

## Chapter CVIII.

### SUBJECTS REQUIRING CONSIDERATION IN COMMITTEE OF THE WHOLE.

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**4792. All propositions involving a tax or charge on the people are considered in Committee of the Whole.**

**All appropriations of public moneys or property, and propositions to release any liability to the United States or to refer any claim to the Court of Claims are considered in Committee of the Whole.**

**Present form and history of section 3 of Rule XXIII.**

Section 3 of Rule XXIII provides:

All motions or propositions involving a tax or charge upon the people; all proceedings touching appropriations of money, or bills making appropriations of money or property, or requiring such appropriation to be made, or authorizing payments out of appropriations already made, or releasing any liability to the United States for money or property, or referring any claim to the Court of Claims, shall be first considered in a Committee of the Whole, and a point of order under this rule shall be good at any time before the consideration of a bill has commenced.

The provisions of the rules requiring, money bills to be considered in Committee of the Whole date from November 13, 1794,<sup>1</sup> when the rules were adopted, as follows:

No motion or proposition for a tax or charge upon the people shall be discussed the day on which it is made or offered, and every such proposition shall receive its first discussion in a Committee of the Whole House.

No sum or quantum of tax or duty voted by a Committee of the Whole House shall be increased in the House until the motion or proposition for such increase shall be first discussed and voted in a Committee of the Whole House, and so in respect to the time of its continuance.

All proceedings touching appropriations of money shall be first moved and discussed in a Committee of the Whole House.

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<sup>1</sup>Third and Fourth Congresses, Journal, p. 230 (Gales & Seaton ed.).

In process of time this rule was found too indefinite. Thus, on May 20, 1840,<sup>1</sup> considerable diversity of opinion arose as to whether or not a bill to sell the public lands to settlers at \$1.25 an acre would come within this rule. Such bills had usually gone to the Committee of the Whole, but the practice was not uniform. And on August 1, 1850,<sup>2</sup> Mr. Speaker Cobb held that a bill directing a sum to be paid to a claimant, but not appropriating the money, did not require consideration in Committee of the Whole.

The rules of 1794 continued, however, until January 13, 1874,<sup>3</sup> when in place of the last rule the Committee on Rules reported and the House adopted this rule, long known as No. 112:

All proceedings touching appropriations of money, and all bills making appropriations of money or property, or requiring such appropriations to be made, or authorizing payments out of appropriations already made, shall be first discussed in a Committee of the Whole House.

In reporting this rule from the Committee on Rules, Mr. James A. Garfield, of Ohio said that it had been suggested by Mr. William S. Holman, of Indiana. It was considered a very important amendment at the time. The Speaker<sup>4</sup> explained that the old rule of 1794 might have covered the case were it not for the construction given it by presiding officers of the past, so that "an appropriation hereafter to be made "or "to be paid out of an appropriation already made "had been phrases frequently used in evading the rule. It was also urged that the Committee of the Whole was falling into disuse, and that it would be better to return to the older practice of the House.

The rule of 1874 did not, however, meet all the requirements of the principle involved, as was shown on January 24, 1879,<sup>5</sup> when it was held that a proposition to relieve sureties on a bond did not require consideration in Committee of the Whole.

The next year the House, in making what is known as the revision of 1880,<sup>6</sup> evidently remembered this practice, and incorporated a clause relating to the releasing of any liability. In that revision also the three old rules were combined into the present rule, which has remained unchanged since except in one respect. In 1896 the words "or referring any claim to the Court of Claims" were added.<sup>7</sup>

**4793. The requirement as to consideration in Committee of the Whole applies to amendments as well as to bills. (Speaker overruled.)**—On April 11, 1828,<sup>8</sup> the House was considering the tariff bill, which had been considered in Committee of the Whole and reported with amendments.

Mr. John C. Wright, of Ohio, offered this amendment:

And after the 1st of January, 1829, no credit for duties shall be allowed at the custom-houses, on any manufactures of wool, or of which wool shall be a component material, imported into the United States.

<sup>1</sup> First session Twenty-sixth Congress, *Globe*, pp. 405, 406.

<sup>2</sup> First session Thirty-first Congress, *Journal*, p. 1216; *Globe*, p. 1491.

<sup>3</sup> First session Forty-third Congress, *Record*, pp. 627, 628, 629; *Journal*, p. 234.

<sup>4</sup> James G. Blaine, of Maine, Speaker.

<sup>5</sup> Third session Forty-fifth Congress, *Journal*, pp. 274, 275. This ruling followed one of Mr. Speaker Banks on March 2, 1857. (Third session Thirty-fourth Congress, *Journal*, p. 605.)

<sup>6</sup> Second session Forty-sixth Congress, *Record*, p. 206.

<sup>7</sup> First session Fifty-fourth Congress, *Record*, pp. 586–592.

<sup>8</sup> First session Twentieth Congress, *Journal*, p. 1040; *Debates*, pp. 2291–2305.

Mr. William D. Martin, of South Carolina, objected to the motion on the ground that it had not heretofore been made in Committee of the Whole.

The Speaker<sup>1</sup> held the motion to be in order; but admitted that the question was close and asked the judgment of the House.

Mr. Churchill C. Cambreleng, of New York, appealed. The appeal was debated at length, the contention being as to whether this proposition inflicted a charge on the people within the meaning of the rule.<sup>2</sup> The House decided finally, yeas 113, ayes 85, to overrule the Speaker. So it was decided that the motion was not in order in the House.

So again on May 8, 1828,<sup>3</sup> the Speaker held that, if the Committee of the Whole were discharged from consideration of a bill, the bill could not be considered in the House, since the Committee of the Whole had not yet considered a section of it containing an appropriation.

**4794.** On February 16, 1829,<sup>4</sup> the House was considering the bill for the preservation and repair of the Cumberland road, which had been reported from the Committee of the Whole on February 12.

Mr. William Ramsey, of Pennsylvania, submitted an amendment heretofore offered by him in Committee of the Whole, to double the tolls on the road.

Mr. John W. Taylor, of New York, raised the question of order that as the amendment, which increased a tax, had not been adopted in Committee of the Whole, the House could not now receive it under the rule.

The Speaker<sup>5</sup> overruled the point of order, declaring it sufficient that the amendment had been offered and voted on in Committee, whether the Committee adopted or rejected it.<sup>6</sup>

**4795. An amendment to a Senate amendment, providing an appropriation for another purpose than that of the Senate amendment, requires consideration in Committee of the Whole.**

**Senate amendments being under consideration in the House, and an amendment thereto requiring consideration in Committee of the Whole being proposed, the House at once goes into Committee of the Whole to consider it.**

<sup>1</sup> Andrew Stevenson, of Virginia, Speaker.

<sup>2</sup> In respect to this decision the rule at the present time is the same as then. (See sec. 4792.)

<sup>3</sup> First session Twentieth Congress, Journal, p. 1042.

<sup>4</sup> Second session Twentieth Congress, Debates, p. 351.

<sup>5</sup> Andrew Stevenson, of Virginia, Speaker.

<sup>6</sup> There is one ruling to the effect that the rule does not apply to concurrent resolutions. On August 5, 1876 (first session Forty-fourth Congress, Journal, pp. 1393, 1394; Record, p. 5234), Mr. Samuel S. Cox, of New York, from the Committee on Banking and Currency, reported a concurrent resolution providing for and constituting a commission to examine the relations of gold and silver money as affecting trade, commerce, finance, labor, the resumption of specie payments, etc. The Commission was to consist of three Members of the House, three Senators, and three experts whom they might select and associate with them. The Commission was to be authorized to employ a stenographer.

Mr. Greenbury L. Fort, of Illinois, made the point of order that the resolution must receive its first consideration in a Committee of the Whole House.

The Speaker pro tempore (Milton Saylor, of Ohio) overruled the point of order, holding that a concurrent resolution was not subject to the objections provided in Rule 112 (now sec. 3 of Rule XXIII). [It is evident that this concurrent resolution could not make an appropriation from the Treasury unless signed by the President. Therefore the ruling is correct, although the reason given is hardly accurate.]

On March 2, 1885,<sup>1</sup> the House was considering certain Senate amendments to the legislative, executive, and judicial appropriation bill, one of which was as follows:

For clerks to Senators who are not chairmen of committees, at \$6 per day, \$39,432.

Mr. J. Warren Keifer, of Ohio, moved to concur in the Senate amendment with an amendment which would make it read as follows:

For clerks to Senators and Representatives who are not chairmen of committees, at the rate of \$100 per month during the session, \$209,300.

Mr. William S. Holman, of Indiana, made the point of order that the amendment offered by Mr. Keifer should receive its consideration in the Committee of the Whole.

The Speaker,<sup>2</sup> in ruling, said:

This amendment proposes not simply to increase—not at all to increase, so far as the Chair sees—the amount which the Senate proposes to appropriate as compensation for its own clerks, but to add the clerks of the House, and thereby make an appropriation of something over \$200,000 for another purpose than that provided for in the Senate amendment. Now, the rule of the House is that every proposition involving a tax or charge upon the people, all proceedings touching appropriations of money, or bills making appropriations of money or property, or requiring such appropriations to be made, or authorizing payments out of appropriations already made, or releasing any liability to the United States for money or property, shall be first considered in a Committee of the Whole, and a point of order under this rule shall be good at any time before the consideration of a bill has commenced. \* \* \* The rule includes all propositions or proceedings touching the appropriation of money. Of course the amount involved does not affect the principle or the construction of the rule, but the Chair may be permitted to allude to that for the purpose of illustrating the importance of the rule. If it is in order to add to a Senate amendment, for a different purpose than that to which the amendment relates, the sum of \$100, without first considering the proposition in Committee of the Whole, it is equally in order to add \$10,000,000, and if the Chair were to hold that such an amendment as that could be considered in the House without having its first consideration in the Committee of the Whole, clearly the spirit of the rule would be violated. The Chair thinks that, this being an original proposition in the House and for a purpose not provided for in the Senate amendment, it must have its first consideration in the Committee of the Whole on the state of the Union.

Mr. Thomas B. Reed, of Maine, then raised the point whether or not it was in order to go into Committee of the Whole for the consideration of the amendment.

The Speaker said that if the point of order had been made against the Senate amendment when it was presented in the House, it would necessarily have had its consideration in the Committee of the Whole House on the state of the Union. But that point of order was not made, and the House had proceeded to the consideration of the Senate amendment. The Chair had great difficulty in determining whether it was his duty to decide the amendment of Mr. Keifer out of order and exclude it from the consideration of the House because it ought first to be considered in committee, or whether it was the duty of the Chair to rule simply that it must have its first consideration in the Committee of the Whole House on the state of the Union and allow it to be offered, with the right to go into the Committee of the Whole House on the state of the Union for the purpose of considering it. It was a question which, so far as the Chair knew, had never been presented to the House. But the Chair was inclined to think that to hold that the amendment could not be entertained might result in preventing the House from making very necessary amendments to Senate

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<sup>1</sup> Second session Forty-eighth Congress, Record, pp. 2421–2423.

<sup>2</sup> John G. Carlisle, of Kentucky, Speaker.

amendments, and that the Chair ought, therefore, to allow an amendment to the Senate amendment to be entertained and have its consideration in the Committee of the Whole House on the state of the Union. The Chair made that ruling because great inconvenience and injustice might result to the House itself from any other construction of the rule.

**4796. Senate amendments to House bills must be considered in Committee of the Whole if they be such as, originating in the House, would be subject to that requirement.**

**Present form and history of Rule XX.**

Rule XX provides:

Any amendment of the Senate to any House bill shall be subject to the point of order that it shall first be considered in the Committee of the Whole House on the state of the Union if, originating in the House, it would be subject to that point.

This rule, in exactly its present form, was created in the revision of 1880.<sup>1</sup> It was intended to secure absolutely for all legislation the application of the principle that all proceedings relating to the appropriation of money should be discussed in Committee of the Whole. Previous to the adoption of the rule it had been held that Senate amendments, although they might propose a new and distinct matter of expenditure, need not be considered in Committee of the Whole. Particularly Mr. Speaker Randall had made such a ruling on February 21, 1878,<sup>2</sup> on the Senate amendments to the bill (H. R. 1093) to authorize the free coinage of the standard silver dollar and restore its legal-tender character.

**4797. A Senate amendment which is a modification merely of a House proposition, like the increase or decrease of the amount of an appropriation, or a mere legislative proposition, and does not involve new and distinct expenditure, is not required to be considered in Committee of the Whole.**—On March 1, 1881,<sup>3</sup> the House was considering the Senate amendments to the bill (H. R. 4592) to facilitate the refunding of the national debt, and this amendment had been taken up:

And the expense of preparing, issuing, advertising, and disposing of the bonds and Treasury notes authorized to be issued shall not exceed one-half of 1 per cent.

Mr. Omar D. Conger, of Michigan, made the point of order that the amendment should be considered in Committee of the Whole since the amount had been increased from “one-quarter of 1 per cent” “to “one-half of 1 per cent.”

The Speaker<sup>4</sup> said:

The point the gentleman from Michigan makes is because the Senate has increased the amount to be allowed in that connection the amendment is subject to the point of order. \* \* \* If the Chair gathers the point of order correctly, and if he does not the gentleman will correct him, it is that this is subject to a point of order because the Senate have increased the expense to one-half of 1 per cent. \* \* \* Now, the Senate simply in this case amended in a legitimate way authorized by the Constitution by increasing the amount. The House had in Committee of the Whole considered the question of the amount to be paid. And it constantly happens that the Senate under the Constitution and under their rules, and

<sup>1</sup> Second session Forty-sixth Congress, Record, p. 203.

<sup>2</sup> Second session Forty-fifth Congress, Journal, p. 485.

<sup>3</sup> Third session Forty-sixth Congress, Record, pp. 2299–2301; Journal, p. 558.

<sup>4</sup> Samuel J. Randall, of Pennsylvania, Speaker.

not at variance with the House rules, increases the amount in a House bill. \* \* \* The Chair thinks it was a legitimate amendment for the Senate to make, to increase the amount. The House originally provided for an appropriation. If the House had not provided for any appropriation, there might be room for discussion. But the House already provided for an appropriation, and the Senate has simply said that under the authority given in the Constitution, in its spirit and letter, it has amended and increased the amount. The Chair overrules the point of order.

On an appeal the decision of the Chair was sustained.

**4798.** On January 28, 1897,<sup>1</sup> the Speaker laid before the House the amendment of the Senate to the bill (H. R. 4363) to increase the pension of Joseph J. Hudson.

Mr. Joseph W. Bailey, of Texas, made the point of order that the amendment should be considered in Committee of the Whole.

The Speaker<sup>2</sup> held that the rule<sup>3</sup> of the House applied where the Senate presented an amendment which required consideration in Committee of the Whole; but this was merely a difference in amount on a question that had already been considered in Committee of the Whole. It was not a new proposition, and that had been held not to send it to the Committee of the Whole. Such had been the ruling ever since the rule was adopted.

**4799.** On September 26, 1890,<sup>4</sup> the Speaker laid before the House the bill of the House (H. R. 2990) for the relief of J. L. Cain and others, with an amendment of the Senate thereto and a request for a conference with the House on the bill and amendments.

Mr. Albert J. Hopkins, of Illinois, made the point of order that the amendments of the Senate must be first considered in the Committee of the Whole House.

The Speaker<sup>2</sup> overruled the point of order on the ground that no new proposition was presented by the Senate amendment which reduced the amount of appropriation carried by the House bill.

**4800.** On February 28, 1891,<sup>5</sup> the Speaker laid before the House the bill of the House (H. R. 10881) to amend Title LX, chapter 3, of the Revised Statutes of the United States relating to copyright, with amendments of the Senate thereto, and a request for a conference with the House on the bill and amendments.

The House having proceeded to their consideration, Mr. William E. Simonds, of Connecticut, moved that the House nonconcur in the amendments and agree to the conference asked by the Senate.

Mr. Lewis E. Payson, of Illinois, made the point of order that the amendments of the Senate, under Rule XX,<sup>6</sup> must receive their first consideration in the Committee of the Whole House on the state of the Union, and that the bill and amendments were not in order for present consideration as business properly on the Speaker's table.

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<sup>1</sup> Second session Fifty-fourth Congress, Record, p. 1253.

<sup>2</sup> Thomas B. Reed, of Maine, Speaker.

<sup>3</sup> Rule XX. (See sec. 4796 of this volume.)

<sup>4</sup> First session Fifty-first Congress, Journal, p. 1087; Record, p. 10490.

<sup>5</sup> Second session Fifty-first Congress, Journal, p. 333; Record, pp. 3606-3608.

<sup>6</sup> See section 4796 of this chapter.

After debate on the point of order, the Speaker <sup>1</sup> made the following statement:

The Chair desires to say that the evil which was intended to be remedied by the twentieth rule of the House was an evil which manifested itself in bills containing different items. The House would pass a bill containing a number of items and the Senate would add other items thereto, involving other and further expenditure, and when the bill came back it would be held that that did not send it to the Committee of the Whole because the amendment had been made by the Senate. But it seems to the Chair that the objection presented here is neither within the evil to be remedied nor within the language of the rule.

The amendment which has been made by the Senate in this case is nothing more than a legitimate amendment of a proposition which had already passed the House. That proposition is added to and changed and contains different ideas; nevertheless they are within the scope of a proper and suitable amendment. If the amendment of the Senate is open to the point of order, the original proposition in the House was equally open to it, and if it had been considered in Committee of the Whole it would have been understood that it was considered with every possible amendment in view. So, when it is considered in the House without any point of order made, it is also to be understood as having been considered from every point of view, including the possibility that the Senate would make this change.

The Chair thinks that this portion of the bill has received the consideration which the rules of the House require, and that the rules of the House do not require that every amendment which is made by the Senate to substantive propositions, which are modifications only, shall be reviewed in the House in Committee of the Whole. The Chair therefore overrules the point of order.

**4801.** On February 7, 1897,<sup>2</sup> the Speaker laid before the House the bill (H. R. 9286) to create the California Debris Commission and to regulate hydraulic mining in the State of California, with amendments of the Senate.

Mr. William H. H. Cowles, of North Carolina, moved that the House disagree to the amendments and agree to the conference asked by the Senate on the disagreeing votes of the two Houses thereon.

Mr. Lewis F. Watson, of Pennsylvania, made the point of order that the amendments of the Senate should receive their first consideration in the Committee of the Whole.

The Speaker<sup>3</sup> overruled the point of order, holding that, inasmuch as no new item of appropriation was contained in the amendments, it was in order to consider them in the House.

**4802.** On November 3, 1893,<sup>4</sup> the Speaker laid before the House the joint resolution (H. Res. 22) to amend the act, approved April 25, 1890, relating to the admission of articles intended for the World's Columbian Exposition, with an amendment of the Senate striking out a portion of the bill relating to the sale of articles brought into the country for purposes of the Exposition.

Mr. Joseph G. Cannon, of Illinois, moved that the House concur in the amendment.

Mr. William D. Bynum, of Indiana, made the point of order that the amendment should be first considered in Committee of the Whole.

The Speaker<sup>3</sup> overruled the point of order, holding as follows:

An amendment of the Senate providing for a new and distinct subject of taxation, or for an appropriation not included in the original bill, must receive consideration in Committee of the Whole;

<sup>1</sup> Thomas B. Reed, of Maine, Speaker.

<sup>2</sup> Second session Fifty-second Congress, Journal, p. 79; Record, pp. 1292, 1293.

<sup>3</sup> Charles F. Crisp, of Georgia, Speaker.

<sup>4</sup> First session Fifty-third Congress, Journal, p. 172.

but there is nothing of that nature in this amendment. This bill has once been considered in Committee of the Whole, and the amendment is simply a proposition to strike out part of it. The Chair, therefore, thinks that the bill having been once considered in Committee of the Whole and the amendment of the Senate being of the nature stated, the rules do not require that it should be considered again in Committee of the Whole.

**4803.** On February 11, 1891,<sup>1</sup> the Speaker laid before the House the bill of the House (H. R. 8046) to increase the wages of certain employees in the Government Printing Office, on the Speaker's table, with an amendment of the Senate thereto and a request for a conference with the House on the bill and amendment.

Mr. Alexander M. Dockery, of Missouri, made the point of order that the bill should receive its first consideration in the Committee of the Whole House on the state of the Union.

The Speaker<sup>2</sup> overruled the point of order.

**4804.** On January 19, 1903,<sup>3</sup> the Speaker pro tempore laid before the House the bill (H. R. 15345) to promote the efficiency of the militia, with Senate amendments.

Mr. Oscar W. Underwood, of Alabama, made the point of order that the bill might not come before the House, except by unanimous consent, since a certain Senate amendment struck out of the bill a section providing for a reserve force of 100,000 men and officers who were to be allowed the same pay and allowances as were appropriated for the United States Army. As that Senate amendment touched an appropriation of money, he maintained that it would prevent the bill from coming directly before the House.

After debate the Speaker pro tempore<sup>4</sup> said:

A diminishing of the officers provided for in the House bill would not carry the bill to the Committee of the Whole, because, instead of being an additional charge upon the Treasury, it would be a relief to the Treasury. \* \* \* The Chair understands that it has been ruled, times without number, and it would be tedious to restate the number of times it has been ruled, that a Senate amendment which is a modification merely of a House proposition, like the increase or decrease of an amount, and so forth, and that does not involve new and distinct expenditures, is not required to be considered in Committee of the Whole. The Chair therefore overrules the point of order.

**4805.** On February 26, 1902,<sup>5</sup> the House proceeded to the consideration of the bill (H. R. 5833) temporarily to provide revenue for the Philippine Islands, which had been returned from the Senate with amendments.

Mr. James D. Richardson, of Tennessee, made the point of order that consideration should be in Committee of the Whole House on the state of the Union.

The Speaker<sup>6</sup> said:

The gentleman from Tennessee makes the point of order that these amendments should be considered in the Committee of the Whole House on the state of the Union. The Chair will ask the gentleman from Tennessee to indicate to which of these amendments he makes the point of order, because that point

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<sup>1</sup>Second session Fifty-first Congress, Journal, p. 234; Record, p. 2506.

<sup>2</sup>Thomas B. Reed, of Maine, Speaker.

<sup>3</sup>Second session Fifty-seventh Congress, Record, p. 965; Journal, p. 137.

<sup>4</sup>John Dalzell, of Pennsylvania, Speaker pro tempore.

<sup>5</sup>First session Fifty-seventh Congress, Record, p. 2186

<sup>6</sup>David B. Henderson, of Iowa, Speaker.

can apply only to propositions for raising revenue, not to regulations or increases or decreases from the propositions of the House bill.

**4806.** On January 11, 1905,<sup>1</sup> the Speaker laid before the House the bill (H. R. 1513) entitled "An act for the relief of the estate of George W. Saulpaw," with a Senate amendment.

The Clerk read the Senate amendment.

Mr. Charles L. Bartlett, of Georgia, suggested a question as to whether or not the amendment should receive consideration in Committee of the Whole.

The Speaker<sup>2</sup> said:

The Chair on examining the bill finds that the Senate amendment carries the same provision that the House bill carries, and it seems to be merely a verbal amendment. Then, even if it changed the amount, the Chair is advised, under the ruling heretofore made, that it would not have to go to the Committee of the Whole. It is a new matter that comes by the way of Senate amendment that carries appropriation or makes a charge upon the Treasury that goes to the Committee of the Whole. \* \* \* The recollection of the Chair is, and he is fortified in that recollection by the best authority of which the Chair is aware, that this is in line with the precedents.

**4807. The fact that one of several Senate amendments must be considered in Committee of the Whole does not prevent the House from proceeding with the disposition of those not subject to the point of order.—**

On July 3, 1884,<sup>3</sup> the bill (H. R. 5667) granting pensions to the soldiers and sailors of the Mexican war, and for other purposes, was returned from the Senate with amendments. These amendments were considered in order, the first being concurred in, with an amendment, the next was concurred in, and against the third the point of order was raised that it must be considered in Committee of the Whole under Rules XX and XXIII.<sup>4</sup>

The Speaker having decided that it must be so considered in Committee of the Whole, as it involved an expenditure of money, Mr. Richard W. Townshend, of Illinois, made a point of order as to whether the whole bill should go to the Committee of the Whole.

To which the Speaker<sup>5</sup> replied:

The Chair decides that the point of order is well taken, and that the amendment must be considered in Committee of the Whole. But the Chair holds the House can proceed with the other amendments and dispose in the House of those that are not subject to the point of order.

**4808. A Senate amendment being under consideration, and a proposition being made to concur with an amendment requiring consideration in Committee of the Whole, the entire bill goes to the Committee of the Whole, although only the proposed amendment is considered.—**On March 3, 1887,<sup>6</sup> the conferees on the disagreeing vote of the two Houses on the Senate amendments to the legislative, etc., appropriation bill reported an agreement as to all the amendments except those numbered 3 and 14.

<sup>1</sup>Third session Fifty-eighth Congress, Record, p. 725.

<sup>2</sup>Joseph G. Cannon, of Illinois, Speaker.

<sup>3</sup>First session Forty-eighth Congress, Record, pp. 5981, 5985.

<sup>4</sup>See sections 4792 and 4796 of this chapter.

<sup>5</sup>John G. Carlisle, of Kentucky, Speaker.

<sup>6</sup>Second session Forty-ninth Congress, Journal, p. 865; Record, p. 2736.

Amendment 14 was to insert the following: "For clerks to Senators who are not chairmen of committees, \$40,890."

Mr. Thomas M. Bayne, of Pennsylvania, moved that the House recede from its disagreement and agree with an amendment appropriating \$192,000 for pay of clerks during sessions of Congress only for Senators and Representatives who were not chairmen of committees.

Mr. William S. Holman, of Indiana, made the point of order that the said amendment must receive its first consideration in Committee of the Whole.

The Speaker<sup>1</sup> said:

The Chair will state that when the Senate amendment came to the House it was subject, under Rule XX, to the point of order that it must have its first consideration in Committee of the Whole on the state of the Union, and if that point had been made of course the amendment and the bill would have gone to the Committee of the Whole.

The point was not made, however, but it is now made against so much of the amendment offered by the gentleman from Pennsylvania, Mr. Bayne, as proposed to make an appropriation of money for a different purpose from that specified in the Senate amendment, and the Chair has ruled heretofore that it must go to the Committee of the Whole on the state of the Union, but it takes the bill also; they go together. \* \* \* Of course, the committee can not consider the bill, but can consider only the amendments. Nevertheless, the bill must go to the committee because the amendment is proposed as a part of the bill.

**4809. A bill which might involve a charge upon the Government, but does not necessarily do so, need not go to the Calendar of a Committee of the Whole.**—On February 8, 1900,<sup>2</sup> Mr. George E. Foss, of Illinois, during the call of committees in the morning hour<sup>3</sup> called up the bill (H. R. 969) relating to the relief of certain men of the Navy from the charge of desertion. The effect of the bill was to remove the limitation of time within which applications for relief might be received and acted on.

Mr. Sereno E. Payne, of New York, made the point of order that the bill did not properly belong to the House Calendar,<sup>4</sup> since it might involve a charge upon the Treasury in the shape of pensions or bounties.

After debate the Speaker<sup>5</sup> held:

The Chair overrules the point of order, believing this does not impose any burden on the Government; it is simply extending the time within which application may be made for the removal of the charge of desertion. Effacing the record of desertion is the thing aimed at by this bill. Non constat that a dollar is due to anyone. The assumption is entirely too remote, and it seems to the Chair clear that if any bill can properly be on the House Calendar this can be.

**4810. A bill that may incidentally involve expense to the Government, but does not require it, is not subject to the point of order that it must be considered in Committee of the Whole.**—On July 25, 1876,<sup>6</sup> the House was considering a bill to utilize the product of gold and silver mines, reported from the Committee on Mines and Mining, and pending when the morning hour expired on the 19th instant.

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<sup>1</sup> John G. Carlisle, of Kentucky, Speaker.

<sup>2</sup> First session, Fifty-sixth Congress, Record, pp. 1657, 1658; Journal, p. 242.

<sup>3</sup> For rule relating to morning hour see section 3118 of this work.

<sup>4</sup> For rule relating to Calendars see section 3115 of this volume.

<sup>5</sup> David B. Henderson, of Iowa, Speaker.

<sup>6</sup> First session Forty-fourth Congress, Journal p. 1333.

Mr. John A. Kasson, of Iowa, made the point of order that the bill must receive its first consideration in a Committee of the Whole House, in accordance with the requirements of Rule 112.<sup>1</sup> Mr. Kasson quoted this language of the bill:

That coin notes of the denomination of \$50 and multiples thereof up to \$10,000 may, in the mode hereinafter provided, be paid by the several mints and assay offices at San Francisco, Carson City, Philadelphia, and New York for the net value of gold and silver bullion deposited thereat.

And said:

Now, if this bullion is purchased by authority of law, it can not be paid without money, and no money can be taken, or property of any kind, without authority of law; so that in the very first few lines of the bill you find that there is an express appropriation either of money or property.

The Speaker pro tempore<sup>2</sup> overruled the point of order, holding that the bill under consideration did not make an appropriation of money or property, or in any way require an appropriation to be made, and that the fact that the bill may incidentally "involve" expense does not bring it within the rule cited, it being necessary that the bill should directly "require" an appropriation to subject it to the provisions of the rule in question.

The record of debate<sup>3</sup> gives the words of the Speaker pro tempore as follows:

The Chair is convinced that there is a growing evil in the fact that we do not consider bills of importance in Committee of the Whole on the state of the Union to the extent that was formerly done. But that is a matter for the House and not for the Chair. The Chair has carefully examined this bill. He is unable to regard it as a bill in any sense making appropriations of money or property, or in any sense requiring such appropriations to be made. He certainly can not see in what possible sense it can be regarded as a proposition for "a tax or charge upon the people," or how it can possibly come under the one hundred and eleventh rule,<sup>4</sup> which simply provides that no increase of the sum or quantum of tax or duty voted by a Committee of the Whole House shall be made in the House without being first discussed and voted on in Committee of the Whole House. The mere fact that this bill may involve expense does not bring it within the rule. Gentlemen will notice that the word used in the rule is "requiring," not "involving." And the mere fact that the bill may in some incidental or remote way involve expense, or that in some form or other to carry out its provisions expense may be incurred and even necessarily incurred by additional legislation, can not bring it within the rule. The Chair therefore overrules the point of order.

**4811. To require consideration in Committee of the Whole a bill must show on its face that it involves an expenditure of money, property, etc.—**

On May 17, 1884,<sup>5</sup> the House was considering a bill of the House (H. R. 6074) to change the eastern and northern judicial districts of the State of Texas, and to attach a part of the Indian Territory to said districts, and for other purposes.

Mr. John H. Rogers, of Arkansas, made the point of order against the bill that it should be considered in the Committee of the Whole. He said that by providing for holding a term of court twice a year at a certain point increased expenditure in the way of rent would be involved. Also there would be expenses for seals, etc., as processes would have to be issued. Then there would be new offices, for marshal, clerk, etc.

<sup>1</sup> Now section 3 of Rule XXIII. (See sec. 4792 of this work.)

<sup>2</sup> Milton Saylor, of Ohio, Speaker pro tempore.

<sup>3</sup> First session Forty-fourth Congress, Record, pp. 4865–4868.

<sup>4</sup> For this rule as it existed at that time see section 4792 of this volume.

<sup>5</sup> First session Forty-eighth Congress, Journal, pp. 1247, 1248; Record, pp. 4248, 4257.

The Speaker <sup>1</sup> said:

The Chair overrules the point of order. He think it goes beyond the limits of propriety on questions of this kind. It would be really difficult to imagine any legislation enacted by Congress that does not involve some expenditure. This may, but the expenditure is so clearly an incident that the Chair does not think it brings the bill within the rule. The point of order is overruled.

**4812.** On April 24, 1886,<sup>2</sup> the House was considering bill of the House (H. R. 2929) to amend the act dividing the State of Missouri into two judicial districts, and to divide the eastern and western districts thereof into divisions, establish district and circuit courts of the United States therein, and provide for the times and places for holding such courts, and for other purposes.

Mr. Richard P. Bland, of Missouri, made the point of order that the bill should go to the Committee of the Whole.

After debate the Speaker <sup>1</sup> held:

The Chair desires to call the attention of the gentleman from Missouri [Mr. Bland] to the rule which has heretofore been adhered to in the decision of questions of this kind. It has been uniformly held that before a point of order of this character can be sustained it must appear with certainty that an additional appropriation will be required to execute the law if the bill should be passed.<sup>3</sup> Now, it is true that this bill provides for summoning jurors and for holding courts at these additional places in certain contingencies; that is, in case the county authorities provide the necessary rooms, offices, etc. But all these courts are to be held merely for the purpose of transacting the judicial business in what now constitutes one district. Civil and criminal proceedings are to be commenced in these courts, but the Chair has no means of determining that the creation of these courts will not in fact diminish the cost of litigation instead of increasing it.

It often, as the Chair knows, diminishes the costs of litigation to the citizens and the Government to have courts convenient to litigants and convenient for the trial of criminal and penal cases.

The Chair is not able to see in this bill any provision which makes it absolutely certain the cost of judicial proceedings in this territory will be increased. On the contrary, it may be contended, and probably would be by gentlemen, it will be diminished. When it does not appear on the face of the bill that additional appropriations will be required, but is merely a matter of argument, the Chair can not decide that such will necessarily be the case. \* \* \* The Chair thinks the point of order is not well taken.

**4813.** On February 27, 1897,<sup>4</sup> the House proceeded to consider the Senate amendments to the Indian appropriation bill.

Mr. Dennis T. Flynn, of Oklahoma, made the point of order that one of the amendments provided for two terms of the United States court where there had been but one, and therefore that it should be considered in Committee of the Whole.

In overruling the point of order the Speaker <sup>5</sup> said:

The Chair does not remember ever having seen a case where an increase in the sittings of the United States court should go to the Committee of the Whole.

**4814.** On January 8, 1891,<sup>6</sup> Mr. Byron M. Cutcheon, of Michigan, called up the bill of the House (H. R. 28) to effect a rearrangement of the grades of office in the Subsistence Department of the Army.

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<sup>1</sup> John G. Carlisle, of Kentucky, Speaker.

<sup>2</sup> First session Forty-ninth Congress, Record, pp. 3808, 3809; Journal, p. 1373.

<sup>3</sup> On March 9, 1848, Mr. Speaker Winthrop laid down the proposition that if the bill did not "on its face" contain an appropriation of money it was not required to go to Committee of the Whole. (First session Thirtieth Congress, Journal, p. 526.)

<sup>4</sup> Second session Fifty-fourth Congress, Record, p. 2459.

<sup>5</sup> Thomas B. Reed, of Maine, Speaker.

<sup>6</sup> Second session Fifty-first Congress, Journal, p. 110; Record, p. 1039.

Mr. William S. Holman, of Indiana, made the point of order that the bill provided for an increase of salaries, and should therefore receive its first consideration in the Committee of the Whole House on the state of the Union.

The Speaker<sup>1</sup> overruled the point of order, on the ground that the bill on its face did not involve any expenditure of money.

**4815.** On February 11, 1891,<sup>2</sup> the House proceeded to consideration of bill of the Senate (S. 4620) to establish the Record and Pension Office of the War Department, and for other purposes.

Mr. William S. Holman, of Indiana, made the point of order that the bill must be first considered in Committee of the Whole.

The Speaker pro tempore<sup>3</sup> overruled the point of order, saying:

Bills need be considered in Committee of the Whole only when they come within the terms of clause 3 of Rule XXIII,<sup>4</sup> which provides that all motions or propositions involving a tax or charge upon the people must receive their first consideration in Committee of the Whole; and, in the judgment of the Chair, basing that judgment upon his recollection of the almost uniform precedents, and particularly of decisions made by Mr. Speaker Carlisle in the Forty-eighth, Forty-ninth, and Fiftieth Congresses, unless the bill upon its face shows that it does involve an expenditure, it is not subject to the point of order.

**4816.** On December 6, 1890,<sup>5</sup> Mr. Charles O'Neill, of Pennsylvania, on behalf of the Committee on the Library, called up the following concurrent resolution of the Senate on the House Calendar:

*Resolved by the Senate (the House concurring),* That Congress desires the removal of the remains of the illustrious soldier and statesman Ulysses S. Grant to, and their interment in, Arlington National Cemetery, and that the President be requested to convey to the widow of this eminent man such desire, tendering to her on behalf of the nation all necessary facilities for such removal and interment.

Mr. Roswell P. Flower, of New York, made the point of order that the resolution, if adopted, would require an appropriation of money, and must therefore receive its first consideration in the Committee of the Whole House on the state of the Union.

The Speaker<sup>1</sup> overruled the point of order.

**4817.** On February 25, 1897,<sup>6</sup> Mr. H. C. Van Voorhis, of Ohio, presented, from the Committee on Banking and Currency, the bill (H. R. 849) for increasing the circulation of national banks.

Mr. Thomas C. McRae, of Arkansas, made the point of order that the bill should be considered in Committee of the Whole, as the increased issue of notes would necessarily involve a charge on the Treasury.

The Speaker<sup>1</sup> overruled the point of order.

**4818. Where the expenditure is a mere matter of speculation, the rule requiring consideration in Committee of the Whole does not apply.—**

<sup>1</sup> Thomas B. Reed, of Maine, Speaker.

<sup>2</sup> Second session Fifty-first Congress, Journal, p. 235.

<sup>3</sup> Lewis E. Payson, of Illinois, Speaker pro tempore.

<sup>4</sup> See section 4792.

<sup>5</sup> Second session Fifty-first Congress, Journal, p. 30; Record, p. 180.

<sup>6</sup> Second session Fifty-fourth Congress, Record, p. 2270.

On February 27, 1897,<sup>1</sup> Mr. Eugene F. Loud, of California, from the Committee on the Post-Office and Post-Roads, called up the bill (S. 1811) to extend the uses of the mail service by admitting to the mails the postal cards and envelopes of the United States Economic Postage Association, under proper guaranties as to recompense to the Government for the service.

Mr. Henry H. Bingham, of Pennsylvania, having made the point of order that the bill should be considered in Committee of the Whole, after debate the Speaker overruled it.

On March 1 Mr. Bingham was permitted to review the point of order, and made the point that in consequence of the number of such postal cards and envelopes there would be needed an extraordinary increase in the clerical force of the country.

The Speaker<sup>2</sup> said:

The Chair does not see anything to change his ruling on the subject. It may be possible that it will increase the expenses, but that is a mere matter of speculation as to whether they will be larger or not; and the Chair overrules the point of order.

**4819.** On July 20, 1892,<sup>3</sup> Mr. Samuel Fowler, of New Jersey, called up a bill (H. R. 8818) to grant an American register to the foreign-built steamship *China*.

Mr. John H. Bankhead, of Alabama, made the point of order that the bill should be first considered in the Committee of the Whole House on the state of the Union, for the reason that the effect of the bill, by giving an American registry to a foreign steamship, would be to entitle it to a subsidy under 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, and would therefore require an appropriation.

The Speaker<sup>4</sup> overruled the point of order upon the ground that the act of March 3, 1891, did not itself grant subsidies, but authorized the Postmaster-General to make contracts with American vessels, by which they might obtain subsidies; therefore the pending bill did not necessarily require an appropriation or create a charge upon the Treasury.

**4820.** On February 15, 1898,<sup>5</sup> the House was about to consider a joint resolution (H. Res. 120) authorizing and directing the Secretary of War to submit estimates of the cost of opening a channel through a certain bar in Galveston Bay.

Mr. Sereno E. Payne, of New York, made the point of order that the resolution should be considered in Committee of the Whole.

After debate as to whether or not any expense would be required on the part of the Government, the Speaker,<sup>2</sup> after examining the resolution, held:

It is not apparent on the face of this joint resolution that it makes any appropriation or will require any to be made. If a question of this kind is merely a matter of argument, \* \* \* the Chair thinks he will have to overrule the point of order.

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<sup>1</sup> Second session Fifty-fourth Congress, Record, pp. 2477, 2579, 2580.

<sup>2</sup> Thomas B. Reed, of Maine, Speaker.

<sup>3</sup> First session Fifty-second Congress, Journal, pp. 311, 312.

<sup>4</sup> Charles F. Crisp, of Georgia, Speaker.

<sup>5</sup> Second session Fifty-fifth Congress, Record, p. 1737.

**4821.** On December 14, 1904,<sup>1</sup> during the call of committees for the consideration of business on the House Calendar, the Committee on Mines and Mining proposed for consideration the bill (H. R. 1954) to authorize the exploration and purchase of mines within the boundaries of private land claims.

Mr. Sereno E. Payne, of New York, made the point of order that the bill required consideration in Committee of the Whole, and therefore was not properly on the House Calendar.

After debate, the Speaker<sup>2</sup> ruled:

The point of order is made to the legislation here and the bill under Rule XXIII, which is as follows:

"3. All motions or propositions involving a tax or charge upon the people; all proceedings touching appropriations of money, or bills making appropriations of money or property, or requiring such appropriation to be made, or authorizing payments out of appropriations already made, or releasing any liability to the United States for money or property, or referring any claim to the Court of Claims, shall be first considered in a Committee of the Whole."

The Chair has read hurriedly this bill and takes the statement of the gentleman from Iowa, which confirms the general recollection of the Chair, that the grant made by the Spanish or Mexican Government prior to the treaty of peace with Mexico reserved minerals. The gentleman from Iowa so states and that confirms the impression which the Chair has. Now, this bill upon its face proposes, on the initiative of a locator of mineral rights, condemnation proceedings. As to the power of Congress to confer on an individual such rights to initiate condemnation proceedings for his benefit, the Chair states no opinion; in fact, he will say he has no opinion. \* \* \*

It is not necessary for the Chair to decide whether Congress has or has not. As the Chair understands the law to be, the mineral rights in these claims referred to in the bill are in the Government and subject to location under the law as it now is. The Chair so understood the gentleman from Iowa, and the Chair is under the impression the statement is correct and it has not been controverted by any gentleman.

Upon the face of this bill there does not seem to be any charge upon the Treasury in the language of the rule "involving a tax or charge upon the people." In other words, it takes a roundabout argument to show the Government is to be charged, or that the people are to be charged, by virtue of this legislation. And after the argument is made, the Chair apprehends that it would still be in the air as to whether a charge is made against the people by the proposed legislation. So that under prior decisions that the Chair will not now take time to read, made by Mr. Speaker Carlisle and by Mr. Speaker Reed, it seems to the Chair that the point of order is not well taken.

**4822. The House may consider in Committee of the Whole subjects other than those specified in the rule.**—On December 19, 1879,<sup>3</sup> the report of the Committee on Rules, which was a general revision of the rules of the House, was committed to the Committee of the Whole House on the state of the Union, and was thereafter considered therein.

**4823. The giving of unanimous consent for the consideration of a measure waives any requirement as to consideration in Committee of the Whole.**—On January 24, 1882,<sup>4</sup> the House gave unanimous consent for the consideration of the bill (H. R. 2341) for the relief of colored emigrants, and as the consideration was beginning, Mr. Philip B. Thompson, jr., of Kentucky, made the point of order that the bill should be considered in Committee of the Whole.

<sup>1</sup>Third session Fifty-eighth Congress, Record, pp. 285, 286.

<sup>2</sup>Joseph G. Cannon, of Illinois, Speaker.

<sup>3</sup>Second session Forty-sixth Congress, Journal, p. 139; Record, p. 191.

<sup>4</sup>First session Forty-seventh Congress, Record, p. 592.

The Speaker<sup>1</sup> said:

The Chair is of the opinion that when the House gives unanimous consent to consider the measure in the House it waives the rule.

**4824. It was decided early in the history of the House that a bill requiring an appropriation to be made should be considered in Committee of the Whole, as if actually making the appropriation.**—On January 5, 1833,<sup>2</sup> Mr. William W. Ellsworth, of Connecticut, reported from the Committee on the Judiciary a bill (H. R. 660) to revive and continue in force an act entitled “An act to provide for reports of the decisions of the Supreme Court of the United States.”

A question arose whether this bill should be considered in a Committee of the Whole, on account of this provision contained in it—

That a reporter shall, from time to time, be appointed by the Supreme Court of the United States to report its decisions, who shall be entitled to receive from the Treasury of the United States, as an annual compensation for his services, the sum of one thousand dollars.

The Speaker<sup>3</sup> having decided that, because of this provision, the bill should be considered in Committee of the Whole, Mr. John Quincy Adams, of Massachusetts, appealed.

In the course of debate on the appeal the Speaker sustained his decision on the ground that whatever doubt there might be as to the strict letter of the rules, this bill came clearly within their reason and spirit. These rules, he maintained, were the laws of the House, intended to govern their proceedings, and ought, therefore, to be construed according to their obvious intent and spirit, the good to be obtained by them, or the evils guarded against. So long as he presided over the deliberations of the House, he should pursue this course in the discharge of his duties and in construing and expounding its rules.

The object of these rules could not be misunderstood. They were intended to guard against precipitate legislation and to afford every opportunity for free discussion and debate on all subjects touching appropriation of money or imposing a tax or charge upon the people. This bill creates a new office and fixes a salary, though the appropriating clause is omitted. Hence it was said not to fall within the operation of the rules.

The Chair maintained that the omission of the appropriating clause made no difference; it was of a character which rendered it peculiarly liable to the operation of these rules. The Chair proceeded to show the danger of such a construction and the manner in which the benefits and spirit of the rules would be defeated.

What benefit would arise from the committal of a bill appropriating a sum of money, after the law had fixed the office and salary and appointment had been made and the duties performed? The appropriation would follow as a matter of course. He instanced the cases of the President, judges, and officers of the United States. What benefit, in fact, arose from committing a bill appropriating the funds to pay them? None. But suppose a bill to raise the salaries of all these officers,

<sup>1</sup>J. Warren Keifer, of Ohio, Speaker.

<sup>2</sup>Second session Twenty-second Congress, Journal, p. 139; Debates, pp. 950, 951.

<sup>3</sup>Andrew Stevenson, of Virginia, Speaker.

was it not apparent that the commitment of the bill, in such case, would be important? The Chair thought it an important decision, and felt gratified that it would now be settled by the solemn judgment of the House for their future action.

Mr. Adams withdrew his appeal, but another Member renewed it, and the decision of the Chair was sustained, yeas 161, nays 14.

**4825. A bill must be considered in Committee of the Whole, even though the portion requiring an appropriation be merely incidental to the main purpose of the bill.**—On June 8, 1836,<sup>1</sup> the House was considering, under the terms of a special order, two bills providing for the admission of the States of Arkansas and Michigan into the Union.

Mr. John M. Patton, of Virginia, rising to a parliamentary inquiry, asked if the bills should not be committed to the Committee of the Whole.

The Speaker<sup>2</sup> replied that the bill for the admission of Arkansas, as it contained an appropriation for judges, would, under the rules, require being committed; and that the bill for the admission of Michigan, although it contained no express appropriation, created a charge upon the Treasury, and came, though not clearly, within the spirit of the rule. The Chair read a former decision on this point, made in 1832.

The House thereupon resolved itself into Committee of the Whole House on the state of the Union for the consideration of the bills.

**4826. A bill reducing the hours of labor of letter carriers, but not by its terms requiring an appropriation to be made, was held not to come within the rule requiring consideration in Committee of the Whole.**—On July 15, 1886,<sup>3</sup> Mr. John J. O'Neill, of Missouri, called up the bill (S. 2076) providing as follows:

*Be it enacted, etc.,* That eight hours shall constitute a day's work for letter carriers who are now or who may hereafter be employed by or on behalf of the Government of the United States; and there shall be no reduction in compensation paid for services rendered by reason of the limitation of the hours of labor prescribed by this act.

Mr. James H. Blount, of Georgia, made the point of order that the bill must be considered in Committee of the Whole.

The Speaker<sup>4</sup> overruled the point of order, saying:

The Chair must be governed in deciding the point of order by the contents of the bill. It provides that eight hours shall constitute a day's work for letter carriers who are now or who may hereafter be employed by or on behalf of the Government of the United States; and there shall be no reduction in compensation paid for services rendered by reason of the limitation of the hours of labor prescribed by this act. Now, it may be if the hours of labor of letter carriers are so diminished as to make it necessary to employ an additional number in that service an appropriation will have to be made for their payment. But that is a matter of argument. The bill does not make an appropriation and on its face does not require an appropriation to be made. \* \* \* The invariable rule is to look at the bill itself and see whether on its face, by its terms, it makes an appropriation or requires one to be made.<sup>5</sup>

<sup>1</sup> First session Twenty-fourth Congress, Debates, p. 4212.

<sup>2</sup> James K. Poll., of Tennessee, Speaker.

<sup>3</sup> First session Forty-ninth Congress, Journal, p. 2217; Record, p. 7003.

<sup>4</sup> John G. Carlisle, of Kentucky, Speaker.

<sup>5</sup> Speaker Carlisle enunciated the same principle again (second session Forty-ninth Congress, Journal, pp. 86, 87; Record, p. 122).

**4827. A bill which sets in motion a train of circumstances destined ultimately to involve certain expenditure must be considered in Committee of the Whole.**—On December 12, 1904,<sup>1</sup> during the call of committees for the consideration of business on the House Calendar, Mr. Abraham L. Brick, of Illinois, from the Committee on Naval Affairs, called up the bill (H. R. 3586) to provide for the retirement of petty officers and enlisted men of the Navy, which provided:

*Be it enacted, etc.*, That in computing the necessary thirty years' time for the retirement of petty officers and enlisted men of the Navy all service in the Army, Navy, or Marine Corps shall be credited.

Mr. Sereno E. Payne, of New York, made a point of order that the bill properly belonged on the Union and not the House Calendar.

The Speaker<sup>2</sup> held:

The Chair must sustain the point of order. It seems to the Chair that, upon the face of it, it makes a change of existing law, that this bill provides for an additional charge upon the Treasury not now made by law. The Chair must take notice that if these men go upon the retired list others will fill their places, and by the terms of the bill they are to go upon the retired list by virtue of their service in the Army or the Marine Corps, as well as their service in the Navy, the law now being that they must serve thirty years' time in the Navy, as the Chair understands, before they can go on the retired list. It seems to the Chair that, upon the face of it, it makes a charge upon the Treasury and should receive consideration in the Committee of the Whole House on the state of the Union. The bill will be referred to the Union Calendar.

**4828. A bill which has been considered in Committee of the Whole, and then by the House has been recommitted to a standing committee, is not, when again reported to the House, necessarily subject to the point of order that it must be considered in Committee of the Whole.**—On May 31, 1888,<sup>3</sup> Mr. Samuel J. Randall, of Pennsylvania, from the Committee on Appropriations, reported back with amendments the legislative, executive, and judicial appropriation bill, which had been recommitted to that committee.

The consideration of the bill being about to begin, Mr. Samuel R. Peters, of Kansas, made the point of order that the bill should be considered in Committee of the Whole.

After debate, the Speaker pro tempore<sup>4</sup> held:

The Chair does not remember any decision bearing upon this point of order except one case where there had been a recommitment of a bill with instructions after it had been considered in Committee of the Whole, which bill, on being reported back with a statement from the committee that there was no new matter in the bill which had not been considered in Committee of the Whole on the state of the Union, was admitted for consideration in the House, and the report was sustained.

Clause 3, of Rule XXIII, provides:

“All motions or propositions involving a tax or charge upon the people; all proceedings touching appropriations of money, or bills making appropriations of money or property, etc., shall be first considered in a Committee of the Whole.”

This bill was considered in Committee of the Whole, as required by the rule, and was reported back to the House. A controversy arising about some blanks existing in the bill, it was recommitted to the Committee on Appropriations. The gentleman from Pennsylvania, chairman of the Committee on

<sup>1</sup>Third session Fifty-eighth Congress, Record, p. 165.

<sup>2</sup>Joseph G. Cannon, of Illinois, Speaker.

<sup>3</sup>First session Fiftieth Congress, Record, p. 4793; Journal, pp. 2029, 2030.

<sup>4</sup>Benton McMillin, of Tennessee, Speaker pro tempore.

Appropriations, now reports it back with the statement that no clause or appropriation has been added which was not considered in the Committee of the Whole. The rule does not provide that it shall have more than one consideration in Committee of the Whole.

To hold now that the rule required this bill to be again considered in Committee of the Whole would make it necessary to go through with the entire bill, section by section, in Committee of the Whole, if demanded; for it would be impossible to have a part of the bill pending in the House and other portions in the committee. The Chair is not of opinion that such a proceeding was contemplated by the rule, when provision was made that the bill "shall be first considered in a Committee of the Whole," and thinks that there has been a compliance with the rule.

The Chair thinks the statement made by the gentleman from Pennsylvania brings this bill within the decision cited, and overrules the point of order, the gentleman having stated that there is no clause or provision reported by the committee that has not received consideration in Committee of the Whole.

Mr. Peters having appealed, the appeal was on the next day laid on the table.<sup>1</sup>

**4829.** On April 9, 1896,<sup>2</sup> Mr. William W. Grout, of Vermont, reported back the District of Columbia appropriation bill, which, after consideration in Committee of the Whole, had by the House been recommitted to the Committee on Appropriations with instructions "to reexamine and report a new paragraph of so much of the bill as appears under the subhead 'For charities.'"

Mr. Franklin Bartlett, of New York, made the point of order that the bill should be considered in Committee of the Whole.

After debate, the Speaker<sup>3</sup> held:

In the third clause of Rule XXIII<sup>4</sup> there is a provision that "all motions or propositions involving a tax or charge upon the people, and all proceedings touching appropriations of money, shall first be considered in a Committee of the Whole." Taken alone, that expression is very ample and seems to cover everything; but it is quite evident that it has very many limitations, as gentlemen will see if they consider the practice of the House. After a bill has been reported by a Committee of the Whole to the House, the House has power then to add any other amendments which it sees fit to add, in conformity to the rules, without any reference of them to the Committee of the Whole.

If the recollection of the Chair is correct, a number of important bills, such as general tariff bills, after having been very much modified in the Committee of the Whole, were, upon their return to the House, changed by the adoption of a substitute, which substitute involved taxes and charges on the people, but which nevertheless was not considered in Committee of the Whole. In fact, it is a matter of almost everyday occurrence that bills coming under this general description, having amendments which also come under this description, are acted upon by the House without any previous examination by the Committee of the Whole, the examination of the whole subject generally being supposed to inform the House upon the question.

In the Fiftieth Congress—unless the Chair is mistaken as to the time—this question arose in very much its present form; and the Speaker pro tempore decided that the bill would not under the rule go to the Committee of the Whole, because if it did all the paragraphs which had been passed upon and approved by the House would have to be gone over again, or else the anomaly would be presented of a bill partly in Committee of the Whole and partly not. Without going any further than that decision, or undertaking to say what would be the effect if a general recommitment was ordered on the whole bill, the Chair thinks that this is not within the rule cited, and therefore that it should be considered by the House.

**4830. Instance of a ruling that a provision changing the manner of expenditure of money already appropriated does not require consideration in Committee of the Whole.**—On April 2, 1878,<sup>5</sup> Mr. Charles Foster,

<sup>1</sup> First session Fiftieth Congress, Record, p. 4821.

<sup>2</sup> First session Fifty-fourth Congress, Record, p. 3781.

<sup>3</sup> Thomas B. Reed, of Maine, Speaker.

<sup>4</sup> See section 4792 of this chapter.

<sup>5</sup> Second session Forty-fifth Congress, Journal, p. 782; Record, p. 2203.

of Ohio, from the Committee on Appropriations, reported a substitute resolution to enable the joint commission to carry into effect the act of Congress providing for the completion of the Washington Monument.

The House having proceeded to its consideration, and pending the question on its engrossment and third reading, Mr. Omar D. Conger, of Michigan, made the point of order that the said joint resolution must receive its first consideration in a Committee of the Whole House.

During the debate it was explained that the resolution was intended to authorize a portion of the money appropriated for the Monument to be used in strengthening the foundation, the commission having doubts about their right to do it without such authorization.

The Speaker<sup>1</sup> overruled the point of order, on the ground that the said joint resolution changed the manner of expenditure of money already appropriated, and did not involve an original appropriation of money.<sup>2</sup>

**4831. A bill providing for an expenditure which is to be borne otherwise than by the Government is not required to be placed on a Calendar of the Committee of the Whole.**—On February 8, 1900,<sup>3</sup> Mr. Thomas S. Butler, of Pennsylvania, raised the question of order that the bill (H. R. 3718) “for the preservation of the frigate *Constitution*,” should be on the House Calendar and not on the Union Calendar.<sup>4</sup> This bill authorized the Secretary of the Navy to repair the frigate, but with this proviso:

*Provided*, That before beginning on such work a sufficient sum of money to complete such work shall be raised through the agency of the Massachusetts State Society United States Daughters of 1812 and placed at his disposal for the purpose.

The Speaker<sup>5</sup> said:

An inspection of this bill satisfies the Chair that it lays no burden upon the Government. The money to do this work must be provided for, in the first instance, as the Chair understands the language of the bill, by other means than through the Treasury of the United States.

**4832. The disposal of a privilege belonging to the Government was held not to be such an appropriation of public property as would require consideration in Committee of the Whole.**—On February 18, 1889,<sup>6</sup> the House was proceeding to consider the bill (H. R. 12432) to provide for the better protection of the fur seals and salmon fisheries of Alaska, etc., when Mr. John H. Rogers, of Arkansas, made the point of order that the bill should receive its first consideration in Committee of the Whole.

The Speaker<sup>7</sup> overruled the point of order, upon the ground that there was no provision of the bill which imposed any additional expense upon the Government, and that the provisions relating to the disposal of a privilege which belonged to the

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<sup>1</sup> Samuel J. Randall, of Pennsylvania, Speaker.

<sup>2</sup> This decision must be regarded as coming very near to the line laid down in the rule (see sec. 4792 of this chapter) which provides that propositions “authorizing payments out of appropriations already made” shall be considered in Committee of the Whole. This portion of the rule was in existence in 1878, when this decision was made.

<sup>3</sup> First session Fifty-sixth Congress, Record, pp. 1655, 1656.

<sup>4</sup> As to the calendars, see section 3115 of this volume.

<sup>5</sup> David B. Henderson, of Iowa, Speaker.

<sup>6</sup> Second session Fiftieth Congress, Journal, p. 534; Record, pp. 2021, 2022.

<sup>7</sup> John G. Carlisle, of Kentucky, Speaker.

Government for compensation to be paid by the parties who are to enjoy that privilege did not make the bill one appropriating public property within the rule.

**4833. A provision placing liability on the United States and the District of Columbia jointly was held to require consideration in Committee of the Whole.**—On April 9, 1906,<sup>1</sup> the House was proceeding to consider the bill (H. R. 17217) to amend an act entitled “An act to establish a code of law for the District of Columbia,” regulating proceedings for condemnation of land for streets, when Mr. John J. Fitzgerald, of New York, made the point of order that the bill was not properly on the House Calendar; but should go to the Union Calendar, because of this clause:

If the total amount of the damages awarded by the jury and the cost and expenses of the proceedings be in excess of the total amount of the assessments for benefits, such expense shall be borne and paid equally by the United States and the District of Columbia.

The Speaker<sup>2</sup> decided:

The Chair is inclined to be of the opinion that this legislation covered by the paragraph read by the Chair, to which the gentleman calls attention, does make a charge upon the Treasury, and that the bill should be upon the Union Calendar.

**4834. A bill providing for the payment of money into the Treasury, and also making an appropriation of the same, requires consideration in Committee of the Whole.**—On February 3, 1863,<sup>3</sup> the House was proceeding to the consideration of the bill (H. R. 714) to construct a ship canal from the Mississippi River to Lake Michigan, when Mr. William S. Holman, of Indiana, made the point of order that, inasmuch as the fifth section provided for the payment of certain moneys into the Treasury of the United States, and also made an appropriation of the same whereby it might be taken out of the Treasury, the bill must receive its first consideration in Committee of the Whole.

The Speaker<sup>4</sup> sustained the point of order.

Mr. Elihu B. Washburne, of Illinois, having appealed, the appeal was laid on the table by a vote of 93 yeas, 37 nays.<sup>5</sup>

**4835. A bill relating to money coming into the Treasury in trust for specifically indicated purposes was held not to require consideration in Committee of the Whole.**—On April 24, 1878,<sup>6</sup> the House proceeded to consider the bill (S. 15) to alter and amend “An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean,” etc.

The bill having been read, Mr. Benjamin F. Butler, of Massachusetts, made the point of order that the bill must be considered in Committee of the Whole House on the state of the Union, under Rule 112.<sup>7</sup>

<sup>1</sup> First session Fifty-ninth Congress, Record, p. 4955.

<sup>2</sup> Joseph G. Cannon, of Illinois, Speaker.

<sup>3</sup> Third session Thirty-seventh Congress, Journal, p. 319; Globe, p. 700.

<sup>4</sup> Galusha A. Grow, of Pennsylvania, Speaker.

<sup>5</sup> On March 10, 1864, the same point of order was made on this section of this bill, and Speaker Colfax reaffirmed this ruling and the House acquiesced. (First session Thirty-eighth Congress, Journal, p. 368; Globe, p. 1037.)

<sup>6</sup> Second session Forty-fifth Congress, Journal, pp. 937, 938; Record, pp. 2780, 2781.

<sup>7</sup> For form of this rule at that time see section 4792 of this chapter.

The Speaker<sup>1</sup> overruled the point of order on the ground that it did not apply to money coming into the Treasury of the United States in trust for purposes which are specifically indicated.

**4836. A bill providing for the investment of certain trust funds in the Treasury was held not to require consideration in Committee of the Whole.**—On February 8, 1888,<sup>2</sup> Mr. Nelson Dingley, jr., of Maine, called up the bill (H. R. 2012) authorizing the Secretary of the Treasury to invest the lawful money deposited in the Treasury, in trust, by national banking associations for the retirement of their circulating notes.

Mr. J. B. Weaver, of Iowa, made the point of order that the bill should receive its first consideration in Committee of the Whole.

The Speaker<sup>3</sup> overruled the point of order upon the ground that under no circumstances could the Government become liable for a larger sum than was required to redeem the outstanding notes of national banks. For this sum the Government was liable in any event; so that this bill could make no difference in the liability of the Government in that respect, whether the bonds should fluctuate in value or not. The Government was liable under the law as it existed for every dollar of national bank notes for the redemption of which money had been deposited; and it was entitled, as the Chair thought as the law now stood, to any part of that money which might remain after the redemption of the outstanding notes. While it was true that the Government might lose in its financial operations, the question that the Chair was called upon to decide was whether this particular bill created an additional liability. And the Chair held that it did not. The Government was not to issue any original or new bonds under the provisions of the bill. If the Government purchased the bonds and afterwards it was necessary to sell them to realize funds to redeem outstanding national-bank notes, it sold the old bonds, the liability for which was already fixed by law.

This decision of the Chair was acquiesced in by the House.

**4837. The dedication of public land to be forever used as a public park was held to be such an appropriation of public property as would require consideration in Committee of the Whole.**—On February 24, 1897,<sup>4</sup> Mr. Joseph W. Babcock, of Wisconsin, presented from the Committee for the District of Columbia the bill (S. 307) as follows:

*Be it enacted, etc.,* That the entire area formerly known as the Potomac Flats and now being reclaimed, together with the tidal reservoirs, be, and the same are hereby, made and declared a public park under the name of the Potomac Park, and to be forever held and used as a park for the recreation and pleasure of the people.

Mr. Alexander M. Dockery, of Missouri, made the point of order that the bill should be considered in Committee of the Whole.

After debate, the Speaker<sup>5</sup> held:

The Chair is inclined to think that this is an appropriation of public property for a particular purpose. When the matter was first presented, the impression of the Chair was that the bill did not

<sup>1</sup> Samuel J. Randall, of Pennsylvania, Speaker.

<sup>2</sup> First session Fiftieth Congress, Journal, p. 721; Record, p. 1063.

<sup>3</sup> John G. Carlisle, of Kentucky, Speaker.

<sup>4</sup> Second session Fifty-fourth Congress, Record, pp. 2215, 2216.

<sup>5</sup> Thomas B. Reed, of Maine, Speaker.

come within the rule; but on examining the matter more carefully the Chair is inclined to hold a different opinion, and he sees no reason why the bill should not be discussed in Committee of the Whole.

**4838.** On March 14, 1902,<sup>1</sup> during the morning hour for the call of committees, Mr. John F. Lacey, of Iowa, called up the bill (H. R. 4393) reserving from the public lands in the State of Oregon, as a public park for the benefit of the people of the United States, and for the protection and preservation of the game, fish, timber, and all other natural objects therein, a tract of land herein described, etc.

Mr. James D. Richardson, of Tennessee, made the point of order that, as the bill dedicated public property to park purposes, it might not be considered on this call.

The Speaker<sup>2</sup> said:

It is clearly not properly on the House Calendar; that has been repeatedly decided, and the bill will be changed to the Union Calendar.

**4839. A bill extending the time of a railroad land grant is required, under the rule, to be considered in Committee of the Whole.**—On January 24, 1877,<sup>3</sup> Mr. Lucius Q. C. Lamar, of Mississippi, from the Committee on the Pacific Railroads, to which was referred the Senate bill to extend the time for the construction and completion of the Northern Pacific Railroad, reported the same without amendment.

The House proceeded to its consideration, when Mr. William S. Holman, of Indiana, made the point of order that, as the bill made an appropriation of lands, it must receive its first consideration in the Committee of the Whole House on the state of the Union.

The Speaker<sup>4</sup> sustained the point of order under Rule 112,<sup>5</sup> holding that the pending bill was not only a measure touching appropriation of property incidentally, but also directly; and that it created a grant of land on a new condition, that the road should be completed within a new period. The bill was not only a measure touching the appropriation of property, but that was a direct, material, vital feature of the appropriation; that time was an element to be considered in connection with the grant, and that by existing law time was of the essence of the grant.

**4840. The grant to a railroad of easement on public lands or in streets belonging to the United States is a subject requiring consideration in Committee of the Whole.**—On June 9, 1890,<sup>6</sup> Mr. William W. Grout, of Vermont, on behalf of the Committee on the District of Columbia, called up the bill of the House (H. R. 8243) supplementary to an act entitled “An act to authorize the construction of the Baltimore and Potomac Railroad in the District of Columbia,” on the House Calendar.

Mr. Daniel Kerr, of Iowa, made the point of order that the bill should receive its first consideration in the Committee of the Whole House on the state of the Union.

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<sup>1</sup>First session Fifty-seventh Congress, Record, p. 2804.

<sup>2</sup>David B. Henderson, of Iowa, Speaker.

<sup>3</sup>Second session Forty-fourth Congress, Journal, p. 293; Record, p. 924.

<sup>4</sup>Samuel J. Randall, of Pennsylvania, Speaker.

<sup>5</sup>Now section 3 of Rule XXIII. (See sec. 4792 of this chapter.)

<sup>6</sup>First session Fifty-first Congress, Journal, p. 718; Record, p. 5842.

During the debate it was developed that the bill would give authority to the railroad to lay its tracks on certain streets of the District.

The Speaker<sup>1</sup> sustained the point of order, saying:

The Chair thinks that is the question, whether this is a grant of an easement. The Chair has already decided, in a case where the permission was revocable at the will of the Government, that it was not such an easement or appropriation of public property as brought it within the rule; but this does not seem to be a provision of that character. It seems to be a grant of an easement absolutely.

**4841.** On June 27, 1892,<sup>2</sup> Mr. John T. Heard, of Missouri, called up for consideration the bill (H. R. 3591) to authorize the Norfolk and Western Railroad Company of Virginia to extend its line of road into and within the District of Columbia, and for other purposes.

Mr. Louis E. Atkinson, of Pennsylvania, made the point of order that the bill should receive its first consideration in the Committee of the Whole, inasmuch as it granted certain property of the United States, to wit, the right of way over the streets of Georgetown and Washington.

The Speaker<sup>3</sup> sustained the point of order.

**4842.** On December 5, 1893,<sup>4</sup> Mr. Thomas C. McRae, of Arkansas, on behalf of the Committee on the Public Lands, presented for consideration the bill (H. R. 198) to grant to the Birmingham, Sheffield and Tennessee River Railroad Company a right of way over the public land traversed by it, which bill was on the House Calendar.

Mr. Nelson Dingley, jr., of Maine, made the point of order that inasmuch as the bill proposed to grant a right of way over Government lands, it should be considered in Committee of the Whole.

The Speaker<sup>3</sup> sustained the point of order.

**4843. A bill confirming a grant of public lands requires consideration in Committee of the Whole.**—On July 7, 1890,<sup>5</sup> Mr. Lewis E. Payson, of Illinois, as a privileged question, from the Committee on the Public Lands, to which was recommitted the bill of the Senate (S. 2781) to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes, reported the same with an amendment in the nature of a substitute therefor.

Mr. William S. Holman, of Indiana, made the point of order that section 3 of the original bill and section 5 of the substitute, as follows:

That the rights of way and riparian rights heretofore attempted to be conveyed to the city of Portland, in the State of Oregon, by the Northern Pacific Railroad Company and the Central Trust Company of New York, by deed of conveyance dated August 8, 1886, and which are described as follows, etc., \* \* \* are hereby confirmed unto the said city of Portland, in the State of Oregon, its successors and assigns, forever, with the right to enter on the hereinbefore-described strip of land, over and across the above-described sections for the purpose of constructing, maintaining, and repairing a water-pipe line as aforesaid—

was a confirmation of a grant heretofore made, and that the bill should be considered in Committee of the Whole.

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<sup>1</sup> Thomas B. Reed, of Maine, Speaker.

<sup>2</sup> First session Fifty-second Congress, Journal, p. 237.

<sup>3</sup> Charles F. Crisp, of Georgia, Speaker.

<sup>4</sup> Second session Fifty-third Congress, Journal, p. 15; Record, p. 36.

<sup>5</sup> First session Fifty-first Congress, Journal, p. 830; Record, pp. 5441, 5701.

The Speaker<sup>1</sup> sustained the point of order raised by Mr. Holman, and the bill and amendment were referred to the Committee of the Whole House on the state of the Union.

**4844. Indian lands have not been considered “property” of the Government within the meaning of the rule requiring consideration in Committee of the Whole.**—On August 12, 1890,<sup>2</sup> the Speaker laid before the House the bill of the Senate (S. 4207) extending the time of payment to the purchasers of land of the Omaha tribe of Indians in Nebraska, and for other purposes.

Mr. W. C. P. Breckinridge, of Kentucky, made the point of order that the said bill should receive its first consideration in the Committee of the Whole on the state of the Union.

The Speaker<sup>1</sup> overruled the said point, on the ground that the bill on its face made no appropriation of money or property.

**4845.** On March 12, 1890,<sup>3</sup> Mr. Bishop W. Perkins, of Kansas, called up and the House proceeded to the consideration of the bill of the House (H. R. 856) to amend section 1 and section 9 of an act entitled “An act to authorize the Denison and Washita Valley Railroad Company to construct and operate a railway through the Indian Territory, and for other purposes,” approved July 1, 1886, reported with an amendment. This land was the property of the Indians, and not public lands belonging to the Government.

Mr. Benton McMillin, of Tennessee, made the point of order that under the rule quoted the bill must receive its first consideration in a Committee of the Whole.

After debate on the point of order, the Speaker<sup>1</sup> overruled the same on the ground that the bill granted the right of way and did not appropriate public land.

**4846. A bill creating a new office requires consideration in Committee of the Whole.**—On January 13, 1880,<sup>4</sup> Mr. Benjamin Wilson, of West Virginia, from the Committee on Printing, to which was referred the bill of the House (H. R. 2170) to provide for the election of a Congressional Printer, reported the same without amendment.

The bill having been read, Mr. Omar D. Conger, of Michigan, made the point of order that the said bill must, under Rule 112,<sup>5</sup> receive its first consideration in the Committee of the Whole House.

The Speaker<sup>6</sup> sustained the point of order on the ground that the bill created a new office which required an appropriation hereafter to be made, and “touched” an appropriation of money, thus bringing it within the “terms of the rule.”

**4847. A bill increasing the number of officers in a branch of the Government service should be considered in Committee of the Whole.**—On March 10, 1890,<sup>7</sup> the House was about to proceed to the consideration of the bill of

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<sup>1</sup>Thomas B. Reed, of Maine, Speaker.

<sup>2</sup>First session Fifty-first Congress, Journal, p. 948; Record, p. 8483.

<sup>3</sup>First session Fifty-first Congress, Journal, p. 337; Record, pp. 2165, 2166.

<sup>4</sup>Second session Forty-sixth Congress, Journal, p. 217.

<sup>5</sup>See section 4792 of this chapter.

<sup>6</sup>Samuel J. Randall, of Pennsylvania, Speaker.

<sup>7</sup>First session Fifty-first Congress, Journal, p. 326; Record, p. 2093.

the Senate (S. 1629) to amend section 4414, Title LII, of the Revised Statutes of the United States, "Regulation of steam vessels," reported from the Committee on Commerce.

Mr. Benton McMillin, of Tennessee, made the point of order that the bill increased the number of officers in the inspection service and that it should receive its first consideration in Committee of the Whole.

The Speaker<sup>1</sup> sustained the point of order.

**4848. A bill authorizing the promotion of an officer to a higher grade does not require consideration in Committee of the Whole.**—On February 21, 1879<sup>2</sup> Mr. John Goode, jr., of Virginia, from the Committee on Naval Affairs, reported, with an amendment in the nature of a substitute, the bill (H. R. 5662) authorizing the President to appoint Dr. William Martin a surgeon in the regular navy of the United States.

Mr. Clement H. Sinnickson, of New Jersey, made the point of order that the bill created a new office and must receive its first consideration in Committee of the Whole House.

The Speaker<sup>3</sup> overruled the point of order, on the ground that the bill only authorized and requested the President to promote an officer from a lower to a higher grade of rank, and made no appropriation.

**4849. A provision increasing the number of persons who would be entitled to receive pensions should receive consideration in Committee of the Whole.**—On July 3, 1884,<sup>4</sup> the House had under consideration a general pension bill to which the Senate had added an amendment abolishing the restriction of widows' pensions by striking out the words "as were married to such officers or soldiers or sailors prior to the discharge of such officers and enlisted men."

Mr. Goldsmith W. Hewitt, of Alabama, made the point of order that the amendment under Rule XX<sup>5</sup> must receive its first consideration in the Committee of the Whole House on the state of the Union, on the ground that the effect of such amendment would be to increase the number of persons who would receive pensions under the bill if it should become a law in that form.

The Speaker<sup>6</sup> sustained the point of order upon the ground stated by Mr. Hewitt, and also upon the further ground that the amendment would have been subject to the point of order under clause 3, Rule XXIII,<sup>7</sup> if submitted when the bill was pending in the House, that it must receive its first consideration in Committee of the Whole.

**4850. A bill increasing the number of cadets in the Military Academy should be considered in Committee of the Whole.**—On January 16, 1895,<sup>8</sup> Mr. Joseph H. Outhwaite, of Ohio, presented for consideration the bill (H. R. 8059) to amend section 1315 of the Revised Statutes.

<sup>1</sup> Thomas B. Reed, of Maine, Speaker.

<sup>2</sup> Third session Forty-fifth Congress, Journal, p. 484; Record, p. 1722.

<sup>3</sup> Samuel J. Randall, of Pennsylvania, Speaker.

<sup>4</sup> First session Forty-eighth Congress, Journal, p. 1657.

<sup>5</sup> See section 4796 of this chapter.

<sup>6</sup> John G. Carlisle, of Kentucky, Speaker.

<sup>7</sup> See section 4792.

<sup>8</sup> Third session Fifty-third Congress, Journal, p. 66; Record, p. 1037.

Mr. William S. Holman, of Indiana, made the point of order that the bill being to increase the number of cadets should be considered in the Committee of the Whole.

The Speaker pro tempore<sup>1</sup> sustained the point of order.

**4851. A provision for the distribution of rations among sufferers from a flood requires consideration in Committee of the Whole.**—On April 25, 1890,<sup>2</sup> Mr. Joseph G. Cannon, of Illinois, reported from the Committee on Appropriations a joint resolution providing for the distribution of rations for the relief of destitute persons in the district overflowed by the Mississippi River.

Mr. W. C. P. Breckinridge, of Kentucky, made the point of order that the joint resolution must receive its first consideration in a Committee of the Whole.

The Speaker<sup>3</sup> sustained the point of order, and the joint resolution and report were referred to the Committee of the Whole House on the state of the Union.

**4852. A bill authorizing the issue of military equipment to a school does not require consideration in Committee of the Whole.**—On January 7, 1891,<sup>4</sup> Mr. Byron M. Cutcheon, of Michigan, called up the joint resolution of the House (H. Res. 240) to authorize the Secretary of War to issue ordnance and ordnance stores to the Washington High School.

Mr. Richard P. Bland, of Missouri, made the point of order that the joint resolution made an appropriation of property, and should therefore receive its first consideration in the Committee of the Whole House on the state of the Union.

The Speaker<sup>3</sup> overruled the point of order.

**4853. A proposition to dispose of funds held as a trust under control of the Government, but not the property of the Government, is not considered in Committee of the Whole.**—On October 5, 1893,<sup>5</sup> Mr. William C. Oates, of Alabama, from the Committee on the Judiciary, presented for consideration the joint resolution (H. Res. 34) providing for the disposition of certain personal property and money now in the hands of a receiver of the Church of Jesus Christ of Latter-day Saints, appointed by the supreme court of Utah, and authorizing its application to the charitable purposes of said church.

Mr. Julius C. Burrows, of Michigan, made the point that the joint resolution should be first considered in Committee of the Whole.

The Speaker<sup>6</sup> overruled the point of order.

**4854. Taxes relating to bank circulation have not been considered such "tax or charge upon the people" as require consideration in Committee of the Whole.**—On April 16, 1864,<sup>7</sup> the House proceeded to the consideration of the bill of the House (H. R. 395) to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof.

Mr. William S. Holman, of Indiana, made the point of order that the said bill must receive its first consideration in the Committee of the Whole House on the

<sup>1</sup> Alexander M. Dockery, of Missouri, Speaker pro tempore.

<sup>2</sup> First session Fifty-first Congress, Journal, p. 520; Record, p. 3822.

<sup>3</sup> Thomas B. Reed, of Maine, Speaker.

<sup>4</sup> Second session Fifty-first Congress, Journal, p. 107; Record, p. 996.

<sup>5</sup> First session Fifty-third Congress, Journal, p. 127.

<sup>6</sup> Charles F. Crisp, of Georgia, Speaker.

<sup>7</sup> First session Thirty-eighth Congress, Journal, p. 537; Globe, p. 1680.

state of the Union, on the ground that it imposed a tax and also made an appropriation.

The Speaker<sup>1</sup> overruled the point of order on the ground that it contained no appropriation, nor did it impose a tax upon the people, such as was contemplated by the rule.

From this decision of the Chair Mr. Holman appealed, and the question being put, Shall the decision of the Chair stand as the judgment of the House? it was decided in the affirmative, yeas 71, nays 31.

**4855.** On July 5, 1894,<sup>2</sup> Mr. Uriel S. Hall, of Missouri, from the Committee on Banking and Currency, to whom was recommitted the bill (H. R. 4326) to subject to State taxation national-bank notes and United States Treasury notes, reported the same, with amendments, for immediate consideration.

Mr. Marriott Brosius, of Pennsylvania, made the point of order that inasmuch as the bill authorized the taxation of Federal obligations by the States, the bill should be first considered in the Committee of the Whole.

The Speaker<sup>3</sup> overruled the point of order.

**4856. Under the later practice bills for the adjudication and payment of claims require consideration in Committee of the Whole.**—On August 20, 1890,<sup>4</sup> Mr. James Buchanan, of New Jersey, called up the bill of the House (H. R. 11120) providing for the adjustment of accounts of laborers, workmen, and mechanics arising under the eight-hour law, on the House Calendar.

The bill having been read, Mr. W. C. P. Breckinridge, of Kentucky, made the point of order that the bill must receive its first consideration in a Committee of the Whole, being a bill which contemplated and provided for a judgment against the United States.

After debate on the point of order, the Speaker pro tempore<sup>5</sup> overruled the same, on the ground that it did not appear on the face of the bill that it made or required an appropriation of money; that it did not require a judgment to be found or made in behalf of the persons named in the bill, and that the test which had been applied in former rulings on this identical question, which the Chair would follow, was that if the bill did not directly make an appropriation of money or require one to be made, but could be executed without an appropriation, then the rule invoked (clause 3 of Rule XXIII)<sup>6</sup> did not apply.

**4857.** On September 20, 1890,<sup>7</sup> the Speaker laid before the House the bill of the Senate (S. 4175) authorizing the Secretary of the Treasury to settle the indebtedness to the Government of the Sioux City and Pacific Railroad Company.

Mr. William S. Holman, of Indiana, made the point of order that the bill must receive its first consideration in the Committee of the Whole House on the state of the Union.

<sup>1</sup> Schuyler Colfax, of Indiana, Speaker.

<sup>2</sup> Second session Fifty-third Congress, Journal, p. 467; Record, p. 7140.

<sup>3</sup> Charles F. Crisp, of Georgia, Speaker.

<sup>4</sup> First session Fifty-first Congress, Journal, p. 972; Record, pp. 8881, 8882.

<sup>5</sup> Charles H. Grosvenor, of Ohio, Speaker pro tempore.

<sup>6</sup> See section 4792 of this chapter.

<sup>7</sup> First session Fifty-first Congress, Journal, p. 1104; Record, p. 10690.

The Speaker<sup>1</sup> overruled the point of order, on the ground that no appropriation was made by the bill, and that the practice of the House had been uniform in respect to bills of this class that consideration in a Committee of the Whole was not required under the rule.

**4858.** On January 14, 1885,<sup>2</sup> on motion of Mr. William R. Cox, of North Carolina, the Senate bill to provide for the ascertainment of claims of American citizens for spoliations committed by the French prior to the 3d of July, 1801, was taken from the Speaker's table and read twice.

Mr. William S. Holman, of Indiana, made the point of order that under Rule XXIII,<sup>3</sup> clause 3, the said bill must receive its first consideration in the Committee of the Whole House on the state of the Union.

After debate thereon,

The Speaker<sup>4</sup> overruled the same, on the ground that it did not make an appropriation of money or require an appropriation of money to be hereafter made, but provided for an investigation of the claims therein referred to by the Court of Claims, the same to be reported to Congress for final action.

**4859.** On December 14, 1904,<sup>5</sup> in the course of the call of the committees for the consideration of business on the House Calendar, the Committee on Indian Affairs asked for consideration of the bill (H. R. 54) to amend an act entitled "An act to provide for the adjudication and payment of claims arising from Indian depre-dations," approved March 3, 1901.

Mr. Charles Curtis, of Kansas, made the point of order that the bill should receive consideration in Committee of the Whole, and was not properly on the House Calendar.

After debate, the Speaker<sup>6</sup> ruled:

The Chair calls attention to Rule XXIII, and that portion of the rule that the Chair believes to be material and vital to this point of order is as follows:

"All motions or propositions involving a tax or charge upon the people \* \* \* shall be first considered in a Committee of the Whole, and a point of order under this rule shall be good at any time before the consideration of a bill has commenced."

Now, then, the question is whether this bill involves a tax or charge upon the people. The Chair, in deciding this question, must necessarily take into view the law as it now is, together with the proposed legislation, and inquire whether the legislation proposed in this bill, changing existing law, if enacted, involves a tax against the people.

Now, the bill provides:

"All claims for property of citizens of the United States, or inhabitants thereof, who have since become citizens of the United States, taken or destroyed within the jurisdiction of the United States by Indians belonging to any band, tribe, or nation subject to the jurisdiction of the United States, without just cause or provocation on the part of the owner or agent in charge, and not returned or paid for; and the alienage of the claimant, provided he has since become a citizen of the United States, or the want of amity of such Indians shall not be a defense to said claims."

<sup>1</sup>Thomas B. Reed, of Maine, Speaker.

<sup>2</sup>Second session Forty-eighth Congress, Journal, p. 260; Record, pp. 696, 697.

<sup>3</sup>See section 4792 of this chapter. In the Fifty-fourth Congress the words "or referring any claim to the Court of Claims" were added to the rule.

<sup>4</sup>John G. Carlisle, of Kentucky, Speaker.

<sup>5</sup>Third session Fifty-eighth Congress, Record, pp. 282, 283.

<sup>6</sup>Joseph G. Cannon, of Illinois, Speaker.

Under the law as it now exists, if the depredation was made against an individual who was not a citizen of the United States at the time the depredation was committed, the United States is not responsible. This provision, if enacted into law, would make the United States responsible. Then, again, it changes the law as it now stands touching amity. The Chair must take notice of the law; has read the bill, and shown wherein it changes existing law. It changes it in other respects it is not necessary for the Chair to refer to in deciding this point of order. In substance it certainly covers the proposition "involving a tax or charge upon the people," and therefore the Chair sustains the point of order, and the bill is referred to the Committee of the Whole House on the state of the Union.

**4860. It was formerly held (before the change in section 3 of Rule XXIII) that a bill referring a claim to the Court of Claims did not require consideration in the Committee of the Whole.**—On March 7, 1890,<sup>1</sup> the point of order was made that the bill (S. 235) referring to the Court of Claims the claim of William E. Woodbridge, must receive its first consideration in the Committee of the Whole.

The Speaker<sup>2</sup> overruled the point of order, on the ground that it had been uniformly held that bills of this class did not come within the requirements of the rule cited, and that the principle which governed the question was that if the bill did not require an appropriation, or if it could be executed without an appropriation, then the rule did not apply. For these reasons the Chair held the point of order not well taken, and stated that the question was on the third reading of the bill.<sup>3</sup>

**4861. A bill increasing the rate of postage has been held to affect the revenues, and therefore to require consideration in Committee of the Whole.**—On December 4, 1900,<sup>4</sup> during the call of committees, Mr. Eugene F. Loud, of California, by authority of the Committee on the Post-Office and Post-Roads, called up the bill (H. R. 10374) to amend the laws relating to the second class of mail matter, one section of which contained this provision:

That news agents shall not be allowed to return to news agents or publishers at the pound rate unsold periodical publications, but shall pay postage on the same at the rate of 1 cent for 4 ounces.

Mr. James D. Richardson, of Tennessee, made the point of order that the bill affected the postal revenue, and therefore should receive consideration in Committee of the Whole.

After debate, the Speaker<sup>5</sup> said:

The Chair is ready to rule upon the question of order which has been presented.

Rule XIII, referred to by the gentleman from California, prescribes the class of legislation that can go upon the House Calendar, as well as the other Calendars of the House, and the second paragraph of that rule is in the following language:

"Second. A House Calendar, to which shall be referred all bills of a public character not raising revenue, nor directly or indirectly appropriating money or property."

That, of course, indicates the class of bills that may properly be placed upon the House Calendar.

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<sup>1</sup>First session Fifty-first Congress, Journal, p. 315.

<sup>2</sup>Thomas B. Reed, of Maine, Speaker.

<sup>3</sup>Mr. Speaker Carlisle had also decided this way as to certain French spoliation claims. (Second session Forty-eighth Congress, Journal, p. 260; Record, p. 697.) So also Mr. Speaker Randall, on January 21, 1879. (Third session Forty-fifth Congress, Journal, p. 244.)

<sup>4</sup>Second session Fifty-sixth Congress, Journal, p. 22; Record, pp. 50–52.

<sup>5</sup>David B. Henderson, of Iowa, Speaker.

Rule XXIII prescribes the class of business before the House which must be sent to the Committee of the Whole House on the state of the Union for consideration, and is in the following language:

“All motions or propositions involving a tax or charge upon the people; all proceedings touching appropriations of money or bills making appropriations of money or property, or requiring such appropriations to be made, or authorizing payments out of appropriations already made, or releasing any liability to the United States for money or property, or referring any claim to the Court of Claims, shall be first considered in a Committee of the Whole, and a point of order under this rule shall be good at any time before the consideration of a bill has commenced.”

Now, it seems to the Chair that the vital question presented in this discussion is as to whether or not this is a matter affecting the revenues of the Government.

It is admitted by the gentleman in charge of the bill—and the Chair is not familiar with the rate of taxation under such conditions—that this increases the rate of postage, and to that extent increases the burdens on the people of the country. It may probably raise more revenue. As to that the Chair is unable to say; but it clearly affects the revenue. That is admitted. There can be no question as to that fact. Now, if the contention be made that increasing the rate of postage does not affect the revenue, it may be answered that the House has already taken a decided stand on that question.

In 1859, when the post-office appropriation bill went from the House to the Senate, that body added to the bill a proposition increasing the rate of postage. The House, under the leadership of Mr. Grow, of Pennsylvania, took the ground that that did affect the revenue, and a stubborn and long-continued fight followed between the two Houses. The House of Representatives allowed the post-office appropriation bill to fail before it would yield on that point.

Now, it seems to the Chair to be clear that an increase of the rate of postage does affect taxation, does affect the revenue; and the Chair is clearly of the opinion that it is a matter that should first be considered in the Committee of the Whole House on the state of the Union, and therefore sustains the point of order.<sup>1</sup>

**4862. Resolutions from the Committee on Accounts authorizing expenditures from the contingent fund do not, according to the later rulings, require consideration in Committee of the Whole.**—On December 19, 1888,<sup>2</sup> Mr. Walter I. Hayes, of Iowa, from the Committee on Accounts, presented a bill providing clerks for Members, payment of the same to be made out of the contingent fund of the House.

Mr. William S. Holman, of Indiana, made the point of order that the bill should be considered in Committee of the Whole.

The Speaker<sup>3</sup> sustained the point of order.<sup>4</sup>

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<sup>1</sup>When the rule requiring consideration in Committee of the Whole was substantially the same as at present, but when the construction of it was evidently not so strict as at present, the following ruling is found: On January 11, 1836 (second session Twenty-fourth Congress, Journal, p. 191; Debates, pp. 1350, 1352), the bill (H. R. 829) to reduce the revenue of the United States to the wants of the Government was under consideration, when Mr. Abijah Mann, jr., of New York, made the point of order that the bill should be committed to the Committee of the Whole, under the rule requiring such a disposition of bills “for a tax or charge upon the people.”

The Speaker (James K. Polk, of Tennessee) said it did not appear to him, on the face of the bill, that it required commitment. Did it propose an imposition of duties, and thereby a tax or charge upon the people? It appeared to him not; and he could not, therefore, take upon himself to decide that it must necessarily go to a Committee of the Whole.

From this decision Mr. Mann appealed, but, after debate, withdrew the appeal.

<sup>2</sup>Second session Fiftieth Congress, Record, pp. 356, 357.

<sup>3</sup>John G. Carlisle, of Kentucky, Speaker.

<sup>4</sup>Mr. Speaker Randall had ruled this way on June 12, 1879 (first session Forty-sixth Congress, Record, p. 1952), but had ruled the other way on January 25, 1879 (third session Forty-fifth Congress, Journal, pp. 241, 242), May 13, 1878 (second session Forty-fifth Congress, Journal, p. 1074), and on February 9, 1877 (second session Forty-fourth Congress, Journal, p. 409).

**4863.** On July 29, 1892,<sup>1</sup> Mr. W. W. Dickerson, of Kentucky, from the Committee on Accounts, submitted, as a privileged report, a report on the following resolution, and asked its present consideration:

Whereas Fred Rice has served as special messenger to the Committee on Agriculture without pay since February 1: Therefore,

*Be it resolved,* That the Doorkeeper be instructed to place his name upon the laborers' roll, and that the said Fred Rice be paid out of the contingent fund for services rendered from February 1 to April 1, inclusive, at the rate of \$2 per day.

Mr. William S. Holman, of Indiana, made the point of order that the resolution, requiring an expenditure out of an appropriation already made, must receive its first consideration in the Committee of the Whole.

The Speaker<sup>2</sup> sustained the point of order, holding that propositions reported from the committees on Printing and on Accounts for the payment of money out of funds already appropriated were, according to the practice, immediately considered in the House. But, if the point were made, their first consideration should be in Committee of the Whole, since they are within the express terms of clause 3, Rule XXIII,<sup>3</sup> being propositions "authorizing payments out of appropriations already made."

**4864.** On March 2, 1893,<sup>4</sup> Mr. Harry W. Rusk, of Maryland, from the Committee on Accounts, submitted a privileged report on the following resolution:

*Resolved,* That the Clerk of the House of Representatives be directed to pay out of the contingent fund of the House to John W. Almarade, the father of Ernest Almarade, deceased, late an employee of the House of Representatives, a sum equal to six months of the salary being paid to him at the time of his death, etc.

Mr. William S. Holman, of Indiana, made the point of order that the resolution should be considered in Committee of the Whole.

The Speaker<sup>2</sup> sustained the point of order.

**4865.** On December 21, 1889,<sup>5</sup> before the adoption of rules, Mr. M. M. Boothman, of Ohio, from the Committee on Accounts, to which was referred the joint resolution of the House (H. Res. 11) giving one month's extra pay to certain employees of the House, reported the same with amendments.

Mr. William S. Holman, of Indiana, made the point of order that the joint resolution must receive its first consideration in the Committee of the Whole House on the state of the Union on the ground that it involved an expenditure of public money, and that under the rules of the last House, which were evidence of the common-law rules of the House, its first consideration in such committee was required.

The Speaker<sup>6</sup> overruled the point of order.

**4866.** On February 5, 1891,<sup>7</sup> Mr. M. M. Boothman, of Ohio, as a privileged question, from the Committee on Accounts, reported a resolution providing for

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<sup>1</sup> First session Fifty-second Congress, Journal, p. 345; Record, p. 6945.

<sup>2</sup> Charles F. Crisp, of Georgia, Speaker.

<sup>3</sup> See section 4792 of this chapter.

<sup>4</sup> Second session Fifty-second Congress, Journal, p. 126; Record, p. 2431.

<sup>5</sup> First session Fifty-first Congress, Journal, p. 87; Record, p. 376.

<sup>6</sup> Thomas B. Reed, of Maine, Speaker.

<sup>7</sup> Second session Fifty-first Congress, Journal, p. 216; Record, p. 2199.

defraying out of the contingent fund of the House the cost of preparing a digest of contested election cases.

Mr. William S. Holman, of Indiana, made the point of order that the resolution must receive its first consideration in a Committee of the Whole, as it involved an appropriation of money.

The Speaker<sup>1</sup> overruled the point of order.

**4867.** On December 18, 1896,<sup>2</sup> Mr. Benjamin B. Odell, jr., of New York, from the Committee on Accounts, reported resolutions authorizing the employment of additional folders at stated compensation, to be paid out of the contingent fund of the House, and also authorizing other payments out of the same fund.

Mr. Nelson Dingley, of Maine, made the point of order that the resolutions should be considered in Committee of the Whole.

The Speaker<sup>1</sup> said:

The Chair thinks recent rulings have been the other way. This is out of the contingent fund of the House, is a part of its expenditures, and does not affect the United States beyond that.

**4868. A report from the Committee on Printing relating to printing for the use of the two Houses does not require consideration in Committee of the Whole.**—On the 25th of July, 1882,<sup>3</sup> Mr. William M. Springer, of Illinois, from the Committee on Printing, reported without amendment the bill of the Senate to authorize the preparation of a catalogue of Government publications.

Mr. William S. Holman, of Indiana, made the point of order that the bill must receive its first consideration in the Committee of the Whole House.

After debate on the point of order the Speaker<sup>4</sup> overruled the same on the ground that as the Committee on Printing had the right to report at any time it carried with it the right of present consideration in the House, which was in harmony with the past practice of the House; and with this view the Chair was inclined to adhere to that practice, and consequently overruled the point of order.<sup>5</sup>

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<sup>1</sup> Thomas B. Reed, of Maine, Speaker.

<sup>2</sup> Second session Fifty-fourth Congress, Record, p. 271.

<sup>3</sup> First session Forty-seventh Congress, Journal, p. 1728; Record, p. 6481.

<sup>4</sup> Warren Keifer, of Ohio, Speaker.

<sup>5</sup> Second session Forty-sixth Congress, Journal, p. 217, for a decision the other way.