

Chapter CCLXXIII.¹

QUESTIONS OF ORDER AND APPEALS.

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3427. It is not the duty of the Chair to construe the Constitution as affecting proposed legislation.

An appropriation for the administration of the national prohibition law was held to be authorized by law and in order on an appropriation bill.

On January 18, 1930,² during consideration of the Treasury and Post Office appropriation bill in the Committee of the Whole House on the state of the Union, the paragraph providing for the enforcement of the national prohibition act was reached.

Mr. Fiorello H. LaGuardia, of New York, made the point of order that there was no authorization for the proposed appropriation.

After debate, the Chairman³ ruled:

The gentleman from New York has made a point of order against the appropriation carried in this section for the expenses of enforcing the provisions of the national prohibition act. He makes this point of order: First, that there is no authoritative law for the appropriation, because this appropriation is based on the laws that have been passed for the enforcement of the prohibition act, which act itself depends for its validity on the constitutionality of the eighteenth, or prohibition, amendment. In other words, his point of order is based on the supposition of fact that there is no operative eighteenth amendment at the present time. In the beginning of his argument he made the statement that he was not arguing the constitutionality of this law and that this is not the time or place to raise a constitutional question. With that part of the gentleman's argument the Chair entirely agrees. The Chairman of the Committee of the Whole, or even the Speaker of the House, is not called upon to decide a constitutional question or even render an opinion on a

¹Supplementary to Chapter CXLIII.

²Second session Seventy-first Congress, Record, p. 1903.

³Bertrand H. Snell, of New York, Chairman.

constitutional question. Notwithstanding that statement by the gentleman from New York, he immediately launched into a very long, carefully prepared, and somewhat ingenious argument to uphold his contention that the eighteenth amendment is not operative at the present time.

Now, what is the practical situation before the Committee? We are governed by the rules and practices of the House, and as far as the Chair knows there are only one or two extreme occasions where we have ever relied upon the Constitution itself as authority for making an appropriation in one of the regular appropriation bills. The Chair has seen one decision in connection with appropriations for ambassadors to foreign countries, where the only authorization was the clause in the Constitution which provides for the appointment of ambassadors.

That was considered as sufficient authorization for making the appropriation. However, as a usual thing we are governed entirely by the rules and practices of the House. Clause 2 of Rule XXI reads as follows:

“No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law.”

The subcommittee on appropriations has very carefully and fully set out in the first page and a half of this special section all of the laws that have furnished the authority for the appropriation. The Chair has examined some of these authorities and he believes there is sufficient and ample authority in the laws that are enumerated for making the appropriation. The gentleman from New York in his argument has not claimed that all of these laws have been repealed or, in fact, that any one of them has been repealed. As far as the present occupant of the chair is informed or knows, none of them have been repealed.

Therefore the Chair is of the opinion that there is ample authority of law for making the appropriation; that the Committee on Appropriations has not gone beyond the authority that is given it and therefore the point of order is overruled.

3428. A point of order being reserved, the pending question may be debated on its merits if no Member demands the regular order.

On August 23, 1918,¹ while the bill (H. R. 12731) amending the draft law, was under consideration in the Committee of the Whole House on the state of the Union, Mr. Dudley Doolittle, of Kansas, offered an amendment confirming the right of suffrage to soldiers in the service of the United States.

Mr. S. Hubert Dent, of Alabama, reserved a point of order on the amendment.

Mr. Doolittle inquired if the amendment was debatable after reservation of a point of order against it.

The Chairman² held that the point of order was in abeyance during reservation and the pending amendment was subject to debate on its merits if no Member demanded the regular order.

3429. Reservation of a point of order is by unanimous consent only and must be made or waived on demand for the regular order.

A point of order when reserved is not subject to debate.

A point of order being withdrawn, and Member may renew it.

On December 18, 1912,³ an appropriation bill was under consideration in the Committee of the Whole House on the state of the Union.

The Clerk read a paragraph providing for the instruction of Indian women in household duties and the conduct of experiments in forestry on Indian agency farms.

Mr. James R. Mann, of Illinois, reserved a point of order on the paragraph, but after debate withdrew it.

¹ Second session Sixty-fifth Congress, Record, p. 9457.

² Courtney W. Hamlin, of Missouri, Chairman.

³ Third session Sixty-second Congress, Record, p. 878.

Thereupon, Mr. H. Robert Fowler, of Illinois, renewed the point of order and was proceeding in debate when Mr. Martin Dies, of Texas, objected that debate was not in order.

The Chairman ¹ said:

The gentleman from Illinois is recognized under the familiar practice in the Committee of the Whole to extend recognition, when requested, to a Member reserving a point of order. Strictly speaking under this recognition the gentleman is not entitled to five minutes, if objection is made. But the usual practice allows him to proceed in the absence of objection for certainly as much as five minutes.

Mr. Fowler having concluded, Mr. Scott Ferris, of Oklahoma, proposed to debate the point or order which has been reserved.

The Chairman held that a point or order which has been reserved was not subject to debate and said:

The Chair does not see how the gentleman can be heard on a point of order that is reserved. There is nothing before the committee.

The point of order was reserved by the gentleman from Illinois, and his rights, if any, were exhausted in the opinion of the Chair, at the expiration of five minutes. There is no point of order to discuss, none having been made.

Mr. Marlin E. Olmsted, of Pennsylvania, demanded the regular order.

The Chairman referred to section 6869 of Hinds' Precedents and said:

In conformity with the authority quoted, the Chair rules now, as it has ruled heretofore, that the reservation of a point of order is not a matter of right under the rules, but of general acquiescence. All proceedings under such a reservation are a form of unanimous consent. Objection having been made, the gentleman from Illinois is requested to state his point or order.

3430. A point or order may be reserved but must be decided or withdrawn on the demand of any Member for the regular order.

If reservation of a point or order is withdrawn another Member may renew it.

Debate under reservation of a point of order is by unanimous consent and may be terminated at any time by a demand for the regular order.

A proposition to be accepted as a substitute must relate to the same subject and propose a related objective.

On October 24, 1921,² the Committee of the Whole House on the state of the Union was considering the bill (H. R. 8762) to create a commission authorized to refund foreign obligations.

Mr. James A. Frear, of Wisconsin, offered as an amendment a proposal to incorporate in the bill the following proviso:

Provided, That the total amount of interest payable on any such obligation received hereunder shall not be less than an amount equal to interest on the principal thereof at the rate of 5 per cent per annum.

Mr. James W. Collier, of Mississippi, offered as a substitute for the amendment the following:

Provided, That no agreement or agreements so entered into with respect to any matter herein authorized shall be deemed to have been completed nor to have force and effect until it shall have been submitted to the Congress of the United States and embodied in a law passed by Congress.

¹ Edward W. Saunders, of Virginia, Chairman.

² First session Sixty-seventh Congress, Record, p. 7468.

Mr. Nicholas Longworth, of Ohio, objected that the purported substitute was not in fact a substitute in that it differed from the pending amendment both in subject matter and purpose.

At the request of Mr. Collier, Mr. Longworth, consented to reserve the point of order to permit debate on the merits of the proposal.

After debate Mr. Eugene Black, of Texas, demanded the regular order and the Chairman¹ announced:

The Chair understands the gentleman demands the regular order. Does the gentleman from Ohio press his point or order?

The Chair will state for the information of the committee that debate on a reservation of a point of order is by unanimous consent, and it is within the privilege of any member of the committee at any time to demand the regular order, when it is incumbent on the member who has made the point of order to either withdraw the point of order or make it. I understand the gentleman from Texas demands the regular order, and the Chair is inquiring of the gentleman from Ohio whether he desires to withdraw the point of order or make it.

Thereupon, Mr. Longworth, not insisting on the point of order, Mr. Albert Johnson, of Washington, renewed it.

The Chairman held that the proposal was not a substitute and said:

The amendment of the gentleman from Wisconsin provides that "the total amount of interest payable on any such obligation received hereunder shall not be less than an amount equal to interest on the principal thereof at the rate of 5 per cent per annum." The object of the amendment of the gentleman from Wisconsin is for the sole purpose of restricting the discretion of the commission as to the interest arrangements that may be entered into. The substitute offered by the gentleman from Mississippi goes much further. In fact, it makes no references whatsoever to the purport, directly or indirectly, of the amendment of the gentleman from Wisconsin. It relates to agreements that may be entered into. It has a much broader scope than the pending amendment. In fact, it has no relation to it except in a very distant degree, and therefore it can not be considered a substitute, and the Chair sustains the point or order.

3431. On December 22, 1932,² the Committee of the Whole House on the state of the Union was considering the Interior Department appropriation bill, when Mr. Samuel S. Arentz, of Nevada, offered an amendment making provision for school-room equipment in Indian schools.

Mr. William W. Hastings, of Oklahoma, reserved a point of order on the amendment.

After debate, Mr. Hastings having withdrawn the point of order, Mr. Philip D. Swing, of California, proposed to renew the reservation.

Mr. Arentz made the point or over that debate had intervened and the amendment was no longer subject to a point of order.

The Chairman³ dissented and held that the reservation of a point of order withdrawn by one Member might be renewed immediately by another Member.

3432. Submission of a question of order precludes further consideration until disposed of.

On January 14, 1913,⁴ the Post Office appropriation bill was ordered to be engrossed and was read a third time, when Mr. Victor Murdock, of Kansas, moved to

¹ William H. Stafford, of Wisconsin, Chairman.

² Second session Seventy-second Congress, Record, p. 925.

³ Schuyler Otis Bland, of Virginia, Chairman.

⁴ Third session Sixty-second Congress, Record, p. 1519.

recommit the bill to the Committee on the Post Office and Post Roads with instructions to report it back instanter with an amendment interdicting the transportation of mail matter advertising intoxicating liquors.

Mr. Swagar Sherley, of Kentucky, objected that the amendment embodied in the motion to recommit was not germane and pending the point of order demanded a division of the question on the various substantive propositions presented in the motion.

Mr. Murdock made the point of order that the demand for a division of the question could not be made until the pending point of order had been decided.

The Speaker¹ sustained the point of order and addressed himself to the question of germaneness raised by Mr. Sherley.

3433. The previous question may not be demanded on a proposition against which a point of order is pending.

On January 16, 1917,² the House had under consideration the Post Office appropriation bill with amendments recommended by the Committee of the Whole House on the state of the Union.

Mr. Charles H. Randall, of California, moved to recommit the bill to the Committee on the Post Office and Post Roads, with instructions to report it back forthwith with an amendment prohibiting the transmission through the mails of matter advertising intoxicants.

Mr. Swagar Shirley, of Kentucky, made the point of order that the amendment proposed legislation on an appropriation bill.

Mr. Randall demanded the previous question on the motion to recommit, when Mr. James R. Mann, of Illinois, raised the question of the right to move the previous question while a point of order was pending.

The Speaker¹ sustained the point of order and held the demand for the previous question could not be entertained until the question of order was disposed of.

3434. An amendment read for information is not pending and reservation of points of order is not required to preserve rights thereon.

On February 22, 1910,³ the Indian appropriation bill was being considered in the Committee of the Whole House on the state of the Union.

A section making provision for the expense of the Five Civilized Tribes being read, Mr. John H. Stephens, of Texas, gave notice that at the proper time he proposed to offer an amendment requiring the commission to enroll and provide for certain members of the Choctaw Tribe.

On request of Mr. James R. Mann, of Illinois, the amendment was read for information.

Mr. Charles D. Carter, of Oklahoma, proposed to raise a question of order against the amendment.

¹ Champ Clark, of Missouri, Speaker.

² Second session Sixty-fourth Congress, Record, p. 1484.

³ Second session Sixty-first Congress, Record, p. 2216.

The Chairman¹ declined to entertain the reservation and held that as the amendment was merely read for information it was not pending and a point of order was not required to preserve the rights of Members to object when it was offered.

3435. An instance wherein the Chair after announcing a decision subsequently reversed the opinion.

Where a Government agency was required by law to fix salaries in accordance with the classification act, a proposal under which it would be possible to fix salaries in excess of the maximum provided by the classification act was held to constitute legislation.

On January 12, 1927,² the independent offices appropriation bill was being considered in the Committee of the Whole House on the state of the Union.

The Clerk read:

For every expenditure requisite for and incident to the work of the Board of Tax Appeals as authorized under Title IX, section 900, of the revenue act of 1924, approved June 2, 1924, as amended by Title X of the revenue act of 1926, approved February 26, 1926, personal services (including 12 employees at rates of compensation to be fixed by the board, not in excess of \$7,500 each per annum), stenographic reporting services to be obtained on and after the passage of this act by the board in its discretion, through the civil service or by contract, or renewal of existing contract, or otherwise, rent at the seat of government and elsewhere, traveling expenses, car fare, stationery, furniture, office equipment, purchase and exchange of typewriters, law books and books of reference, periodicals, and all other necessary supplies, \$682,740.

Mr. Eugene Black, of Texas, made a point of order that the language—

Including 12 employees at rates of compensation to be fixed by the board, not in excess of \$7,500 each per annum.

was a proposition to enact legislation.

Mr. Black cited section 910 of the code as follows:

The board is authorized, in accordance with the civil service laws, to appoint, and in accordance with the classification act of 1923 to fix the compensation of such employees, and to make such expenditures, including expenditures for personal services and rent at the seat of government and elsewhere, and for law books, books of references, periodicals, etc.

and contended that the authorization to fix salaries at a figure not in excess of \$7,500 was a proposal to fix them in excess of the maximum provided in the statute cited.

The Chairman³ overruled the point of order, but subsequently asked the attention of the Committee and announced.

The Chair finds himself in a rather peculiar position and hopes that he is not the only occupant of the chair who has so found himself. A few moments ago a point of order was made to lines 2 and 3, and the Chair overruled the point or order. Now an amendment is offered, which in addition to the language found in lines 2 and 3, includes the words "stenographic reporting services." On further investigation the Chair has come to the conclusion that the revenue act of 1926 authorizes the board to appoint these employees under civil-service rules and fix their salaries only in accordance with the reclassification act.

When the Chair made his first ruling he took snap judgment apparently, in holding that the language, "compensation to be fixed by the board," did not change existing law. But after careful consideration the Chair is compelled to reverse that ruling and hold that this does change the basic law, since apparently it permits the fixing of the salaries of these 12 employees without reference to

¹Marlin E. Olmsted, of Pennsylvania, Chairman.

²Second session Sixty-ninth Congress, Record, p. 1513.

³James T. Begg, of Ohio, Chairman.

the reclassification act. The Chair therefore sustains the point of order made against the amendment.

3436. If a portion of paragraph is out of order the entire paragraph may be stricken from the bill, but after that portion has been ruled out it is too late to lodge the point of order against the paragraph as a whole as if the objectionable matter had not been stricken from the bill.

On January 31, 1921,¹ the Committee of the Whole House on the state of the Union had under consideration the river and harbor bill.

The Clerk read the paragraph:

For the preservation and maintenance of existing river and harbor works, and for the prosecution of such projects heretofore authorized as may be most desirable in the interests of commerce and navigation, \$15,000,000: *Provided*, That allotments from this sum shall be made by the Secretary of War upon the recommendation of the Chief of Engineers: *Provided further*, That at the beginning of the second session of the Sixty-seventh Congress a special report shall be made to Congress by the Secretary of War showing the amount allotted under this appropriation for each work of improvement or maintenance.

Mr. Thomas L. Blanton, of Texas, having submitted a point of order against the two provisos, the Chairman sustained the point of order and the provisos were stricken from the paragraph.

Whereupon Mr. Blanton lodged a point of order against the remainder of the paragraph on the ground that if a portion was out of order the entire paragraph was subject to a point of order.

Mr. James R. Mann, of Illinois, objected and argued:

The gentleman might have made a point of order against the whole paragraph. The gentleman did make a point of order against the two provisos. Before the Chair ruled upon that he might have made a point of order against the whole paragraph, but he did not attempt to make a point of order against the whole paragraph until the Chair ruled out the two provisos. Now, the gentleman is entitled to make a point of order against the balance of the paragraph, but the provisos are out of it, and he can not sustain the point of order now on the ground that it has the provisos in it, because they are already out.

The Chairman² acquiesced and said:

That is exactly the position taken by the Chair, as the Chair has already stated. The paragraph is not now subject to a point of order for the reason stated by the gentleman from Illinois.

3437. An amendment being offered, and the reading having begun, a point of order may interrupt the reading and the Chair may rule the amendment out if enough has been read to show that it is out of order.

On April 7, 1980,³ while the Committee of the Whole House on the state of the Union was considering the District of Columbia appropriation bill, the Clerk read:

Attendance officers: For two attendance officers, authorized by the act providing for compulsory education in the District of Columbia, approved June 8, 1906, at \$600 each; one attendance officer, \$900; in all, \$2,100.

Mr. Andrew J. Peters, of Massachusetts, sent the desk and amendment which the Clerk reported as follows:

That from and after the passage of this act the labor of children—

At this point Mr. Martin B. Madden, of Illinois, rose to submit a point of order.

¹Third session Sixty-sixth Congress, Record, p. 2349.

²James W. Husted, of New York, Chairman.

³First session Sixtieth Congress, Record, p. 4483.

The Chairman ¹ declined recognition and said:

As soon as there is sufficient of the amendment read to indicate what the purpose is, the Chair will rule on the point of order. The Clerk will continue the reading.

The Clerk continued:

That from and after the passage of this act the labor of children in the District of Columbia shall be subject to the following regulations—

The Chairman interposed:

The Clerk will cease reading. That is clearly out of order. It is legislation, pure and simple. The point of order is sustained.

3438. On January 26, 1917,² during the consideration of the river and harbor bill in the Committee of the Whole House on the state of the Union, Mr. Murray Hulbert, of New York, offered an amendment which he sent to the desk to be reported by the Clerk.

The Clerk read:

Sec. 9. That the following amendment to section 7, Article I, of the Constitution is hereby proposed and submitted to the several States, as follows.

Mr. James R. Mann, of Illinois, interrupted and demanded to be heard on a point of order against the amendment.

The Chairman reminded that the reading of the amendment had not yet been concluded.

Mr. Mann submitted:

Enough has been read to show that the amendment is a proposed amendment to the Constitution of the United States. I make the point of order so as to prevent showing what it is.

The Chairman ³ entertained the objection and sustained the point of order.

3439. On October 30, 1919,⁴ the bill (S. 2775), the mineral leasing bill, was being considered in the Committee of the Whole House on the state of the Union.

Mr. John E. Raker, of California, offered an amendment in the nature of a substitute.

After a portion of the amendment had been read, Mr. Thomas L. Blanton of Texas, interposed a question of order.

The Chairman ⁵ objected:

The Chair can not decide the point of order on a matter that he knows nothing about.

It is manifest that any point of order against this amendment can not be given consideration by the Chair until the Chair knows what is contained in the amendment. The Chair is no mind reader—

The Clerk continued until section 40 of the amendment was read, prohibiting one corporation from acquiring or controlling the stock of another corporation, when Mr. Blanton again interrupted and made the point of order that the amendment was not germane.

¹ John Dalzell, of Pennsylvania, Chairman.

² Second session Sixty-fourth Congress, Record, p. 2082.

³ Henry T. Rainey, of Illinois, Chairman.

⁴ First session Sixty-sixth Congress, Record, p. 7783.

⁵ Martin B. Madden, of Illinois, Chairman.

The Chairman entertained the point of order and said:

The reading having disclosed that section 40 of the amendment offered by the gentleman from California is contrary to the spirit of the provisions of the bill, and seeks to prevent the acquisition of stock in a corporation by individuals or stockholders of another corporation, and provides for punishment under certain circumstances, and indicates by the provisions of the section that it has no relation whatever to the provisions of the bill, wishes to say that the former Speaker of the House, Mr. Speaker Clark, on December 5, 1912, having ruled upon a question on all fours with this, on a point of order made to a bill providing for the physical valuation of railroads, when a provision dealing with the future issuance of stocks and bonds was pending, and held the amendment not to be germane, and held the point of order made against it as good, and sustained it, so the chair under the present circumstances feels constrained to rule that the amendment of the gentleman from California offered at this stage of the bill, covering cases already having been passed upon during the consideration of the bill, is out of order, and the point of order is sustained.

3440. It is too late to raise a question of order against the consideration of a proposition after debate on it has begun.

On March 25, 1910,¹ the House was in the Committee of the Whole for consideration of bills on the Private Calendar.

The bill (S. 4040) to grant land to the city of Cheyenne was taken up for consideration.

After debate, Mr. Charles L. Bartlett, of Georgia, made the point of order that the bill was a public bill and was improperly on the Private Calendar.

Mr. James R. Mann, of Illinois, objected that the bill had been debated and the point of order came too late.

The Chairman² ruled:

After the bill now under consideration had been read by the Clerk the gentleman from Illinois took the floor and discussed the merits of the measure for something like forty minutes, and a number of other gentlemen took part in the colloquy. The gentleman from Georgia then made the point of order that the bill was not properly on the Private Calendar, and that, therefore, the consideration of the measure should be suspended. The Chair would refer the committee to the precedents on this point, which are numerous.

The Chairman cited section 6895 of Hinds' Precedents as particularly applicable and concluded:

There are numerous other precedents coming down to within the last Congress to the same effect, that a point of order as to the place of a bill on the calendar should be made when the bill is first called, and, as in the first case quoted, a mere parliamentary inquiry was held to be intervening debate.

Exactly the same point is decided in a number of other cases, and the decisions from the Chair are based on the fact that it was not necessary for the Chair to consider the merits of a point of order, as the point of order came too late, it having considered the measure. In this case, as the consideration lasted for a full hour, the Chair overrules the point of order.

3441. On January 26, 1932,³ in the course of the consideration of the Agriculture Department appropriation bill in the Committee of the Whole House on the state of the Union, Mr. Fiorello H. LaGuardia, of New York, offered an amendment to the pending paragraph of the bill.

The Clerk having read the amendment, Mr. LaGuardia said in debate:

If the chairman will accept my amendment, I will not take any time of the committee.

¹Second session Sixty-first Congress, Record, p. 3777.

²Henry S. Boutell, of Illinois, Chairman.

³First session Seventy-second Congress, Record, p. 2743.

Mr. James P. Buchanan, of Texas, the Chairman of the subcommittee reporting the bill, declined to accept the amendment.

Whereupon, Mr. John Taber, of New York, proposed a point of order against the amendment.

The Chairman¹ refused recognition and said:

The Chair will state that the point of order of the gentleman from New York should have been before the gentleman from New York began his remarks. The Chair overrules the point of order because debate has intervened between the reading of the amendment and the raising of the point of order.

3442. A point of order against the motion to strike out the enacting clause must be made before debate has begun.

On December 5, 1919,² the House resolved into the Committee of the Whole House on the state of the Union for the further consideration of the bill (H. R. 9755) to establish the standard of weights and measures for wheat-mill and corn-mill products.

Mr. William B. Bankhead, of Alabama, moved to strike out the enacting clause, and being recognized consumed five minutes in debate.

Mr. Frank W. Mondell, of Wyoming, was recognized for five minutes in opposition to the motion.

Thereupon, Mr. Nicholas J. Sinnott, of Oregon, made the point of order that the motion to strike out the enacting clause was not admissible under the terms of the special order under which the bill was being considered.

Mr. Otis Wingo, of Arkansas, objected that a point of order against a motion to strike out the enacting clause came too late after it had been debated.

The Chairman³ ruled:

The question raised here is rather involved, but the Chair has consulted several authorities referred to in the debate and feels clear on the point. The gentleman from Oregon refers to the paragraph 3215 of Hinds' Precedents, in support of his contention. It seems to the Chair that in the decision referred to in that paragraph, the whole matter hinged on whether or not the point of order was made before debate had begun. We must concede in the point of order now before the committee that debate had taken place before the point of order was made. The gentleman from Alabama had made his motion to strike out the enacting clause and had debated it for a number of minutes. Therefore, as debate had taken place, in the Chair's opinion the citation of paragraph 3215 does not parallel the question now under discussion, because debate had already been had, while in that reference the decision was based on the fact that debate had not taken place previous to the point of order being made.

The Chair now refers to Hinds' Precedents, section 6902. It seems to the Chair that this case is almost a parallel case to the one now presented to the committee. The Chair will not repeat the ruling rendered at that time, a ruling on which he founds his own ruling, but will insert it as part of his decision, as the reason why he is going to overrule the point of order. The Chair therefore overrules the point of order made by the gentleman from Oregon on the ground that the point comes too late.

The question now is on the motion made by the gentleman from Alabama to strike out the enacting clause.

¹John W. McCormack, of Massachusetts, Chairman.

²Second session Sixty-sixth Congress, Record, p. 209.

³Frederick C. Hicks, of New York, Chairman.

3443. A point of order against a proposition must be made before an amendment is offered.

On September 19, 1918,¹ the revenue bill was being considered in the Committee of the Whole House on the state of the Union, when the Clerk read:

SEC. 1200. That there is hereby created a board to be known as the "Advisory Tax Board," hereinafter called the board, and to be composed of five members to be appointed by the President of the United States, by and with the advice and consent of the Senate. The board shall remain in existence during the continuance of the present war with the Imperial German Government and for a period of 12 months after the termination of such war as declared by proclamation of the President.

Mr. William P. Borland, a Missouri, proposed this amendment.

The members of the board first appointed shall be appointed for terms of one, two, three, four, and five years, respectively, and thereafter the term of each member shall be five years.

Mr. Martin B. Madden, of Illinois, made a point of order against the amendment, which was overruled by the Chair.

Whereupon Mr. Madden lodged a point of order against the paragraph to which the amendment was proposed.

Mr. Borland submitted that the point of order against the paragraph came too late after an amendment had been proposed and was under consideration.

The Chairman² ruled:

The gentleman can not direct a point of order against the entire paragraph after an amendment has been offered.

The paragraph was read. It was then before the House and open first for a point of order, and then for amendment. Anyone making, or reserving a point of order would have entitled to prior recognition to the gentleman from Missouri. No one made a point of order to the paragraph. Hence the gentleman from Missouri asking recognition to offer an amendment, was in order. He was recognized, and submitted an amendment to the paragraph to which an amendment was directed.

The Chairman then read from sections 6899 and 6902 of Hinds' Precedents and concluded:

In this case no point or order was made to the paragraph, or sought to be made, before the amendment was offered. After the amendment was offered, and held to be in order, it was too late to make a point of order to the paragraph. This ruling in the judgment of the Chair conforms to the precedents, and practice of the House.

Subsequently, the Chairman supplemented his decision (Record, p. 10519):

The Chair will ask the indulgence of the committee. A few moments ago the Chair had to rule on a question of order of interest to every Member of the House, and with respect to which he had no opportunity to look up the precedents and cite same in connection with his ruling. The Chair since that time has found the following precedent which is precisely in point. The situation presented when the Chair made its ruling, was as follows:

The first paragraph in the section relating to the advisory tax board had been read without any objection, or point of order, or reservation of a point of order. An amendment was then offered to which a point of order was made. The point of order as overruled, and the gentleman from Illinois undertook to make a point of order to the original paragraph to which the amendment of the gentleman from Missouri had been offered. The Chair held that under the rules this motion

¹ Second session Sixty-fifth Congress, Record, p. 10517.

² Edward W. Saunders, of Virginia, Chairman.

came too late, briefly giving the reasons sustaining the ruling. The Chair now desires to put into the Record the following decision which is precisely in point:

The Chairman then read section 6911 of Hinds' Precedents and continued:

In the case cited the amendment was rejected on a point of order. In the case before the House the point of order to the amendment was overruled, and the amendment thereby held to be in order.

The committee will note that while the case cited is not so strong a case on the facts as the case upon which the Chair had occasion to rule, it fully sustains the ruling of the Chair to the effect that after an amendment is offered to a paragraph it is then too late to make a point of order to the paragraph to which that amendment relates.

3444. On April 22, 1932,¹ the Navy Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union.

The Clerk read the paragraph providing for the naval reserve, when Mr. William A. Ayres, of Kansas, offered an amendment.

Before the amendment could be read by the Clerk, Mr. Fred A. Britten, of Illinois, proposed to reserve a point of order on the paragraph.

The Chairman² declined to entertain the reservation and said:

The gentleman's point of order comes too late. An amendment has been offered and is in the hands of the Clerk.

3445. A point of order may not be raised against a proposition after an amendment is offered and even a pro forma amendment precludes a question of order.

On June 26, 1916,³ during the consideration of the river and harbor bill in the Committee of the Whole House on the state of the Union, the Clerk read this paragraph.

For the construction of a navigable waterway of suitable depth and width to answer the needs of commerce, connecting the waters of the Flint and Ocmulgee Rivers in the State of Georgia.

Mr. Charles Pope Caldwell, of New York, moved to strike out the last word for the purpose of asking a question, and then raised a question of order against the paragraph.

The chairman⁴ overruled and point of order on the ground that it came too late after the pro forma amendment had been offered.

3446. Debate on a point of order is for the information of the Chair, and therefore within his discretion.

A resolution of the House may not by amendment be changed to a bill.

A proposition in the form of a bill may not be offered as a substitute for a proposition in the form of a simple resolution.

On November 6, 1919,⁵ the House was considering the resolution (H. R. 362) directing the Secretary of War to deliver surplus motor trucks to the Secretary of Agriculture for use in the construction of roads.

¹First session seventy-second Congress, Record, p. 8704.

²Claude A. Fuller, of Arkansas, Chairman.

³First session Sixty-fifth Congress, Record, p. 4317.

⁴Pat Harrison, of Mississippi, Chairman.

⁵First session Sixty-sixth Congress, Record, p. 8049.

The question being put on agreeing to the resolution, Mr. Charles Pope Caldwell, of New York, moved to recommit the resolution to the Committee on Expenditures in the War Department with instructions to report it back instanter with an amendment in the nature of a substitute for the entire resolution.

Mr. Sydney Anderson, of Minnesota, made the point of order that a bill could not be offered as a substitute for a resolution of the House.

Mr. Caldwell, being recognized to debate the point of order, was discussing the merits of the proposed amendment when admonished by the Speaker¹ that debate should be confined to the subject.

Mr. Caldwell insisted that he was within his rights in stating the predicate on which he based his argument, and that he was entitled to make a statement of fact.

The Speaker dissented:

The Chair does not desire the gentleman to discuss the merits of it. The Chair will say to the gentleman that the gentleman's discussion is entirely in the discretion of the Chair.

Mr. Caldwell took issue on the germaneness of his argument, when the Speaker ruled:

The Chair refuses to hear the gentleman further.

3447. On February 11, 1921,² the naval appropriation bill was being considered in the Committee of the Whole House on the state of the Union.

Mr. Fred A. Britten, of Illinois, lodged a point of order against an item in the bill.

After debate on the question of order had proceeded for some time, Mr. James V. McClintic, of Oklahoma, made the point of order that debate had been exhausted.

The Chairman³ said:

The Chair overrules the point of order. Debate on points is in the discretion of the Chair.

3448. Debate on a point of order is at the discretion of the Chair and Members may speak as often as recognized.

On May 31, 1910,⁴ during consideration of the sundry civil appropriation bill in the Committee of the Whole House on the state of the Union, Mr. Albert Douglas, of Ohio, offered an amendment providing for the general expenses of the Bureau of Mines.

Mr. James A. Tawney, of Minnesota, made a point of order against the amendment, and spoke repeatedly in the debate on the subject, until Mr. Politte Elvins, of Missouri, submitted a parliamentary inquiry asking how often a gentleman was entitled to speak on the same point of order.

The Chairman⁵ replied:

Just as many times as the Chair will recognize the gentleman.

¹ Frederick H. Gillett, of Massachusetts, Speaker.

² Third session Sixty-sixth Congress, Record, p. 3012.

³ Joseph Walsh, of Massachusetts, Chairman.

⁴ Second session Sixty-first Congress, Record, p. 7163.

⁵ James R. Mann, of Illinois, Chairman.

3449. In discussing questions of order the rule of relevancy is strictly construed and debate is confined to the point of order and does not admit reference to the merits of the pending proposition.

On August 12, 1919,¹ Mr. Thomas L. Blanton, of Texas, called up a privileged resolution of inquiry requesting certain information from the Secretary of Labor.

Mr. Joseph Walsh, of Massachusetts, directed a point of order against the resolution, and Mr. Blanton in debating the point of order touched on the merits of the proposition involved.

The Speaker² admonished:

The gentleman must not discuss the merits of the case, but the gentleman must confine himself to the point of order.

3450. Points of order are usually reserved when appropriated bills are referred to the Committee of the Whole in order that portions in violation of rules may be eliminated by raising points of order in committee.

On March 7, 1922,³ Mr. S. Wallace Dempsey, of New York, by direction of the Committee on Rivers and Harbors, reported the river and harbor bill.

Mr. John N. Garner, of Texas, submitted a parliamentary inquiry as to whether it was necessary to reserve points of order on the bill, and to the general appropriation bills when reported, or whether it was merely a custom without a reason.

In discussing the inquiry, Mr. Finis J. Garrett, of Tennessee, said:

Mr. Speaker, there is considerable reasoning about the matter in Hinds' Precedents; it seems to be a precedent based on very good reason, as I have read the statements of Mr. Hinds in regard to it. Immediately upon being presented, the matter is referred to the Committee of the Whole House on the state of the Union, and he argues, and it seems to me with a good deal of force, that that being the case it is necessary that all points of order shall be reserved in the House.

In response to the inquiry the Speaker² said:

It is simply a matter of precedent. It has always been the custom that points of order must be reserved in the House in order that they may be then made in the Committee of the Whole.

Whereupon, Mr. Garner reserved all points of order on the bill.

3451. On July 15, 1919,⁴ the sundry civil service appropriation bill was under consideration in the Committee of the Whole House on the state of the Union.

The Clerk read a paragraph authorizing the Secretary of Labor to maintain a national system of employment offices in the several States.

Mr. Thomas L. Blanton, of Texas, made the point of order that the paragraph comprised new legislation and was not in order on an appropriation bill.

Mr. James W. Good, of Iowa, submitted that the point of order came too late, inasmuch as no points of order had been reserved on the bill when it was reported.

Mr. Blanton replied that while it was the custom to reserve points of order on the general appropriation bills when reported to the House, such reservation was a

¹ First session Sixty-sixth Congress, Record, p. 3804.

² Frederick H. Gillett, of Massachusetts, Speaker.

³ Second session Sixty-seventh Congress, Record, p. 3935.

⁴ First session Sixty-sixth Congress, Record, p. 2662.

mere formality and was not essential, and a point of order, if meritorious, could be presented when the paragraph to which it applied was reached as the bill was read for amendment.

The Chairman ¹ held:

The Chair holds that unless there is a reservation under circumstances of this kind a point of order can not be entertained to a part or a section of the bill. It seems to the Chair clear that points of order must be reserved, else it is the duty of the committee to report the bill as it is.

3452. An amendment may not be offered to a paragraph in a bill while a point of order against the paragraph is pending.

On April 2, 1908,² the Agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union.

The Clerk read a paragraph authorizing the Secretary of Agriculture to inquire into additional sources of raw material for paper making.

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

Thereupon, Mr. Champ Clark, of Missouri, proposed an amendment placing all raw materials entering into the manufacture of paper on the free list.

The Chairman ³ declined to entertain the amendment and said:

Amendments are not in order. The gentleman from Missouri has the floor, but the gentleman from Missouri has not the floor to offer an amendment, because no amendment is in order until the point of order is disposed of.

3453. An appeal from the decision of the Chair is debatable both in the House and in the Committee of the Whole, but debate may be closed in the House by a motion to lay on the table and in the Committee of the Whole by a motion to close debate or to rise and report.

Debate on an appeal in the Committee of the Whole is under the 5-minute rule subject to the will of the committee.

On June 16, 1917,⁴ while the river and harbor bill was being considered in the Committee of the Whole House on the state of the Union, Mr. Martin D. Foster, of Illinois, raised a question of order against a paragraph providing for the purchase of the Cape Cod Canal.

The Chairman ⁵ sustained the point of order and Mr. J. Hampton Moore, of Pennsylvania, having appealed from the decision of the Chair, Mr. Irvine L. Lenroot, of Wisconsin, was recognized to debate the question raised by the appeal.

Mr. Richard W. Austin, of Tennessee, made the point of order that an appeal from the decision of the Chair was not debatable.

The Chairman held:

It is debatable. The present occupant of the chair some time ago made an erroneous statement, saying that it was not debatable, but afterwards corrected that statement by saying an appeal was debatable, subject to the will of the committee.

¹ Horace M. Towner, of Iowa, Chairman.

² First session Sixtieth Congress, Record, p. 4298.

³ David J. Foster, of Vermont, Chairman.

⁴ First session Sixty-fifth Congress, Record, p. 3727.

⁵ Pat Harrison, of Mississippi, Chairman.

The committee can close it in the committee or rise and close debate in the House. In the House debate is avoided by moving to lay the appeal on the table, but no such rule applies in the committee, so the only way to close debate is by moving that it be done.

Mr. William H. Stafford, of Wisconsin, being recognized to debate the question, protested against being limited to five minutes and submitted that debate on an appeal in the Committee of the Whole was under the hour rule. He further insisted that debate on appeal could be limited only by a vote that the committee rise.

The Chairman overruled the contention and held:

Let the Chair state to the gentleman right here that debate can be closed any time by the gentleman having the floor moving to close debate. It can be done either way.

Under the precedents, and there are not very many of them, he is led to believe that the question of appeal does not come under the one-hour rule but under the five-minute rule, the same as discussions upon amendments. So the Chair hold that it is under the five-minute rule.

There is no question in the mind of the Chair, so far as the right to control debate is concerned. That has been decided as shown by paragraph 6949 of volume 5 of Hinds' Precedents.

It is within the province of the committee to close debate when it sees fit, or the chairman of the committee in charge of the bill has the right to move that the committee rise and go into the House and so close debate.

3454. Debate on an appeal in the Committee of the Whole is under the 5-minute rule.

On January 29, 1919,¹ the Committee of the Whole House on the state of the Union was considering the sundry civil appropriation bill.

Mr. Leonidas C. Dyer, of Missouri, proposed to amend the bill by inserting the following proviso:

Provided, That no part of the appropriation herein shall be used unless all former Government employees who have been drafted or enlisted in the military service of the United States in the war with Germany shall be reinstated on application to their former positions appropriated for herein if they have received an honorable discharge and are qualified to perform the duties of the position.

Mr. Swagar Sherley, of Kentucky, made the point of order that the amendment was a proposition to incorporate legislation in an appropriation bill.

Mr. Dyer took the position that while it provided legislation it was admissible as a limitation.

The Chairman² overruled the point of order.

Mr. Edward W. Saunders, of Virginia, having appealed from the decision of the Chair, Mr. James R. Mann, of Illinois, asked to be recognized for one hour to debate the appeal.

The Chairman³ held that the Committee of the Whole was proceeding under the 5-minute rule and that debate on an appeal was no exception, and recognized Mr. Mann for five minutes.

¹Third session Sixty-fifth Congress, Record, p. 2324.

²John N. Garner, of Texas, Chairman.

³Charles R. Crisp, of Georgia, Chairman.

3455. Debate in an appeal in the Committee of the Whole is under the 5-minute rule and many be closed by committee.

In recognizing for debate on an appeal in the Committee of the Whole the Chairman alternates between those favoring and those opposing.

The motion to lay on the table is not in order in Committee of the Whole.

On May 21, 1926,¹ Mr. Cassius C. Dowell, of Iowa appealed from the decision of the Chair on a question, giving a motion to rise and report to the House recommending reference priority over a motion to rise and report to the House recommending passage.

Mr. Ernest R. Ackerman, of New Jersey, moved to lay the appeal on the table.

The Chairman² called attention to the fact that the motion to lay on the table was not in order in the Committee of the Whole.

Members having been recognized to debate the question raised by the appeal Mr. David H. Kincheloe, of Kentucky, submitted as a parliamentary inquiry, that one 5-minute speech had been made in favor of sustaining the decision of the Chair and one 5-minute speech in opposition, and that debate had now been exhausted.

The Chairman ruled:

The suggestion of the gentleman is as to the right for the debate to continue after 10 minutes has been exhausted by reason of the fact that no amendment can be offered as in the usual case under 5-minute rule in the consideration of the bill. The Chair is advised that former Speaker Crisp ruled that debate on an appeal from the decision of the Chair proceeded under the 5-minute rule. Under a strict construction of the rules, possibly there could be no debate at all. The practice has been—which this present incumbent of the chair feels inclined to follow—to permit the debate to proceed under the 5-minute rule until debate is exhausted or the committee sees fit to close the debate, and it will be the desire of the Chair while the debate continues to alternate in granting recognition.

After further debate, Mr. Bertrand H. Snell, of New York, moved that debate on the pending appeal do now close.

The motion was agreed to.

3456. On May 24, 1921,³ the second deficiency bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read an item providing for salaries in the General Land Office at annual rates during the fiscal year 1922.

Mr. Thomas L. Blanton, of Texas made the point of order that the appropriation was not a deficiency appropriation.

The Chairman⁴ having sustained the point of order and;

Mr. James W. Good, of Iowa, having appealed from the decision of the Chair, Mr. Joseph W. Byrns, of Tennessee, inquired if the question of appeal was debatable.

The Chairman held it to be debatable under the five-minute rule.

¹First session Sixty-ninth Congress, Record, p. 9855.

²Louis C. Cramton, of Michigan, Chairman.

³First session Sixty-seventh Congress, Record, p. 1697.

⁴Joseph Walsh, of Massachusetts, Chairman.

Mr. Finis J. Garret, of Tennessee, as a parliamentary inquiry, asked if it were in order to move to lay the appeal on the table.

The Chairman said:

The Chair would state that that motion is not in order in Committee of the Whole. It has been construed that the motion to adjourn or the motion to lay on the table is not in order in Committee of the Whole. In Hinds' Precedents, section 4719, the Chairman ruled that, the motion to lay on the table is not in order in Committee of the Whole. It was an appeal from the decision of the Chair. A Member from Massachusetts moved to lay the appeal on the table. The appeal was taken from the decision of the Chair. Mr. Fowler, of Massachusetts, moved to lay the appeal on the table, and the Chairman held that the motion was not in order in Committee of the Whole. That ruling was followed by the Chairman of the committee as late thereafter as 1902, and has been followed, the Chair thinks, several times since that time. The question is, Shall the decision of the Chair sustaining the point of order stand as the judgment of the committee?

The question being taken, the committee voted to sustain the decision of the Chair.

3457. An appeal may not be taken from a response of the Speaker to a parliamentary inquiry.

On April 3, 1908.¹ Mr. David A. De Armond, of Missouri, raised a question of order against a resolution submitted by Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, providing for the consideration of the District of Columbia appropriation bill. Mr. De Armond based his objection on the ground that it contravened a special order agreed to by unanimous consent on the previous day.

The Speaker overruled the point of order and Mr. De Armond propounded a parliamentary inquiry as to whether it would be in order under consideration.

The Speaker² replied:

It has to be done under a rule, and such motion would not be in order under the rules as they stand, but under the Constitution the House can make its rule and regulations, and change them, or amend them; and this, as the rules provide, is a report from the Committee on Rules, which is a privileged committee, and proposes to the House not only to do away with the unanimous consent, but to impose other terms that would exist under the rules as we now have them; and the very object of the organization of the House, with a Committee on Rules with that privilege, is to give the House an opportunity to do anything in the event the House, proceeding in an orderly way, desires so to do.

From this response by the Chair Mr. De Armond proposed to appeal to the House.

The Speaker ruled:

The gentleman can hardly appeal from an answer to a parliamentary inquiry.

3458. The Chair does not rule on the consistency of a proposed amendment.

The consistency of a proposed amendment with the text is a question to be passed on by the House and not by the Speaker.

On June 4, 1929,³ the Committee of the Whole House on the state of the Union was considering the bill (S. 312), the apportionment bill.

¹ First session Sixtieth Congress, Record, p. 4350.

² Joseph G. Cannon, of Illinois, Speaker.

³ First session Seventy-first Congress, Record, p. 2349.

The Clerk read as follows:

SEC. 2. That the period of three years beginning the 1st day of July next preceding the census provided for in section 1 of this act shall be known as the decennial census period, and the reports upon the inquires provided for in said section shall be completed within such period: *Provided*, That the tabulation of total population by States as required for the apportionment of Representatives shall be completed within 12 months and reported by the Director of the Census to the Secretary of Commerce and by him to the President of the United States.

Mr. Clarence J. McLeod, of Michigan proposed to insert after the word “months” the following:

after the beginning of the above-described period.

Mr. John E. Ranking, of Mississippi, objected that the amendment was in the nature of a duplication and was inconsistent with the text.

The Chairman ¹ declined to pass on the question and said:

There is no rule of the House under which duplication is subject to the point of order as far as the Chair is aware. Unless the amendment violates one of the specific rules of the House, the Chair is not empowered to rule it out of order. The Chair overrules the point of order.

¹ Carl R. Chindblom, of Illinois, Chairman.