amendment a prohibition, as here, and details as to the manner of the performance of the duties of the office, it clearly points out the intention of the provision to impose new duties upon the Government officials. It is evident that the provision would be purposeless unless the effect was to change existing law. Now, if it is the duty of the United States district attorney to act in the line directed by this amendment, the amendment is unnecessary. If it seeks to impose upon them other and further duties, it is contrary to existing law, and that is true whether it is expressed in affirmative or negative language. The Chair therefore sustains the point of order.

Thereupon Mr. Hitchcock proposed an amendment in form as follows:

Provided, however, That no money appropriated in this paragraph shall thereafter be paid to any United States, district attorney who shall for six months after the passage of this bill fail to proceed by suit in equity or criminal prosecution against any persons or corporations in his district engaged in the violation of any of the provisions of the laws of the United States against trusts, trade conspiracies, or combinations in restraint of interstate commerce.

¹Second session Fifty-eighth Congress, Record, pp. 4058, 4059.

²Theodore E. Burton, of Ohio, Chairman.

Mr. Hemenway having raised a question of order, the Chairman said:

The Chair thinks the amendment is open to the same objection as the preceding one, and therefore sustains the point of order.

3984. Where a proposition might be construed by the executive officer as a modification of a statute, it may not be held as such a limitation of appropriation as is permissible on a general appropriation bill.—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 Mr. Victor Murdock, of Kansas, offered this amendment:

Amend by adding, after the word “dollars,” in line 2, page 21:

“*Provided*, That no part of this sum shall be expended in payment for transportation of the mails by railroad routes where the average weight of mails per day has been computed by the use of a divisor less than the whole number of days such mails have been weighed.”

Mr. Howard M. Snapp, of Illinois, made the point of order that the amendment proposed legislation.

After debate, the Chairman² held:

The existing law has received a construction by the officers charged with the duty of administering it, and that construction the Chair feels bound to follow. The proposed amendment changes existing law as construed by the proper officer, by changing the divisor. This is in the guise of a limitation; but it has been held over and over again here that a limitation is negative in its nature and may not include positive enactment establishing rules for executive officers. It has been held further that while limitation may provide that a part of an appropriation shall not be used except in a certain way, yet the restriction of executive discretion may not go to the extent of an imposition of new duties. And the limitation on the discretion exercised under the law by a bureau of the Government is a change of existing law. The decisions on the question of limitation, the attempt to draw a well-defined distinction between changes of existing law and a proper limitation, are among the most difficult questions that the Chair is ever called upon to decide.

In a decision rendered last year by the gentleman from New York [Mr. Sherman] on a matter very similar to this, he said:

“Where a proposed limitation might be construed by the executive or administering officer as a modification of a statute and change of existing law, it could not be held a limitation.”

The Chair’s belief is that the rulings along that line are correct, and the Chair sustains the point of order.

Mr. Murdock having appealed, the decision of the Chair was sustained, ayes 72, noes 14.

3985. The House may by limitation on a general appropriation bill forbid the use of any of the money for a specific service, but it may not grant the whole appropriation for the general service on condition that an executive officer shall take a certain course as to the specific service.—On December 12, 1906,² the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the following amendment was proposed as a new paragraph by Mr. Henry H. Bingham, of Penn-

¹ Second session Fifty-ninth Congress, Record, pp. 3469–3471.

² Frank D. Currier, of New Hampshire, Chairman.

³ Second session Fifty-ninth Congress, Record, p. 318.

sylvania, to the portion of the bill making provision for the Government Printing Office:

No money appropriated in this act shall be used in connection with the printing of documents authorized by law or ordered by Congress, or either branch thereof, unless the same shall conform to the orthography recognized and used by generally accepted dictionaries of the English language.

Mr. Edgar D. Crumpacker, of Indiana, made the point of order against the amendment that it changed existing law.

The Chairman¹ held:

The Chair has just ruled that the paragraph which was assailed by the point of order heretofore made by the gentleman from Indiana [Mr. Crumpacker] changed existing law. Here there is a proposition, not to change existing law, but to attach certain provisions to an appropriation of dollars made in this bill—in other words, a limitation as to the use of the money herein appropriated. Very many precedents can be found sustaining this kind of legislation, and the Chair holds that this is a limitation upon the appropriation in the bill.

Thereupon Mr. Marlin E. Olmsted, of Pennsylvania, offered an amendment in the nature of a substitute, providing:

No part of the compensation provided by this act shall be paid to the Public Printer unless he shall, in printing documents authorized by law or ordered by Congress or either branch thereof, conform in the spelling thereof to the rules of orthography recognized and used by accepted dictionaries of the English language.

Mr. John J. Fitzgerald, of New York, having made a point of order, the Chairman held:

An amendment proposing to make the payment of salaries of certain officials dependent upon contingencies was held to be a change of law and not a limitation. The Chair sustains the point of order.

3986. On January 21, 1907,² the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Henry S. Boutell, of Illinois, offered this amendment:

Strike out, in line 6, page 54, after the word “playgrounds,” the word “one” and insert “seventy-six;” and at the end of line 6 add: “provided none of this sum shall be available unless \$75,000 are spent in purchasing new sites for playgrounds.”

Mr. Joseph T. Johnson, of South Carolina, made the point of order that the amendment involved legislation.

The Chairman³ held:

Under the rule a limitation is in order. Under the rules, however, an amendment in the form of a limitation which is not a limitation of expenditure, but is an affirmative change of law, is not in order. The Chair thinks this is not a limitation upon expenditures of money, but a change of the law. The Chair therefore sustains the point of order.

3987. It is in order by a limitation on an appropriation bill to withhold the appropriation from a designated object, although contracts may be left unsatisfied thereby.—On June 3, 1892,⁴ the House was in Committee of

¹ William P. Hepburn, of Iowa, Chairman.

² Second session Fifty-ninth Congress, Record, pp. 1470, 1471.

³ James R. Mann, of Illinois, Chairman.

⁴ First session Fifty-second Congress, Record, pp. 5003, 5004.

the Whole House on the state of the Union, considering the post-office appropriation bill, when Mr. William S. Holman, of Indiana, offered the following amendment:

Provided further, That no part of the money hereby appropriated shall be expended in the carrying out of any contract or contracts made hereafter under the provisions of the act entitled "An act to provide for ocean mail service between the United States and foreign ports, and to promote commerce," approved March 3, 1891.

Mr. Nelson Dingley, of Maine, having made a point of order against this amendment, the Chairman¹ ruled:

The Chair does not understand that the amendment offered by the gentleman from Indiana changes existing law, but simply that it attaches a limitation upon the expenditure of the money appropriated under this particular act. * * * The Chair rules that the amendment is in order.

3988. A provision withholding an appropriation from those portions of a service not covered in existing contracts was admitted as a limitation.—On March 18, 1898,² the House was in Committee of the Whole House on the state of the Union, considering the post-office appropriation bill. The paragraph making appropriations for the pneumatic-tube service for carrying mails being under consideration, Mr. William P. Hepburn, of Iowa, proposed this amendment:

Provided, That no part of this appropriation shall be used in extending such pneumatic service beyond the service for which contracts are already entered into.

Mr. Sydney E. Mudd, of Maryland, made a point of order against the amendment.

The Chairman³ ruled:

The Chair will overrule that point of order. This is a limitation simply of what the appropriation is for.

3989. While Congress may decline to appropriate for a salary fixed and conditioned by law, yet it is not in order on an appropriation bill to make the payment conditional on certain contingencies which would change the lawful mode of payment.—On April 25, 1890,⁴ the House was in Committee of the Whole House on the state of the Union, considering the legislative, executive, and judicial appropriation bill.

The paragraph relating to salaries in the office of the Director of the Mint having been read, Mr. W. C. P. Breckinridge, of Kentucky, offered the following amendment:

Provided, That no part of said sum of \$28,960 shall be available until all laws limiting the free and unrestricted coinage of silver or making any distinction between the coinage of gold and silver are repealed.

Mr. Benjamin Butterworth, of Ohio, having made the point of order, after debate, the Chairman⁵ ruled:

The Chair is prepared to rule upon the point of order. The paragraph to which the amendment is moved provides for the payment of the salaries of officers connected with the Mint. These officers are provided for by statute, and under the statutes of the United States each officer connected with the Mint service of the United States is entitled to the salary provided for him by law, and at stated periods, provided the appropriations are made.

¹ John A. Buchanan, of Virginia, Chairman.

² Second session Fifty-fifth Congress, Record, p. 2974.

³ John A. T. Hull, of Iowa, Chairman.

⁴ First session Fifty-first Congress, Record, pp. 3830–3832.

⁵ Lewis E. Payson, of Illinois, Chairman.

Of course it is within the power of Congress to refuse to make an appropriation; but in the judgment of the Chair, as a matter of statute law, the Director of the Mint or any other officer named in the paragraph, if an appropriation is made for the payment of his salary, is entitled to receive it at the period fixed by law. The amendment proposed by the gentleman from Kentucky, which would postpone the payment of these salaries until the happening of a contingency which may never occur, is, in the judgment of the Chair, such a change of existing law as brings the amendment within the inhibition of the rule. The point of order is sustained.

3990. On February 18, 1896,¹ the Committee of the Whole House on the state of the Union was considering the agricultural appropriation bill, and the paragraph relating to the division of seeds had been reached, when Mr. Robert G. Cousins, of Iowa, offered an amendment, of which the following proviso was a portion:

That no part of the \$8,000 for compensation of the Secretary of Agriculture provided for in this bill shall be available or payable, except \$25, until the said Secretary shall have expended for seeds the amount appropriated in said act approved March 2, 1895, and shall have purchased and distributed the seeds provided for in said act.

Mr. James W. Wadsworth, of New York, having made a point of order, the Chairman,² after having the rule read, held:

The Chair is therefore constrained to hold, under this rule, that the amendment is not in order. There is a decision in the Fifty-first Congress covering precisely the same point. This amendment would, if adopted, change a salary, payable monthly, and make it contingent on the beneficiary doing something or refraining from doing something, and therefore the Chair holds that the amendment is not in order.

3991. On August 26, 1890,³ the House was in Committee of the Whole House on the state of the Union, considering the legislative, executive, and judicial appropriation bill, when Mr. Daniel Kerr, of Iowa, offered at the proper place this amendment, which he contended was a mere limitation on the appropriation:

Provided, That no part of the money hereby appropriated shall be paid to any employee who, in the opinion of the chief of the division in which he is employed, is incompetent and inefficient for the work in which he is engaged, for more than one month after his inefficiency or incompetency is ascertained.

Mr. Benjamin Butterworth, of Ohio, made a point of order against the amendment.

The Chairman⁴ sustained the point of order.

3992. On June 16, 1890,⁵ the House was in Committee of the Whole House on the state of the Union, considering the sundry civil appropriation bill, the paragraphs relating to the Government Printing Office having been reached.

Mr. William D. Bynum, of Indiana, offered this amendment:

Provided, That no money appropriated by this or the preceding paragraph, or by this act, shall be paid to any person employed in the public Printing Office for or during any time such employee is on leave of absence with pay, under existing law, in excess of the pay allowed during such leave of absence; nor shall any such person receive pay for leave of absence during the time such person may be at work and receive pay therefor: *And provided further,* That no money appropriated under said paragraphs or under this act shall be paid to any person for work or labor performed in excess of eight hours a day, as prescribed by existing law.

¹ First session Fifty-fourth Congress, Record, p. 1895.

² John A. T. Hull, of Iowa, Chairman.

³ First session, Fifty-first Congress, Record, p. 3902.

⁴ Lewis E. Payson, of Illinois, Chairman.

⁵ First session Fifty-first Congress, Record, pp. 6155–6158, 6185.

Mr. Joseph G. Cannon, of Illinois, having made a point of order against the amendment, it was sustained by the Chairman.¹

Upon an appeal taken by Mr. William M. Springer the decision of the Chair was sustained.

3993. To a provision appropriating for the support of army hospitals an amendment excepting a certain hospital was held to be a limitation. (Chairman overruled.)—On December 16, 1896,² the army appropriation bill was under consideration in Committee of the Whole House on the state of the Union. To a paragraph providing for the support of the medical and hospital department Mr. John A. T. Hull, of Iowa, offered this amendment:

Provided, That no part of this sum shall be expended in the further maintenance of the Army and Navy Hospital at Hot Springs, Ark.

Mr. John S. Little, of Arkansas, raised a point of order against the amendment.

After debate, the Chairman³ ruled:

The Chair is very sorry to entertain different views from those entertained by the gentleman in charge of this bill, but as the Chair views this question, this being an appropriation for hospitals, a proposition to divert the money from that object is a change of existing law. The Chair therefore sustains the point of order.

Mr. Hull having appealed, the decision of the Chair was sustained by a vote of 69 ayes to 53 nays.

Mr. R. W. Parker, of New Jersey, immediately proposed the following words as an amendment: "except at the hospital at Hot Springs, Ark.," so that the appropriation should go to all the hospitals, except to that one.

Mr. Little having renewed his point of order, the Chairman sustained it.

Mr. John F. Lacey, of Iowa, appealed from the decision, and, after debate, there were on the question of sustaining the Chair 57 ayes and 84 nays.

So the decision of the Chair was overruled and the amendment was declared to be in order.

3994. A proviso that mail matter should be carried in cars run in a certain way was held to be legislation and not a proper limitation on the appropriation.—On March 19, 1898,⁴ the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this amendment was proposed by Mr. Curtis H. Castle, of California, to the appropriate section:

Provided, That all mail matter transported by electric and cable cars shall be carried in specially designated cars, said cars to be run at regular hours and unconnected with passenger cars, and to be used for no other purpose than the transportation of the mails.

A point of order was made against the amendment by Messrs. Jacob H. Bromwell, of Ohio, and Nelson Dingley, of Maine.

After debate the Chairman⁵ ruled:

The proposition as it first struck the Chair was that it was simply a limitation. * * * The same question that is involved in this amendment of the gentleman from California was decided by

¹Julius C. Burrows, of Michigan, Chairman.

²Second session Fifty-fourth Congress, Record, pp. 221–225.

³Albert J. Hopkins, of Illinois, Chairman.

⁴Second session Fifty-fifth Congress, Record, pp. 3000, 3001.

⁵John A. T. Hull, of Iowa, Chairman.

Mr. Carlisle in a case which came before the Committee of the Whole House on the state of the Union affecting the Pension Department, where Mr. Carlisle ruled that a change in existing law, in the meaning of the rule, was brought about wherever the law specifically overruled the construction of the officer charged with the duty of construing the law, and he ruled the amendment of order for that reason.¹ In this case the amendment goes further than overruling any construction by enacting absolute law which entirely changes the method of carrying the mails on street railways or electric cars.

It entirely changes the law in this, that it is not a limitation on the appropriation, but an absolute provision of law that the cars must be run at regular intervals, unconnected with passenger cars, and be used for no other purpose than the transportation of the mails. That is a positive new provision of law that never has been enacted by the Congress of the United States, and, in the judgment of the Chair, is clearly obnoxious to the rule which prohibits new legislation on an appropriation bill. The Chair sustains the point of order.²

3995. The Postmaster-General having general authority to transport the mails, a designation of a specific method of transportation was held to be a limitation of the appropriation.—On March 18, 1898,³ the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union.

This paragraph having been read—

For transportation of mail by pneumatic tube or other similar devices, by purchase or otherwise, \$225,000—

Mr. John A. Moon, of Tennessee, made a point of order that there was no law authorizing such an appropriation.

After debate, the Chairman⁴ ruled:

The Chair understands that the Postmaster-General is given authority generally to transport the mail. If the Chair recollects correctly, a similar point of order was made against a clause in the bill authorizing an appropriation for bicycles. * * *

The Chair is right about the general statute authorizing the Postmaster-General to transport the mail, and the Chair thinks that this limits this appropriation to a particular way of transporting the mail and that the clause is in order, and the Chair therefore overrules the point of order.

¹ See section 3938 of this chapter.

² A ruling in opposition to this theory is to be noted. On February 12, 1897 (second session Fifty-fourth Congress, Record, p. 1773), the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and this section had been reached:

“For incidental expenses, including letter boxes, package boxes, posts, satchels, repairs, marine free-delivery service at Detroit, etc., \$60,000; in all, \$13,274,000: *Provided*, That said marine free-delivery service at Detroit, shall be performed by the use of rowboats and not by the employment of a steam launch or boat.”

Mr. Theodore E. Burton, of Ohio, made a point of order that the proviso was legislation, as the work was now performed by steam launches.

The Chairman (John A. T. Hull, of Iowa), after debate, held:

“The rule provides that no provision shall be placed on an appropriation bill which changes existing law or enacts any new legislation; but there has never been any difference of opinion in the rulings of the Chair on appropriation bills heretofore as to the right of a Committee of the Whole House on the state of the Union to place limitation on an appropriation. Under the present law there is no question but this mail service can be performed by rowboats or a steam launch. If the limitation was simply affecting the number of steam launches that could be employed, the Chair thinks there could be no question of its being in order. The only question connected with it is that it shall be performed by rowboats. This provision may be held to be more than a mere limitation. But as it is a very close question of fact whether that is new legislation or not, the Chair feels like allowing the Committee of the Whole to decide it on its merits, and therefore overrules the point of order.”

³ Second session Fifty-fifth-Congress, Record, p. 2964.

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

3996. In appropriating for per diem employees whose compensation is fixed by law with no exception as to Sundays, the withholding of appropriation for Sunday pay is a limitation rather than a change of law.—On March 19, 1898,¹ the post-office appropriation bill being under consideration in Committee of the Whole House on the state of the Union, the Clerk read this paragraph of the bill:

For mail deprecations and post-office inspectors, including salaries of inspectors, etc., and for per diem allowance to inspectors in the field while actually traveling on business of the Department, exclusive of Sundays excepting in cases of emergency, \$430,000.

Mr. Charles H. Grosvenor, of Ohio, made a point of order against the words “exclusive of Sundays excepting in cases of emergency,” on the ground that they involved a change of the existing law, which provided: “The post-office inspectors shall be allowed \$4 a day in lieu of charges now permitted for personal expenses.”

The Chairman² ruled:

In the opinion of the Chair, this is a limitation upon the appropriation. While it does not change the compensation already fixed, it is directory as to the manner in which that compensation shall be paid.

3997. A proviso that no part of an appropriation for a certain amount should be expended until estimates of the entire cost had been made was held to be a limitation.—On February 16, 1905,³ the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

Navy-yard, League Island, Pa.: To continue retaining wall about reserve basin, \$100,000; grading and paving, to continue, \$20,000; sewer system, extensions, \$10,000; railroad system, extension, \$12,000; dredging and filling in Delaware water front, to continue, \$30,000; water system, extension, \$5,000; fire protection system, extensions, \$5,000; extension of reserve basin, to continue dredging, \$75,000; locomotive crane track, extension, \$25,000; underground conduit system, extension, \$15,000; telephone system, improvements, \$2,500; extension of building 24, \$3,000; locomotive crane for yards and docks, \$7,500; berth for receiving ship, \$20,000; water-closets, additional, \$5,000; pump and boiler for caisson, dry dock No. 1, \$2,000; piers, extensions, \$40,000; in all, navy-yard, League Island, \$377,000.

Mr. John J. Fitzgerald, of New York, offered the following amendment:

Insert in page 29, line 16:

Provided, That no part of the money herein appropriated for dredging, improving, and building retaining walls in and about the reserve basin shall be expended until there has been prepared ready for submission to Congress at its next session an estimate of the completed cost of such reserve basin.”

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

The Chairman⁴ held:

This seems to come within the definition of a limitation upon expenditure. The point of order is therefore overruled.

¹ Second session Fifty-fifth Congress, Record, p. 3013.

² John A. T. Hull, of Iowa, Chairman.

³ Third session Fifty-eighth Congress, Record, p. 2761.

⁴ John Dalzell, of Pennsylvania, Chairman.

3998. A proviso that money for a bridge shall not be available until a corporation using it shall fulfill certain conditions was admitted as a limitation.

The question of admitting an amendment should be decided from the provisions of its text rather than from purposes which circumstances may suggest.

On March 3, 1904,¹ the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. James T. McCleary, of Minnesota, proposed the following amendment as a new section:

For the repair 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 contracts for the repair 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 any part of this sum shall be used, the Anacostia and Potomac River Railroad Company 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, nor shall said appropriation be available until said railroad company shall agree to assume one-half the cost of maintenance and repair of said new bridge to be collected in the same manner as the cost of laying pavements between the rails and tracks of street railways as provided for in section 5 of "An act providing a permanent form of government for the District of Columbia," approved June 11, 1878: *Provided further,* That this appropriation shall not be available until the Anacostia and Potomac River Railroad Company shall agree 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, and in case of failure to reach such an agreement that the supreme court of the District of Columbia shall, upon petition filed by either party, fix and determine the same.

Mr. C. R. Davis, of Minnesota, made the point of order that the paragraph involved legislation, and declared that the intention was to authorize an entirely new bridge. Furthermore other paragraphs of the section involved legislation.

The Chairman² ruled:

The Chair will cite a ruling made in the first session of the Fifty-seventh Congress to the effect that "the admissibility of an amendment should be judged from the provisions of its face, rather than from the purposes which circumstances may suggest." This amendment states that the appropriation made thereby is for the repairing of a bridge. The Chair will, therefore, rule that it is an appropriation for a work now in progress; that it is an expenditure previously authorized by law. The amendment provides that the appropriation shall be withheld unless certain conditions are complied with. All the provisos are distinct limitations upon this appropriation. The Chair will overrule the point of order. The question is on the amendment offered by the gentleman from Minnesota.

3999. A proposition that no part of the appropriation should be paid until the passing of a title was held to be a limitation.—On February 14, 1901,³ 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

¹ Second session Fifty-eighth Congress, Record, p. 2759.

² George P. Lawrence, of Massachusetts, Chairman.

³ Second session Fifty-sixth Congress, Record, p. 2434.

making appropriation for the payment of rent of quarters in the old custom-house in New York City, when Mr. James D. Richardson, of Tennessee, offered this amendment:

Provided, That no part of this appropriation shall be available or be paid to said bank until the title to the bank shall be completed and the title to the old custom-house property pawed under the laws of New York to the said bank.

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

After debate, the Chairman¹ held:

The Chair is of the opinion that the amendment offered by the gentleman from Tennessee [Mr. Richardson] is not new legislation and does not repeal existing law. It is true that the act referred to vests a discretion in the Secretary of the Treasury in reference to the terms of the contract which he shall make, but the Chair does not understand that it affects in any way the obligation of Congress in reference to making appropriations, and in accordance with the established decisions of this House the Chair is obliged to rule that this is a limitation, and therefore the Chair overrules the point of order.

4000. On March 26, 1898,² the House was in Committee of the Whole House on the state of the Union, considering the naval appropriation bill, when the Clerk read the paragraph making appropriations for the naval station at Port Royal, S. C., with which was this proviso:

Provided, That none of the above amounts appropriated for the naval station at Port Royal shall be available or used until the United States shall have acquired all right and title to the land claimed by Agnes A. Niver adjacent to the land where the dry dock now is, and involved in litigation in the United States Court of Claims, except that \$1,000 of the \$15,000 appropriated for the quay wall may be used to preserve the same.

Mr. William Elliott, of South Carolina, made the point of order that the proviso involved a change of existing law.

After debate, the Chairman³ ruled:

It seems to the Chair clearly that this is a limitation. Following the line of decisions that have been made in that respect and so regarding this proviso, the Chair overrules the point of order.

4001. A paragraph providing that an appropriation should be expended in the United States, an amendment providing for purchase in the world's markets on the best terms was held in order.—On January 23, 1906,⁴ the urgent deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the following paragraph was read:

THE ISTHMIAN CANAL.

To continue the construction of the Isthmian Canal, to be expended under the direction of the President in accordance with an act entitled "An act to provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans," approved June 28, 1902, as follows:

For miscellaneous material purchases in the United States, \$1,000,000.

¹ Henry S. Boutell, of Illinois, Chairman.

² Second session Fifty-fifth Congress, Record, pp. 3256, 3257.

³ James S. Sherman, of New York, Chairman.

⁴ First session Fifty-ninth Congress, Record, p. 1439.

Mr. David A. De Armond offered an amendment to the proposition as to the place of purchase, as follows:

Amend by adding the following: "Said purchases shall not be confined to the United States, but the things purchased shall be bought upon the best terms that the world's markets afford."

Mr. James A. Tawney, of Minnesota, made the point of order that the amendment involved legislation.

The Chair¹ having asked if there was any existing law on the subject, and no law being cited, he ruled:

Unless the amendment of the gentleman from Missouri changes existing law, the Chair will rule the amendment to be in order.

4002. To a provision for payment of the expenses of certain judges a proviso that no part of the money should be expended except on an itemized statement was held in order.—On January 26, 1906,² the urgent deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the following 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 actually incurred 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 of reasonable expenses actually incurred for travel and attendance of justices or judges who shall attend the circuit court of appeals held at any other place than where they reside, not to exceed \$10 per day, the same to be paid upon written certificates of said judge, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; 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, \$85,000.

Mr. Robert B. Macon, of Arkansas, proposed this amendment:

After the word "States," insert: "*Provided*, That no part of said sum herein appropriated shall be used for the payment of the expenses of said district judges unless said certificates contain an itemized statement of said expenses."

Mr. Lucius N. Littauer, of New York, raised the question of order that the amendment involved legislation.

After debate, the Chairman¹ held:

The statute provides simply that "upon the written certificates of the judges" this money shall be paid. The amendment presented by the gentleman from Arkansas, in the form of a limitation, states what these certificates shall contain during the period that this appropriation shall be in effect. That is the view the Chair takes of it, and with that view the Chair must hold that it is a limitation upon this specific appropriation, and therefore overrule the point of order.

4003. A provision that no part of any appropriation for an article should be paid to any trust was held in order as a limitation.—On March 1, 1906,¹ the Army appropriation bill was under consideration in Committee of the

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

² First session Fifty-Ninth Congress, Record, p. 1611.

³ First session Fifty Ninth Congress, Record, p. 3235.

Whole House on the state of the Union, when the Clerk read a paragraph making appropriation for the purchase of powder.

Mr. Oscar W. Gillespie, of Texas, offered an amendment:

After the word "dollars," in line 22, page 43, insert: "*Provided*, That no part of the said \$629,000 shall be paid to any trust or combination in restraint of trade nor to any corporation having a monopoly of the manufacture and supply of gunpowder in the United States, except in the event of an emergency."

Mr. H. Olin Young, of Michigan, made a point of order against the amendment.

The Chairman¹ held that it was a limitation on the appropriation contained in the paragraph, and in order.

4004. A provision that an appropriation for the pay of volunteer soldiers should not be available longer than a certain period after the ratification of a treaty of peace was held to be a limitation merely.—On December 8, 1898,² the House was in Committee of the Whole House on the state of the Union considering the urgent deficiency appropriation bill.

The paragraph relating to the pay of volunteer soldiers in the Army having been reached, Mr. John M. Allen, of Mississippi, proposed this amendment:

Provided, That the money appropriated by this bill for the pay of volunteers under act approved April 22, 1898, and subsequent acts authorizing the raising of volunteers shall not be available for the payment of the volunteer forces now in the service longer than three months after the ratification of a treaty of peace.

Mr. Joseph G. Cannon, of Illinois, made the point of order that this would be legislation on an appropriation bill.

The Chairman,³ after debate, ruled:

In the opinion of the Chair, the amendment offered by the gentleman from Mississippi is a limitation, and, therefore, following the precedents on that point, the Chair overrules the point of order.

4005. An amendment that no part of the appropriation for the Army should be available for an army of over a certain size was held to be a limitation.—On January 11, 1905,⁴ the Army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the first paragraph was read, as follows:

Be it enacted, etc., That the following sums be, and they are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, for the support of the Army for the year ending June 30, 1906.

To this paragraph Mr. John S. Little, of Arkansas, offered an amendment:

Add, after the word "six," in line 6, page 1, the following proviso:

Provided, however, That no part of the moneys appropriated in this act shall be expended for the support and maintenance of more than 30,000 men, including officers and enlisted men."

Mr. John A. T. Hull, of Iowa, made the point of order that the amendment would change the existing law, in that it would reduce the size of the Army.

¹ Henry S. Boutell, of Illinois, Chairman.

² Third session Fifty-fifth Congress, Record, pp. 84, 85.

³ John Dalzell, of Pennsylvania, Chairman.

⁴ Third session Fifty-eighth Congress, Record, pp. 715, 716.

After debate, the Chairman¹ held:

The Chair would state to the gentleman from Iowa that this amendment appears to be drawn in conformity with a number of precedents in the form of limitations. Careful examination discloses the fact that this amendment does not in terms cut down the number of officers or enlisted men in the Army, but simply limits the appropriation in this bill to a certain number of officers and men. It is quite clear to the Chair that the officers and enlisted men who are not provided for in this bill would have a clear claim against the United States Government for their services; but it also seems to the Chair that this amendment is in the form of such a limitation as has been held not to be subject to a point of order, and that the amendment therefore should be left to the vote of the committee. * * * As the Chair has said, it seems, from careful examination of the amendment, to be in strict conformity with several amendments on which points of order have been overruled, as it merely places a limitation upon the use of the money appropriated in this act, and the Chair therefore overrules the point of order.

4006. An amendment providing that no portion of an appropriation for manufacture of stamped envelopes should be expended in printing return cards on them was ruled out of order.—On January 19, 1899,² the Post Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and this paragraph of the bill had been reached:

For manufacture of stamped envelopes and newspaper wrappers, \$694,000.

To this Mr. Champ Clark, of Missouri, offered the following amendment:

Add at end of line, after the word “dollars,” the following:

Provided, That no portion of this sum shall be expended in printing return cards or any other words upon stamped envelopes.

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

The Chairman³ sustained the point of order.

4007. 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 contract were held to be in the nature of legislation and not limitations.—On February 21, 1899,⁴ the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the paragraph appropriating for the construction of new war vessels was read.

Mr. Alexander M. Dockery, of Missouri, made a point of order against these lines in the paragraph:

Except that no proposals for any of these vessels shall be considered unless the bidder is already in possession of an adequate plant.

Mr. Albert J. Hopkins, of Illinois, made a point of order against this portion of the paragraph:

and not more than two armored cruisers and not more than two of said protected cruisers shall be built in any one yard or by one contracting party.

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

²Third session Fifty-fifth Congress, Record, p. 823.

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

⁴Third session Fifty-fifth Congress, Record, pp. 2158–2160.

After debate, the Chairman¹ held:

The Chair will then dispose of that raised by the gentleman from Missouri first.

It will hardly be contended, it seems to the Chair, that the provision in the bill to which exception is made is not a legislative provision in the face of Rule XXI, and therefore, unless a foundation can be raised for it in some previous bill, it must be ruled out on the point of order raised by the gentleman from Missouri.

The contention that the provision of the bill of last year will maintain this provision is not well taken, for that provided only for adding certain torpedo boats and complying with certain provisions of law then in force.

The Chair, therefore, is constrained to sustain the point of order raised by the gentleman from Missouri. * * * The Chair thinks the same reasoning applies to the point of order made by the gentleman from Illinois as to that made by the gentleman from Missouri, and therefore sustains his point of order.

4008. It is in order in appropriating for the construction of a building to provide by limitation that the money shall be used only for a building of certain dimensions.—On March 2, 1904,² the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

For continuing work on the municipal building, \$300,000, which sum shall not be available except for constructing said building on plans that will provide for a building six stories high on all sides, with suitable accommodations therein for the offices of the register of wills, recorder of deeds, and the police court, in addition to the offices and departments now designed to be accommodated therein, and with a subbasement story of sufficient height of ceiling to afford suitable accommodations for heating and lighting plant and for a repair shop for the District of Columbia.

Mr. Samuel W. Smith, of Michigan, made the point of order that the provision as to the plans of the building constituted legislation.

After debate, the Chairman³ held:

The pending paragraph appropriates \$300,000 for continuing work on the municipal building. It specifies that that sum shall not be available except for constructing said building on plans that will provide for a building six stories high on all sides, with suitable accommodations therein for the offices of the register of wills, register of deeds, and the police court, in addition to the offices and departments now designed to be accommodated therein, and with a subbasement story of sufficient height of ceiling to afford suitable accommodations for heating and lighting plant and for a repair shop for the District of Columbia. To that provision the gentleman from Michigan [Mr. Samuel W. Smith] raises the point of order that it is new legislation; that it is in violation of Rule XXI, which is very familiar to the members of the committee, and especially to that clause of the rule which says:

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

While the committee has no power to adopt a provision which changes existing law, it has been many times held that it has a right to limit an appropriation. It can withhold it altogether or it can make it subject to certain conditions. This paragraph provides that the appropriation of \$300,000 shall not be available except under certain conditions which are named. It seems to the Chair that it is a distinct limitation on this appropriation. The Chair therefore overrules the point of order.

4009. A provision that no greater price should be paid for armor plate than was paid in this country by other Governments for the same article was held to be a limitation.—On February 23, 1899,⁴ the naval appro-

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

²Second session Fifty-eighth Congress, Record, pp. 2685, 2686.

³George P. Lawrence, of Massachusetts, Chairman.

⁴Third session Fifty-fifth Congress, Record, p. 2252.

priation bill was under consideration in Committee of the Whole House on the state of the Union, an amendment relating to the price to be paid for armor plate being before the House.

As an amendment to the amendment Mr. Joseph H. Walker, of Massachusetts, offered the following:

and in no case in excess of the price paid to any manufacturer in this country for such armor by any other government.

Mr. Charles A. Boutelle, of Maine, made a point of order against the amendment.

The Chairman ¹ held:

The Chair overrules the point of order. The Chair thinks the amendment is a limitation to the amendment.

4010. On April 1, 1898,² the naval appropriation bill being under consideration in Committee of the Whole House on the state of the Union, the paragraph making appropriation for certain vessels was reached. To this paragraph there was the following proviso:

Provided, That the total cost of the armor, according to the plans and specifications already prepared, for the three battle ships authorized by the act of June 10, 1896, shall not exceed \$3,210,000, including all cost of nickel in the same and exclusive of the cost of transportation, ballistic test plates, and tests, and no contract for armor plate shall be made at an average rate to exceed \$400 per ton of 2,240 pounds, including nickel as aforesaid.

Mr. Thomas H. Ball, of Texas, made a point of order that the provision relating to the price of armor plate was a change of law.

After debate, the Chairman ¹ ruled:

The provision in the naval appropriation bill of March last is identical in terms with the provision in the naval appropriation bill to which the gentleman now raises the point of order. It seems to the Chair perfectly clear that the provision in the last naval bill was a limitation which touched merely the appropriation therein provided for, and the provision here is a limitation upon the appropriation herein provided for. Therefore the Chair overrules the point of order.

4011. On February 21, 1899,³ the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union. The paragraph appropriating for the purchase of armor and armament having been reached, Mr. Charles A. Boutelle, of Maine, offered this amendment:

Provided, That no part of said sum shall be expended except in procuring armor of the best obtainable quality at an average cost not exceeding \$545 a ton of 2,240 pounds, including royalties.

Mr. Albert J. Hopkins, of Illinois, made a point of order that this would involve a change of law, since section 2 of the naval appropriation act approved May 4, 1898, provided:

No contract for armor plate shall be made at an average rate to exceed \$400 per ton.

After debate, and on February 22, the Chairman ¹ ruled:

Undoubtedly, if the provision in the first portion of this section were applied to continuation of the work, the point of the gentleman from Illinois would be well taken. It would then be a statute, and the provision of this bill would "change existing law." The Chair finds that in the consideration

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

² Second session Fifty-fifth Congress, Record, p. 3482.

³ Third session Fifty-fifth Congress, Record, p. 2165, 2190.

of the naval bill last year the point of order was raised against the amendment which the gentleman from Illinois contended to be a fixed statute, and the Chair then overruled the point of order (the present incumbent of the chair), basing his ruling upon the fact that that provision was a limitation which applied to the appropriation contained in that bill only. That being so, the Chair must rule that this amendment is a limitation applying to the appropriation provided in this bill only, and therefore must overrule the point of order. The Chair does so rule; and the question is on the amendment offered by the gentleman from Maine.

4012. A provision for the construction of an armor-plate factory was held not in order as part of a limitation on an appropriation for armor plate.—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 Air. John F. Rixey, of Virginia, offered this amendment:

On page 71, at the end of line 4, insert:

“Provided, That the Secretary of the Navy shall not pay more than \$398 per ton for armor plate of the best quality for the ships herein authorized; and in case he is unable to make contracts for armor plate under the above conditions, he is authorized and directed to erect, on land owned by the Government, a factory for the manufacture of armor plate, and the sum of \$4,000,000 is hereby appropriated for that purpose.”

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

After debate the Chairman² said:

Rule XXI 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, unless in continuation of appropriations for such public works and objects as are already in progress; nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto.”

Now, in regard to the decision to which the gentleman from Virginia referred, on page 345 of the Manual, the Chair has made investigation, and finds that the provision passed upon—it is found on page 296 of Parliamentary Precedents—was a proviso that—

“The total cost of the armor, according to the plans and specifications already prepared for three battleships authorized by the act of June 10, 1896, shall not exceed \$3,210,000, including the cost of nickel in the same, and exclusive of the cost of transportation, ballistic test plates, and tests, and no contract for armor plates shall be made at an average rate to exceed \$400 per ton of 2,240 pounds, including the nickel as aforesaid.”

That amendment was ruled by the Chair to be a limitation merely upon the appropriation, and therefore to be in order; but the amendment offered by the gentleman from Virginia, after limiting the price to be paid for armor to \$398 per ton, proceeds further and declares “that in case the Secretary of the Navy shall not be able to make contracts at that rate he is authorized and directed to erect on land owned by the Government a factory for the manufacture of armor, and the sum of \$4,000,000 is hereby appropriated for that purpose.” That seems to the Chair to be not a limitation upon the appropriation contained in the paragraph that has been read, but an authorization, to the Secretary of the Navy to do something which he was not previously authorized to do, and therefore it is an enactment of law and a change of existing law. It may furthermore be questioned whether, as the amendment attempts to limit the price to be paid for armor upon other vessels not mentioned in the paragraph to which it is offered, but provided for in paragraphs which have already been agreed to and passed, it is in order upon this paragraph, which relates merely to two colliers, and therefore whether it is germane to this particular paragraph, to which it is offered as a proviso. Finding that part of the amendment is out of order, the Chair is forced to sustain the point and rule out the entire amendment.

¹ Second session Fifty-eighth Congress, Record, pp. 2382, 2383.

² Marlin E. Olmsted, of Pennsylvania, Chairman.

4013. On February 20, 1905,¹¹ the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. William W. Kitchin, of North Carolina, offered this amendment:

Page 68, line 15, after the word "vessels," insert:

"That the Secretary of the Navy is hereby authorized to procure, by contract, armor of the best quality for the vessels herein authorized at prices not exceeding \$398 per ton, and in case he is unable to provide such armor under such conditions he is hereby authorized and directed to erect an armor-plate factory for the manufacture of such armor, and the sum of \$4,000,000 is hereby appropriated toward such purpose."

Mr. George E. Foss, of Illinois, having made a point of order, the Chairman² held:

The amendment offered by the gentleman from North Carolina provides for the erection of an armor-plate factory, and the Chair has no question in his mind at all that it is clearly legislation and not in order.

4014. A proposed amendment limiting the kinds of seeds to be purchased under the law was held to be a change of law and not a limitation.—On April 10, 1900,³ the agricultural 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 purchase of seeds for distribution.

Mr. John B. Corliss, of Michigan, proposed an amendment limiting the purchase of seeds to "only such as are rare and uncommon seeds."

It was argued that this was a limitation merely upon the appropriation.

The Chairman⁴ held:

The Chair is of the opinion that the point of order made by the gentleman from Arkansas [Mr. McRae] is well taken, for the reason that existing law provides that a certain kind or class of seeds shall be purchased and distributed, while the amendment would entirely change the character of the seeds now permitted by law; therefore the point of order is sustained.

4015. A provision that an emergency fund for maintenance of the Navy should be expended at the discretion of the President was held to be a limitation.—On April 18, 1900,⁵ the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. William W. Kitchin, of North Carolina, made a point of order against this paragraph of the bill:

EMERGENCY FUND, NAVY DEPARTMENT.

To meet unforeseen contingencies for the maintenance of the Navy constantly arising, to be expended at the discretion of the President, \$500,000.

After debate the Chairman⁶ held:

This bill is a bill making appropriation for the naval service for the next fiscal year. Of course, every appropriation in the bill is for the maintenance of the naval establishment. This appropriation is for "the maintenance of the Navy;" broadly speaking, that is what the object of the appropriation is. It is so stated in the appropriating words; "to meet unforeseen contingencies for the Navy constantly

¹ Third session Fifty-eighth Congress, Record, pp. 2945, 2946.

² John Dalzell, of Pennsylvania, Chairman.

³ First session Fifty-sixth Congress, Record, pp. 3989, 3990.

⁴ James M. E. O'Grady, of New York, Chairman.

⁵ First session Fifty-sixth Congress, Record, p. 4381.

⁶ Sereno E. Payne, of New York, Chairman.

arising," in the mind of the Chair, is simply a limitation on that appropriation. So that the Chair has no difficulty whatever on the first proposition. The appropriation is for the maintenance of the Navy, and is in order on this bill. The question is whether the language "to be expended at the discretion of the President" changes existing law.

The Chair finds a ruling made in the Fifty-fourth Congress on an appropriation—

"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, etc."

The point of order was made against that amendment, and the Speaker of the House held—that being in the House—the point of order was not well taken, and that that amendment was in order. While the present occupant of the chair would hardly go so far as to hold that that particular amendment was in order, as at present advised, yet the question rises here whether it is any more than a limitation on this appropriation, to be used in the discretion of the President—when the President approves of it, in other words. That is the view the Chair takes of it, and so overrules the point of order.

Mr. Kitchin having appealed, the decision of the Chair was sustained, ayes 94, noes 89, on a vote by tellers.

4016. Formerly amendments establishing limitations were considered legislative in character.—On April 8, 1880,¹ a question of order arose in Committee of the Whole House on the state of the Union as to the following amendment which it was proposed to offer to the army appropriation bill:

That no money appropriated in this act is appropriated, or shall be paid, for the subsistence, equipment, transportation, or compensation of any portion of the Army of the United States to be used as a police force to keep the peace at the polls at any election held within any State.

The point of order was made that this amendment would be legislation, and not in order even under the exceptions specified by the rule as it existed at that time.

Mr. James A. Garfield, of Ohio, pointed out specifically that it was a limitation on an appropriation; but neither he nor anyone else claimed that it was admissible for that reason.

The Chairman² said of the amendment that it "of course changes existing law, but it retrenches, and the spirit and letter of the old and new rule requires the amendment to be received."

4017. A limitation applies only to an appropriation and not to Indian trust funds.—On January 21, 1905,³ the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and a paragraph relating to schools had been read, when Mr. John H. Stephens, of Texas, proposed this amendment:

Amend by adding the following at the end of line 18, page 51:

"In the administration and disbursement of funds held in trust for the Indian tribes, by the United States, that portion of the act approved June 7, 1897 (30 Stat., p. 79), which provides: 'And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for

¹ Second session Forty-sixth Congress, Record, pp. 2231–2240.

² Mr. S. S. Cox, of New York, Chairman.

³ Third session Fifty-eighth Congress, Record, pp. 1196–1201.

education in any sectarian school,' shall apply; and from such trust funds, or interest thereon, held for the benefit of Indian tribes by the United States, no funds shall be appropriated or used for purposes of education in any sectarian or denominational school."

Mr. James S. Sherman, of New York, raised a question of order against the amendment.

After debate, the Chairman¹ said:

The Chair understands that the amendment offered by the gentleman from Texas [Mr. Stephens] relates to trust funds and not to money appropriated in the bill. It is not a limitation, but it does change existing law, and for that reason it is not germane. Therefore the Chair sustains the point of order.

Thereupon Mr. Stephens offered the following:

On page 51, Indian appropriation bill (H. R. 17474), add the following:

"Provided, That no portion of Indian trust funds, nor the interest thereon, shall be expended for contract schools without the consent in writing of the Indians entitled to the same being first obtained."

As to this amendment, also, the Chairman sustained a point of order raised by Mr. Sherman.

4018. On March 8, 1906,² the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read the following paragraph:

That no part of the moneys herein appropriated for fulfilling treaty stipulations shall be available or expended unless expended without regard to the attendance of any beneficiary at any school other than a Government school.

Mr. John H. Stephens, of Texas, proposed an amendment:

Provided, That in the administration and disbursement of funds held in trust for the Indian tribes by the United States that part of the act of June 7, 1897 (30 Stat., p. 79), which provides "and it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school," shall apply to any trust fund or interest thereon held by this Government for the benefit of any Indian tribes by the United States, and no such trust funds nor any moneys appropriated by Congress shall be expended or used for the education or support of Indian children in any sectarian or denominational school.

Mr. James S. Sherman, of New York, having made a point of order against the amendment, Mr. Stephens said:

I desire to say that this is only a limitation on this appropriation and it construes existing law. The law in question is the act of Congress approved June 10, 1896, providing as follows:

"And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian schools."

After debate, the Chairman¹ said:

The amendment offered by the gentleman from Texas, while in the form of a limitation, is not confined to this particular appropriation, and it deals with funds which are not covered by the law to which the gentleman refers. The Chair sustains the point of order.

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

² First session Fifty-ninth Congress, Record, pp. 3539-3541.