AUTHENTICATED
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HINDS' PRECEDENTS

OF THE

HOUSE OF REPRESENTATIVES

OF THE

UNITED STATES

INCLUDING REFERENCES TO PROVISIONS
OF THE CONSTITUTION, THE LAWS, AND DECISIONS
OF THE UNITED STATES SENATE

By
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Clerk at the Speaker's Table

VOLUME IV

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2726. The Constitution requires the House to keep and publish a Journal, excepting from publication such parts as require secrecy.

Votes by yeas and nays and veto messages of the President are required by the Constitution to be spread on the Journal.

The Constitution of the United States, in section 5 of Article I, provides:

Each House shall keep a Journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the Members of either House on any question shall, at the desire of one-fifth of those present, be entered on the Journal.[6]

Also in section 7 of Article I:

Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States. If he approve he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their Journal and proceed to reconsider it.

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[1] Printed and distributed by the Clerk. Section 251 of Volume I. Office of journal clerk and its requirements. Section 2644 of Volume III.

[2] Preparation and reading is not prevented by death of Clerk. Section 237 of Volume I. Amendment of Congressional Record secondary to. Section 6989 of Volume V.

[3] Administration of oath to Member-elect before. Sections 171, 172 of Volume I.

[4] See also section 3091 of this volume.

[5] Clerk declines to entertain a protest at organization. Section 80 of Volume I. Summary of precedents as to entry of protests. Sections 2597, 2783 of this volume.

[6] Field *v.* Clark, 143 U. S., 649.

2727. The Journal and not the Congressional Record is the official record of the proceedings of the House.—On the legislative day of February 13, 1885,[1] but in reality on the calendar day of February 14, Mr. Henry G. Turner, of Georgia, as a question of order stated that upon the motion of Mr. Albert S. Willis, of Kentucky, to lay on the table the appeal of Mr. Thomas B. Reed, of Maine, from the decision of the Chair that the motion of Mr. Willis, made on the 12th instant, to limit debate on the pending section and all amendments thereto in the Committee of the Whole House on the state of the Union on the bill of the House, H.R. 8130 (river and harbor bill), it appeared by the record that the yeas were 97 and the nays 103, and that consequently the said appeal was not laid on the table, and moved the correction of the Journal accordingly.

The Speaker pro tempore[2] held the said question to be not one of order at this time and also that the official record of the proceedings of the House was its Journal, and that the publication in the Record was no evidence of the incorrectness of the Journal.

On motion of Mr. Turner, the Record was corrected to correspond with the roll call as it appeared in the Journal.

2728. The House in early days fixed the title of the Journal.—On January 8, 1790,[3] the Journal having been read by the Clerk, Mr. Elias Boudinot, of New Jersey, moved to correct the title by striking out all the words after declaring it merely the Journal of the House of Representatives.

After debate, the following form of title was agreed to:

Journal of the House of Representatives of the United States.

At a session of the Congress of the United States, begun and held at the city of New York, on Monday, the 4th day of January, 1790, being the second session of the First Congress, held under the present Constitution of Government of the United States, being the day appointed by law for the meeting of the present session.

At the next session the form was somewhat modified.[4]

At the beginning of the Second Congress the form of title became—

Journal of the House of Representatives of the United States.

CONGRESS OF THE UNITED STATES.

Begun and held at the city of Philadelphia, in the State of Pennsylvania, on Monday, the 24th of October, 1791, being the first session of the Second Congress held under the Constitution of Government of the United States.[5]

On December 7, 1829, the title to the Journal appears for the first time with this added clause—

and in the fifty-fourth year of the independence of the said States.

Neither the Journal nor debates explain this addition.[6]

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[1] Second session Forty-eighth Congress, Journal, p. 554.

[2] John H. Bagley, jr., of New York, Speaker pro tempore.

[3] Second session First Congress, Annals, p. 1077; Journal, p. 133 (Gales & Seaton ed.).

[4] Journal, p. 329 (Gales & Seaton ed.).

[5] First session Second Congress, Journal, p. 433 (Gales & Seaton ed.).

[6] First session Twenty-first Congress, Journal, p. 3; Debates, p. 470.

The clause disappears at the beginning of the Journal of the second session of the Twenty-first Congress, but appears at the beginning of the Journal for the first session of the Twenty-second Congress. The clause again disappears in the Journal of the first session of the Twenty-third Congress.

In the Journal for the first session of the Twenty-fourth Congress, in the introductory paragraph, the phrase "and in the sixtieth year of the Independence of said States" appears. This phrase does not appear in the introductory paragraph of the Journal of the second session of that Congress.

The present title of the Journal is:

Journal of the House of Representatives—Congress of the United States—Begun and held at the Capitol, in the city of Washington, in the District of Columbia, on Monday the fourth day of December, in the year of our Lord nineteen hundred and five, being the first session of the Fifty-ninth Congress, held under the Constitution of the United States, and in the one hundred and thirtieth year of the Independence of said States.[1]

2729. The title of the Journal indicates whether or not the Congress was convened by law.—The title of the Journal, in cases where the Congress is convened by law, indicates that fact. Thus on March 4, 1867,[2] the Journal speaks of the session as "held in pursuance of the act of January 22, 1867," and on March 4, 1869,[3] as "held in pursuance of the Constitution and laws of the United States," the Congress being convened in accordance with the law of January 22, 1867.

2730. The written Journal of the House has been preserved, either in the original draft or in a copy.

A discussion of the nature and functions of the Journal.

During the debate on Thomas H. Benton's expunging resolutions in the Senate in 1836, application was made to the Clerk of the House for a statement as to the usages of the House in regard to its Journals. Clerk Walter S. Franklin transmitted statements to Mr. Isaac Hill, a Senator, who presented them to the Senate in debate on May 27, 1836.[4]

Clerk Franklin, in his communication, says that "the original rough manuscript Journal[5] of the House of Representatives of the United States (those read on the mornings) have not been preserved to a period anterior to the commencement of the first session Eighteenth Congress (1823–24). The Clerk also adds the following letter, addressed to himself by Mr. S. Burch, evidently an employee of the Clerk's office, and under date of April 6, 1836:

I entered this office a youth, under John Beckley, who was the first Clerk of the House of Representatives under the present Constitution of the United States, and who died in the year, 1807.

During the recess of Congress he put me at what was termed "recording the Journal" of the preceding session, which was to write it off from the printed copy into a large bound volume. I inquired of him why it was that it was copied when there were so many printed copies? He answered that the printed copies would probably in time disappear from use, etc.; the large manuscript volume would not.

The "rough Journal," as it was then termed and is still termed, being the original rough draught read in the House on the morning after the day of which it narrates the proceedings was not and had

[1] First session Fifty-ninth Congress, Journal. p. 3.

[2] First session Fortieth Congress, Journal, p. 3.

[3] First session Forty-first Congress, Journal, p. 3.

[4] First session Twenty-fourth Congress, Debates, p. 1594.

[5] In 1889 we find the House amending the manuscript Journal of a previous date, as well as the printed copy. So the manuscript Journal was conceived of as an existing record. (Second session Fiftieth Congress, Record, p. 191.)

not from the beginning been preserved. I inquired the reason, and was answered that the printed copy was the official copy, as it was printed under the official order of the House; and as errors, which were sometimes discovered in the rough Journal, were corrected in the proofs of the printed copy the printed copy was the most correct, and that therefore there was no use in lumbering the office with the "rough Jounal" after it had been printed.

Two of Mr. Beckley's immediate successors in office, Mr. Magruder and Mr. Dougherty, viewed the matter as Mr. Beckley viewed it. I know the fact from having called their attention to the subject. I often reflected upon the subject; and it appeared to me to be proper that the "rough Journal" should be preserved, although I could not see any purpose whatever to be answered by doing so. I often conversed with the clerks of the office upon the subject; but, as we were only subordinates, the practice was not changed until the first session of the Eighteenth Congress (1823–24), when I determined, without consulting my superior, that the "rough Journal" should no longer be thrown away, but be preserved and bound in volumes, and it has been regularly preserved and bound since.[1]

2731. It is the uniform practice of the House to approve its Journal for each legislative day.—On March 24, 1880,[2] in the course of proceedings relating to the approval of the Journal, the Speaker[3] said:

The Chair desires to say that by the Constitution of the United States this House is required to keep a journal of its proceedings. In accordance with the rule adopted in 1789 (the practice under which has been unbroken) the House each morning approves the Journal of the proceedings of the prior day's session. The Chair puts the question in this form: "If there be no objection, the Journal of the prior day's proceedings will stand approved." That has been the practice under the old rule; and the new rule is in language on this point the same as the rule adopted in 1789. The first clause of Rule XXIV[4] * * * states distinctly that the Journal shall be approved. The Chair thinks it is in accord with the uniform practice in all legislative bodies that the Journal shall be approved.

2732. The Journal may neither be read nor approved until a quorum has appeared.—On April 9, 1842,[5] at 11 o'clock, the hour to which the House stood adjourned, the Speaker took the chair and directed the Journal of yesterday to be read. Mr. William Russell, of Ohio, objected to the reading of the Journal on the ground that a quonun had not appeared. The Speaker decided that it was in order to read the Journal in the absence of a quorum. From this decision Mr. Russell took an appeal to the House. On a motion to lay the appeal on the table, there were 96 ayes to 18 noes, a total of 114; not a quorum.

The Speaker[6] here stated that his decision had been made hastily and without referring to the rules; that during the call of the yeas and nays he had looked into

[1] For an interesting discussion of the nature and functions of the Journal required under the Constitution, with precedents in English parliamentary history, as well as in colonial and later times in America, see the debates over Mr. Benton's expunging resolutions in the Senate at this time, Debates, First session Twenty-fourth Congress, pp. 877–933, 1593–1598, 1884–1897. Mr. Benton's resolution to expunge from the Senate Journal the resolution censuring President Jackson was, agreed to January 16,1837. (Second session Twenty-fourth Congress, Debates, p. 504.)

In the earlier history of the House the Journal was published at frequent intervals and placed on the seats of Members. (See Globe of December 12, 1848, second session Thirtieth Congress, p. 32.)

On February 7, 1872, the House discontinued the old custom of furnishing the Journal to Members in sheets. (Second session Forty-second Congress, Globe, p. 881; Journal, p. 286.)

The Journal at present is published at the end of each session.

[2] Second session Forty-sixth Congress, Record, p. 1837.

[3] Samuel J. Randall, of Pennsylvania, Speaker.

[4] See section 3056 of this volume. The rule rather assumes than directs that the Journal is to be approved.

[5] Second session Twenty-seventh Congress, Journal. p. 678; Globe, p. 405.

[6] John White, of Kentucky, Speaker.

the subject and found that his decision was erroneous, the first rule[1] providing that upon the appearance of a quorum he shall cause the Journal of the preceding day to be read; he therefore recalled his decision.[2] And thereupon Mr. Russell withdrew his appeal.

2733. If a question as to a quorum is raised before the reading of the Journal, a quorum should be ascertained to be present before the reading should begin.

Illustration of former method of ascertaining presence of a quorum.

On October 19, 1888,[3] immediately after the reading of the Journal, Mr. John M. Farquhar, of Now York, objected to its approval because there appeared to be no quorum present, and also called attention to the fact that on the preceding day the Journal had been approved, although he had then made the point that a quorum was not present.

The Speaker[4] said:

The first rule of the House provides that the Speaker shall take the chair on every legislative day precisely at the hour to which the House shall have adjourned at the last sitting, immediately call the Members to order, and, on the appearance of a quorum, cause the Journal of the proceedings of the last day's sitting to be read, having previously examined and approved the same. The Chair thinks that if the point is made before the Journal is read that there is no quorum present in the House, it is the duty of the Chair to cause the roll of the Members to be called for the purpose of ascertaining the fact; because there is only one case provided for by the rules in which the Chair itself may ascertain by a count whether or not a quorum is present, and that is where the previous question has been ordered upon a measure. The rule provides that in such a case there shall be no call of the roll ordered until the Speaker shall have ascertained by a count that there is no quorum actually present.[6] The rule also provides that the Journal shall have been previously examined and approved by the Speaker,[6] but the Chair thinks that is merely a preliminary examination and approval, and that the proceedings of the House and the question as to whether or not they are correctly or incorrectly recorded by the officers of the House must always be under the control of the body itself. If this were not the case, the reading of the Journal would be an entirely useless proceeding.

In this case the Chair does not understand that the gentleman from New York, Mr. Farquhar, made the point of order before the Journal was read, but be makes the point now that the approval of the Journal, when objected to, can not be made by the House in the absence of a quorum; and the Chair thinks that point well taken, because the approval of the Journal is the transaction of business; it is a proceeding which affects the regularity and validity of the proceedings of the previous day. But until a vote is taken and the fact that no quorum is present is disclosed, or until the roll is called and discloses that fact, the Chair, of course, can not say officially that there is not a quorum present in the House.

There may be no quorum actually on the floor at the present moment, and yet a quorum might appear upon a vote. The question therefore is, Will the House now approve the Journal of the proceedings of yesterday? and, in order to prevent any difficulty or misunderstanding hereafter, the Chair thinks the House ought also to approve or disapprove the Journal of the proceedings of the day before yesterday.

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[1] Now Rule I, section 1 (see sec. 1310 of vol. II of this work).

[2] In 1889 Mr. Speaker Carlisle ruled that the Journal might not be read in the absence of a quorum. Second session Fiftieth Congress, Journal, p. 193; Record, p. 629.

[3] First session Fiftieth Congress, Journal, p. 2945; Record, p. 9607.

[4] John G. Carlisle, of Kentucky, Speaker.

[5] This was the practice of the House formerly. In the earlier days the Speaker seems to have counted the House, and such is the present practice. (See Congressional Globe, first session Thirty-fifth Congress, pp. 2164, 2211.)

[6] See section 1310 of vol. II of this work.

2734. The only Journal which may be read to the House is one that has been examined and corrected by the Speaker under the rule.

Discussion of the scope of the Speaker's power to correct the Journal before it is read.

On January 12, 1821,[1] the Journal of the preceding day was read by the Clerk, the first entry being in the words following:

> Mr. Lowndes presented three memorials of the senate and house of representatives of Missouri, one praying, etc.

Mr. Thomas W. Cobb, of Georgia, called attention to the fact that by the terms of the memorial it purported to be from the senate and house of representatives of "the State of" Missouri. Therefore he moved to amend the Journal by inserting in the proper place the words "the State of."

It was urged that the usage was to record memorials in the Journal as what they purported to be, and if the principle was to be introduced that petitioners must prove that they were what they claimed to be there would be endless difficulties for the House. Mr. John Randolph urged that it was essential that the Journal should record the truth.

The question being taken on Mr. Cobb's motion, there were 76 yeas and 76 nays. The Speaker having voted with the nays, the motion was lost.

Mr. Severn E. Parker, of Virginia, then moved to amend by inserting the words "Territory of" before the word "Missouri."

In the course of the debate, Mr. Thomas Butler, of Louisiana, called attention to the fact that as originally written the Journal had used the word "State," but that subsequently the word had been erased, so that in some parts of the description of the contents of the memorial the sense of the sentences was even destroyed.

Thereupon the Speaker[2] said, from the chair, that it was the practice for the Journal to be written by the Clerk. The rules of the House made it the duty of the Speaker to "examine and correct the Journal before it is read." If, being so examined, and corrected by the Speaker, it should not, in the opinion of any Member, be correct, it was competent for any Member to move to amend it and for the House, should such be its pleasure, to direct it to be amended. In the present instance the presiding officer had thought proper so to correct the Journal that it should not be taken either to affirm or deny that Missouri was a State, that being a question on which the House was greatly divided in opinion.

The debate continuing, Mr. John Rhea, of Tennessee, urged that the Speaker had a power over the Journal analogous to that which a court had over the presentment of a jury—he might alter it in form but not in substance. Then Mr. Rhea called for the reading of the Journal as it was before the changes were made by the Speaker.

The Speaker held that it was not in order to read any journal as the Journal of the House but that one which had been corrected by its presiding officer.

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[1] Second session Sixteenth Congress, Journal, pp. 125–130, 133, 134 (Gales and Seaton ed.); Annals, pp. 841–856, 859–862.

[2] John W. Taylor, of New York, Speaker.

The Speaker having again affirmed this ruling, Mr. Cobb appealed.

The question of the appeal having been stated by the Chair, Mr. William Lowndes, of South Carolina, said that if it were determined that the Journal should be read as first written, the principle would apply to the whole detail of composing the Journal, and thence to the minutest particulars of it, which would show that the Journal, as presented to the House in form, was the only journal of which the House properly had cognizance. He therefore urged Mr. Cobb to withdraw his appeal, which Mr. Cobb at once did.

The motion of Mr. Parker was then disagreed to, yeas 4, nays 150. Mr. Henry R. Warfield, of Maryland, moved to reconsider the vote by which the House had disagreed to the first proposed amendment, and this motion to reconsider was disagreed to, yeas 71, nays 77.

On January 13, Mr. Robert R. Reid, of Georgia, submitted the following resolutions:

Resolved, That it is the duty of the Speaker, under the rules of the House, to examine and correct the Journals of the House.

Resolved, That the House possesses the right to inquire into, and decide upon, the propriety of any correction which may be made by the Speaker.

Resolved, That the erasures made by the Speaker in the Journal of the 11th of January are alterations and not corrections, inasmuch as the Journal, in its original form, corresponds with the fact intended to be described, viz, that a petition from the senate and house of representatives of the State of Missouri was presented by a Member from the State of South Carolina.

The House declined to consider the resolutions, yeas 47, nays 96.

2735. The Speaker's right to examine and correct the Journal after it is made up by the Clerk has always been affirmed.—It is a well-understood fact that it is a part of the duty of the Speaker to supervise the making up of the Journal, the duty being prescribed by the rule which provides that the Journal shall have been examined and corrected by the Speaker before it is read to the House.[1] On March 29, 1850,[2] the select committee appointed to examine the charge that Mr. Speaker Cobb had mutilated the Journal, found that changes had been made in it by his direction, before it was read to the House, but that this was not a mutilation, but a proper correction of it under the authority of the Speaker in the discharge of the duty imposed on him by the rule.

2736. On July 29, 1841,[3] Mr. Hopkins L. Turney, of Tennessee, moved that the Journal of the preceding day be amended in certain particulars, so as to correspond to what he asserted to be the minutes as kept by the Clerk.

The Speaker,[4] after some debate bad taken place, stated to the House that he had made the correction in the Journal himself, under the rules of the House, which gave him the power, and that the Clerk's minutes were incorrect.

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[1] Section 1 of Rule I (see sec. 1310 of Vol. II of this work), which provides that the Speaker shall "cause the Journal of the proceedings of the last day's sitting to be read, having previously examined and approved the same."

[2] First session Thirty-first Congress, Journal, p. 739; Globe, p. 619.

[3] First session Twenty-seventh Congress, Journal, p. 257; Globe, p. 227.

[4] John White, of Kentucky, Speaker.

2737. On December 8, 1876,[1] Mr. Speaker Randall stated that the rule whereby the Speaker corrected the Journal before it was read had become practically a dead letter.

At the present time the Journal is submitted each morning to be examined by the Speaker or the Clerk at the Speaker's Table acting for the Speaker.

2738. The preliminary right of the Speaker to correct the Journal should be exercised before it is read to the House.—It seems evident, from an incident arising on September 21, 1893, that the preliminary examination of the Journal by the Speaker should be before the Journal has been read to the House. On that day the Speaker, Mr. Crisp, did not have the opportunity to make the preliminary examination, and when the Journal was read there appeared a statement as to a ruling of the Speaker which the Speaker declared to be inaccurate. Mr. Thomas B. Reed, of Maine, made the point that the Journal, having been read, might be corrected only by the House, and that the Speaker's preliminary right of correction had expired. The Speaker, while not ruling expressly, submitted the amendments which he considered necessary to the House, and they were agreed to unanimously.[2]

2739. The reading of the Journal must be in full whenever demanded by a Member.

There is no rule requiring the names of those not voting on a call of the yeas and nays to be entered on the Journal.

On August 27, 1890,[3] during the reading of the Journal of the proceedings of the previous day, Mr. William E. Mason, of Illinois, made the point of order that the the Clerk was not reading the detailed statement of the several yea and nay votes.

The Speaker[4] said:

> The gentleman has a right to have the names read if he insists upon it.

The Clerk having proceeded with the reading, Mr. Mason made the point of order that the names of those not voting on the yea and nay votes were not being read.

The Speaker said:

> The Chair desires to say with regard to this list that although the rules do not require it the names of those not voting have been made a part of the Journal by custom. They form a part of the Journal in the present instance, and must be read if the gentleman from Illinois insists upon it.

Mr. James D. Richardson, of Tennessee, made the further point of order that the Clerk was reading the names on the said yea and nay votes from the Congressional Record, instead of from the Journal.

The Speaker having stated that the Reading Clerk was, as a matter of convenience, reading the names from the Congressional Record, held that the Journal was correctly and properly made up and was being read in the usual way, and directed the Clerk to read from the original tally list, which was done.

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[1] Second session Forty-fourth Congress, Record, p. 113.

[2] First session Fifty-third Congress, Record, pp. 1650, 1668.

[3] First session Fifty-first Congress, Journal, p. 994; Record, p. 9230.

[4] Thomas B. Reed, of Maine, Speaker.

Again, on September 10, 1890,[1] the Clerk proceeded to read the Journal of the proceedings of the previous day's sitting, during which Mr. James D. Richardson, of Tennessee, and Mr. Charles T. O'Ferrall, of Virginia, demanded the reading of the Journal in full, also including the names of the absentees.

The Speaker[2] pro tempore held that there was no rule or other requirement that the names of Members not voting should be entered on the Journal or read, and that the constitutional provisions that "the yeas and nays of the Members, etc., shall, at the desire of one-fifth of the Members present, be entered on the Journal," had been complied with, and that the Journal was being read in the usual way.

2740. On January 23. 1891,[3] the Journal of the proceedings of the previous day's sitting, except so much thereof as referred to executive documents, reports of committees, and the introduction and reference of bills and petitions, having been read, and the question being on its approval,

The Speaker[4] stated that without objection the same would stand approved as read; and there being no objection, it was so ordered.

Then,

Mr. Clifton R. Breckinridge, of Arkansas, demanded the reading in full of the said portion of the said Journal so omitted.

The Speaker thereupon directed the Clerk to read the omitted portion of the said Journal in full, and the same having been so read, and the question being on its approval as read, the same was approved.

2741. On the demand of any Member the reading of the Journal must be in full.—On February 26, 1903,[5] Mr. James D. Richardson, of Tennessee, insisted that the Journal should be read in full, including the portion which records the presentation of reports and the introduction of bills and resolutions.

The Speaker[6] said:

> It is quite true that these addenda at the close of the Journal have not been read in practice, but the Chair thinks that they are such part of the Journal that they will have to be read if the reading is demanded.

2742. The Journal of the last day of a session that has adjourned without day is not read on the first day of the succeeding session.—On December 4, 1876,[7] the first day of the session, Mr. Abram S. Hewitt, of New York, moved to suspend the rules and adopt a resolution to provide for an investigation of the recent Presidential election in Louisiana, Florida, and South Carolina.

Mr. George G. Hoskins, of New York, made the point of order that a motion to suspend the rules was not in order until after there had been a morning hour for the call of States and Territories for bills on leave and resolutions.[8]

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[1] First session Fifty-first Congress, Journal, p. 1028; Record, p. 9946.

[2] Julius C. Burrows, of Michigan, Speaker pro tempore.

[3] Second session Fifty-first Congress, Journal, p. 174; Record, p. 1785.

[4] Thomas B. Reed, of Maine, Speaker.

[5] Second session Fifty-seventh Congress, Record, p. 2709.

[6] David B. Henderson, of Iowa, Speaker.

[7] Second session Forty-fourth Congress, Journal, pp. 18–22; Record. pp. 13 and 14.

[8] Bills and resolutions are now introduced by filing them at the Clerk's desk. (See sections 3364–3366 of this volume.)

The Speaker overruled the point of order, on the ground that the morning hour was the hour immediately after the reading of the Journal, and there being no Journal to read there could be no morning hour.

Mr. John A. Kasson, of Iowa, appealed from this decision of the Chair, and made the further point of order that the regular order of business was the reading of the Journal of the preceding day's session.

The Speaker[1] overruled the said point of order, on the ground that the last session of Congress adjourned without day, and that therefore there could be no Journal to read this morning of the proceedings of the session of the previous day.[2]

From this decision of the Chair Mr. Kasson appealed. The appeal was laid on the table by a vote of 145 yeas to 73 nays.[3]

2743. It has been held that the Journal of the last day of a session may not be amended on the first day of the succeeding session, but this principle has not been followed uniformly.—On December 4, 1876,[4] Mr. Speaker Randall stated that the Journal of the last day of the previous session could not be corrected on this the first day of the succeeding session.

2744. On December 12, 1888,[5] the House corrected the original Journal of May 21, 1888, a legislative day of the preceding session. The motion was admitted as privileged, and is recorded in the Journal.

2745. On the last legislative day of a session the Journal is sometimes read and approved as far as completed, but the practice is very unusual.— On the calendar day of March 3, 1901,[6] a Sunday, but the legislative day of Friday, March 1, the recess having expired, the House reassembled at 2 o'clock p. m., and was called to order by the Speaker.

The Clerk read the Journal from the last approval up to the last recess, which was approved.

2746. In a single instance, at the close of a session, the Journal was dated on the calendar rather than the legislative day in order to conform to the Senate records.—At the close of a session, on the legislative day of July 2, but the calendar day of July 4, Mr. Speaker Colfax said that, to avoid a discrepancy of dates between the business of the two Houses, he would order that the business be entered on the Journal as of July 4. There was no objection to this, and it was so ordered. On Saturday, July 2, the House had not adjourned, but taken a recess. This had prolonged the legislative day of July 2 through Monday, the 4th. The Senate having adjourned on Saturday had thereby made the legislative day of July 4.[7]

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[1] Samuel J. Randall, of Pennsylvania, Speaker.

[2] In a rare instance the Journal of the last day of a session was read and approved as far as completed on that day. Second session Fifty-sixth Congress.

[3] It is also not the custom to read the last day's Journal on that day, so that Journal is in fact never read or approved.

[4] Second session Forty-fourth Congress, Record, p. 16.

[5] Second session Fiftieth Congress, Journal, p. 72; Record, p. 191.

[6] Second session Fifty-sixth Congress, Record, p. 3564.

[7] First session Thirty-eighth Congress, Journal, p. 1028; Globe, p. 3535. This is exceptional, however, as usually the House Journal is dated as of the legislative day. In 1901 the legislative day of March 1 continued until the expiration of the Congress at noon of the calendar day of March 4, and the entire Journal for the legislative day is dated "March 1." (Second session Fifty-seventh Congress, Journal, p. 333.) Usually, however, the final Journal bears date of March 2 or 3 at the end of a Congress.

2747. The reading of the Journal is dispensed with only by unanimous consent or a suspension of the rules.—On March 1, 1877,[1] near the close of the session and Congress, the reading of the Journal of the previous day's proceedings had been commenced, omitting, as usual, the resolutions and reports in full, when Mr. William M. Springer, of Illinois, made the point of order that business could not be proceeded with until the Journal had been read in fun and approved.

The Speaker[2] overruled the point of order, on the ground that it could not be made until after the reading of the Journal had been concluded, when it would be subject to correction, and also on the ground that the reading of the Journal could be dispensed with by unanimous consent or by a suspension of the rules.

After the reading of the Journal, as far as prepared, had been concluded, the motion was made and carried to suspend the rule requiring the reading of the Journal, and the further reading was dispensed with.

2748. On January 30, 1872,[3] Mr. Speaker Blaine declared that the reading of the Journal could be dispensed with only by unanimous consent.

2749. In the reading of the Journal, by general consent, certain parts, such as the names of those voting in the affirmative and negative on the questions taken by the yeas and nays, are omitted. But on important occasions the reading of the Journal throughout is sometimes insisted on. Such an instance occurred on March 22, 1842,[4] the Journal stating, "The Journal of yesterday having been read throughout."

2750. On March 25, 1880,[5] Mr. Speaker Randall said: "The Chair has always objected to the dispensing with the reading of the Journal when proposed. It is the right of any Member on the floor to object to dispensing with the reading of the Journal, and when no Member asserts that right the Chair usually interposes his own objection."

2761. The transaction of business is not in order before the reading of the Journal, even for the purpose of amending the title of a bill which has passed on the preceding day.—On February 2, 1894,[6] Mr. Elijah A. Morse, of Massachusetts, arose immediately after the prayer by the Chaplain and before the reading of the Journal and submitted the question of order whether it was in order for him to now move to amend the title of the bill (H. R. 4864) to reduce taxation, to provide revenue for the Government, and for other purposes, passed by the House on the preceding day.

The Speaker[7] I held that it was not now in order to move an amendment to the title of the bill.[8]

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[1] Second session Forty-fourth Congress, Journal, p. 588; Record, p. 2030.

[2] Samuel J. Randall, of Pennsylvania, Speaker.

[3] Second session Forty-second Congress, Globe, p. 707.

[4] Second session Twenty-seventh Congress, Journal, p. 581; Globe, p. 348. During the Fifty-first Congress, in the state of feeling which resulted from Mr. Speaker Reed's steps to put down obstruction, it was a frequent occurrence for a Member to insist that the Journal be read in full.

[5] Second session Forty-sixth Congress, Record, p. 1878.

[6] Second session Fifty-third Congress, Journal, p. 132; Record, pp. 1806, 1807.

[7] Charles F. Crisp, of Georgia, Speaker.

[8] Unless a separate vote is demanded on the title, it is always assumed to be agreed to with the passage of the bill.

2752. Ordinarily no business may be transacted before the reading and approval of the Journal, although for a brief period another rule prevailed as to certain highly privileged matters.—On July 22, 1856,[1] before the Journal was read, no quorum being present, Mr. John Letcher, of Virginia, moved that there be a call of the House.

Mr. David Ritchie, of Pennsylvania, made the point of order that, inasmuch as the previous question had been seconded and the main question ordered upon the pending question when the House adjourned yesterday, a motion for a call of the House was not now in order.

The Speaker[2] stated that the question now before the House was upon the reading of the Journal (the rule prohibiting its reading until the appearance of a quorum), and until the Journal was read the question upon which the previous question was seconded could not come before the House. He therefore overruled the point of order.

In this decision of the Chair the House acquiesced.[3]

2753. On January 11, 1889,[4] before the Journal had been read Mr. J. B. Weaver, of Iowa, moved that the House take a recess until half-past 1 o'clock.

Mr. Samuel J. Randall, of Pennsylvania, made the point of order that such a motion was in the nature of business, and therefore not in order.

The Speaker[5] ruled:

The point of order is well taken, as the Journal has not yet been read. The Chair decided a few days ago that it was competent for any gentleman upon the floor, before the reading of the Journal, to make a simple motion that the House adjourn, because the House might not desire to continue in session; but the House can transact no business until the Journal has been read, and the Chair thinks the only proceedings in order are the simple motion to adjourn and then the reading of the Journal.

Mr. Weaver stated that on a preceding day, the 9th of January, the Chair had ruled that a motion to fix the day to which the House should adjourn was in order before the reading of the Journal; and Mr. Springer quoted section 5 of Rule XVI:

A motion to fix the day to which the House shall adjourn, a motion to adjourn, and to take a recess shall always be in order.

The Speaker said:

The Chair is well aware of that rule. But the House, in the judgment of the Chair, can transact no business until its Journal has been read. It has been held again and again that an order of the House fixing the day to which the House shall adjourn, or to take a recess, is the transaction of business and requires the presence of a quorum. Moreover, the Chair desires to say that even if he had decided on the 9th of January that this motion was in order he is now satisfied that it is not in order, and would have no hesitation whatever in reversing his own ruling on the subject.

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[1] First session Thirty-fourth Congress, Journal, p. 1253; Globe, p. 1710.

[2] Nathaniel P. Banks, of Massachusetts, Speaker.

[3] Of course a case where the Speaker should be absent a Speaker pro tempore would be elected before the reading of the Journal.

[4] Second session Fiftieth Congress, Record, pp. 676, 677.

[5] John G. Carlisle, of Kentucky, Speaker.

2754. On Monday, March 7, 1892,[1] immediately after the prayer by the Chaplain, Mr. T.C. Catchings, of Mississippi, called up a resolution reported from the Committee on Rules on the preceding Monday, and providing a special order for the consideration of the bill (H.R. 4426) for the free coinage of gold and silver, etc.

Mr. Charles Tracey, of New York, made the point of order against the consideration of said resolution, that no business was in order until after the reading and approval of the Journal of the proceedings of Saturday last.

After debate the Speaker[2] overruled the point of order on the ground that under clause 51 of Rule XI[3] "it shall always be in order to call up for consideration a report from the Committee on Rules," and that like a motion to adjourn, which "is always in order," such report may be called up before as well as after the reading of the Journal.

Mr. Tracey appealed from the decision of the Chair. This appeal was laid upon the table by a vote of yeas 195, nays 73.

2755. On February 20, 1893,[4] the Speaker called the House to order.

Mr. William A. Stone, of Pennsylvania, made the point that no quorum was present. A quorum having appeared, Mr. John Dalzell, of Pennsylvania, moved that the House take a recess until 1 o'clock.

Mr. James D. Richardson, of Tennessee, made the point of order that the motion to take a recess was not in order until after the approval of the Journal.

The Speaker[2] overruled the point of order.

2756. On April 4, 1894,[5] the Journal having been read, but a quorum not having voted on the question of its approval, a motion that the House adjourn was defeated by a vote of 185 nays to 0 yeas, a quorum voting.

Then Mr. Benjamin H. Bunn, of North Carolina, demanded that the House resume consideration of the contested election case of English *v.* Hilborn, and made the point that under the special order of the 28th ultimo, under which the House was proceeding, the consideration of said case took precedence over motions touching the approval of the Journal.

The Speaker[6] sustained the point of order, and held that under the terms of the special order, which continued from day to day, no motion could intervene to prevent the consideration of the election case, and that while the question of the approval of the Journal must be disposed of, the vote first to be taken must be on the questions arising in said election case.

Mr. John F. Lacey, of Iowa, stated that he appealed from the decision of the Chair.

The Speaker declined to entertain the appeal.

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[1] First session Fifty-second Congress, Journal, p. 91; Record, p. 1825.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] This clause of Rule XI was at this time a new provision. (See sec. 4621 of this volume.)

[4] Second session Fifty-second Congress, Journal, p. 98; Record, p. 1863.

[5] Second session Fifty-third Congress, Journal, pp. 308, 309.

[6] Charles F. Crisp, of Georgia, Speaker.

2757. Before the reading of the Journal a simple motion to adjourn is in order. but a motion to fix the day to which the House shall adjourn, being the transaction of business, is not in order.—On January 9, 1889,[1] there having been a call of the House to ascertain the presence of a quorum before the reading of the Journal, and the presence of the quorum having been announced by the Speaker, Mr. J.B. Weaver, of Iowa, moved that when the House adjourn it be to meet on Friday next.

Mr. Samuel J. Randall, of Pennsylvania, made the point of order that, the roll call having disclosed the presence of a quorum, it was the duty of the Chair to cause the Journal to be read, and that until it was read the motion was not in order.

The Speaker[2] overruled the point of order and held that a motion to adjourn and a motion to determine the time to which the House will adjourn[3] are in order before the Journal is read.[4]

2758. A motion to suspend the rules and approve the Journal was held in order although the Journal had not been read and the then highly privileged motion to fix the day to which the House should adjourn was pending.—On Monday, February 6, 1893,[5] after prayer by the Chaplain and before the Journal was read, Mr. C.B. Kilgore, of Texas, moved that when the House adjourn it be to meet on Wednesday next.

Pending the motion, Mr. Benton McMillin, of Tennessee, moved that the rules be suspended and the Journal of Saturday's proceedings be approved.

Mr. Kilgore made the point of order that inasmuch as he (Mr. Kilgore), after making his motion, had not taken his seat, but was on his feet intending to move that the House take a recess, and inasmuch as the Journal had not been read, it was not in order for the Speaker to entertain the motion of Mr. McMillin and that the motion was not then in order.

After debate, the Speaker[6] overruled the point of order, holding as follows:

As early as the Thirty-third Congress it was held that "A Member may submit more than one motion in connection with a pending proposition if the latter motion is of higher dignity than the former." Now, the latter motion submitted by the gentleman from Texas [Mr. Kilgore] is of not so high dignity as the first motion submitted by him, so that under the rulings heretofore made the latter motion was not in order. The point is made that before the reading of the Journal the motion of the gentleman from Texas is not in order. The Chair is inclined to think that that point comes too late. It has not been considered by the Chair because it was not made until after the Chair had recognized the gentleman from Tennessee [Mr. McMillin] and thus passed from, or recognized as pending, the motion of the gentleman from Texas that when the House adjourn it adjourn to meet on Wednesday next. So that, pending the motion of the gentleman from Texas, the gentleman from Tennessee made a motion to suspend the rules and approve the Journal. Now, the only question that troubles the Chair in this matter is the suggestion that, pending one motion, it is not in order to recognize the gentleman to make another motion which gentlemen claim is not privileged.

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[1] Second session Fiftieth Congress, Journal, pp. 193, 194; Record, p. 630.

[2] John G. Carlisle, of Kentucky, Speaker.

[3] This motion is no longer privileged.

[4] On a subsequent day, January 11, 1889, Speaker Carlisle qualified this ruling, saying that it was intended to go only to the extent of holding the simple motion to adjourn in order. He said the motion to fix the day was the transaction of business, and was not in order before the reading of the Journal. (Second session Fiftieth Congress, Record, p. 677.)

[5] Second session Fifty-second Congress, Journal, pp. 75, 76; Record, p. 1255.

[6] Charles F. Crisp, of Georgia, Speaker.

In the first place, the Chair thinks that on the first and third Mondays of the month the motion to suspend the rules, when a Member is recognized to make it, is a motion of the very highest privilege; expressly made so by the rule, made so for the purpose of enabling the House to transact such business as it chooses to transact under a two-thirds rule not in accordance with the general rules of the House. This view was very clearly expressed by the gentleman from Maine [Mr. Reed] when Speaker of the House. The Speaker then held that "A motion to suspend the rules waives and suspends all requirements and provisions of the rules and brings the House to an immediate vote on such motion." So, as the Chair has already remarked, the only question that troubles him is whether he had a right to recognize the gentleman from Tennessee [Mr. McMillin] to move to suspend the rules pending a motion recognized by the rules. The Chair inclines to the opinion that he may properly recognize the motion of the gentleman from Tennessee; not to deprive the gentleman from Texas [Mr. Kilgore] of the right to a vote on his proposition, not to take it away from him, but that the Chair might, pending that proposition, recognize another gentleman to move to suspend the rules and approve the Journal.

The suggestion has been made by the gentleman from Maine [Mr. Reed) that the Journal has not been read. Neither is a bill read at the time when the gentleman from Maine, or any other gentleman, rises and moves to suspend the rules and pass that bill. The motion is first made and then the bill is read, whereupon the Chair submits the question whether the motion is seconded. So there can be nothing in the point that the Journal has not been read, because a part of the motion to suspend the rules and approve the Journal requires the reading of the Journal, just as a part of the motion to suspend the rules and pass a bill requires the reading of the bill.

Inasmuch as it seems to the Chair that the provision for suspending the rules on the first and third Mondays of each month is, by its express terms, designed and intended to permit two-thirds of the House to transact business outside of and beyond the regular rules, and inasmuch as the rules themselves expressly provide that only one motion shall be made respecting it, which indicates the object of the rule to be to put it in the power of two-thirds of the House, on two certain days in each month, to transact business free from what are commonly known as dilatory motions, the Chair holds, in the interest of the purpose and scope of the rule, that, pending the motion of the gentleman from Texas, the motion of the gentleman from Tennessee is in order.

Mr. Kilgore appealed from the decision of the Chair. The appeal was laid on the table.

Pending the question on the motion of Mr. McMillin, Mr. Kilgore moved that the House adjourn; which motion was disagreed to.

The question was then put on the motion of Mr. Kilgore, that when the House adjourn today it be to meet on Wednesday next; which motion was disagreed to.[1]

The Journal was then read; and the question being put, "Will the House suspend the rules and approve the Journal?" it was decided in the affirmative, yeas 204, nays 0, not voting 125.

2759. The reading of the Journal, being interrupted by disorder, was resumed as soon as the House had taken action to restore order.—On June 11, 1836,[2] while the Clerk was reading the Journal of the last day's session of the House, an assault was committed within the Hall, and in the presence of the House, by a person admitted to a place on the floor as a reporter or stenographer to take down the debates, upon the person of another reporter or stenographer, also admitted to a place on the floor for the same purpose.

Whereupon Mr. Lewis Williams, of North Carolina, submitted a motion that both persons be taken into custody. This motion having been agreed to, and the Sergeant-at-Arms having executed the order, the reading of the Journal was resumed.

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[1] The motion to fix the day to which the House shall adjourn was at that time highly privileged. (See sec. 5301 of Vol. V of this work.)

[2] First session Twenty-fourth Congress, Journal, p. 983.

2760. A motion to amend the Journal takes precedence of a motion to approve it.—On May 30, 1882,[1] Mr. Speaker Keifer held that a motion to amend the Journal took precedence of a motion to approve it.

2761. The House amends the Journal where a vote is recorded erroneously, even though the result be changed thereby.—On September 28, 1837,[2] the Journal of the preceding day having been read, Mr. Joseph L. Tillinghast, of Rhode Island, stated that, on the question to suspend the rules to enable Mr. Richard Biddle, of Pennsylvania, to propose a resolution on the preceding day he gave his vote in the affirmative, but that the same was omitted to be entered, and asked that his vote be recorded.

The Speaker stated that at this time the error could only be corrected by unanimous consent. This consent being given, the error was corrected, and Mr. Tillinghast's name was placed on the list of Members voting in the affirmative on that question.

2762. On December 10, 1840,[3] Mr. Edward Stanly, of North Carolina, moved to reconsider the vote of the preceding day whereby the message of the President had been ordered referred and printed.

On this vote there were, ayes 89, noes 90.

The House then adjourned until Monday, December 14.

On that day, after the Journal of Thursday, the 10th, had been read, Mr. Robert C. Winthrop, of Massachusetts, moved to amend the same as follows:

> That the ayes given by himself and Mr. Joseph L. Williams on Thursday last on the question of reconsidering the vote for printing certain extra copies of the President's message be now entered upon the Journal, it appearing that the same were omitted at the time.

After considerable debate as to the propriety of this course, the motion to amend the Journal was agreed to, yeas 201, nays 3.

The Journal being amended accordingly, the Speaker[4] stated that the operation thereof changed the vote on the question of reconsideration, moved by Mr. Stanly, and announced the decision on that question to be in the affirmative. This therefore brought the resolution for referring and printing the message before the House again.

2763. On August 4, 1846,[5] the Journal of the preceding day was read, when Mr. James B. Hunt, of Michigan, rose and stated that on the preceding day he voted in the affirmative on the resolution offered by Mr. Dodge directing the Clerk of the House to pay to the officers and others in the employ of the House of Representatives additional compensation; that his vote stood recorded in the negative and he asked that the Journal of the preceding day be corrected.

And the journal was corrected accordingly.

Mr. Elias B. Holmes, of New York, rose and stated that he voted in the affirmative upon the same resolution, and that his vote was not recorded, and asked that the Journal be corrected.

And the Journal was corrected accordingly.

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[1] First session Forty-seventh Congress, Record p. 4333.

[2] First session Twenty-fifth Congress, Journal, p. 106.

[3] Second session Twenty-sixth Congress, Journal, pp. 25, 31, 32; Globe, p. 17.

[4] Robert M. T. Hunter, of Virginia, Speaker.

[5] First session Twenty-ninth Congress, Journal. pp. 1200–1202; Globe, p, 1188.

The Speaker[1] stated that the operation of the corrections thus made was to change the vote upon the resolution offered by Mr. Dodge, and announced the decision on that resolution to be in the affirmative. So the Journal of the preceding day was changed to show that the resolution had been passed by a vote of 77 yeas to 76 nays.

2764. On March 1, 1847,[2] the Journal of the preceding legislative day having been read, Mr. Henry T. Ellett, of Mississippi, rose and stated that he was present on Saturday, and voted in the negative on the amendment to the revenue bill, and moved that the Journal be amended by recording his vote thereon in the negative on said question.

Mr. George Ashmun, of Massachusetts, asked whether the gentleman's vote, if recorded, would make any difference in the result.

The Speaker[1] said that this question was not pertinent to the matter before the House. The only question was whether the gentleman had a right to vote or not. If so, under the uniform practice of the House, his vote must be recorded.

The question of Mr. Ellett's motion was nevertheless put to the House, and decided in the affirmative. So the Journal was amended accordingly.

2765. On March 28, 1892,[3] Mr. D.D. Donovan, of Ohio, being detained from the House by illness, sent to the Speaker a letter stating that in a certain roll call he was wrongly recorded as voting on a certain measure when he was not in fact present on the day in question, March 24. By unanimous consent the Journal of that day was corrected.

2766. The correction in the Journal before its approval of the erroneous record of a Member's vote is made as a matter of right and not by vote of the House.—On February 26, 1903[4] during the process of approving the Journal, the question of approving the Journal was pending, when Mr. J.G. Russell, of Texas, called attention to the fact that he was recorded as voting "aye" when in reality he voted "no."

The Speaker[5] said:

> The correction will be made according to the statement of the gentleman from Texas.

Mr. James Hay, of Virginia, having objected, the Speaker said:

> The Chair desires to say a word about this objection. In the early history of the Congress gentlemen were not allowed to change a vote in the Journal; but it has become more and more liberalized until it has become an absolute right to have it corrected and has been so treated where he is wrongfully recorded, and so it will be corrected in this case.

2767. While the regular time for amending the Journal expires with its approval, yet this rule has sometimes been waived for the correction of a yea-and-nay vote.—On November 5, 1807,[6] Mr. Barent Gardenier, of New York, raised the question that in the Journal of October 28, his name was omitted from the list of yeas and nays on a certain question. He therefore proposed an amendment.

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[1] John W. Dav, is, of Indiana, Speaker.

[2] Second session Twenty-ninth Congress, Journal, p. 451; Globe, p. 556.

[3] First session Fifty-second Congress, Journal, p. 121; Record, p. 2610.

[4] Second session Fifty-seventh Congress, Record, p. 2709.

[5] David B. Henderson, of Iowa, Speaker.

First session Tenth Congress, Journal. p. 18 (Gales & Seaton ed.); Annals, p. 805.

This motion was opposed on the ground that it would be a dangerous precedent to suffer the Journal to be corrected several days after the question had been decided. If this were to be done the alteration might sometimes change the decision of a question. Mistakes in the Journal should be corrected immediately after the entries were read. Errors in the yeas and nays should be rectified at the time they were called over, and all other errors on the morning of the succeeding day, when the Journal was read to the House.

On the other hand, it was contended that the Member from New York had taken the earliest opportunity to move the correction, since he did not know his name was omitted until the printed sheets of the Journal were before the House. He had a constitutional right to have his name on the Journal on that question.

It was decided to agree to the motion with a preamble stating the reasons. Accordingly, the following was adopted:

Whereas an error is discovered in the Journals of this House by the total omission of the name of Barent Gardenier, on the question by yeas and nays, taken on the 28th of October last:

Resolved, That the Journals of this House, of the 28th of October last, be amended by placing the name of Barent Gardenier among those who voted in the negative on the amendment proposed by Mr. Blount to the motion for proceeding to the appointment of standing committees.

On December 15, 1807 [1] and January 2, 1808,[2] the Journals of days previous to the day immediately preceding were amended without question.

2768. On April 19, 1870,[3] business having intervened since the reading of the Journal, Mr. Samuel Hooper, of Massachusetts, asked that his vote in the Journal, on a bill passed the previous day, be corrected. He was recorded as voting "yea," while in fact he voted in the negative.

Mr. Ebon C. Ingersoll, of Illinois, raised the question of order that a motion to correct the Journal was not in order after the reading of the Journal had passed.

The Speaker [4] said:

The rule in regard to corrections of the Journal is, that unless they be made immediately after the reading of the Journal at the Clerk's desk it is too late to raise any question for correction. It has, however, become the custom not to read the list of yeas and nays as recorded upon the Journal, and it would evidently be unfair to hold a gentleman responsible for and bound to abide by a record which he has not heard read.

So the correction was allowed.[5]

2769. On July 14, 1870,[6] business having intervened after the reading of the Journal, Mr. James B. Beck, of Kentucky, claiming the floor for a question of privilege, stated that the Journal did not record his vote on a bill acted on the day previous. He had voted and asked the correction.

The Speaker [4] said:

It is not in order to correct the Journal except immediately after its reading, save by unanimous consent. If there be no objection the name of the gentleman from Kentucky will be entered among the yeas.

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[1] Journal, p. 75; Annals, p. 1177.

[2] Journal, p. 104; Annals, p. 1270.

[3] Second session Forty-first Congress, Globe, p. 2783.

[4] James B. Blaine, of Maine, Speaker.

[5] This correction is not noted in the Journal of April 19.

[6] Second session Forty-first Congress, Globe, p. 5601.

2770. A motion to amend theJournal may not be admitted after the previous question is demanded on a motion to approve.—On June 17, 1897,[1] the Journal having been read, Mr. Sereno E. Payne, of New York, moved that it be approved, and on that motion asked the previous question.

Mr. William Sulzer, of New York, moved to amend the Journal, and Mr. Joseph W. Bailey, of Texas, made the point of order that this motion had precedence over the motion to approve.

The Speaker[2] overruled the point of order, holding that the motion to approve had precedence.

Mr. Bailey having appealed, the appeal was laid on the table by a vote of 96 yeas to 80 nays, 16 answering "present."

Subsequently, on June 21, the Speaker made this statement:

> The Chair desires to call the attention of the House to a statement made at the last session in regard to the amendment of the Journal. According to the Record, the Chair stated that a motion to approve the Journal takes precedence of a motion to amend it. Of course that statement was made simply with reference to the case which was in hand, and, to be accurate for general purposes, there ought to be added, "if that motion is first made."

2771. Journals of more than one session remaining unapproved, they are taken up for approval in chronological order, although the opposite ruling has once been made.

The question as to whether or not the Journal of the preceding day should be read until the Journals of days prior to that day have been approved.

Instance wherein the Speaker submitted to the House a question as to the order of disposing of several unapproved Journals.

On Tuesday, March 23, 1880,[3] a controversy arose over the approval of the Journal of Monday, and the legislative day of Tuesday terminated without that Journal being approved, and with a question pending which was claimed by its proposer to be a question of privilege and which related to the Journal. On Wednesday, March 24, after the prayer by the Chaplain, the Speaker stated that the question before the House was the question of privilege raised as to Monday's Journal.

Mr. Joseph C.S. Blackburn, of Kentucky, made the point of order that the first business in order was the reading of Tuesday's Journal.

After debate, the Speaker[4] submitted to the House the question whether the Journal of Tuesday's proceedings should first be read, before proceeding with the question relating to the approval of Monday's Journal; and the House decided not to require at that time the reading of the Journal of Tuesday.

Mr. J. Proctor Knott, of Kentucky, made the point of order that the reading of the Journal was peremptorily demanded by the rules, which could not be set aside except by unanimous consent.

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[1] First session Fifty-fifth Congress, Record, pp. 1803, 1892; Journal, p. 115.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Second session Forty-sixth Congress, Record, pp. 1833, 1839; Journal, pp. 842–877.

[4] Samuel J. Randall, of Pennsylvania, Speaker.

The Speaker said:

The Chair has already stated that by universal practice all parliamentary bodies have the power to regulate the manner of their proceeding. The House has just expressed its opinion in relation to the reading of the Journal of yesterday's proceedings, and the Chair overrules the point of order of the gentleman from Kentucky, Mr. Knott, in obedience to the views of the House just expressed.

After the settlement of the pending question as to the Journal of Monday, that Journal was approved. Then the Journals of Tuesday and Wednesday were approved in order.

2772. On Saturday, April 14, 1894,[1] the Speaker directed the Clerk to read the Journal of the proceedings of the previous day, Friday, April 13.

Mr. Thomas B. Reed, of Maine, made the point that the Journal of the proceedings of Thursday not having been approved, the question on the approval of that Journal should be disposed of before the Journal of the proceedings of Friday should be read.

After debate, the Speaker[2] held that pursuant to the terms of Rule I the Journal of Friday should be first read and took precedence over the question of approving the Journal of the preceding day.

2773. On Tuesday, April 17, 1894,[3] the Journal of the proceedings of Monday was read.

Mr. Julius C. Burrows, of Michigan, made the point that the Journals of Thursday and Friday last, respectively, not having been approved, the question would first be on the approval of the Journal of the preceding days, in chronological order.

After debate, the Speaker[2] sustained the point, holding as follows:

The rules provide that the Speaker shall take the chair at 12 o'clock, and, on the appearance of a quorum, cause the Journal of the preceding day's session to be read, and approved if correct. Suppose for some reason the day passes without this having been done. The next day arrives. The Chair directs the Journal of the preceding day to be read, which Journal itself discloses that a Journal has not been approved. That Journal itself discloses that the first question to come up after its approval is the approval of the Journal which has not been approved, because that was the proposition pending before the House. So that the Chair is unable to see any reason for the rule that, under existing conditions, the first question is the approval of the Journal most remote instead of that most near to the time of this meeting.

It is true the question seems heretofore to have been submitted to the House, and the practice contended for seems to have been approved by the House. The Chair will conform to that decision. The question is upon the approval of Thursday's Journal, and on that question the previous question has been demanded and the yeas and nays have been ordered thereon.[4]

By unanimous consent, the order for the yeas and nays was dispensed with, and the Journals of Thursday and of Friday last, respectively, were then approved.

2774. In ordinary practice the Journal is approved by the House without the formal putting of the motion to vote.—On February 12, 1857,[5] in the course of discussion relating to the approval of the Journal, the Speaker[6] said:

The Journal of the House has been read and approved by the House. * * * There has been no motion to approve the Journal; but it is assumed, no question being made. * * * That has

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[1] Second session Fifty-third Congress, Journal, p. 334; Record, p. 3757.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] Second session Fifty-third Congress, Journal, pp. 337, 338; Record, p. 3793.

[4] During the debate a decision of Mr. Speaker Randall bearing on the point was read from Record, second session Forty-sixth Congress, p. 1837.

[5] Third session Thirty-fourth Congress, Globe, p. 674.

[6] Nathaniel P. Banks, jr., of Massachusetts, Speaker.

been the uniform practice of the House as regards the Journal. The Chair assumes, instead of stating the question to the House, that the Journal is approved by the House, unless some question be raised. * * * It is the established practice in all deliberative assemblies that when the Journal is read it is considered as approved unless a question be raised.[1]

2775. It was the early practice to record in the Journal all motions to amend the Journal, but in later years the rule has not been adhered to always.—On February 14, 1838,[2] a motion was made to amend the Journal of the preceding day by striking out a portion.

Mr. Charles F. Mercer, of Virginia, rising to a parliamentary inquiry, asked whether, if the motion to amend should prevail, the part stricken out would appear in the Journal of to-day.

The Speaker[3] replied that it necessarily would, as showing the ground of the House's vote.

2776. On December 12, 1838,[4] the Journal of the preceding day having been read, Mr. Henry A. Wise, of Virginia, moved that the same be amended by stating therein that he refused to vote on the question that the House do agree to the first of the resolutions moved on the preceding day by Mr. Charles G. Atherton, of New Hampshire.

The motion to amend the Journal was decided in the negative.

Mr. Wise, rising to a parliamentary inquiry, asked the Chair if the motion just made to amend would be recorded in the Journal of this day.

The Speaker[3] replied that it would.

2777. In some cases where the Journal has been amended the proposed amendment has appeared in full on the day on which it was offered, and the Journal which was amended appeared also in its amended form. This was the case in an amendment adopted February 26, 1841.[5]

This was not always the case, however. Sometimes, and indeed, in most cases, the amended Journal does not appear in the amended form, the amendment being on the Journal of the day when it was offered and adopted.

2778. The Journal of the special session of 1841[6] has this record in the index under the subject "Journal":

After being read in the morning, the Journal, was occasionally amended, and was made to conform to the order of amendment, no notice of which was taken in the Journal of the subsequent day.

2779. In the Thirty-first Congress[7] the correction of the Journal for errors in the roll call was placed in the Journal of the succeeding day.

2780. The Journal makes no mention of its own approval except when a question is raised and a vote taken.—As early as 1842[8] it appears by

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[1] At the present time the Journal is approved each day formally, the Speaker saying: "Without objection the Journal will be considered as approved." If there is objection, the motion is made and the vote taken.

[2] Second session Twenty-fifth Congress, Globe, p. 180.

[3] James K. Polk, of Tennessee, Speaker.

[4] Third session Twenty-fifth Congress, Journal, p. 60 , Globe, p. 25.

[5] Second session Twenty-sixth Congress, Journal, pp. 311, 330.

[6] First session Twenty-seventh Congress, Journal, p. 541. Speaker—John White, of Kentucky.

[7] First session Thirty-first Congress, Journal, pp. 853, 1095, 1111, 1205, 1352.

[8] Second session Twenty-seventh Congress, Globe, pp. 16, 229, 250, etc.

the Globe each morning that the Journal of the previous day was read and approved. The Journal itself makes no mention of its own approval, unless the yeas and nays be taken on the motion.

2781. After the Journal has been approved, amendments should not be ordered.—On December 29, 1795,[1] after the Journal for the preceding day had been read and approved, a Member called attention to what he considered a material error, and moved to amend.

The Speaker[2] said he had never known an instance of this sort where amendment was made after the Journal had been read over and agreed to. He did not think it could be done unless the House were unanimous in it.

After debate the House dropped the subject without action.

2782. While a proposed correction of the Journal may be recorded in the Journal, yet it is not in order to insert in full, in this indirect way, what has been denied insertion in the first instance.—On July 6, 1846,[3] the Speaker decided that an amendment to the Journal offered by Mr. Edward W. McGaughey, of Indiana, was not in order, because it related to proceedings which were rendered a nullity by the subsequent discovery of an error.

The Journal of the day did not give the proposed amendment of Mr. McGaughey in full, but merely described it briefly.

When the Journal had been read, on July 7, Mr. George Ashmun, of Massachusetts, moved that the same be amended by inserting at length the motion made by Mr. McGaughey.

The Speaker[4] decided that the motion to amend the Journal was not in order, for the reason that it was not in order to spread on the Journal indirectly what the House had already refused to place there directly.

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

2783. The House declined to allow amendment of the Journal entry of a motion which was recorded exactly as made.

An instance wherein the House, by vote, allowed an explanation of a motion to be entered on the Journal.

On March 30, 1836,[5] Mr. Bailie Peyton, of Tennessee, submitted to the House a motion, in writing, in the words following:

> The Member from Tennessee [Mr. Peyton] moved to amend so much of the Journal contained in the motion of the Member from Louisiana [Mr. Ripley] in the following words: "Notwithstanding the Member from Tennessee alleged that General Hawkins from North Carolina, had not agreed to it, which allegation is disproved by the statement of General Hawkins," by inserting the following words, to wit: "The Member from Tennessee [Mr. Peyton] stated that the Member from North Carolina [Mr. Hawkins] was opposed to the change of the five votes from the Commons to the Congress box. That the fact of his disagreement with the majority of the committee, as to these five votes, was known to the others of the majority; and he [Mr. Hawkins] was about to enter his protest on the report, but at the suggestion of friends that he could have an opportunity of expressing his opinion as to these votes by his vote in the House, he [Mr. Hawkins] consented to sign the report of the majority, and to its being made without such protest."

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[1] First session Fourth Congress, Annals, p. 173.

[2] Jonathan Dayton, of New Jersey, Speaker.

[3] First session Twenty-ninth Congress, Journal, pp. 1032, 1035; Globe, pp. 1064, 1065.

[4] John W. Davis, of Indiana, Speaker.

[5] First session Twenty-fourth Congress, Journal, pp. 598, 599; Debates, p. 3014.

The said motion being read, and it appearing that the entry in the Journal of yesterday, on the motion of Mr. Ripley, had been at the time reduced to writing by Mr. Ripley, and was correctly copied into the Journal, the Journal, therefore, could not be amended as thus proposed.

Mr. Peyton then asked to have his said motion entered on the Journal of this day, as explanatory of the entry of the Journal of yesterday, which request was granted by a vote of the House.

2784. In amending the Journal the House may decide as to what are proceedings, even to the extent of omitting things actually done or of recording things not done.—On July 8, 1846,[1] the Journal of the preceding day having been read, Mr. John W. Tibbatts, of Kentucky, moved "to correct the same by omitting all proceedings in relation to the call of the House, moved by Mr. Dromgoloe, following the decision of the Speaker upon the resolution offered by Mr. McKay requiring absentees to render excuses for their absence whenever they shall next appear in the House."

And after debate the previous question was moved by Mr. Barclay Martin, of Tennessee, and the main question was ordered and stated, "Shall the Journal be corrected as proposed by Mr. Tibbatts?" when Mr. William H. Brockenbrough, of Florida, raised the question of order that the Journal of the preceding day was made up in accordance with the Constitution of the United States, and was true in point of fact, and being true, could not be altered unless shown to be untrue.

The Speaker[2] overruled the point of order on the ground that the Constitution does not specify the manner in which the Journal shall be kept, and the House has the control thereof, and may judge what are and what are not "proceedings."

Upon an appeal the decision of the Chair was sustained.

2785. The Journal being correct, the Speaker nevertheless entertained a motion to amend it so as to cause it to state what was not the fact, leaving the House to decide as to the propriety of the action.—On March 23, 1880,[3] Mr. Omar D. Congar, of Michigan, raised a question of order that the bill of the House (H.R. 5265) to revise certain sections of the Revised Statutes, being virtually a bill to revise the tariff, had on the preceding day been improperly referred to the Committee on the Revision of the Laws; and thereupon Mr. James A. Garfield, of Ohio, moved to amend the Journal, which had been read but not approved, by striking out the Committee on Revision of the Laws and inserting the Committee on Ways and Means.

A question at once arose as to whether or not the Journal, when it stated correctly the proceeding of the day before, might be amended so as to change that proceeding.

The Speaker[4] decided that he would entertain the motion to amend, leaving to the House to decide as to the propriety of amending the Journal in the manner indicated.

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[1] First session Twenty-ninth Congress, Journal, p. 1047.

[2] John W. Davis, of Indiana, Speaker.

[3] Second session Forty-sixth Congress, Journal, pp. 842, 874; Record, pp. 1804–1807, 1878–1881.

[4] Samuel J. Randall, of Pennsylvania, Speaker.

Thereupon the House agreed to the motion to lay on the table the motion to amend; but reconsidered, and after prolonged dilatory proceedings, on March 25 approved the Journal as originally made, and agreed to a resolution discharging the Committee on the Revision of the Laws and referring the bill to the Committee on Ways and Means.

2786. An instance wherein the Senate, after discussion, declined so to amend the Journal as to state what was not the actual fact.—On March 23, 1866,[1] in the Senate, Mr. John P. Stockton, of New Jersey, voted on his own election case. On March 26 Mr. Charles Sumner, of Massachusetts, contending that such action was in defiance of natural as well as parliamentary law, proposed to amend the Journal by striking out the vote of Mr. Stockton. Mr. Willard Saulsbury, of Delaware, made the point that the Journal was correctly made up in that it recorded the fact which occurred, and therefore that a motion to amend it thus was not in order. Mr. Sumner contended that it appeared from the face of the Journal that the action of the Senator in voting was contrary to the principles of natural law, and therefore void. So the Journal should be amended in accordance with that state of affairs. After considerable discussion of the best method of getting at the matter, it was decided informally not to amend the Journal, but to reconsider the vote agreeing to the resolution, and then to adopt a resolution declaring that Mr. Stockton's vote should not be received in determining the question of his right to a seat. This was done, Mr. Sumner withdrawing his proposition to amend the Journal.

2787. The House has nullified an order by rescinding the record of it in the Journal.—On February 13, 1821,[2] the Journal of the preceding day having been read, Mr. Arthur Livermore, of New Hampshire, moved to amend it by erasing the order directing the Clerk to inform the Senate that this House had rejected the resolution from the Senate declaring the admission of the State of Missouri into the Union.[3]

Mr. Livermore explained that he did this in order that the resolution might be retained in the possession of the House, so that he might make a motion to reconsider the vote by which it was rejected.

The motion was agreed to without division.

2788. Although the Journal had been approved, the Speaker admitted as privileged a motion to correct a manifest error which would deprive a Member of certain rights as to the pending question.—On December 31, 1851,[4] after the Journal had been read and approved as usual, the House was proceeding to the consideration of a resolution presented on the preceding day by Mr. Thomas L. Clingman, of North Carolina, and providing for closing debate in Committee of the Whole on that portion of the President's message relating to Louis Kossuth.

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[1] First session Thirty-ninth Congress, Globe, pp. 1601, 1635–1648.

[2] Second session Sixteenth Congress, Journal, p. 225 (Gales & Seaton ed.); Annals, p. 1117.

[3] By a ruling of Mr. Speaker Clay in the preceding year it was held out of order to move to reconsider after the bill had gone to the Senate, and this procedure was taken to obviate the difficulty thus created. The present practice of the House is different. (See Sec. 5605 of Vol. V. of this work.)

[4] First session Thirty-second Congress, Journal, p. 148; Globe, pp. 169, 170.

Mr. Lewis D. Campbell, of Ohio, having proposed to offer an amendment, Mr. Clingman rose and stated that when he introduced the resolution he had accompanied its introduction with a demand for the previous question; and as it appeared that the Journal of the preceding day failed to state the facts, he therefore moved that it be amended accordingly.

Mr. Campbell made the point of order that, the Journal not showing any demand for the previous question, and he having the floor for the purpose of moving an amendment to the resolution, the Speaker was bound by the Journal, and the floor could not be taken from him by a motion to amend the Journal.

The Speaker[1] stated that his own recollection confirmed the statement of the gentleman from North Carolina as to his demand for the previous question and that the Journal was defective in failing to state the fact. If the House should direct the Journal amended accordingly, the gentleman from Ohio was clearly not entitled to the floor for the purpose of offering his amendment. In view of this fact, it seemed manifestly proper that the question as to the correctness of the Journal should first be submitted to the House for its decision. He therefore overruled the point of order.

Mr. Campbell having appealed, the appeal was laid on the table.

2789. Because of the rule requiring every motion made and not withdrawn to be entered on the Journal, it was held not in order to amend the Journal by striking out a resolution actually offered.—On December 21, 1864,[2] after the reading of the Journal, Mr. S.S. Cox, of Ohio, claiming the floor on a question of privilege, moved to strike out such portion of the Journal as referred to a resolution offered on the preceding day, and relating to retaliatory treatment of prisoners of war.

The Speaker asked if it was charged that the Journal had not been correctly made up, and Mr. Cox responded that he did not raise that question.

Thereupon the Speaker[3] decided that the motion to strike out was not in order.

Mr. Cox thereupon moved to expunge the resolution from the Journal.

Mr. Ellihu B. Washburne, of Illinois, having made the point of order that this motion was not in order, the Speaker said:

> The Chair sustains the point of order. The Chair will state to the gentleman from Ohio that the thirty-ninth rule[4] requires that every written motion made in the House shall be inserted in the Journal and that the Speaker shall revise and correct the Journal every morning before it is read to the House. There is a question of privilege if the charge is made that the Speaker has mutilated the Journal. That was decided in the Thirty-first Congress to be a question of privilege. If the gentleman wishes to expunge the resolution he must wait until resolutions are in order. But the Journal must state what occurred, and it is not a question of privilege to move to strike out what did occur.

2790. The Speaker has ruled out of order a motion to expunge a portion of the Journal.—On February 9, 1853,[5] after the Journal of the preceding day had been read, Mr. Daniel Mace, of Indiana, moved to amend it "by expunging

[1] Linn Boyd, of Kentucky, Speaker.

[2] Second session Thirty-eighth Congress, Globe, p. 98.

[3] Schuyler Colfax, of Indiana, Speaker.

[4] See sec. 5300 of Vol. V of this work for the rule at present.

[5] Second session Thirty-second Congress, Globe, p. 549.

therefrom the whole proceedings of last evening's session, because the same shows a spirit of faction," etc.

The Speaker[1] said:

The gentleman's proposition is not, legitimately, to amend the Journal, and the Chair rules it out of order.[2]

2791. On April 12, 1810,[3] after the Journal had been approved and the House had proceeded with business for some time, Mr. John Taylor, of South Carolina, moved to expunge from the Journal of the preceding day's business the motion and vote relating to ceremonies on the death of Col. William Washington.

The Speaker[4] held that unanimous consent was necessary to expunge a vote from the Journal, and, there being objection, the motion was not entertained.

2792. The House has rescinded a resolution recorded in the Journal of a preceding Congress.—On March 2, 1875,[5] Mr. Glenni W. Scofield, of Pennsylvania, by unanimous consent, offered the following resolution, which was agreed to:

Whereas the House of Representatives, on the 30th day of April, 1862, adopted a resolution censuring Simon Cameron for certain alleged irregular proceedings as Secretary of War in the matter of purchasing military supplies at the outbreak of the rebellion; and whereas, on the 26th day of the ensuing month, the then President of of the United States, Abraham Lincoln, in a special message to Congress, assumed for the Executive Department of the Government the full responsibility of the proceedings complained of, declaring in said message that he should be equally wanting in candor and in justice if he should leave the censure to rest exclusively or chiefly on Mr. Cameron, and adding that it was due to Mr. Cameron to say that, although he fully approved the proceedings, they were not moved nor suggested by him, and that not only the President, but all the other heads of departments were at least equally responsible with him for whatever error, wrong, or fault was committed in the premises:

Therefore,

Resolved, That this House, as an act of personal justice to Mr. Cameron and as a correction of its own records, hereby directs that said resolution be rescinded, and that "recission" be entered on the margin of the Journal where said resolution is recorded.

2793. On May 2,1876,[6] Mr. L. Q. C. Lamar, of Mississippi, proposed the following resolution, which was agreed to without dissent:

Resolved, That so much of the resolution adopted by the House of Representatives of the Forty-third Congress, on the 3d of February, 1875, as charges prevarication upon Hon. John Young Brown be, and the same is hereby, rescinded and ordered to be expunged.

Mr. George F. Hoar, of Massachusetts, referred to the precedents in relation to ex-Secretary of War Cameron, the Benton resolution in the Senate, and the resolution in Parliament in the case of Wilkes. He said it seemed to him that it was proper for the House to rescind a resolution of a preceding House, but the proposition to expunge went beyond the proper power of the House. Mr. Lamar said he considered the point well taken and would modify the resolution so as to leave out the words "and ordered to be expunged." The record of debates indicates that this was done and that the resolution was adopted as amended. The Journal, however, gives the resolution as adopted in the original form.

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[1] Linn Boyd, of Kentucky, Speaker.

[2] In 1812, however, such a motion was admitted without question. (See sec. 2808 of this chapter.)

[3] Second session Eleventh Congress, Annals, p. 1789.

[4] Joseph B. Varnum, of Massachusetts, Speaker.

[5] Second session Forty-third Congress, Journal, p. 618; Record, p. 2084.

[6] First session Forty-fourth Congress, Journal, p. 907; Record, pp. 2887–2889.

2794. The correction of the Journal of a day preceding the last legislative day is usually made only by unanimous consent.—On June 15, 1836,[1] Mr. John Quincy Adams, of Massachusetts, submitted a motion to amend the Journal, not of the preceding day, the 14th, but of the day before that, the 13th. This motion was admitted "by consent."

2795. On December 31, 1839,[2] a motion was made to amend the Journal of the 27th of December, although that Journal had been read for amendment on December 30.

Mr. Speaker Hunter expressed the opinion that it was too late to amend the Journal of the 27th, but Mr. John Jameson, of Missouri, who had made the motion to amend, quoted a passage from the Manual to show that the Journal might be corrected at any time. The Speaker thereupon admitted the motion.

2796. On August 2, 1852,[3] Mr. Speaker Boyd held that a correction of the Journal for a day preceding the last legislative day could be made only by unanimous consent.

2797. On May 20, 1870,[4] a Member was allowed, by unanimous consent, to correct his vote on the Journal of the 21st of the preceding March.

This correction is noted in the Journal of May 20.[5]

2798. A Member may not, as a matter of right, enter a protest in the Journal.—On February 10, 1869,[6] during proceedings in the House relating to a protest made in joint convention against counting the electoral vote of the State of Georgia, Mr. P.M.B. Young, of Georgia, asked if it would be in order "to enter my solemn protest in behalf of the people of my State and in the name of the Constitution and laws of the United States against the action of this House in thus excluding from the Electoral College the State of Georgia."

The Speaker[7] said:

> The remarks just made by the gentleman from Georgia will be recorded in the Globe, but a protest can not be entered on the Journal as a matter of right. The consent of the House is necessary to grant that privilege.

2799. The demand of a Member that a protest against certain parliamentary practices of the House be placed on the Journal does not present a question of privilege.

In 1855 the Speaker held it the right of the Chair to decide whether or not a question alleged to be of privilege should be submitted to the House.

On February 24, 1855,[8] Mr. Joshua R. Giddings, of Ohio, rose and claimed, as a question of privilege, that a certain paper in the nature of a protest against the practice, represented by him as having lately grown up in the House, which precluded a Member from giving his reasons for voting upon a bill, be entered upon the journal.

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[1] First session Twenty-fourth Congress, Journal, p. 1010.

[2] First session Twenty-sixth Congress, Journal, p. 151; Globe, p. 93.

[3] First session Thirty-second Congress, Globe, p. 2041.

[4] Second session Forty-first Congress, Globe, p. 3642.

[5] Journal, p. 811.

[6] Third session Fortieth Congress, Globe, p. 1059.

[7] Schuyler Colfax, of Indiana, Speaker.

[8] Second session Thirty-third Congress, Journal, p. 451; Globe, p. 930.

The Speaker decided that no question of privilege was presented by the gentleman.

Mr. Giddings's paper asserted that important bills and measures were pressed through the House by resorts and expedients until recently unknown to American legislation; that a bill for carrying into effect the convention of February 8, 1853, with Great Britain, was passed on the preceding day without permitting any exhibition of the fact that the convention was for the benefit of slavery; that the extraordinary manner in which the bill was protected from exposure was opposed to the true dignity of the American Congress; and for the reasons contained in these allegations Mr. Giddings protested.

Mr. Giddings claimed, in the debate which arose on the presentation of the paper, that it was a well-settled rule that questions of privilege were submitted to the decision of the House and not to the Speaker.

The Speaker[1] said:

The Chair differs with the gentleman from Ohio. He is perfectly assured of the correctness of his decision.

Mr. Giddings having appealed, the Speaker said, in stating the appeal:

The gentleman from Ohio complains that yesterday, during the proceedings had in reference to a bill indicated, he was not allowed to make a speech. Not being allowed to make a speech then, he now insists that he has the right to place a protest upon the Journal of the House. The Chair decides that he does not know of any rule making such a proposition a question of privilege, nor of any rule authorizing the spreading of any such document upon the Journal. The gentleman further holds that, whether or not it be a question of privilege under the rules must be determined by the House and not by the Speaker. The Chair differs with the gentlemen. He decides that it is not a question of privilege; that he can not, under the rules, claim the right as a privileged question, or a question of privilege, to spread upon the Journal what he states to be his protest.

The decision of the Chair was sustained, the appeal being laid on the table by a vote of 137 yeas to 46 nays.

2800. On May 29, 1882,[2] the House was considering a rule in relation to dilatory motions during the consideration of a contested-election case when Mr. Samuel S. Cox, of New York, rose to a question of privilege and submitted a protest signed by members of the minority—

against the proceedings of the majority and the rulings of the Speaker as unjustifiable, arbitrary, and revolutionary, and expressly designed to deprive the minority of the protection which has been established as one of the great muniments of the representative system by the patient and patriotic labors of the advocates of parliamentary privilege and civil liberty.

Objection was at once made that the protest should not go upon the journal, and it was not so entered. But by direction of the Speaker it was read and appeared in the Record. The Speaker[3] said:

The Chair thinks that this is not a question of privilege, but one which should not be ruled out by the Chair. The Chair thinks, although he has no more interest in it than any other Member, as so many Members have signed it and desire it to go into the Record that it should go.

The protest appears in the Record but not in the Journal.

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[1] Linn Boyd, of Kentucky, Speaker.

[2] First session Forty-seventh Congress, Journal, p. 1263; Record, p. 4326.

[3] J. Warren Keifer, of Ohio, Speaker.

2801. In the earlier practice protests which the House refused to allow in the Journal appeared there indirectly as part of the rejected motion.—On February 8, 1836,[1] the House agreed to resolutions relating to the agitation for the abolition of slavery in the District of Columbia, and presented originally by Mr. Henry L. Pinckney, of South Carolina.

Immediately after the adoption of these resolutions Mr. Thomas Glascock, of Georgia, moved that—

> The rules of proceeding be suspended to enable him to make a motion that Mr. Rice Garland, Mr. John Robertson, and himself, be permitted to enter upon the Journal of the House the reasons for the votes given by them this day on the division of the resolution moved by Mr. Pinckney, viz, on the following words: "With instructions to report that Congress possesses no constitutional authority to interfere in any way with the institution of slavery in any of the States of this confederacy."

The House decided this motion in the negative. The motion in the words quoted appears in the Journal of that day's proceedings.

On the next day this motion was repeated in the same form except that the words "a protest containing the reasons" are used instead of "the reasons." With this difference the motion appears on the Journal of February 9 in the same terms as in the Journal of the preceding day. The protest in full, signed by the three Members appears in full in the debates but not in the Journal, the House, by a vote of 81 yeas to 113 nays, having refused to suspend the rules in order to enable the protest to be offered for insertion in the Journal.

2802. On December 21, 1838,[2] Mr. Caleb Cushing, of Massachusetts, moved—the Journal of the preceding day having been read—to amend the same by inserting the following words:

> Mr. Cushing presented the petition of Joseph Young and others, of Salisbury, in the State of Massachusetts, which was laid on the table under the resolution of the House of the 12th of December; and, on presenting the same, Mr. Cushing protested that, in submitting to the application of said resolution to this petition, he yielded not to right but to power, conceiving said resolution to be unconstitutional and therefore in itself purely null and void; which protest he moved to have entered on the Journal, but the Speaker decided that the motion was not in order.

Mr. George C. Dromgoole, of Virginia, rising to a parliamentary inquiry, asked whether or not, if the motion to amend should be rejected. The subject-matter would still go on the Journal.

The Speaker[3] replied that the whole would go on the Journal of this day's proceedings.

The motion to amend the Journal was then decided in the negative, yeas 14, nays 174.

2803. In 1839,[4] the organization of the House was prevented for some time by a contest as to who should be recognized as the occupants of five of the New Jersey seats. Finally the members-elect chose Mr. John Quincy Adams, of Massachusetts, Chairman, and adopted an order that the roll should be called by States, those gentlemen being called whose seats were not disputed or contested.

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[1] First session Twenty-fourth Congress, Journal, pp. 316–318; Debates, p. 2503.

[2] Third session Twenty-fifth Congress, Journal, p. 138; Globe, p. 56.

[3] James K. Polk, of Tennessee, Speaker.

[4] First session Twenty-sixth Congress, Journal, pp. 27–31; Globe, pp. 46, 47.

On December 12, at the conclusion of the roll call had in pursuance of this order, Mr. Joseph F. Randolph, of New Jersey, the only Member from that State whose seat was uncontested, read in his place a paper purporting to be a protest, signed by the five Members from New Jersey who had credentials from the governor of that State. This was a protest against the course of the House in regard to their claim to be Members. Mr. Randolph moved that this protest be spread on the Journal of the House. And on this motion there were yeas 114, nays 117. So the House refused to allow the protest to be spread on the Journal.

On December 13, the Journal of the preceding day having been read, Mr. Henry A. Wise, of Virginia, moved that it be amended by inserting the protest in full, which he thereby presented.

Mr. George C. Dromgoole, of Virginia, submitted a question of order as follows:

Is the motion of Mr. Wise in order, as it effects, by putting on the Journal, the very thing the House yesterday refused to spread on the Journal?

The Chairman decided the motion of Mr. Wise to be in order, citing precedents from the proceedings of the last two Congresses.

Mr. Dromgoole appealed, and after debate Mr. John W. Davis, of Indiana, moved to lay the whole subject on the table.

Mr. George N. Briggs, of Massachusetts, here inquired of the Chair, if the subject was laid on the table, would the motion of Mr. Wise, with the paper recited in it, appear on the Journal?

The Chair decided that, according to all precedent, it would appear on the Journal.

From this decision also Mr. Dromgoole appealed.

After further proceedings and further appeal, the whole subject was laid on the table.

The protest appears in full in the Journal, as a part of Mr. Wise's motion to amend.

2804. In 1843 the House finally decided that a protest which had been refused admission to the Journal might not appear there indirectly.

The Journal should record every vote and state in general terms the subject of it.

It is in order to move to amend the Journal by inserting what the House has refused to hear read.

On December 4, 1843,[1] Mr. Daniel D. Barnard, of New York, proposed to read in his place a paper in the nature of a protest, but, a question being put, the House voted not to give him permission to do so. The vote was not taken by yeas and nays, and no reference to the transaction appeared in the Journal of the succeeding day.

On December 5, after the reading of the Journal, Mr. Barnard offered the following:

Resolved, That the Journal of yesterday be amended in regard to the offer of Mr. Barnard to read a paper in his place, so as to state the facts in regard to said offer, and inserting the following paper as that offered to be read, to wit: (Here follows the text of a protest signed by fifty Members of the House against the participation in the election of Speaker of Members from several States that had not chosen their Representatives by districts, as provided by law.)

[1] First session Twenty-eighth Congress, Journal, pp. 7, 13, 27, 45, 49; Globe, pp. 2, 3, 10, 13, 23–27.

After debate Mr. Barnard modified the resolution to read as follows:

Resolved, That the Journal of yesterday be amended so as to state that Mr. Barnard offered in his place to read a paper, signed by himself and forty-nine other Members of the House; that objection was made; when a motion was submitted that Mr. Barnard have leave to read the paper; that question was put by the Clerk to the House, which, on a division, decided against granting the leave. And that the Journal be further amended by inserting the following paper as that offered to be read, to wit: (Here followed the protest.)

Mr. George C. Dromgoole, of Virginia, raised the following question of order: That it is not in order to move to amend the Journal, by inserting therein that which the House yesterday refused to hear read.

The Speaker [1] decided that it was competent for the gentleman from New York to bring the proposition before the House for its decision.

Mr. Thomas W. Gilmer, of Virginia, moved to amend the motion of Mr. Barnard by striking out the last clause, which provided for the insertion of the protest.

Pending the question of this amendment the House adjourned, and the motion of Mr. Barnard, with the protest in full, appeared on the Journal of the day's proceedings.

On December 6, when the Journal of the preceding day had been read, Mr. A.H. Chappell, of Georgia, contended that the protest was irregularly on the Journal, and moved to strike therefrom so much of Mr. Barnard's motion as recited the protest.

Mr. Barnard, as a question of order, submitted that he having of right offered a resolution on the preceding day, which was received and considered by the House, it was not now in order to move to strike it from the Journal.

The Speaker decided against the point of order.

Debate then arose as to the propriety of the entry of the protest as part of the motion of Mr. Barnard. The Speaker said that the Journal had been made up in accordance with the previous practice of the House in such cases. On the other hand, it was urged that the entry was irregular, and that such a practice destroyed the control of the House over its own Journal. The Journal should be a record of the things done by the House, but in this case it was proposed to make it a record of a paper which the House had refused to allow to be read. The Constitution required that the yeas and nays be entered on the Journal, but this did not involve the printing in full on the Journal of the whole subject over which the ordering of the yeas and nays arose. Otherwise it would be in the power of one-fifth to lumber the Journal with a great variety of extraneous matter.

After postponement the question was taken on December 11, on Mr. Gilmer's motion to amend Mr. Barnard's resolution, and was agreed to, yeas 120, nays 64.

Mr. Barnard's motion as amended was then agreed to, and the Journal of December 4 appears with the entry as specified in the amended resolution.

The question was then taken on the motion of Mr. Chappell, and it was agreed to, yeas 93, nays 84. And so the protest was stricken from the Journal of December 5, and nowhere in the Journal does it appear.[2]

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[1] John W. Jones, of Virginia, Speaker.

[2] Mr. Dromgoole offered a motion to amend the rules by providing in future that it should not be in order, under cover of a proposition to amend the Journal, to spread on the Journal a proposition which the House had previously refused to receive or hear read. This was debated at some length, but not acted on. (Journal, p. 49; Globe, pp. 27, 38.)

2805. It is not in order to place on the Journal indirectly what the House has refused to place there directly.

The House having declined to permit protests to be entered on the Journal, the Speakers have declined to entertain motions to amend the Journal which would have effected the purpose indirectly.

Effect in the House of an affirmative decision on a motion to lay on the table.

Practice of House and Senate as to admitting protests to the Journal. (Footnote.)

On December 22, 1862,[1] Mr. George H. Pendleton, of Ohio, offered a resolution to enter upon the Journal the protest of 36 Members of the House against the passage of House bill No. 591, entitled "An act to indemnify the President and other persons for suspending the privileges of the writ of habeas corpus and acts done in pursuance thereof."

The resolution, with the accompanying protest, was laid on the table at once by a vote of 75 to 41.

On the next day Mr. Pendleton called attention to the fact that the Journal contained only the resolution "that the following protest of 36 Members of this House against the passage of House bill No. 591 be entered upon the Journal," and did not contain the protest, which he claimed was a part of the resolution. Mr. Pendleton claimed that the protest should go on the Journal for two reasons: First, it was an essential part of the resolution which the Clerk was not at liberty to omit, and, secondly, the House, by laying the resolution on the table, had entertained the question whether they would or would not order it to be recorded on the Journal, and with deference to possible future action of the House the protest should be recorded. Therefore he moved to correct the Journal by inserting the protest at length.

The Speaker[2] decided that the motion was not in order, for the reason that it was not in order to spread upon the Journal indirectly what the House has already refused to place there directly, the order of the House by which the resolution was laid on the table being, according to the practice of the House, equivalent to such refusal. He said also that while in the Senate the effect of the motion to lay on the table was to postpone the question to be called up at any time, in the House the practice had always been to consider a vote laying a measure on the table as a negative decision of the House. The Chair, in support of his decision, cited the decision in the first session Twenty-ninth Congress, July 7, 1846, wherein the Speaker held that the motion of Mr. Ashmun to amend the Journal by inserting at length the motion made the day before by Mr. McGaughey to amend the Journal of the preceding day was not in order, on the ground that it was not in order to place on the Journal indirectly what the House had refused to place there directly. Also from the Journal of the first session Twenty-eighth Congress the following was cited:

Mr. Barnard moved the following resolution:

"Resolved, That the Journal of yesterday be amended so as to state that Mr. Barnard offered in his place to read a paper signed by himself and forty-nine other Members of the House; that objection was made; when a motion was made that Mr. Barnard have leave to read the paper; that a question was put by the Clerk of the House, which, on a division, decided against granting the leave."

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[1] Third session Thirty-seventh Congress, Journal, pp. 122, 123; Globe, p. 165.

[2] Galusha A. Grow, of Pennsylvania. Speaker.

And so it was

"Resolved, That so much of the resolution of Mr. Barnard for an amendment of the Journal of Monday, the 4th instant, as recites a protest of D. D. Barnard and others be stricken from the Journal of Tuesday, the 5th instant."

(The protest was accordingly stricken from the Journal.)

From this decision Mr. Pendleton appealed. The decision of the Chair was sustained, 74 yeas to 20 nays.[1]

2806. In 1826 the House authorized the Representatives from the State of Georgia to enter a protest in the Journal.—On May 10, 1826,[2] during, the hour set apart under the then existing rules for the presentation of resolutions by Members,[3] Mr. John Forsyth, of Georgia, presented this resolution:

Resolved, That the following protest, presented by the Representatives of the State of Georgia yesterday, be entered on the Journal of the House. (Here follows a declaration, signed by the Members of the Georgia delegation, that neither the President, the Senate, nor the Government of the United States had any constitutional power to invalidate by the treaty with the Creek Indians the rights secured to the State of Georgia, and therefore the undersigned solemnly protested.)

The resolution was opposed, especially by Mr. Daniel Webster, of Massachusetts, on the ground that, with a single instance, the practice was unprecedented and might become very inconvenient.

The resolution was agreed to, ayes 82, noes 61, and the protest appears in the Journal.

2807. In 1868 a protest was entered in the Journal by unanimous consent.—On June 24, 1868,[4] by unanimous consent, Mr. James Brooks, of New York, presented a protest signed by Members of the minority against the admission of Representatives from the State of Arkansas, and this protest was entered on the Journal.

2808. The declaration of a Delegate on a public question being presented for insertion in the Journal and read, was recorded in the Journal, whereupon the House declined to expunge it.—On June 4, 1812,[5] the House,

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[1] On August 14, 1850 (Globe, 1–31, pp. 1579, 1588), in the Senate, a protest against the action of the Senate in passing the bill admitting California as a State was presented, signed by 10 Senators. The Senator presenting it, Mr. Hunter, of Virginia, asked that it be read and spread upon the Journal of the Senate. An extended debate arose. The President of the Senate stated that there had not been a case since the foundation of the Government when a protest had been entered on the Journal. An attempt made July 17. 1789, to authorize the entering of protests on the Journal had been defeated. Mr. Benton, of Missouri, said that in the British House of Lords any peer might record his protest in the Journal, but this practice had never been allowed in the American Senate. Mr. Hale recalled that at the organization of the Twenty-eighth Congress Mr. Barnard had offered a protest against the admission of the Representatives from New Hampshire, Georgia, and Missouri, which had been refused a place in the Journal. Mr. Hunter recalled a case in the House where Mr. Garnett, of Virginia, was allowed to have entered on the Journal his reasons for a certain vote which he gave.

(The Senate decided not to admit the protest to the Journal.)

[2] First session Nineteenth Congress, Journal, p. 537; Debates, pp. 2623–2627.

[3] This was Rule 17. (See Journal 1st sess. 19th Cong., p. 781.) It has long ceased to exist, and now ail resolutions, unless involving questions of privileges, must be referred, unless by unanimous consent the House allows their presentation.

[4] Second session Fortieth Congress, Journal, p. 922; Globe, p. 3441.

[5] First session Twelfth Congress, Journal (supplemental), p. 470 (Gales & Seaton ed.); Annals, pp. 1638, 1679.

being in secret session, had passed the "act declaring war between Great Britain and her dependencies," whereupon Mr. George Poindexter moved to have inserted in the Journal a declaration in the following words:

George Poindexter, Delegate from the Mississippi Territory, not having a constitutional right to record his suffrage on the Journal of the House on the important question under consideration, and being penetrated with a firm conviction of the propriety of the measure, asks the indulgence of the House to express his own and the sense of his constituents,[1] in support of the honorable and dignified attitude which the Government of his country has assumed in vindication of its rights against the lawless violence and unprecedented usurpations of the Government of Great Britain.

This paper was read, and appeared in the Journal of the next day, whereupon Mr. Nathaniel Macon, of North Carolina, moved that it be expunged from the Journal. This motion was disagreed to—yeas 44, nays 62. A motion that the House proceed to consider the declaration was decided in the negative.

2809. The Parliamentary method of raising a committee to investigate an alleged error in the Journal has not been utilized.—On February 10, 1885,[2] a question being raised as to the correctness of the Journal, a motion was made that a committee be appointed to ascertain the facts in regard to the matter over which the error was alleged to occur. This motion was made in accordance with the parliamentary principle laid down in Jefferson's Manual. The motion was not agreed to.

2810. Certified extracts of the Journal are admitted as evidence in the courts of the United States.—The Statutes of the United States provide:

Extracts from the Journals of the Senate, or of the House of Representatives, and of the Executive Journal of the Senate when the injunction of secrecy is removed, certified by the Secretary of the Senate or by the Clerk of the House of Representatives, shall be admitted as evidence in the courts of the United States, and shall have the same force and effect as the originals would have if produced and authenticated in court.[3]

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[1] Mr. Poindexter must have wished to enter this expression in the Journal, for he had the right of debate and frequently exercised it. (For an instance see Annals, March 12, 1812, pp. 1201–1204.)

[2] Second session Forty-eighth Congress, Record, pp. 1497–1500; Journal, p. 508.

[3] See Revised Statutes, sec. 895.

Chapter LXXXIV.

THE MAKING OF THE JOURNAL.

1. Proceedings only are recorded. Sections 2811–2825.
2. Record of votes and roll calls. Sections 2826–2833.[1]
3. Record of acts, rulings, etc., of the Speaker. Sections 2834–2851.[2]
4. As to bills, petitions, reports, etc. Sections 2852–2860.
5. As to acts of Members. Sections 2861–2873.
6. As to certain exceptional proceedings, etc. Sections 2873–2883.[3]

2811. The Journal records acts, but not the reasons therefor.—On February 27, 1811,[4] the House was considering the bill "concerning the commercial intercourse between the United States and Great Britain and France, and their dependencies, and for other purposes," and the previous question was ordered on the passage of the bill.

On February 28 Mr. John Randolph, of Virginia, moved to amend the Journal so as to show that the vote on the passage of the bill was taken "without debate, being precluded by the decision of the House."

The House disagreed to the motion.

2812. The Journal records the proceeding simply, and not the circumstances attending it.—On February 5, 1840,[5] the Journal contained the following entry:

Mr. Randolph presented sundry resolutions adopted by the council and general assembly of the State of New Jersey, which are in the words following: (Here follow the resolutions in full.)

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[1] As to record of vote by ballot. See. 232 of Vol. I, Sec. 368 of Vol. III.

House declines to permit change of record of persons noted as present to form a quorum. Sec. 2620 of Vol. III.

[2] Farewell address of Speaker recorded. Sec. 233 of Vol. I.

[3] Report of committee appointed to investigate the Clerk printed in full. Sec. 295 of Vol. I.

As to record of certification by the Speaker in case of contumacious witness. Sec. 1609 of Vol. II and Secs. 1672, 1686, 1691 of Vol. III.

Answers of persons arraigned at the bar of the House recorded in full. Secs. 1673, 1699 of Vol. III. Not recorded, secs. 1674, 1685, 1686, 1690 of Vol. III.

Articles of impeachment appear in full. Secs. 2302, 2344, 2368 of Vol. III.

[4] Third session Eleventh Congress, Journal, pp. 600, 601 (Gales & Seaton ed.); Annals, p. 1096.

[5] First session Twenty-sixth Congress, Journal, pp. 307, 310; Globe, p. 167.

On February 6 Mr. Daniel P. Leadbetter, of Ohio, moved to strike out this entry and insert the following:

Mr. Randolph inquired of the Speaker if he had received certain joint resolutions from the governor and council of the State of New Jersey; and if so, did the Speaker intend to present them? And if the Speaker did not intend to present them, did the Chair wish to state his reasons for refusing to present them?

Mr. Speaker replied that he had received certain resolutions from the governor and council, addressed to him as a Member of the House and not as Speaker; that he should not present them, and had so informed the governor and council.

Mr. RANDOLPH. Then I will present them, and move to have them spread upon the Journal.

Mr. Leadbetter objected, as being out of order. The Chair stated that by the practice of the House the resolutions were in order. Mr. Hand rose to the same question of order; and, during a desultory debate, wherein Mr. Randolph was called upon to either state the contents of the resolutions, or to have them read, Mr. Randolph replied, Let them be read. Mr. Dromgoole rose and objected to the reception, and would continue to do so until the Speaker should state his reasons for not presenting those resolutions.

After debate the motion to amend the Journal was laid on the table—yeas 87, nays 86.

2813. A motion which is not entertained by the Speaker is not entered on the Journal.—On May 8, 1868,[1] Mr. Benjamin F. Butler, of Massachusetts, offered a resolution to amend the Journal of the House by striking out all record of a resolution offered on May 7 by Mr. William E. Robinson, of New York, said resolution being intended as a censure on the action of the House.

The Speaker[2] said:

The resolution of the gentleman from New York was not entered on the Journal according to the rule "All motions, however, to be entered on the Journal must be first entertained by the Speaker." The Chair declined to entertain the motion of the gentleman from New York on the ground that it was not, as alleged, a question of privilege. It could not, therefore, be entered on the Journal.

2814. Proceedings of the House, rendered null through discovery of errors, are not properly entered on the Journal.

Instance wherein the Speaker ruled out of order a motion to amend the Journal by inserting a record of proceedings that became null through errors.

The correction of an error having changed the result of a vote a motion to reconsider, based on the erroneous vote, was treated as a nullity.

On July 6, 1846,[3] the Journal of Friday having been read, Mr. Edward W. McGaughey, of Indiana, moved that the same be amended by inserting thereon all the proceedings of Friday last in relation to the vote upon inserting "salt" in the schedule of articles free of duty, which were then declared by the Speaker to be null, in consequence of the discovery of an error in the adding up of a vote, and which were consequently omitted from the Journal of that day.

The Speaker[4] stated that, inasmuch as the error alluded to in the amendment proposed by Mr. McGaughey was discovered before the next vote was announced,

[1] Second session Fortieth Congress, Globe, p. 2387.

[2] Schuyler Colfax, of Indiana, Speaker.

[3] First session Twenty-ninth Congress, Journal, p. 1032; Globe, p. 1058.

[4] John W. Davis, of Indiana, Speaker.

and as that vote was upon a motion to reconsider the last vote made by a Member who voted with the majority, and as the correction of the error changed the result of that vote, the Member making the motion had no right, under the rule, to make it, and therefore all the action subsequent to the announcement of the erroneous vote was properly stated by the Speaker, at the time, to be a nullity; in which statement the House acquiesced. The Speaker therefore decided that the amendment of the Journal now proposed by Mr. McGaughey was not in order.

From this decision Mr. McGaughey appealed. The appeal was laid on the table by a vote of 90 to 52, thus sustaining the Chair.

On the succeeding day the Speaker, in the course of a ruling, said[1] in relation to this subject:

All nullities or errors perpetrated on the part of the House, through error on the part of the Clerk, had never been considered as journalizing matter. And the Chair would call attention to two cases that had occurred at the present session. On the engrossment of the bill making provision for the payment of Indian annuities, when that bill was under consideration, the Clerk omitted one of the amendments, and the House went on and ordered the bill to a third reading. After that had been done a gentleman from Tennessee called the attention of the Chair to the fact that one of the amendments had been omitted. The Chair stated that the proceedings would be regarded as a nullity and that it would not appear in the Journal, and it did not. At another time during this session, when the bill in relation to fishing bounties was under consideration, the Chair was in precisely the same condition in which it found itself on Friday last. The Chair gave the casting vote. It was afterwards ascertained that the Chair had no right to vote. The whole proceeding was a nullity, and did not appear in the journal.

2815. While the Journal ought to be a correct transcript of proceedings, the House has not insisted on a strict chronological order of entries—On December 28, 1807,[2] Mr. John Randolph, of Virginia, calling attention to the supplemental or secret Journal of the House, noted that while a resolution respecting the embargo was under consideration a message had been received from the Senate. But the Journal as published indicated that the resolution was disposed of before the message was received. The Journal ought always to be a correct transcript of proceedings as they actually happened; therefore he moved to amend the Journal to read as follows:

On motion of Mr. Randolph, and seconded, that the House do come to the following resolution:

Resolved, That an embargo be laid on shipping, the property of citizens of the United States, now in port or which shall hereafter arrive.

And debate arising thereon,

A message, pending the same debate, was received from the Senate by Mr. Otis, their Secretary, as follows:

"Mr. Speaker: The Senate have in confidence directed me to inform this honorable House that they have passed a bill entitled 'An act laying an embargo on all ships and vessels in the ports and harbors of the United States,' to which they desire the concurrence of this House."

And then he withdrew.

Whereupon, it was moved by Mr. Macon, and ordered by the House, that the said motion of Mr. Randolph do lie on the table.

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[1] Globe, p. 1065.

[2] First session Tenth Congress, Journal, p. 95 (Gales & Seaton, ed.); Annals, p. 1240.

2816. While the Journal does not record the reasons for an adjournment, such reasons may be inserted by special direction of the House.

Instance wherein a correction of the Journal was recorded in the Journal.

On February 21, 1834,[1] the Journal of the preceding day having been read, Mr. John Quincy Adams, of Massachusetts, proposed that, by unanimous consent, it should be so amended as to state that the adjournment of the House was for the purpose of affording the Speaker and the Members an opportunity of attending the funeral obsequies of William Wirt, deceased.

Mr. J. K. Mann, of Pennsylvania, objected.

The Speaker[2] said that if a motion should be made, a majority of the House could, of course, have their Journal modified to suit their own pleasure. * * * The Speaker had not felt warranted to insert any further record in the Journal of yesterday than the simple fact of the adjournment. But if it was the pleasure of the House that the clause proposed should be added, the Chair would most cheerfully assent.

A motion being made, the amendment was agreed to.

The Journal of February 20 appears in the amended form, and that of February 21 shows the action of the House in making the amendment.

2817. The Journal is a record of proceedings simply, and does not record the statements or opinions of Members.—On February 21, 1837,[3] the Journal of the preceding day having been read, Mr. Francis W. Pickens, of South Carolina, moved that the same "be amended so as to take notice of the fact that Mr. Gholson, of Mississippi, chairman of the committee on the part of the House to conduct the examination of witnesses, stated that he had handed over fourteen other questions to another witness, which were in the progress of being answered." This amendment to come in immediately preceding the resolution moved by Mr. Lane, to dispense with further proceedings in the case of Reuben M. Whitney, and for his discharge from custody.

The Speaker[4] said that it had not been usual to make such entries on the Journal, which was a record of proceedings simply, and not at all a register of debates.

And on the question, "Shall the Journal be amended in manner aforesaid?" it was decided in the negative.

2818. The Journal of March 22, 1842,[5] contained this entry:

> The House resumed the consideration of the resolution moved by Mr. Weller yesterday, in relation to Mr. Joshua R. Giddings, one of the Members of this House from the State of Ohio. The question pending at the adjournment was on the appeal taken by Mr. Fillmore from the decision of the Chair, to wit: "That the matter before the House was a question of privilege, and that on a question involving the privileges of a member of the House the previous question could not be applied and, consequently, that the motion for postponement was open for debate."
>
> And on the question, "Shall the decision of the Chair stand as the judgment of the House?"

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[1] First session Twenty-third Congress, Journal, p. 349 Debates, p. 2758.

[2] Andrew Stevenson, of Virginia, Speaker.

[3] Second session Twenty-fourth Congress, Journal, p. 490; Debates, p. 1880.

[4] James K. Polk, of Tennessee, Speaker.

[5] Second session Twenty-seventh Congress, Journal, pp. 573, 581; Globe, p. 348.

It was decided in the negative, yeas 64, nays 118.

So the decision of the Chair was reversed; and the previous question was demanded by a majority of the Members present; when the said previous question was put, viz: Shall the main question be now put? and passed in the affirmative, yeas 95, nays 92.

On March 23, when the Journal containing this entry was read for approval, Mr. John Quincy Adams, of Massachusetts, moved to amend by inserting next after the vote on the question, "Shall the main question be now put?" the following:

Mr. Adams rose and said that there was one question which occurred to him, and which he desired to submit to the House. In the question which arose yesterday between the Speaker and the gentleman from New York [Mr. Fillmore] the Speaker had decided that the previous question could not be applied so as to cut off the gentleman from Ohio [Mr. Giddings] from his right, secured to him by the Constitution, to be heard in his defense.

The gentleman from New York [Mr. Fillmore] had inquired if the previous question could not be applied so as to operate upon all the other Members of the House, leaving the gentleman from Ohio still his privilege of being heard. That was what he [Mr. Adams] understood to be the question between the Speaker and the gentleman from New York. The Speaker had decided that it would operate to cut off the gentleman from Ohio, and that, therefore, the previous question could not be entertained. Now, he [Mr. Adams] took it that the decision of the House had not decided that question between the Speaker and the gentleman from New York. And he [Mr. Adams] would now ask whether an appeal might not be taken from that part of the Speaker's decision; which was, that the gentleman from Ohio could not be heard in his defense, because the previous question had been applied. If an appeal was in order he would now make it, on the ground that, according to the idea of the gentleman from New York, although the previous question was now applied, it did not and could not cut off the gentleman from Ohio from his right to be heard; that the previous question could not apply to that gentleman, although it applied to all others.

The SPEAKER. In the opinion of the Chair, the rules of the House can not operate on one Member in one way and on another in another, whether he stood here as an accused party or not.

And on the question, "Shall the Journal be amended as proposed by Mr. Adams?" it was decided in the negative, yeas 41, nays 124.

2819. On January 14, 1840,[1] Mr. Levi Lincoln, of Massachusetts, moved to amend the following entry of the Journal in regard to a petition presented by him on the preceding day:

It was objected that as the Member who presented the petitions had not moved that they be received, the question of reception was not before the House; by inserting "thereupon Mr. Lincoln expressly disclaimed an intention to move the reception of the petition, declaring that he neither had nor would make such motion."

Objection was made to this amendment on the ground that the Journal should express facts and not reasons or opinions.

The House decided the motion to amend in the negative.

2820. On March 30, 1840,[2] the Journal contains the following entry:

Mr. John Smith offered to present a petition the contents of which he stated.

The Speaker decided that the petition came within the rule of the 28th of January,[3] and could not therefore be received.

From this decision Mr. James appealed to the House, etc.

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[1] First session Twenty-sixth Congress, Journal, p. 206; Globe, p. 120.

[2] First session Twenty-sixth Congress, Journal, pp. 724, 732.

[3] The rule excluding petitions relating to slavery.

On March 31, the Journal of the preceding day, having been read, Mr. George N. Briggs, of Massachusetts, moved to amend the above entry by changing the same to read as follows:

Mr. Smith offered to present a petition which he stated asked for the suppression of the foreign slave trade and that the laws of the District of Columbia, which authorized the sale of colored persons under imprisonment on the suspicion of being slaves unless they proved their freedom should be sold for jail fees, should be repealed.

This proposition to amend the Journal was laid on the table.

2821. The request of a Member to be excused from voting, or his refusal to vote, may be recorded in the Journal, but his reasons therefor, or even the fact that he offered reasons, may not be recorded.—On May 27, 1836,[1] upon the reading of that part of the Journal of the previous day's session which contained the decision of the Speaker on the vote and proceedings of the House on the question that the House do agree to the first resolution reported by the select committee on subjects relating to the agitation for the abolition of slavery in the District of Columbia, Mr. John Quincy Adams, of Massachusetts, moved to amend the same by inserting therein an entry in the words following:

And while the Speaker was giving his decision Mr. Glascock offered to present a paper, in compliance with the request made by Mr. Adams on yesterday, which he alleged contained his reasons for asking to be excused for not voting on the day before.

And the question being put, "Shall the Journal be so amended?" it was decided in the negative, yeas 67, nays 111.

The reading of the Journal having proceeded as follows:

Pending the calling of the yeas and nays on the question on the said second resolution, Mr. John Quincy Adams asked to be excused from voting, and Mr. Francis Granger declined to vote.

Mr. Granger moved to amend the same by striking out the words "and Mr. Francis Granger declined to vote" and inserting in lieu thereof as follows: "Upon his name being called, Mr. Granger declined voting, and was proceeding to offer his reasons to the House when he was called to order by the Speaker."

After debate the motion to amend was decided in the negative.

After the reading of that part of the Journal containing the proceedings on the adoption of the third resolution relating to the slavery question Mr. Adams moved to amend by inserting the following words:

Upon the name of John Quincy Adams being called, in taking the yeas and nays on said third resolution, he answered: "I hold the resolution to be in direct violation of the Constitution of the United States, of the rules of this House, and of the rights of my constituents," and sent his answer in writing to the Chair.

The question being taken on amending the Journal, it was decided in the negative.

Mr. Adams then proposed to amend by adding the following words:

When the name of Mr. John Quincy Adams was called he was present, rose in his place, and answered, but did not vote.

And the question being taken on amending the Journal by the insertion of these words, it was decided in the negative.

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[1] First session Twenty-fourth Congress, Journal, p. 889; Debates., p. 4061.

2822. On February 11, 1837,[1] the Journal of the preceding day's session having been read, on motion of Mr. Charles F. Mercer, of Virginia, it was amended by striking out the reasons given by Mr. John Quincy Adams, of Massachusetts, for the request to be excused from voting on the question of privilege affecting Reuben M. Whitney.

2823. On December 22, 1837,[2] the Journal of the preceding day having been read, Mr. John Quincy Adams, of Massachusetts, moved to amend the same by inserting therein, immediately after the vote on the resolution moved by Mr. Patton—"that all petitions, memorials, and papers touching the abolition of slavery, or the buying, selling, or transferring of slaves in any State, District, or Territory of the United States, be laid upon the table, without being debated, printed, read, or referred, and that no further action shall be had thereon"—an entry in the words following, viz:

> Upon the name of John Quincy Adams being called, in taking the yeas and nays on the foregoing resolution, he answered: "I hold the resolution to be a violation of the Constitution of the United States, of the right of my constituents and of the people of the United States to petition, and of my right to freedom of speech as a Member of this House."

A motion was made by Mr. Ratliff Boon, of Indiana, that the motion of Mr. Adams to amend the Journal lie on the table, and this motion was agreed to.

The record of debates shows that the Speakers[3] pronounced the proceeding proposed by Mr. Adams out of order, and referred for a precedent to a similar case in the preceding Congress.

2824. On July 15, 1840,[4] Mr. Edward Stanly, of North Carolina, moved to amend the Journal of the preceding day by inserting therein his reasons for asking to be excused from voting on the motion to suspend the rules to enable a resolution to be submitted in relation to the case of Lieutenant Hooe.

After debate, the motion to amend was decided in the negative, yeas 23, nays 102.

2825. The House once allowed a Member to insert in the Journal a declaration of his reasons for a vote.

In early and rare instances the names of absent Members have been, by consent of the House, recorded in the Journal among the yeas and nays.

On March 29, 1822,[5] the Journal of the preceding day having been read, was, by unanimous consent, amended by correcting the recorded number of votes on the resolutions recognizing the independence of the South American Republics, so as to include the votes of several Members present on this day but absent on the preceding day when the vote was taken. Some question was made as to this proceeding. Mr. John W. Taylor recalled the fact that several who were not present when the American Declaration of Independence was adopted were allowed to affix their signatures on the succeeding day.

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[1] Second session Twenty-fourth Congress, Journal, p. 372; Debates, p. 1707.

[2] Second session Twenty-fifth Congress, Journal, p. 133; Globe, p. 47.

[3] James K. Polk, of Tennessee, Speaker.

[4] First session Twenty-sixth Congress, Journal, p. 1273.

[5] First session Seventeenth Congress, Journal, pp. 409, 423, 435; Annals, pp. 1404, 1455, 1489.

But when Mr. Robert Wright, of Maryland, asked that the name of his colleague, Mr. Philip Reed, who was absent this day on account of illness, be also recorded, the Speaker[1] ruled that such a privilege might not be granted to a Member who was not present.

On April 2 Mr. William B. Rochester, of New York, who attended for the first time since the proceedings, asked and received unanimous consent to be similarly recorded, and on April 8 the privilege was accorded to Mr. Thomas H. Hubbard, of New York.

On March 30[2] Mr. Philip Reed sent to the House a letter explaining his inability to be present and vote, and asking that if his vote could not be placed among the yeas that the letter might be placed in the Journal. The House ordered that the letter be entered on the Journal.

Mr. Robert S. Garnett, of Virginia, who alone had voted in the negative on the passage of the resolutions, asked the privilege of inserting in the Journal a long written declaration of his reasons for his vote. On Mr. Garnett's motion that his declaration be inserted on the Journal at length, there were ayes 49, noes 51.

On April 1 this vote was reconsidered, and Mr. Garnett modified his declaration to read as follows:

I, Robert S. Garnett, a Member from Virginia, make the following declaration: That I voted against the recognition of the independence of the late American provinces of Spain because, considering it a question of policy, not of principle, I believed that no immediate advantage could grow out of it to either country, whilst many considerations, affecting the interest of both, rendered it at this time inexpedient. I am not opposed to the independence of the late provinces; on the contrary, in common with the rest of my countrymen, I heartily rejoice in their accomplishment, and in the prospects of freedom and happiness which it opens to them.

Considerable debate arose over this motion. The only precedent, that of Mr. Poindexter, was declared not to go so far as this, for in that case the Delegate could not record his opinion in any other way.[3]

The motion was agreed to, yeas 89, nays 71. So the declaration was placed in the Journal.

2826. When a vote is recorded by yeas and nays the nature of the question on which they are taken should be clearly stated in the Journal, even though thereby the summary of an exceptionable petition be printed.—On March 12, 1818,[4] the Journal of the preceding day, being read, was found to contain this entry:

The Speaker laid before the House the memorial of Vincente Pazos, representing himself as the "deputed agent of the authorities acting in the name of the Republics of Venezuela, New Granada, and Mexico," representing the views with which the said authorities took possession of and occupied Amelia Island, in East Florida, complaining of the investment and capture thereof by the arms of the United States, the loss of property and other injuries sustained in consequence of the occupation of the island by the United States, and his application to the President of the United States for redress in the premises, and his failure to obtain it, and praying relief from Congress; which being read, Mr. Forsyth moved that the said memorial "be not received," * * * and the question being "taken on Mr. Forsyth's motion," it passed in the affirmative, yeas 127, nays 28. (The list of the yew and nays was then given.)

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[1] Philip P. Barbour, of Virginia, Speaker.

[2] Journal, pp. 412, 413, 418; Annals, pp. 1418–1421, 1447–1449.

[3] See section 2808 of this volume.

[4] First session Fifteenth Congress, Journal, pp. 320, 323; Annals, p. 1282.

This reading of the Journal having been completed, Mr. George Poindexter, of Mississippi, moved to amend the Journal by striking out after the word "Mexico" all of the recital of the substance of the memorial and inserting, "Which being read, and on the question, Will the House receive the same?" it was, on motion of Mr. Forsyth, determined that the said memorial be not received.[1]

It was urged on behalf of this motion that the contents ought not to be spread on the Journal, as it would give publicity to a petition of an exceptionable character. On the other hand, it was contended that, the yeas and nays being recorded, it was necessary to state so much of the petition as would show the grounds on which the House acted; that as the Constitution required the yeas and nays to be recorded, the nature of the question on which they were given should be clearly stated.

The House disagreed to Mr. Poindexter's motion by a large majority.

2827. The Journal records the result of a vote in figures only when the yeas and nays are taken.—On June 18, 1856,[2] after the reading of the Journal of the preceding legislative day, Mr. George W. Jones, of Tennessee, raised a question of order in regard to the method of recording the vote on a motion which he made to fix the day to which the House should adjourn. When the question was put, and the vote taken by tellers, the tellers reported 88 in the affirmative and 31 in the negative. That fact did not appear in the Journal.

The Speaker[3] said:

> The Chair recollects that the facts were as stated by the gentleman from Tennessee, but the omission upon the Journal is in accordance with the usual custom and mode of keeping the Journal, which is not to record the figures unless the result is arrived at by the yeas and nays. * * * Injustice to the recording clerk, the Chair would say that there is no instance upon the Journal of the House where such a result as that alluded to by the gentleman from Tennessee is recorded in figures. When the result of a vote is determined by yeas and nays, the result so determined is placed upon the Journal. When the result is otherwise ascertained, it is not so recorded. The Chair does not feel authorized to change the ordinary practice of the House in keeping the Journal.[4]

2828. The refusal of the yeas and nays by the House is not recorded in the Journal.—On February 2, 1847,[5] the Journal of the preceding day having been read, Mr. Reuben Chapman, of Alabama, moved that the same be amended by stating thereon that he demanded the yeas and nays on the motion made by Mr. Gordon that his resolution (relating to the Alabama Regiment of volunteers and to Lieutenant McDuff) be laid on the table and that the yeas and nays were refused by the House.

The Speaker[6] stated that it had never been the practice to enter upon the Journal calls for the yeas and nays, and decided the motion to amend not in order.

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[1] Petitions are no longer presented in open House, being referred through the Clerk's desk.

[2] First session Thirty-fourth Congress, Globe, p. 1418.

[3] Nathaniel P. Banks, of Massachusetts, Speaker.

[4] So, also, where a vote by tellers is not accepted as final, and the yeas and nays are ordered, the result by tellers does not appear in the Journal, and the fact of a vote by tellers does not appear. See instance January 27, 1875 (2d sess. 43d Cong., Journal, p. 271; Record, p. 786), when the fact of a ruling being made as to tellers would have justified insertion if ever made.

[5] Second session Twenty-ninth Congress, Journal, pp. 293, 294; Globe, p. 310.

[6] John W. Davis, of Indiana, Speaker.

2829. An error in a vote may be corrected in the Journal of the succeeding day, even though the result be changed thereby.—On February 22, 1844,[1] Mr. Thomas J. Henley, of Indiana, moved that the rules be suspended to enable him to move a resolution fixing the day for the adjournment of the present session of Congress.

The question being taken, there were yeas 108, nays 54. Precisely two-thirds having voted in the affirmative, the Speaker voted in the negative, and so the rules were not suspended.[2]

On February 22, the journal of the preceding day having been read, Mr. John Slidell, of Louisiana, moved that the same be amended by entering his name in the affirmative on Mr. Henley's motion, he having voted "aye" and his name having been erroneously entered in the negative.

As this change of a vote would reverse the result considerable debate arose, and there was question as to what would be the procedure.

The Speaker[3] said that if the motion was made to amend the Journal the result would be a change of the decision made the day before and the resolution proposed by the gentleman from Indiana would be before the House.

The motion to amend the Journal was carried in the affirmative, and Mr. Henley presented his resolution.

2830. On February 28, 1860,[4] we find an instance where, after the reading and approval of the Journal of the preceding day, a member proposed a motion to correct the Journal so as to insert his name among those voting on a certain roll call. He explained that he had in fact voted, and that his motion was for the purpose of correcting an error. Mr. Speaker Pennington admitted his motion as privileged, and on the succeeding day the motion was debated and agreed to. The debate was in the nature of testimony from Members who heard the Member vote.

2831. On March 4, 1852,[5] Mr. James Abercrombie, of Alabama, stated that on the preceding day he had voted in favor of the reference of the Missouri land bill, whereas his intention was to have voted in the negative. Therefore, he desired to have the record of his vote changed in the Journal.

The Speaker[6] said:

> The Chair begs to say to the gentleman from Alabama that, under the rule, it is competent to make a correction of the Journal, but that an alteration can not be made except by unanimous consent. The Chair, throughout his service, does not recollect an instance of the sort.

Unanimous consent being given, the change was made.

2832. A Speaker being elected by ballot, the Journal should show not only the fact but the state of the ballot or ballots.—On May 22, 1809,[7] on the

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[1] First session Twenty-eighth Congress, Journal, pp. 444, 445, 447; Globe, pp. 317, 323.

[2] The rule at this time provided that the Speaker should Dot vote unless the House be equally divided, or unless his vote, if given to the minority, would make the division equal, in which case the question should be lost. The Speaker considered the case of an exact two-thirds vote as one in which he could vote under the rule. (See Globe, p. 323.)

[3] John W. Jones, of Virginia, Speaker.

[4] First session Thirty-sixth Congress, Journal, p. 407; Globe, pp. 902, 908, 922.

[5] First session Thirty-second Congress, Globe, p. 671.

[6] Linn Boyd, of Kentucky, Speaker.

[7] First session Eleventh Congress, Journal, p. 7 (Gales & Seaton ed.); Annals, pp. 57, 58.

first ballot for the choice of a Speaker there was doubt about the election and a second ballot was ordered, from which a choice resulted.

The Journal of this day, when read on the succeeding day, was found to have this entry relating to the choice of Speaker:

The House proceeded by ballot to the choice of a Speaker; and, upon examining the ballots, a majority of the votes of the whole House was found in favor of Joseph B. Varnum, one of the Representatives for the State of Massachusetts.

Mr. John Randolph, of Virginia, with a view of recording the precise state of the ballot, so the case might be correctly understood if drawn into precedent in the future, moved to amend the Journal by inserting after the word "ballots" the following:

The letters reported that the whole number of ballots were one hundred and twenty; that sixty votes were found in favor of Joseph B. Varnum, of Massachusetts; thirty-six votes in favor of Nathaniel Macon, of North Carolina; twenty votes in favor of Timothy Pitkin, junior, of Connecticut; one vote in favor of Roger Nelson, of Maryland; one vote in favor of Charles Goldsborough, of Maryland; and two blank ballots.

On motion of Mr. Randolph,

The House proceeded to a second ballot, and, on examining the ballots, the tellers reported that the whole number of ballots given were one hundred and nineteen; that sixty-five votes, being a majority of the whole number of Members present, were found in favor of Joseph B. Varnum; for Nathaniel Macon, forty-five votes; for Timothy Pitkin, junior, six; for Benjamin Howard, one; for Roger Nelson, one; and for Charles Goldsborough, one.

After debate, this amendment was agreed to.

2833. The Senate Journal has shown the number of Senators answering to a call of the Senate, but not the names.—On August 1, 1890,[1] the Senate considered the practice of the Senate in journalizing a call of the Senate, so as to show only the number of Senators answering to the roll call and not the names of those answering. After debate it was concluded that the Journal was made up in accordance with immemorial custom, and the Vice-President announced that in the future, until otherwise ordered, it would continue to be made up in the same way.[2] The rule of the Senate provided that the proceedings of the Senate should be "briefly and accurately stated in the Journal."

In the House the Journal records the names of members answering on a call of the House.

2834. The Speaker having made a verbal statement concerning a communication returned by him to the governor of a State, the Journal simply recorded the fact that such a statement was made.—The Journal of February 6, 1840,[3] contains this entry:

The Speaker made a verbal statement, and submitted the letter addressed to him, in his character as a Representative from Virginia, by the governor of New Jersey, inclosing the resolutions of the legislature of that State; also a copy of a letter addressed by him to the governor of New Jersey declining to present the said resolutions to this House and assigning his reasons for so declining, which letters were read.

This is the entire entry in the Journal. The record of debates gives the explanation and the letter.

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[1] First session Fifty-first Congress, Record, p. 7990.

[2] This continues to be the practice in the Senate. (See Senate Journal, Third session, Fifty-eighth Congress, pp. 116, 122, etc.).

[3] First session Twenty-sixth Congress, Journal, p. 311; Globe, p. 166.

2835. Only on special occasions are communications addressed to the Speaker recorded in the Journal.—On February 19, 1867,[1] the House ordered entered on the Journal a telegram addressed to the Speaker announcing the death of the last soldier of the Revolution.

2836. The report of a committee which investigated the charge that the Speaker had mutilated the Journal was, by order of the House, printed in full in the Journal.—On March 29, 1850,[2] by vote of the House, the report of the select committee that investigated the charge that the Speaker had mutilated the Journal was, on recommendation of the committee, and by vote of the House, inserted in the Journal.

2837. The Journal may record the simple fact that a Member makes an explanation, but it does not record the act of the Speaker in calling him to order for irrelevancy.—On February 5, 1839,[3] the Journal of the preceding day having been read, Mr. John Quincy Adams, of Massachusetts, moved to amend the same by striking out the words next following the entry of the petition of citizens of the District of Columbia, presented by Mr. Moore, which words are as follows:

> A brief statement of the contents of this petition was made by Mr. Moore, when it was laid on the table—

And inserting in lieu thereof these words:

> And while Mr. Moore was making a brief statement of the contents of said petition he was called to order, and the Speaker decided him to be out of order, and the petition was sent to the Clerk's table, and no order of the House was taken thereon.

A motion was made by Mr. Isaac Toucey, of Connecticut, to amend the amendment proposed by Mr. Adams, by inserting therein, after the words "and the Speaker decided him to be out of order," the words "for entering into a discussion of the merits of the petition, instead of confining himself to a brief statement of the contents thereof, which being suggested, he acquiesced therein."

Mr. Robert Craig, of Virginia, moved to lay the proposed amendment, with the amendment to it, on the table, saying that he believed the original entry represented the facts of the case. This motion was agreed to by the House without division.

2838. It was held in the Senate that when a Senator, called to order for words spoken in debate, appealed to the Senate, the Journal should record the words.—On April 23, 1872,[4] a question arose over the Senate Journal which had this entry:

> Mr. Howe, while engaged in debate, was arrested in his remarks by the Chair, on the ground that he was discussing the merits of the subject, which was not in order on a motion to proceed to its consideration.
>
> From this decision of the Chair Mr. Howe appealed to the Senate.

The Journal having been read, Mr. Timothy O. Howe, of Wisconsin, raised the question that the entry did not state the question presented to the Senate, and insisted that the actual words used by him should be incorporated.

After debate, the Senate ordered the Journal corrected by inserting the words.

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[1] Second session Thirty-ninth Congress, Journal, p. 428.

[2] First session Thirty-first Congress, Journal, p. 739; Globe, p. 619.

[3] Third session Twenty-fifth Congress, Journal, p. 479; Globe, p. 163.

[4] Second session Forty-second Congress, Globe, pp. 2672, 2673.

2839. When the Speaker calls a Member to order for irrelevancy in debate, and the House votes that the Member may proceed, the Journal should contain a record of the transaction.—On May 19, 1840,[1] the Journal contained this entry:

The House proceeded to the consideration of the bill (No. 15) to secure the freedom of elections, and to provide more effectually for the faithful administration of the Government patronage.

Objection being made to this bill on the 10th of February last, at the time it was introduced, the question again recurred, Shall the bill be rejected?[2]

And, after debate, the hour of 2:30 o'clock arrived, and the House took a recess, etc.

On the succeeding day, the Journal of the preceding day having been read, a motion was made by Mr. David Petrikin, of Pennsylvania, to amend the portion given above by inserting:

The Speaker called Mr. Gentry to order for irrelevancy in debate.

Mr. Petrikin objected to Mr. Gentry's proceeding out of order. Leave, by unanimous consent, was then given to Mr. Gentry to proceed.

Mr. Petrikin called Mr. Gentry to order, and sent his objection, in writing, to the Speaker's table, as follows: "The gentleman is not in order, what he is now stating not being relevant to the bill now under discussion. The opinions of Members of this House delivered in other places not being authority here, nor the campaign previous to the election of Mr. Van Buren in 1836, has no bearing on the present subject now before the House."

The Speaker did not entertain the point of order, as it did not state the nature of Mr. Gentry's remarks objected to by Mr. Petrikin.

Mr.Gentry, by common consent, proceeded again.

The Speaker called Mr. Gentry to order.

Mr. Petrikin objected to Mr.Gentry's proceeding.

Mr. Wise moved that Mr. Gentry have leave to proceed, which was agreed to by the House.

The question on agreeing to this amendment being put, it was decided in the affirmative.

2840. The Journal records the rulings but not the remarks of the Speaker.—On January 23, 1877,[3] after the reading of the Journal, Mr. George F. Hoar, of Massachusetts, made the point of order that a statement of the Chair as to what his action might be in a certain case which had not now arisen should not be placed in the Journal as a ruling of the Chair.

The Speaker[4] said:

The Chair agrees with the gentleman from Massachusetts that no remarks of the Chair should go upon the Journal; that only rulings of the Chair should be entered upon the Journal. The modification suggested will be made in this respect.

2841. In later years, although not in the very earliest practice, the Journal has recorded the reasons for the decisions of the Speakers.—On May 30, 1809,[5] the Journal of the preceding day was read, including the following relating, to a decision of order by the Speaker:

Mr. Speaker decided that, in his opinion, it was not in order for the House to take the said resolution into consideration, as the hour which the House usually appropriated for the presentation of petitions and communications had not elapsed; and that he had some communications to lay before the House from some of the Executive Departments.

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[1] First session Twenty-sixth Congress, Journal, pp. 966–968.

[2] The rules of the House no longer provide for this motion.

[3] Second session Forty-fourth Congress, Record, p. 832.

[4] Samuel J. Randall, of Pennsylvania, Speaker.

[5] First session Eleventh Congress, Journal, pp. 23, 25 (Gales & Seaton, ed.); Annals, p. 152.

Mr. John Randolph, of Virginia, moved to expunge all after the word "consideration."

The motion was disagreed to.[1]

2842. The Journal does not record the response of the Speaker to a parliamentary inquiry.—On February 11, 1840,[2] the Journal of the preceding day having been read, a motion was made by Mr. John Quincy Adams, of Massachusetts, to amend the same by inserting therein, after the entries of the resolutions moved by Mr. Rhett, in relation to the slaves liberated by the authorities of the island of Bermuda from the American vessel *Enterprise,* and by Mr. Garrett Davis in relation to the escape of slaves into Canada, respectively, an entry in these words, viz:

Mr. Adams inquired of the Chair whether these resolutions came under the rule on the subject of slavery, and the Speaker answered that they did not.

In the course of the debate the Speaker[3] said that it was not usual to insert on the Journal the opinions of the Chair as to whether certain resolutions came within the rules, unless an appeal was taken from his decision.

Mr. Hopkins L. Turney, of Tennessee, moved that the motion to amend the Journal lie on the table, and the motion was agreed to, yeas 116, Days 53.

2843. The Speaker having ruled a resolution out of order, and an appeal having been taken from the decision, it was held that the resolution should appear in the Journal in full.—On December 30, 1839,[4] the Journal contains the following entry:

Mr. Duncan submitted the following resolution:

Resolved, That the Speaker is hereby advised and directed to swear into office Messrs. Philemon Dickerson, Peter D. Vroom, Daniel B. Ryall, William R. Cooper, and Joseph Kille, Members-elect from the State of New Jersey, and said members thereon be directed to take their seats until the contest is regularly determined by the House.

Objection was made to receiving this resolution, on the ground that, as the presentation of petition was the first business which of right should occupy the attention of the House, it was not in order to offer the resolution, unless by general consent, or by a suspension of the rules.

The Speaker decided in favor of the objection.

From this decision Mr. Duncan took an appeal to the House;

And on the question, Shall the decision of the Chair stand as the judgment of the House?

It passed in the affirmative.

On December 31, the Journal of the preceding day having been read, Mr. George N. Briggs, of Massachusetts, moved to amend the above entry so as to read as follows:

Mr. Duncan proposed to move a resolution which the Speaker decided to be out of order, according to the regular course of business prescribed by the rules.

From which decision Mr. Duncan appealed.

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[1] The Journals up to this time had rarely given even the slightest indications of the reasons of the Speaker's decisions, although on February 27, 1807, and April 10, 1808, the Journals give the Speaker's reference to rules governing the cases.

[2] First session Twenty-sixth Congress, Journal, p. 400; Globe p. 184.

[3] Robert M.T. Hunter, of Virginia, Speaker.

[4] First session Twenty-sixth Congress, Journal, pp. 146, 150; Globe, p. 93.

Mr. Briggs, in support of his motion, contended that the resolution ought not to appear in the Journal, because the Chair had ruled it out of order.

The question being put: "Shall the Journal be so amended?" it was decided in the negative, yeas 71, nays 84.

2844. It is the usual practice that motions, points of order, and appeals not entertained by the Speaker shall not appear in the Journal.—On May 13, 1854,[1] Mr. James Maurice, of New York, moved to amend the Journal of the preceding day by inserting, after the record of the motion to lay on the table an appeal from a decision of the Chair that it was not in order to move to be excused from voting on a call of the House, the following:

Mr. Maurice moved to be excused from voting thereon. The Speaker decided that the motion was not in order, on the ground that the same question was involved in the decision already pending on appeal. From this latter decision Mr. Maurice proposed to take an appeal, and the Speaker refused to entertain the same, on the ground that two appeals could not be pending at the same time.

In regard to the motion of Mr. Maurice, the Speaker[2] said:

Motions made, and on which there has been no action of the House, do not go upon the Journal. For that reason the Clerk did not enter what occurred at the time to which the gentleman has referred. In this connection, the gentleman from New York regards it as important that the minutes of the Clerk should be entered upon the Journal; and the Chair is of the opinion that it would not be inappropriate to enter them on it. It is a simple question. It is for the House to say whether or not they shall be entered on the Journal.

The question being taken, the motion of Mr. Maurice was agreed to, and the Journal was amended accordingly.

2845. On December 6, 1881,[3] the pending question being on the approval of the Journal, Mr. Richard G. Frost, of Missouri, raised the question that he had on the previous day made a point of order which had not appeared in the Journal.

After debate, the Speaker[4] said:

It is sufficient for the Chair to state that the gentleman from Missouri attempted to make a point of order, which, under the circumstances, was out of order, after the demand for the previous question had been made by the gentleman from Kansas. There was also pending at that time a point of order made by the gentleman from Pennsylvania, Mr. Randall, and it was not proper for the Chair to entertain the point of order made by the gentleman from Missouri. It is sufficient for this purpose to state that whether the Chair was right or wrong in refusing to entertain the point of order at that time, the fact is he did not entertain it, and the record would be wrong if it undertook to state what the gentleman suggests.

2846. On May 30, 1882,[5] after the reading of the Journal, Mr. William M. Springer, of Illinois, moved to amend the same by inserting from the Record certain motions made by Members but not entertained by the Speaker, and also certain appeals taken by Members from the rulings of the Chair but not entertained by the Chair.

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[1] First session Thirty-third Congress, Journal, pp. 836, 837; Globe, p. 1184.

[2] Linn Boyd, of Kentucky, Speaker.

[3] First session Forty-seventh Congress, Record, pp. 32, 33.

[4] J. Warren Keifer, of Ohio, Speaker.

[5] First session Forty-seventh Congress, Journal, pp. 1369–1372; Record, pp. 4331, 4332.

The Speaker[1] directed the Clerk to read the following rule:

Every motion made to the House and entertained by the Speaker shall be reduced to writing on the demand of any Member and shall be entered on the Journal with the name of the Member making it unless it is withdrawn the same day.

The Speaker then said:

The Chair desires simply to state that if the Clerk had made up the Journal as the gentleman from Illinois asks it should be made up, it would have been in express violation of the rules in so far as it would have included any of these motions or the appeals that the gentlemen sought to take that were not entertained by the Speaker. If the Clerk had entered on the Journal those motions and appeals they would have been stricken out as having been inserted in absolute violation of the rules.

The question was then taken on Mr. Springer's motion, and it was rejected, yeas 89, nays 133.

The motion to amend the Journal, with the extracts from the Record which it was proposed to insert, appear in the Journal in full.

2847. It was the early (but is not the present) practice that a decision on a point of order should not be recorded in the Journal unless an appeal had been taken.—On January 5, 1833,[2] the Speaker, on a point of order, had stated his position so clearly and fully that Mr. John Quincy Adams, who had taken an appeal, withdrew it.

Thereupon Mr. Thomas D. Arnold, of Tennessee, asked if the ruling would appear in the Journal.

The Speaker[3] replied that it would not.

Thereupon, in order that the decision might appear in the Journal, Mr. Arnold renewed the appeal.[4]

2848. An expression of opinion as to a decision of the Chair is not in order as an amendment to the Journal.

An amendment to the Journal disapproving a ruling of the Speaker was held out of order without question as to the propriety of calling another to the Chair.

On Monday, January 19, 1891,[5] the Journal of the sitting of Saturday, January 17 instant, having been read and the question being on its approval,

Mr. Roger Q. Mills, of Texas, moved to amend the Journal as follows:

By inserting at the point when the Chair refused to entertain his motion to reconsider the words: "Which said ruling of the Chair is disapproved by the House."

The Speaker[6] decided the said motion to be out of order for the reason that it was not an amendment to the Journal.

2849. Where the Speaker names a Member to preside during the remainder of a day's sitting the Journal properly records the fact.—On May 16, 1834,[7] the Journal has this entry:

The Speaker having withdrawn, Mr. Hubbard was substituted to act as Speaker and continued to officiate as such for the remainder of the day.

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[1] J. Warren Keifer, of Ohio, Speaker.

[2] Second session Twenty-second Congress, Journal, p. 139; Debates, p. 951.

[3] Andrew Stevenson, of Virginia, Speaker.

[4] The present practice is to include points of order in the Journal irrespective of the question of appeal. (See Journal, first session Fifty-seventh Congress, pp. 91.5–919.)

[5] First session Fifty-first Congress, Journal, p. 148; Record, p. 1540.

[6] Thomas B. Reed, of Maine, Speaker.

[7] First session Twenty-third Congress, Journal, p. 630.

2850. The Journal of February 28, 1845,[1] has this entry:

The Speaker having withdrawn, Mr. Hopkins was substituted to act as Speaker and continued to officiate as such for the remainder of the day.

2851. The practice has not been uniform as to the recording of the addresses of Speakers in the Journal.—On December 7, 1885,[2] the Journal records in full the address of Mr. Speaker Carlisle on taking the Chair.

The address of Mr. Speaker Colfax on taking the chair December 4, 1865,[3] does not appear in the Journal.

The Journal of December 4, 1905,[4] does not record the address of Mr. Speaker Cannon on taking the Chair.

The farewell addresses of the Speakers are always recorded in full.

2852. The demand of a Member for an alleged constitutional right was held to be sufficiently journalized as a point of order.—The Journal of April 30, 1852,[5] contained this entry:

The yeas and nays having been demanded, no quorum voted, when

Mr. George W. Jones made the point of order that, inasmuch as one-fifth of the Members voting had voted in favor of taking the vote on the engrossment of the bill by yeas and nays, it was not necessary that a quorum should have voted, etc.

On May 1, the Journal having been read, Mr. Jones moved to amend by striking out "Mr. George W. Jones made the point of order," and inserting in lieu thereof "Mr. George W. Jones demanded, as a constitutional right."

The Speaker[6] said:

The Chair, if the House will indulge him in his own behalf, will state that, according to his recollection, the Journal states substantially the history of the matter. It was certainly the object of the Speaker and the Clerk to state it. The Chair thinks that it must at last be a question of order to be determined by the House. The question is whether the Journal reports correctly all the facts.

The question being taken on Mr. Jones's motion, it was decided in the negative, without division.

2853. Bills and resolutions presented in the House for reference under the rule are entered in the Journal and Record by title only.—Bills and resolutions presented in the House for reference under the rule are in all cases entered in the Journal and Record by title and never in full, even in cases where the resolution is very short.[7]

2854. A bill on its introduction is entered on the Journal by its number and title, but is not printed therein in full.—On January 27, 1885,[8] after the reading of the Journal, Mr. John D. White, of Kentucky, raised the question of order that a bill which he had introduced on the preceding day

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[1] Second session Twenty-eighth Congress, Journal, p. 509.

[2] First session Forty-ninth Congress, Journal, p. 14.

[3] First session Thirty-ninth Congress, Journal, p. 8.

[4] First session Fifty-ninth Congress, Journal, p. 6.

[5] First session Thirty-second Congress, Journal, p. 655; Globe, p. 1221.

[6] Linn Boyd, of Kentucky, Speaker.

[7] Direction given by Mr. Speaker Crisp February 10, 1892, First session Fifty-second Congress, Record, p. 1026.

[8] Second session Forty-eighth Congress, Record, p. 1020.

did not appear in full in the Journal, although it had been read in full to the House on its presentation.

The Speaker[1] showed that the Journal had an entry relating to the introduction of the bill, which was described by its number and title, but stated that there was no rule which required a bill, on its introduction, to be printed in full in the Journal.

2855. Memorials of State legislatures were for a time spread on the Journal in full, but the practice has ceased.—For a time it was the practice to insert resolutions of State legislatures in the Journal in full. An instance occurs on December 22, 1843,[2] which was in line with the precedents for several preceding Congresses.

2856. On June 21, 1838,[3] the House ordered the resolutions of the general assembly of the State of Rhode Island, presented by Mr. Joseph L. Tillinghast, of that State, on the 29th of the preceding December, to be entered at large on the Journal.

This practice ceased long since, and the memorial of a State legislature is now entered like any other memorial, except that it is classed as public instead of private.

2857. The Journal should record the name of the first signer of a petition, the number of other signers, and the general place of their residences.—On January 10, 1837,[4] the Journal of the preceding day having been read, on motion of Mr. John Quincy Adams, of Massachusetts, it was amended by inserting the name of the first signer and the number of signers of each of the petitions presented by him yesterday for the abolition of slavery in the District of Columbia, as well as the place of residence of the petitioners.

2858. A letter from the head of an Executive Department, responding to a resolution of inquiry, is not printed in full in the Journal, but a brief summary of its contents is printed.—On May 6, 1844,[5] Mr. John Quincy Adams, of Massachusetts, moved to amend the following paragraph in the Journal of the preceding day:

> A letter from the Secretary of State, in answer to the resolution of the House of the 26th of February last, as to whether any gross errors have been discovered in the printed Sixth Census, or enumeration of the inhabitants of the United States, and stating that no such errors had been discovered.

By striking therefrom the following words: "and stating that no such errors had been discovered."

Mr. Adams urged in support of his motion that the statement in the letter was erroneous.

The Speaker[6] said that whether errors existed in the letter or not would be a subject for investigation, but the Journal contained only a faithful transcript of the contents of the letter.

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[1] John G. Carlisle, of Kentucky, Speaker.

[2] First session Twenty-eighth Congress, Journal, p. 93.

[3] Second session Twenty-fifth Congress, Journal, p. 1127.

[4] Second session Twenty-fourth Congress, Journal, p. 185.

[5] First session Twenty-eighth Congress, Journal, pp. 878, 879; Globe, pp. 606, 607.

[6] John W. Jones, of Virginia, Speaker.

On the question of amending the Journal, there were yeas 32, nays 126.

Mr. Robert C. Schenck, of Ohio, then moved to insert the letter of the Secretary of State in the Journal in full.

This motion was decided in the negative.

2859. The House decided that the Journal should record not only the delivery of a message but also the withdrawal of the messenger.—On April 14, 1836,[1] the Journal of the preceding day having been read, a motion was made by Mr. Ratliff Boon, of Indiana, to amend the entry which set forth the message received from the Senate by Mr. Lowrie, their Secretary, by striking out the concluding words thereof, viz, "and then he withdrew."

And on the question that the Journal be so amended, it was decided in the negative.

2860. The Journal does not record in full a conference report presented merely for printing in the Record under the rule.—On February 26, 1903,[2] during the reading of the Journal, Mr. Oscar W. Underwood, of Alabama, raised the question that the Journal should contain in full a conference report which had been presented to be printed in the Record under the rule,[3] and of which the Journal recorded only the fact of its presentation.

The Speaker[4] overruled the question of order.[5]

2861. An attempt of a Member to speak when debate is not in order is not noticed in the Journal.—On March 23, 1842,[6] a motion was made by Mr. Patrick J. Goode, of Ohio, that the Journal of the preceding day be amended by inserting therein the following:

> Mr. Giddings arose and addressed the Chair. The Speaker said the gentleman was out of order, the House having reversed the decision of the Chair, and decided that the rules in relation to the previous question should be rigidly enforced.
>
> Mr. Giddings arose and said: "I stand before the House in a peculiar situation."
>
> Mr. Mark A. Cooper objected to Mr. Giddings proceeding.

Mr. George W. Hopkins, of Virginia, moved to amend the proposed amendment by adding as follows:

> but afterwards withdrew his objection; and the said Joshua R. Giddings declined speaking, after all objection to his proceeding had been withdrawn.

Mr. John M. Botts, of Virginia, moved that the amendments lie on the table, and the motion was agreed to, yeas 104, nays 64.

2862. On March 23, 1842,[7] Mr. John B. Weller, of Ohio, moved to amend the Journal of the preceding day by inserting the following:

> That before the previous question had been sustained by the House, and whilst the same was under his control, as the mover, Mr. Weller offered to withdraw the previous question, if his colleague [Mr. Giddings] would rise and say that he wished to be heard; the said Joshua R. Giddings making no response thereto, the vote was then taken on sustaining the previous question.

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[1] First session Twenty-fourth Congress, Journal, p. 697.

[2] Second session Fifty-seventh Congress, Record, p. 2709.

[3] This rule requires printing in the Record only.

[4] David B. Henderson, of Iowa, Speaker.

[5] Conference reports are printed in full in the Journal when they are acted on by the House.

[6] Second session Twenty-seventh Congress, Journal, p. 583; Globe, p. 348.

[7] Second session Twenty-seventh Congress, Journal, p. 585; Globe, p. 349.

A motion was made by Mr. Patrick J. Goode, of Ohio, to add to the proposition as follows:

And that Mr. Weller, on being asked by the Speaker whether he unconditionally withdrew the motion for the previous question, did not so withdraw it.

On motion of Mr. Christopher H. Williams, of Tennessee, the subject was laid on the table, yeas 85, nays 58.[1]

2863. The refusal of leave to make a personal explanation is not recorded in the Journal, but as to the granting of such leave the practice is not uniform.—On February 13, 1849,[2] the Journal of the preceding day was read, when Mr. George Ashmun, of Massachusetts, moved to amend the same, by stating that Mr. Wallace, of South Carolina, asked the general consent of the House to address the House upon the resolutions presented by him; and, no objection being made, he proceeded to address the House; and that, after he had concluded, Mr. Ashmun rose to address the House, when the Speaker said he could not proceed if objection was made; and objection was then made.

The entry on the Journal which Mr. Ashmun's motion proposed to correct was as follows:

Mr. Wallace moved that the rules be suspended for the purpose of enabling him to present joint resolutions of the State of South Carolina in opposition to the principles of the Wilmot Proviso.

And the question being put, Shall the rules be suspended?

It was decided in the affirmative—two-thirds voting in favor thereof.

Mr. Wallace accordingly presented the said resolutions; and, having obtained special leave for that purpose, proceeded to address the House in regard to them.

In the course of the debate on the propriety of the proposed amendment, the Speaker[3] said that the precedents were that whenever a gentleman had leave to make a personal explanation, by unanimous consent, it was always so recorded. If a gentleman proposed to do a thing, and did nothing, no record was made. The fact that he asked leave to do so did not go on the record. But when a gentleman obtained unanimous consent to do anything, or did it under a suspension of the rules, the fact was always mentioned.

The motion to amend the Journal was decided in the negative, yeas 81, nays 82.

2864. On June 16, 1894,[4] the Journal of the proceedings of the previous day having been read, Mr. Thomas B. Reed, of Maine, suggested that the Journal should be amended by inserting the statement that the gentleman from Tennessee, Mr. Richardson, arose and addressed the House upon a question of privilege.

The Speaker[5] stated that the remarks of Mr. Richardson had been delivered, upon the unanimous consent of the House, as a personal explanation, and held that it was not usual to make a note in the Journal of such explanations when no action or proceeding of the House or question of order was based thereon.

The Journal was then approved.

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[1] These proceedings relate to a motion for censuring Mr. Giddings, introduced by Mr. Weller, and agreed to by the House under the operation of the previous question without allowing Mr. Giddings the opportunity of being heard.

[2] Second session Thirtieth Congress, Journal, pp. 428, 432; Globe, pp. 527–529.

[3] Robert C. Winthrop, of Massachusetts, Speaker.

[4] Second session Fifty-third Congress, Journal, p. 435.

[5] Charles F. Crisp, of Georgia, Speaker.

2865. The Journal does not record the name of a Member objecting to a request for unanimous consent.—On March 10, 1840,[1] Mr. Edward Stanly, of North Carolina, moved to amend the Journal of the preceding day by inserting after the resolution moved by him, and laid over under the rule, these words:

which resolution was objected to by Mr. Dromgoole.

During the debate on this motion, the Speaker[2] said that it was not usual to insert in the Journal the name of the gentleman objecting; and that it could not be done except by a vote of the House.

The motion to amend was disagreed to.

2866. The Journal specifies by name the Members taking the oath and at times the form of oath taken.—The Journal not only specifies to what Members the oath is administered, but also specifies the form of oath, at times where there are distinctions in this respect.[3]

2867. The Journal announces the return of a Member to whom leave of absence for the remainder of the session has been granted.—The Journal of February 25, 1833,[4] records that—

Mr. Appleton, of Massachusetts, to whom leave of absence for the remainder of the session had been granted, returned to his seat this day.

2868. The practice is not uniform as to whether or not a Member's letter of resignation should appear in full in the Journal.—On January 6, 1826,[5] Mr. Joseph Kent, of Maryland, transmitted his resignation to the House, addressed to the Speaker, stating "I hereby resign my seat as a Member," etc. The letter appears in full in the Journal. The House ordered the Speaker to notify the governor of Maryland of the resignation.

2869. On May 9, 1828,[6] the Speaker laid before the House a letter from Mr. Thomas J. Oakley, of New York, announcing that he had accepted a judicial appointment under the government of the State of New York, and resigning his seat in the House. The Speaker was directed to communicate the resignation of Mr. Oakley to the executive of New York.

The letter of Mr. Oakley was laid on the table. It appears in full in the Journal.

2870. On February 16, 1829,[7] the Speaker laid before the House a letter from Silas Wright, jr., of New York, resigning his seat. The letter does not appear in full in the Journal.

2871. On March 9, 1869,[8] the Speaker laid before the House a letter from Mr. Elihu B. Washburne, of Illinois, resigning his seat as a Member from the Third Congressional district of his State. This letter of resignation does not appear in full in the Journal. It was presented to the House without request for unanimous consent, and, having been read, was laid on the table.

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[1] First session Twenty-sixth Congress, Journal p. 569; Globe, p. 256.

[2] Robert M.T. Hunter, of Virginia, Speaker.

[3] First session Forty-second Congress, Journal, p. 9. Since the repeal of the law requiring the special form of oath in use during the civil war period, there has been only one form of oath.

[4] Second session Twenty-second Congress, Journal, p. 396.

[5] First session Nineteenth Congress, Journal, p. 124.

[6] First session Twentieth Congress, Journal, p. 719.

[7] Second session Twentieth Congress, Journal, p. 294.

[8] First session Forty-first Congress, Journal, p. 18; Globe, p. 36.

2872. On January 5, 1871,[1] the Speaker, without requesting consent, laid before the House a letter from Mr. Robert C. Schenck, of Ohio, tendering his resignation as a Member of the House, and requesting the Speaker to inform the governor of Ohio of the fact.

The letter does not appear in full in the Journal.

2873. A Member, in a letter asking to be excused from committee service, gave reasons derogatory to another Member, whereupon it was held that the Journal should record only the fact that the request was made in writing.—On February 14, 1842,[2] a letter from Mr. Mark A. Cooper, of Georgia, was read, asking to be excused from service on the Committee on Foreign Affairs, and giving his reasons at length, stating that the resignation was caused by the course of the chairman of the committee, Mr. John Quincy Adams, of Massachusetts, in speaking against the property rights of a large section of the people of the country.

Mr. John Campbell, of South Carolina, made the point of order that a Member had no right to spread on the Journal opinions that he might entertain of the conduct of another Member.

The Speaker[3] stated that the letter would not appear on the Journal.

The Journal merely states that the request to be excused was made in writing.

2874. The oath administered to a witness at the bar of the House is not recorded in full in the Journal.

In the earlier practice the response of a witness arraigned at the bar of the House was never recorded in the Journal.

On February 14, 1838,[4] the Journal of the preceding day having been read, Mr. Henry A. Wise, of Virginia, moved to amend the same by stating therein the oath, to wit, "You solemnly swear that the evidence you will give to the House of Representatives, touching the matter now under examination, shall be the truth, the whole truth, and nothing but the truth: so help you God," which the Speaker of this House administered to the witness, Matthew L. Davis, at the bar of the House, February 13, 1838; and further to amend the same by inserting the answers of the said witness to the second and third interrogatories of the House, to wit: to the second interrogatory, the answer "I do;" to the third interrogatory, the answer "He is not."

The Speaker[5] stated that in no former instance had the oath ever been recorded; and it was contrary to the express and positive law, laid down in Jefferson's Manual, to insert the answers of a witness given to the House. This was only done in examinations before committees because the House was not present.

After debate the motion of Mr. Wise was laid on the table.

2875. The House declined to amend its Journal so as to include the letter of a Presidential elector explaining his inability to give his vote.—On February 9, 1809,[6] the Journal of the proceedings of the House of the

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[1] Third session Forty-first Congress, Journal, p. 105; Globe, p. 320.

[2] Second session Twenty-seventh Congress, Globe, p. 233; Journal, p. 366.

[3] John White, of Kentucky, Speaker.

[4] Second session Twenty-fifth Congress, Journal, p. 388; Globe, p. 180.

[5] James K. Polk, of Tennessee, Speaker.

[6] Second session Tenth Congress, Journal, p. 515 (Gales & Seaton ed.); Annals, p. 1426.

8th instant being read by the Clerk, a motion was made by Mr. Nathaniel Macon, of North Carolina, and seconded, to amend the same by inserting a letter written by Matthew Walton, one of the electors of President and Vice-President of the United States for the State of Kentucky, to the other electors for the said State relative to the cause of his inability to attend and give his vote at the time and place appointed by law for that purpose.

Some discussion took place on this point, it being contended by some gentlemen that the House had no concern with the causes why any vote was not received, but merely to count those which came to hand, and that if it was intended to fix a precedent to govern future proceedings on this subject, it ought to be done with great deliberation.

Mr. Macon's motion was then decided in the negative.

A motion to amend the Journal so as to add an explanation of Mr. Walton's failure to vote to the declaration made by the President of the Senate was also decided in the negative.

2876. The proceedings of the joint meeting to count the electoral vote are journalized in the same form as the proceedings of the House alone.—On February 9, 1865,[1] Mr. John V.L. Pruyn, of New York, raised a question as to the method of journalizing the joint convention, or meeting, of the two Houses for the counting of the electoral vote. Mr. Pruyn contended that the proceedings should be journalized in the form of a report made by the Speaker when the House resumed its session.

The Speaker[2] said:

> The gentleman is mistaken so far as the practice of the House is concerned. The present occupant of the chair has been present on two previous occasions when the Presidential vote was counted, and the form of proceeding in that respect has been the same as that read from the Journal to-day.

The Speaker thereupon had read the usual form, which journalized the proceedings of the joint meeting as proceedings of the House alone would be journalized.

2877. A correction of the Congressional Record which involves a motion and a vote is recorded in the Journal.—On May 12, 1879,[3] a correction of the Record of debate, where a vote was taken on a motion to insert, is recorded in the Journal.

2878. In the later practice the proclamation of the President convening Congress appears in full in the Journal.—The First session of the Twenty-seventh Congress met on May 31, 1841,[4] being called together by a proclamation from the President. This proclamation appears in full on the Journal.

2879. The proclamation of the President of the United States convening the Thirty-fourth Congress in extra session appears in full in the Journal.[5]

2880. The Twenty-fifth Congress was convened in extra session by proclamation of the President. The Clerk of the last House called the House together on September 4, 1837,[6] in accordance with the proclamation, and this proclamation is printed in full in the Journal.

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[1] Second session Thirty-eighth Congress, Globe, p. 683.

[2] Schuyler Colfax, of Indiana, Speaker.

[3] First session Forty-sixth Congress, Journal, p. 282.

[4] First session Twenty-seventh Congress, Journal, p. 3.

[5] Second session Thirty-fourth Congress, Journal, p. 1543.

[6] First session Twenty-fifth Congress, Journal, p. 3; Globe, p. 1.

2881. On July 4, 1861,[1] the Thirty-seventh Congress met in extraordinary session, convened by proclamation of the President. This proclamation appears in full on the Journal of that date.

2882. The First session of the Forty-fifth Congress was convened by proclamation of the President. This proclamation appears in full on the Journal.[2]

2883. The Senate in 1867 discontinued the use in the Journal of the word "honorable" before the name of a Senator.—On December 3, 1867,[3] the Senate amended the Journal by striking out the word "honorable" whenever it occurred before the name of a Senator. The President pro tempore stated at the time that the word had been used in the Journals since the organization of the Government.

The title has never been used in the House Journal.

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[1] First session Thirty-seventh Congress, Journal, p. 3.

[2] First session Forty-fifth Congress, Journal, p. 3.

[3] Second session Fortieth Congress, Globe, p. 9.

Chapter LXXXV.

THE QUORUM.[1]

1. **Provision of the Constitution. Section 2884.**
2. **Interpretation of the Constitutional provision. Sections 2885–2894.**
3. **Ruling of Mr. Speaker Reed as to quorum present. Sections 2895–2904.**
4. **Rule for counting a quorum and its interpretation. Sections 2905–2908.[2]**
5. **Reestablishment of the Speaker's count. Section 2909.[3]**
6. **Review of Senate practice. Sections 2910–2915.[4]**
7. **Speaker's count final. Section 2916.**
8. **Making the point of no quorum. Sections 2917–2931.**
9. **All business, including debate, suspended by failure of quorum. Sections 2932–2965.[5]**
10. **Failure of quorum in Committee of the Whole. Sections 2966–2979.**

2884. A majority of the House constitutes a quorum to do business.—The Constitution of the United States provides in Article 1, section 5, that—

> A majority of each [House] shall constitute a quorum to do business.

2885. Out of conditions arising between 1861 and 1891 the rule was established that a majority of the Members chosen and living constitutes the quorum required by the Constitution.—On July 19, 1861,[6] Mr. Charles B. Sedgwick, of New York, moved the previous question on the engrossment of a joint resolution to provide for the selection of a site for the Naval Academy. Fifty-two Members having voted in favor of and 41 Members having voted against seconding the same, the Speaker[7] declared that the previous question was seconded.[8]

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[1] A majority of a committee is a quorum. Section 4540 of this volume.
Quorum of Senate sitting for impeachment trial. Section 2063 of Volume III.
Senate counted during impeachment trial. Section 2105 of Volume III.
As to quorum of managers in impeachment trial. Section 2035 of Volume III.
[2] Principle that legislator detained by force may be counted. Section 356 of Volume 1.
[3] See also section 1653 of Volume III.
Illustration of former practice of accertaining presence of. Section 2733 of this volume.
[4] Elaborate Senate discussion. Section 630 of Volume I.
[5] Oath administered to Members in absence of. Sections 174–178 of Volume I.
Must be present before reading of Journal. Section 2733 of this volume.
Motion to reconsider in absence of. Sections 5606–5608 of Volume. V.
Point of no quorum held dilatory. Sections 5724–5730 of Volume V.
[6] First session Thirty-seventh Congress, Journal, p. 117; Globe, p. 210.
[7] Galusha A. Grow, of Pennsylvania, Speaker.
[8] The previous question no longer requiers a second. (See sec. 5443 of Vol. V of this work.)

Mr. Clement L. Vallandigham, of Ohio, made the point of order that no quorum had voted.

The Speaker decided that, inasmuch as 92 Members constituted a majority of the Members chosen, a quorum had voted.[1] In making his decision the Speaker quoted the following sections of the Constitution:

Each House shall be the judge of the election returns and qualifications of its own Members, and a majority of each shall constitute a quorum to do business.

The House of Representatives shall be composed of Members chosen every second year by the people of the several States.

The Speaker then said that there were chosen in this Congress 183 Members. The Chair decided, under that clause of the Constitution, that 92 would be a majority of all the Members chosen, and the majority of a quorum would be 47.

Mr. Vallandigham, said he concurred in the decision, and thought the House consisted only of the Members sworn in. The Chair had no knowledge of any Member unless he appeared here.

The Speaker said that, so far as that point was concerned, he would withhold his decision as to whether the House consisted of those sworn in or of those known to have been elected; but the Chair was clear in his own mind that a majority of those chosen constituted a quorum.

The House acquiesced in the decision.

2886. On February 25, 1879,[2] the House was considering the legislative, executive, and judicial appropriation bill, to which was added an amendment relating to the presence of United States deputy marshals at the polls. Mr. Eugene Hale, of Maine, having moved to lay the bill and amendment on the table, the vote was taken by yeas and nays and the result was handed to the Speaker.

The Speaker[3] said:

On this question the Chair votes "no." The vote now stands, yeas 3, nays 144; so the motion of the gentleman from Maine, Mr. Hale, to lay the bill on the table is not agreed to. The Chair desires to state in this connection that with his vote there are 147 Members voting, making a quorum of a full House. But in his own mind he does not think that under present circumstances 147 votes are required for a quorum, as there are two vacancies.

2887. On May 10, 1886,[4] a roll call having just been completed, Mr. Thomas M. Browne, of Indiana, asked of the Chair whether or not on the vote just taken there was a quorum without his name.

The Speaker[5] replied:

The Chair thinks not. It has been and is now an open question as to whether or not it requires a majority of all the Members who might be elected under the law to the House to constitute a quorum or merely a majority of those who are Members of the House.

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[1] The House numbered in the preceding Congress 237. The secession of Southern States reduced the number.

[2] Third session Forty-fifth Congress, Record, p. 1908.

[3] Samuel J. Randall, Speaker.

[4] First session Forty-ninth Congress, Record, p. 4338.

[5] John G. Carlisle, of Kentucky, Speaker.

2888. On September 19, 1890,[1] the question being on the approval of the Journal, there appeared on division 162 yeas and 2 nays.

Mr. Charles F. Crisp, of Georgia, made the point of order that no quorum was present.

The Speaker[2] thereupon proceeded to count the House, and announced the presence of 166 Members—a quorum—although the Chair was of opinion that 164 Members constituted a quorum, there being four vacancies.

Mr. Crisp, by unanimous consent, asked that tellers be appointed by the Speaker, in order that the presence or absence of a quorum might be determined beyond the possibility of a doubt.

The Speaker, without conceding it as a right to be claimed under the rules, appointed Mr. William McKinley, jr., of Ohio, and Mr. Crisp as tellers to count the House, who reported the presence of 164 Members.

The Speaker having stated that this number (164) constituted a quorum, Mr. Crisp raised the question of order that 166 Members constituted a quorum of the House.

After debate on the said question of order, the Speaker made the following statement:

The Chair desires to state to the House his opinion upon this question, so far as he is able to state it now, and he states it with this reservation, that if a careful examination of the question should lead him to a different conclusion he should not feel that the opinion which he now states was one to which he would be obliged to adhere. The Chair feels that we ought to be very careful not to strain a point on account of the situation we find ourselves in to-day. It is very undesirable that any ruling should be made which, in principle, might lead to misfortune hereafter for the country, or for the House of Representatives. The Chair has a very decided impression that the late Speaker Randall once decided that a quorum was a majority of the living Members of the House, and has so carried it in his mind without making any examination, but in the examination which the Chair has been able to make up to the present time he has found no decision which goes to the extent required here.

The decision of Speaker Grow on the 19th of July, 1861, upon examination, does not seem to go as far as the Chair supposed it did and as Members of the House now present think it did. That decision only went to the extent of saying that a majority of the Members originally chosen would constitute a quorum of the House. The question whether the decision should be that, or that a majority of those sworn in should constitute a quorum of the House, was left expressly in abeyance. It will be seen, therefore, that decision does not go so far as the requirements of this situation. All previous decisions had been that a quorum must consist of a majority of the Members that might have been chosen; in other words, in this case, of a majority of 330 Members. The only hesitancy that the Chair has about the matter is his vivid recollection of the opinion which he thinks was entertained by a former Speaker, Mr. Randall. Nevertheless, the Chair does not think that any doubtful decision ought to be made, and will therefore adhere for the present to the rule that 166 Members constitute a quorum.

On March 2, 1891,[3] the Speaker, by unanimous consent, submitted the following statement, which was ordered to be printed in the Journal and Record, viz:

On the 19th of last September the Speaker made a decision with regard to the number then necessary for a quorum, which he desires to comment upon. Prior to 1861 it had always been held that a quorum consisted of a majority of all the possible Members of the House. After the rebellion had caused a large number of constituencies to refuse to elect, it was held (July 19, 1861) that a quorum consisted of a majority of "those chosen." This last decision was cited, but the language "those chosen "seemed for

[1] First session Fifty-first Congress, Journal, pp. 1059, 1060; Record, p. 10239.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Second session Fifty-first Congress, Journal, p. 370.

the moment to the Chair to be ambiguous. It was susceptible of two meanings, as the Chair then thought first of Members originally chosen, and, second, of Members chosen then alive. If the first moaning was to be taken, 166 was a quorum; if the latter, 164.

There was some excitement at the time, and the clerks were unable to find the precedents, and the Chair, desirous that the action of the House should be entirely safe, declined to hold that 164 was a quorum. Some days later the precedents were found, and it will be evident that the latter meaning—namely, Members "chosen and living"—was intended, and that, in accordance with the precedent of 1861, 164 was the true quorum. Such was the decision made by the Senate, Reverdy Johnson voting in the affirmative, in 1861–1 and as late as March 24, 1886, that body, on the death of Senator Miller, of California, had its quorum reduced to 38, as will be seen by the Journal of that date. In the September decision the Chair referred to the opinion of Mr. Randall, of which he had a strong impression, and, as he has been able to find it, will cite it as it will be found in the Record of February 25, 1879:

"The Chair desires to state in this connection that with his vote there are 147 Members voting, making a quorum of a full House. But in his own mind he does not thin that under the present circumstances 147 votes are required for a quorum, as there axe two vacancies."

This was not a decision. It was an opinion. As upon reflection the present Speaker does not desire to be cited as opposed to the opinion under which the most important legislation of the country was passed during critical years, he takes the liberty to add this comment. He does not regret having made the decision with the light he then had, and only makes this statement to comply with the promise of further investigation then made.[1]

2889. After the House is once organized the quorum consists of a majority of those Members chosen, sworn, and living, whose membership has not been terminated by resignation or by the action of the House.—On March 16, 1906,[2] the House voted on the question of consideration of the bill (H.R. 15744) to abolish the office of Lieutenant General of the Army of the United States, and there appeared yeas 139, nays 32, answering present 21, a total of 192.

There being a question as to the presence of a quorum, Mr. Marlin E. Olmsted, of Pennsylvania, made the point of order that 192 constituted a quorum, saying:

Mr. Speaker, the statute fixing the number of Members provides for the election of 386, and I understand that 386 were chosen. Two of those Members, one from Pennsylvania, Mr. Castor, and one from Virginia, Mr. Swanson, are not now Members of Congress, The gentleman from Pennsylvania is dead and the gentleman from Virginia, who was sworn in, has resigned. They are clearly no longer Members of this House. Two persons who were chosen to be Members have never been sworn. They have never qualified. They have not become Members of this House. That, therefore, leaves the membership of this House at 382, of which number 192 constitute a quorum. The Constitution provides that a majority of each House shall constitute a quorum. That, of course, raises the question, What is the "House?" That question has been discussed frequently here in earlier days and in the other Chamber. The question arose during the civil war, when a certain section of the country did not elect and send Representatives to the United States Congress. The statute provided for a much larger number, but only 183 Members had been chosen, of whom 92 were present. Mr. Speaker Grow announced that 92 constituted a quorum. Mr. Vallandigham, of Ohio, made the point of order that it did not, but after debate and after ruling by Mr. Speaker Grow, Air. Vallandigham concurred. Mr. Speaker Grow did not go so far as to decide whether a Member who had been chosen, but had not been sworn, would be considered a, Member of the House. In the ascertainment of a quorum it was necessary that he should decide for the purposes of the case before him, but I understand that after debate it was held in a similar case in the Senate that a person elected but not sworn is not to be considered. The present rule of the Senate, originally adopted upon the recommendation of a committee of very able Senators,

[1] On April 3, 1896 (first session Fifty-fourth Congress, Journal, p. 366), Mr. Speaker Reed ruled that 178 Members were a quorum, although, had there been no vacancies in representation, the quorum would have been 179. In that ruling he restated the reasons given above. (See also Congressional Record, second session Fifty-third Congress, pp. 2003–2006.)

[2] First session Fifty-ninth Congress, Record, p. 3932.

including Senator Edmunds, of Vermont, distinctly specifies that "a majority of Senators duly chosen and sworn" shall make a quorum. Three hundred and eighty-four Members have been "chosen and sworn," but one having died and one having resigned, there are living but 382, and a majority, or 192, constitutes a quorum. Much more might be said, but it seems unnecessary to consume time at this late hour. I submit, Mr. Speaker, that the House now consists of 382 Members and that 192 is a constitutional quorum.

As the Speaker was about to rule, Mr. Adam M. Byrd, of Mississippi, appeared and was recorded. This increased the number to 193, which was a quorum of 384, the number in the House after the deduction of the names of Messrs. Castor, who had died, and Swanson, who had resigned.

Therefore the Speaker did not rule on the question.

2890. On April 16, 1906,[1] Mr. Sereno E. Payne, of New York, moved that the House take a recess until tomorrow at 11:30 a. m.

On a division there were, ayes 125, noes 9.

Mr. Jack Beall, of Texas, made the point of order that no quorum was present.

The Speaker pro tempore[2] directed the doors to be closed and the roll to be called, under section 4 of Rule XV, and there were, yeas 165, nays 19, answering present 7.

The Speaker,[3] who had resumed the Chair, said:

The yeas are 165 and the nays are 19; answering "present," 7, a total of 191 voting "yea," "nay" and "present"—in the opinion of the Chair a quorum. The Chair will hand to the Clerk a statement covering the reason the Chair has to assign for holding 191 to be a quorum.

"The Constitution of the United States, in the sections relating to the Congress, specifies that 'a majority of each House shall constitute a quorum to do business.' This brings to the front the question as to what constitutes the 'House,' whether it be all the Members provided for by the apportionment, or whether it be a less number determined by existing accidents or exigencies. During the civil war, when many seats in both House and Senate were vacant, this question assumed great significance and was passed upon in both Houses. On July 19, 1861, Mr. Speaker Grow, after listening to debate, decided that a quorum consisted of 'a majority of those chosen,' but expressly refrained from deciding as to whether the fact of taking or not taking the oath of office should be considered. (See sec. 250 of Parliamentary Precedents.) In 1879 Mr. Speaker Randall intimated that he held the same view; but in 1886 Mr. Speaker Carlisle treated the question as an open one. In 1890 Mr. Speaker Reed, after careful examination of the precedents of the House, held that a quorum was a majority of those 'chosen and living,' such, in his opinion, being the intent of Mr. Speaker Grow's ruling in 1861, although the language of 1861 was not in this respect definite.

"This, therefore, is the status of the question so far as the decisions of the House go. But at the present time another question arises. The apportionment gives this House 386 Members, of whom 194 are a quorum. But two Members have died, and two—Messrs. Patterson, of Tennessee, and Williamson, of Oregon-have not yet been sworn, and Mr. Swanson has resigned. If the rule be that those 'chosen and living' constitute a quorum, without regard to the qualification by taking the oath, then the quorum is 192; but if Members not qualified are not to be counted as part of the House, then the total membership is reduced to 381, and the quorum is 191.

"While the question has never been passed on in the House, it has been the subject of most careful consideration in the Senate, and the result is embodied in a permanent form in Rule III, section 2: 'A quorum shall consist of a majority of the Senators duly chosen and sworn.'

"At first, in 1862, the Senate declined to commit itself to the rule established by the decision of Mr. Speaker Grow in the House in 1861; but in 1864, after thorough debate, by a vote of yeas 26, nays 11, the Senate resolved that 'a quorum of the Senate consists of a majority of the Members duly chosen.'

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[1] First session Fifty-ninth Congress, Record, p. 5354.

[2] Charles Curtis, of Kansas, Speaker pro tempore.

[3] Joseph G. Cannon, of Illinois, Speaker.

The question of qualification was brought up in this discussion, but the Senate showed reluctance to bring it into the decision.

"On January 17, 1877, the Senate, in adopting rules, agreed to the rule in its present form, specifying the quorum as 'a majority of Senators duly chosen and sworn.' These words were adopted with very little debate, on the statement by the Senator in charge that they were the words of the old rule of 1864. But, in fact, the words 'and sworn' were inserted in the revision of 1868,[1] being recommended by a committee composed of Messrs. Henry B. Anthony, of Rhode Island; Samuel C. Pomeroy, of Kansas, and George F. Edmunds, of Vermont. Their report does not explain their reasons for adding these words, and there was no debate on this point when the Senate agreed to the report. The Senate was undoubtedly aware of the change, however, since the words 'and sworn' are italicized in the report, indicating that they were an amendment. On October 11, 1893, the Senate discussed the whole rule briefly, and there was an appeal from a decision of the Chair based on the rule. This appeal was laid on the table—yeas 38, nays 5; but this question did not particularly touch the question of qualification.

Such is the status of this question so far as the law of the House and Senate is concerned. The rule of the Senate goes further than the decisions in the House, and does not seem to have been the subject of extended deliberation so far as the qualification feature is concerned. But in view of the learning of the committee who made the report of 1868, and of the reasons which seem to sustain that report, the Chair feels constrained to hold that after the House is once organized a quorum consists of a majority of those Members chosen, sworn, and living, whose membership has not been terminated by resignation or by the action of the House."

A quorum being present, the House stands in recess until tomorrow, at 11:30 o'clock.

2891. After long discussion the Senate finally decided that a quorum consisted of a majority of Senators duly chosen and sworn.—On June 30 and July 9, 1862,[2] the Senate argued at length, and with a citation of numerous precedents of both the Senate and the House of Representatives, the question as to the number of Members required under the Constitution to constitute a quorum, in either body. It was proposed to declare that a majority of the Senators duly elected and entitled to seats constituted a quorum; but, the proposition was laid on the table by a vote of 19 to 18. The Judiciary Committee had previously reported against action on such a resolution. President pro tempore, Solomon Foot, of Vermont, expressed a decided opinion that a quorum consisted of a majority of the whole number to which the body would be entitled, and said that had been the decision a decade before when the question was discussed ably and fully by Clay, Berrien, Underwood, Badger, and others.

2892. On May 4, 1864,[3] the Senate, after debate and by a vote of yeas 26, nays 11, agreed to the following:

Resolved, That a quorum of the Senate consists of a majority of the Senators duly chosen.

The Senate Journal shows that the rule as adopted at this time made no mention of the qualification by oath.

On March 26, 1868,[4] the Senate agreed to a report of a committee appointed to revise the rules of the Senate, Messrs. Henry B. Anthony, of Rhode Island;

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[1] By the act of July 19, 1867 (15 Stat. L., p. 4), Congress had declared illegal the reconstructed State governments in Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas; and persons bearing credentials as Senators-elect from those States were appearing and claiming seats in the Senate at the time this amendment to the rule was agreed to.

[2] Second session Thirty-seventh Congress, Globe, pp. 3021, 3189.

[3] First session Thirty-eighth Congress, Globe, pp. 2082–2087; Senate Journal, p. 401.

[4] Second session Fortieth Congress, Globe, pp. 1628, 2088.

Samuel C. Pomeroy, of Kansas, and George F. Edmunds, of Vermont. This report added the words "and sworn," so that the rule, as the last sentence of Rule I, read: "A quorum shall consist of a majority of the Senators duly chosen and sworn." The report[1] does not explain why the words "and sworn" were added, but as they appeared italicized the Senate must have been aware of the change. When the Senate considered the report this subject was not debated. It is evident, however, that the existence of certain State governments declared illegal[2] by Congress, and the consequent existence of persons elected as Senators but not permitted to take seats, was the reason for the amendment.

2893. On January 17, 1877,[3] at the time of a revision of the rules, the Senate again adopted with an addition the rule of 1864, and provided that a quorum should consist of "a majority of the Senators duly chosen and sworn."

The statement was made that this rule was the form of 1864, the fact of the revision of 1868 being overlooked.

2894. On October 11, 1893,[4] the Senate discussed briefly the rule of that body establishing the quorum at "a majority of the Senators duly chosen and sworn." The rule was criticised as contrary to the doctrine laid down by Cushing, but was not seriously attacked.

When the Presiding Officer ruled that a less number than the full possible membership was a quorum of the Senate, Mr. Wolcott, of Colorado, appealed; but the appeal was laid on the table, yeas 38, nays 5.

2895. In 1890 Mr. Speaker Reed directed the Clerk to enter on the Journal as part of the record of a yea-and-nay vote names of Members, present but not voting, thereby establishing a quorum of record.

The practice of Members refusing to vote in order to break the quorum had been established many years in the House when discontinued in 1890. (Footnote.)

On January 29, 1890,[5] Mr. John Dalzell, of Pennsylvania, as a privileged question, reported from the Committee on Elections the contested election case of Smith *v.* Jackson, from West Virginia.

Mr. Charles F. Crisp, of Georgia, raised the question of consideration, and the vote being taken by yeas and nays, there were, yeas 161, nays 1, not voting 166.

The Speaker[6] thereupon directed the Clerk to enter on the Journal the names of the following Members as present and refusing to vote, viz:

Messrs. Blanchard, Bland, Blount, Breckinridge of Arkansas, Breckinridge of Kentucky, Brookshire, Bullock, Bynum, Carlisle, Chipman, Clements, Clunie, Compton, Covert, Crisp, Culberson, Cummings, Edmunds, Enloe, Fithian, Goodnight, Hare, Hatch, Hayes, Holman, Lawler, Lee, McAdoo, McCreary, McRae, Morgan, Oates, O'Ferrall, Pendleton, Quinn, Reilly, Seney, Stewart of Texas, Tarsney, Tillman, and Turner of Georgia.

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[1] Second session Fortieth Congress, Senate Report No. 56.

[2] 115 Stat. L., p. 4.

[3] Second session Forty-fourth Congress, Record, pp. 690, 692, 693.

[4] First session Fifty-third Congress, Record, p. 2395.

[5] First session Fifty-first Congress, Journal, pp. 175–177; Record, pp. 949–960, 979–993.

[6] Thomas B. Reed, of Maine, Speaker.

The Speaker thereupon ruled that a quorum was present within the meaning of the Constitution, upon the following grounds:

The Clerk announces the Members voting in the affirmative to be 161 and 2 in the negative. The Chair thereupon, having seen other Members present, having heard their names called in their presence, directed the call to be repeated, and, since gentlemen did not answer when thus called, the Chair directed a record of their names to be made showing the fact of their presence as bearing upon the question which has been raised, namely, whether there is a quorum of this House present to do business according to the Constitution of the United States; and accordingly that question is now before the House, and the Chair purposes to give a statement, accompanied by a ruling, from which an appeal can be taken if any gentleman is dissatisfied therewith.

There has been for some considerable time a question of this nature raised in very many parliamentary assemblies. There has been a great deal of doubt, especially in this body, on the subject, and the present occupant of the chair well recollects a proposition or suggestion made ten years ago by a Member from Virginia, Mr. John Randolph Tucker, an able constitutional lawyer as well as an able Member of this House. That matter was somewhat discussed and a proposition was made with regard to putting it into the rules. The general opinion which seemed to prevail at that time was that it was inexpedient so to do; and some Members had grave doubts whether it was proper to make such an amendment to the rules as would count, as a part of the quorum, the Members present and not voting as well as those present and voting. The evils which have resulted from the other course were not then as apparent as now, and no such careful study had been given to the subject as has been given to it since.

That discussion took place in the year 1880. Since then there have been various arguments and various decisions by eminent gentlemen upon the subject, and these decisions have very much cleared up the question, and it is much more apparent what the rule is. One of the first places in which the question was raised was in the senate of the State of New York. The present governor of New York [1] was then the presiding officer and upon him was devolved a duty similar to that which has been devolved upon me to-day. He met that duty in precisely the same manner. The question there raised was as to the necessity, under their constitution, of the actual participation by voting of the three-fifths constituting a quorum for the passage of certain bills, and he held that that constitutional provision as to a quorum was entirely satisfied by the presence of the members, even if they did not vote, and accordingly he directed the recording officer of the senate to put down certain names as a part of the record of the transaction; that is, to put down the names of the members of the senate who were present and refused to vote in precisely the same manner in which the occupant of this chair has directed the same thing to be done. That decision must be regarded as in no sense partisan, at least as the Chair cites it.

There has also been a decision in the State of Tennessee, where the provisions of the law require a quorum to consist of two-thirds. In the legislature of 1885 the

[1] David B. Hill.

house had ninety-nine members, of which two-thirds was sixty-six. A registration bill was pending which was objected to by the Republican members of the house. Upon the third reading the Republicans refused to vote, whereupon the speaker, a member of the other party, directed the clerk to count as present those there but not voting, and, a quorum being present, declared the bill passed upon this reading.

These two decisions, made, the first in 1883 and the other in the year 1885, seem, to the present occupant of the chair, to cover the ground; but there is an entirely familiar process which every old Member will recognize which, in the opinion of the Chair, is incontestible evidence of the recognition at all times of the right to regard Members present as constituting a part of a quorum. It has been almost an everyday occurrence at certain stages of the session for votes to be announced by the Chair containing obviously and mathematically no quorum; yet, if the point was not made of no quorum, the bill has always been declared to be passed. That can only be upon a very distinct basis, and that is that everybody present silently agreed to the fact that there was a quorum present, while the figures demonstrated no quorum voting. There is no ground by which under any possibility such a bill could be passed constitutionally, unless the presence of a quorum is inferred. It is inferred from the fact that no one raised the question, and the presence was deemed enough.

All methods of determining a vote are of equal value. The count by the Speaker or Chairman and the count by tellers or a count by the yeas and nays are all of them of equal validity. The House has a right, upon the call of one-fifth of the Members, to have a yea-and-nay vote, and then upon that the question is decided; but the decision in each of the other cases is of precisely the same force and effect.

Again, it has always been the practice in parliamentary bodies of this character, and especially in the Parliament of Great Britain, for the Speaker to determine the question whether there is or is not a quorum present by count. It is a question simply of the actual presence of a quorum, and the determination of that is intrusted to the presiding officer in almost all instances. So that when a question is raised whether there is a quorum or not, without special arrangement for determining it, it would be determined on a count by the presiding officer. Again, there is a provision in the Constitution which declares that the House may establish rules for compelling the attendance of Members. If Members can be present and refuse to exercise their functions and can not be counted as a quorum, that provision would seem to be entirely nugatory. Inasmuch as the Constitution provides for their attendance only, that attendance is enough. If more was needed the Constitution would have provided for more.

The Chair feels very much disposed to cause to be read the action of the present governor of the State of New York, then lieutenant-governor and presiding officer of the senate.

The action of the senate was this: The president put the question whether the senate would agree to the final passage of said bill, and eighteen senators voted in favor thereof, and Messrs. Allen, Bowen, Evans, Holmes, F. Lansing, Lord, Lynde, Pitts, Russell, and Thomas, being present, refused to vote.

Then come the votes. For the affirmative, for the negative. Also the following, pursuant to direction of the president:

"Mr. Allen: Present and not voting."

And so on down the list. The result having been announced, the president thereupon ruled as follows:

The action of the senate just taken requires a ruling from the chair, and an explanation of that ruling is eminently proper at this time.

The parliamentary question presented is, whether this bill has been duly passed. It has received the votes of a majority of all the senators elected to the senate. It has received all the affirmative votes which the constitution requires to pass such a bill. This bill, so far as the affirmative vote necessary to its passage is concerned, is controlled by section 15 of article 3 of the constitution, which only requires a majority of all the senators elected.

It is, however, a bill by the provisions of which it is claimed a debt or charge is made against the State, and is, therefore, subject to the provisions of section 21 of the same article of the constitution. That section is substantially as follows: "On the final passage in either house of the legislature of any act which * * * creates a debt or charge * * * or makes any appropriation * * * of public money, the question shall be taken by ayes and nays, which shall be duly entered on the journals, and three-fifths of all the members elected to either house shall in all such cases be necessary to constitute a quorum therein."

This section is peculiarly and carefully worded. It does not provide that three-fifths of all the senators elected shall vote for the bill, or that such a number shall vote at all upon the bill, but simply that such a number must be present in order "to constitute a quorum" when such a bill is upon its final passage. If it had been intended that more than a majority should vote for such a bill to secure its passage, or that there should be three-fifths voting evidenced by the yeas and nays, it could have been easily so expressed. The plain and only object of this section of the constitution was to provide that there should not only be a majority vote in favor of bills of such importance, which create debts or appropriate public moneys for public purposes, but that when they are finally voted upon in the legislature there should be more than a bare majority present, to wit, three-fifths of all the members elected.

If three-fifths are in fact present they need not necessarily vote upon either side. The constitutional requirement is fully complied with by the fact of their presence. There need not be three-fifths voting, but three-fifth must be present to constitute a quorum when the majority pass the bill. The ayes and noes, as entered upon the journal, may be the evidence of the votes, given upon either side, but it is nowhere made the evidence, much less the only evidences, of the passage of a constitutional quorum. There may be a full senate present, and a majority may vote for such a bill, and the balance for good reasons may be excused from voting, yet nevertheless the bill is legally passed although the record of the ayes and noes will not show that three-fifths voted. Such record is not the sole and only criterion from which to determine who were present. Neither the constitution, the statutes, nor the rules of this senate make it so.

The presence or absence of senators is a physical fact known to the president and the clerk of the senate. It requires only the exercise of their senses to determine the question. If a stranger should intrude himself into a senator's seat and insist upon responding to that senator's name when it was called, it would be the clear duty of the clerk not to record the vote, and the duty of the president of the senate to see that it was not recorded. The presence or absence of a response when the clerk calls the roll, is not therefore absolutely conclusive. Whether the senator is in truth present, or does himself respond, is a question for the observation of the officers of the senate, who axe expected honestly and truthfully to determine it.

In fact to-day there are present over three-fifths of all the senators elected. They sit in their seats before me. Rule 14 of the senate requires each senator to vote when his name is called, but a number—more than enough to constitute the requisite three-fifths—refuse to vote at all, either for or against the bill, and remain silent. It is claimed that, therefore, they are to be deemed absent and can not be counted as constituting a quorum. They are not absentees within the meaning of the rules, because they are in fact present. There can be no "call of the house "or other proceedings instituted to compel their attendance, because they are not absent. Their action is in defiance of the rules of this body, factious, and revolutionary.

If, because they refuse to respond to their names when called, they are thereby to be deemed absent, of what use are the rules of this body and the law which gives this body authority to send its sergeant-at-arms for its absent members and forcibly bring them into this chamber, if, when brought

in, they can still refuse to vote and still be deemed absent? It would show that all such provisions in the rules and in the statutes were entirely nugatory and of no force or effect. There is no principle of parliamentary law which permits a senator to be present in his seat and refuse to respond to his name, and then be allowed to insist that he is not present. If he does not want to be regarded as present he must remain away from the chamber. This is common sense, and it is not antagonistic to parliamentary law.

If a senator is in fact present, his refusal to vote, which is a violation of his duty, does not make him absent in a parliamentary sense. He can be counted by the clerk and president as one of the three-fifths necessary to constitute a constitutional quorum. It is peculiarly the duty of the president to see whether or not there is present a requisite quorum. It is made his duty by Rule 6 of this senate to certify the passage of all bills, and to certify the fact whether they are passed by the required vote and with the constitutional quorum present. His certificate is evidence of those facts to the governor, the secretary of state, and to all the world. He is the party held responsible for the truth or falsity of that certificate. He may obtain the information as to the number of senators who are actually present when a bill is passed either from his own observation, or from the tally list, if that shows it, or from the journal kept by the clerk.

There is no precise or prescribed method laid down either in the constitution or law, or in the rules of this body, as to how the presiding officer shall ascertain what number of senators were present. He is bound to know the fact and certify accordingly, the same as he is required to know how many days senators have attended the senate before he gives the certificate which entitles them to draw their pay. There is no law which makes the tally list showing who voted the only evidence as to the number of senators present when a bill is voted upon.

The president of the senate is bound to know and certify as to whether there was present the requisite quorum, and as his certificate is the evidence of such fact the question presented is peculiarly within his province. It is very proper that the journal should show who were present when a bill was passed, not only for the protection of the presiding officer and as evidence corroborative of his certificate, but sometimes for his information. He may have called a senator temporarily to the chair, and a bill like the one in question may have passed in his absence, and upon his return to the chair he may be called upon to sign the certificate of the passage of the bill. It is well in all such cases and for other reasons that the clerk should always keep a record as to what senators are present when a bill is pawed.

If they vote, he is bound to make a record of it, and if they are present and refuse to vote, he sees and knows the fact and should make record of that fact also. Then the record will show the exact truth and will harm no one. The presiding officer can make up his certificate to the bill, not only from his own observation, but in addition thereto, from the journal kept by the clerk. It is very clear that this course will answer every requirement of the law and the constitution. The assertion that whether a constitutional quorum is present on the passage of a bill is only to be determined by whether or not a constitutional quorum voted, and by that fact alone and without reference to anything else, has no substantial foundation on which to stand.

The jurat or certificate which the presiding officer of each house has always signed to such bills from time immemorial is that the bill received a majority of the votes of all the senators elected, "three-fifths being present;" not three-fifths voting. The question as to how many voted in addition to a majority is wholly immaterial so long as three-fifths are present. Their presence is not to be determined solely and only by the yeas and nays.

I have accordingly directed the clerk, as he called the names of the senators who are present but who refuse to vote, to mark opposite their names on the tally list kept by him and which is to be entered in the journal, the words "Present, but refused to vote," and he has done so in each case. Therefore, in accordance with the record so made, which shows that there are present over three-fifths of all the senators elected, and which agrees with my own observation, I do hereby declare that this bill, having received the votes of a majority of the senators elected, three-fifths being present, has been duly and legally passed.

Ordered, That the clerk. return said bill to the assembly with the message that the senate have concurred in the passage of the same with amendments.

Mr. Crisp having appealed from the decision of the Chair, the appeal was debated at length, until January 30, when, on motion of Mr. William McKinley, jr., of Ohio,

the appeal was laid on the table by a vote of 162 yeas to 0 nays, 167 not voting, a sufficient number of those present and not voting being noted by the Speaker to establish the fact that more than a quorum were present.

So the decision of the Chair was sustained.[1]

2896. Decisions overruled by Mr. Speaker Reed when he caused Members not voting to be noted present in 1890.—On February 24, 1875,[1] Mr. John Coburn, of Indiana, called up for consideration House bill No. 4745, to provide against the invasion of States, to prevent the suppression of their authority, and to maintain the security of elections. (Called the force bill.)

There arose dilatory proceedings, and various Members who were present declined to vote, so that there was no quorum voting. Mr. Benjamin F. Butler, of Massachusetts, made the point that there was manifestly a quorum present, and declared that if the Chair would take note of the presence of Mr. Samuel J. Randall, of Pennsylvania, who was participating in the proceedings, but had not voted, and of the Chair himself, there would be found to be a quorum present.

The Chair having declined to take such proceedings, Mr. Coburn raised the point of order more formally in the following language:

> I rise to a point of order. It is simply as to the manner of making a record of Members present. One way of making the record is to have the roll called and the names of Members marked as present upon the roll call, whether upon the yeas and nays or on a call of the House. That makes the record but there is another way in which the House can make its record as positively, as absolutely, as undeniably as that, and that is by a Member rising in his place and saying there is present another Member who has not answered to his name, mentioning his name to the House, and asking that it be recorded. The record can be made, and that man is present and voting.

The Speaker[3] said:

> The Chair never heard of that being done. He begs to remind the House, whereas that might and doubtless would be true, that there is a quorum in the Hall, the very principle enunciated by the gentleman from Indiana has been the foundation probably for the greatest legislative frauds ever committed. Where a quorum, in the judgment of the Chair, has been declared to be present in the House against the result of a roll call, these proceedings in the different legislatures have brought scandal on their names. There can be no record like the call of the yeas and nays; and from that there is no appeal. The moment you clothe your Speaker with power to go behind your roll call and assume that there is a quorum in the Hall, why, gentlemen, you stand on the very brink of a volcano.

2897. On June 9, 1876,[4] a quorum failed to vote on a roll call, and Mr. Wilham M. Springer, of Illinois, made the point of order that, although the roll call dis

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[1] On June 1, 1896 (Journal, first session Fifty-fourth Congress, p. 558), it was ruled by Speaker pro tempore Payne that Members coming into the Hall after the point of no quorum is made, may be counted. Members seem to have caused a quorum to fail by declining to vote as early as May 9, 1834 (first session Twenty-third Congress, Debates, p. 4023). On May 30, 1836 (first session Twenty-fourth Congress, Debates, pp. 4086, 4099) there was a discussion over the refusal of certain Members to vote, and we find Mr. John Bell, of Tennessee, saving that "the time might and probably would come, when the order of the House would be broken up by a factious minority." Therefore he was in favor of prompt punishment of those Members who should refuse to vote.

[2] Second session Forty-third Congress, Record, p. 1734.

[3] James G. Blaine, of Maine, Speaker.

[4] First session Forty-fourth Congress, Journal, p. 1078.

closed the absence of a quorum, the Chair should take cognizance of the presence of those gentlemen who, by rising and announcing pairs, had shown their presence.

The Speaker pro tempore[1] overruled the point of order, on the ground that the Chair could not go outside of the record in deciding as to the presence of a quorum.[2]

2898. Illustrations of the former practices of obstruction by breaking a quorum and by dilatory motions.—On February 17, 1835,[3] a question was taken on an amendment, and no quorum voted. Thereupon Mr. Thomas F. Foster, of Georgia, called the attention of the Chairman (George N. Briggs, of Massachusetts) to the fact that Members "were pertinaciously keeping their seats, voting neither on one side nor the other." He hoped that their names would be taken down.

The Chairman thereupon counted and reported a quorum present, whereupon the question was put again.

2899. On April 6, 1860,[4] Chairman John U. Pettit, of Indiana, in Committee of the Whole House on the state of the Union, announced that it had repeatedly been held in House and committee that the Chair could not determine officially that a quorum was not present without a division of the House or the committee.

2900. On February 18, 1850,[5] Mr. E. Carrington Cabell, of Florida, moved that he be excused from voting, and the question being put, and the yeas and nays ordered, Mr. Albert G. Brown, of Mississippi, moved that he be excused from voting on the motion to excuse Mr. Cabell. Objection was made to this motion, on the ground that the effect was to multiply questions so as to prevent the transaction of business. But Mr. Speaker Cobb decided that the motion was in order, and being in order, the Chair could not do otherwise than entertain it. Thereupon an appeal was taken, and a motion made that the appeal lie on the table. Then a motion was made to adjourn, which was decided in the negative by yeas and nays. The question recurring on the motion to lay the appeal on the table, Mr. George W. Jones, of Tennessee, moved that he be excused from voting on that motion, and the question being put and taken by yeas and nays, the House refused to excuse Mr. Jones from voting. Then a motion to adjourn was offered, and so on dilatory motions were presented and voted on for the entire day. There were during the legislative day thirty-one roll calls, and business was effectually stopped. The subject before the House was a resolution relating to the admission of California to the Union.

2901. On February 18, 1850,[6] pending consideration of a resolution relating to the admission of California to the Union, prolonged dilatory proceedings took place. On a call of the roll a quorum failed to vote, although it was evident that a quorum was present.

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[1] Samuel S. Cox, of New York, Speaker pro tempore.

[2] After the Fifty-first Congress this principle was reestablished for a time (see Journal, second session Fifty-third Congress, p. 211), but its abandonment was soon found necessary if the public business was to be transacted. For an example of the impossible situation created by the reestablishment of the old principle, see second session Fifty-third Congress, Record, pp. 3305, 3331, 3402, 3452, 3545, 3786–3792.

[3] Second session Twenty-third Congress, Debates, pp. 1412, 1413.

[4] First session Thirty-sixth Congress, Globe, p. 1586.

[5] First session Thirty-first Congress, Journal, pp. 545–577; Globe, p. 382.

[6] First session Thirty-first Congress, Journal, p. 562; Globe, p. 380.

Mr. Edward D. Baker, of Illinois, asked whether it was not the duty of the Speaker to make up his own mind from his own observation, whether a quorum of the House was or was not present.

Mr. Speaker Cobb replied that the Chair acted in the present case in accordance with the practice under similar circumstances. Where a vote had been taken by yeas and nays that was the information upon which the Chair must act as to whether a quorum was present or not.

Mr. Robert C. Schenck, of Ohio, proposed a resolution requiring the Speaker to count those present and report the number present and the names of those absent; but the Speaker ruled the resolution out of order.

Mr. Thaddeus Stevens, of Pennsylvania, asked the Speaker to enforce the rule requiring Members to vote. The Speaker replied that the enforcement of this rule had been considered in previous Congresses entirely impracticable.

2902. On May 11, 1854,[1] during the struggle over the proposition to close debate in Committee of the Whole House on the state of the Union on the bill (H.R. 236) to organize the Territories of Kansas and Nebraska, prolonged dilatory proceedings took place, and during that legislative day 101 roll calls occurred, principally on dilatory motions, such as for calls of the House, to adjourn, to fix the day to which the House should stand adjourned, to excuse a Member from voting, etc.

2903. The extent to which the motion to excuse a Member from voting may be used as an instrument of obstruction was shown on February 5, 1858,[2] during a contest over a message of the President relating to the Lecompton constitution of Kansas. On that day Mr. John Sherman made a point of order on the following motion, submitted by Mr. Muscoe R.H. Garnett, of Virginia:

> Mr. Garnett moves to be excused from voting on the motion of Mr. Letcher, to be excused from voting on the motion of Mr. Cobb, to be excused from voting on the motion of Mr. Seward to lay on the table the appeal of Mr. Stanton from the decision of the Chair.

Mr. Speaker Orr said in regard to the point of order:

> The Chair is of the opinion that, under the rules of the House, whatever may be the result, it is competent for the gentleman to make the request; the rules allow any gentleman to ask to be excused from voting upon any proposition.

2904. The decision of Mr. Speaker Reed in counting as part of the quorum Members not voting was sustained by the Supreme Court.—The action of Mr. Speaker Reed in noting Members present and not voting as part of the quorum necessary for the validity of the vote was sustained in a decision of the Supreme Court of the United States.[3] The case arose out of the act providing for the classification of worsteds, passed by the House on May 9, 1890. On the vote there appeared yeas 138, nays 0, not voting 189. The Speaker thereupon announced the names of 78 Members present and not voting, and announced that those present and refusing to vote, together with those recorded as voting, showed a total of 212 Members present, constituting a quorum present to do business.

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[1] First session Thirty-third Congress, Journal, pp. 735–836; Globe, pp. 1161–1183.

[2] First session Thirty-fifth Congress, Journal, pp. 310–315; Globe, p. 599.

[3] United States *v.* Ballin, 144 U.S., p. 1. Opinion by Mr. Justice Brewer.

Therefore he declared the bill passed. The validity of this act being questioned, the court rendered a decision, of which the following paragraph gives the substance:

As appears from the Journal at the time this bill passed the House, there was present a majority, a quorum, and the House was authorized to transact any and all business. It was in a condition to act on the bill if it desired. The other branch of the question is whether, a quorum being present, the bill received a sufficient number of votes; and here the general rule of all parliamentary bodies is that, when a quorum is present, the act of a majority of the quorum is the act of the body.

2905. The rule for counting Members not voting in determining the presence of a quorum.

Form and history of section 3 of Rule XV.

Section 3 of Rule XV provides:

On the demand of any Member, or at the suggestion of the Speaker, the names of Members sufficient to make a quorum in the Hall of the House who do not vote shall be noted by the Clerk and recorded in the Journal, and reported to the Speaker with the names of the Members voting and be counted and announced in determining the presence of a quorum to do business.

This rule dates from February 14, 1890,[1] when it was adopted as part of the revision of the rules made at that time.[2] It simply put in form of a rule the principle established by Mr. Speaker Reed in his ruling of January 29, 1890.[3] The rule was dropped in the Fifty-second Congress, but in the Fifty-third, on April 17, 1894,[4] was restored in a modified form, as follows:

Upon every roll call, and before the beginning thereof, the Speaker shall name two Members, one from each side of the pending question, if practicable, who shall take their places at the Clerk's desk to tell the names of at least enough Members who are in the Hall of the House during the roll call who do not respond, when added to those responding, to make a quorum. If a quorum does not respond on the roll call, then the names of those so noted as present shall be reported to the Speaker, who shall cause the list to be called from the Clerk's desk and recorded in the Journal; and in determining the presence of a quorum to do business those who voted, those who answered "present," and those so reported present shall be considered. Members noted may, when their names are called, record their votes, notwithstanding the provisions of clause 1 of this rule.

The Fifty-fourth and succeeding Congresses restored the form in use in the Fifty-first Congress.

2906. Construction of the rule providing for counting a quorum.—

On May 18, 1906,[5] the House was considering the bill (H. R. 850) for the relief of the estate of Samuel Lee, deceased, when, on the question on agreeing to an amendment, the yea and nay roll call did not disclose a quorum responding.

The Speaker,[6] under clause 3 of Rule XV, noted the presence of certain Members who had not responded.

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[1] See Congressional Record, first session Fifty-first Congress, pp. 1173, 1341, 1347.

[2] See House Report No. 23, first session Fifty-first Congress. This revision was reported by the Committee on Rules—Messrs. Thomas B. Reed, of Maine (Speaker); William McKinley, jr., of Ohio; Joseph G. Cannon, of Illinois; John G. Carlisle, of Kentucky, and Samuel J. Randall, of Pennsylvania. The two last dissented from the report of the majority.

[3] See section 2895 of this chapter.

[4] Second session Fifty-third Congress, Record, pp. 3786–3792. (See pp. 3305, 3331, 3402, 3452, 3545, for an example of the difficulties which made the adoption of this rule imperative.

[5] First session Fifty-ninth Congress, Record, p. 7099.

[6] Joseph G. Cannon, of Illinois, Speaker.

Mr. John S. Williams, of Mississippi, raised a question of order.

The point of order is this, that without any suggestion to the House having been made at all of the absence of a quorum and at a state of the roll call when it was impossible for the Speaker or anybody else to know whether there was going to be disclosed the fact of a quorum or of no quorum, the Speaker in several of these cases noted gentlemen as being present in the Hall at the beginning of the roll call, when there was not only no suggestion of the absence of a quorum, but when the Speaker himself neither knew nor could have known that there would be the absence of a quorum. I recall notably the name of the gentleman from Mississippi [Mr. Bowers] and the gentleman from Missouri [Mr. Clark].

The Speaker [1] said:

Clause 3 of Rule XV the Chair will read, instead of having it read as formerly. It states:

"On the demand of any Member, or at the suggestion of the Speaker, the names of Members sufficient to make a quorum in the Hall of the House who do not vote, shall be noted by the Clerk and recorded in the Journal, and reported to the Speaker with the names of the Members voting and be counted and announced in determining the presence of a quorum to do business."

The Chair has faithfully followed the rule, and again announces, as he announced before—— * * *.

The Chair again announces the result of the vote and the presence of the gentlemen whose names have been noted heretofore and are to go upon the Journal; and those voting "aye" and those voting "no," those answering "present" and those noted literally under clause 3 of Rule XV, number 200—a quorum. The ayes have it.

2907. A Member noted as present under section 3 of Rule XV may be permitted to vote after the calling of the roll is concluded.—On June 30, 1898,[2] on a yea and nay vote there were 93 yeas, 70 nays, and 15 answering "present," a total of 178, one less than a quorum. Under direction of the Speaker pro tempore the clerk at the Speaker's table had noted as present several Members who were in the Hall during the roll call, but who had neither voted nor answered "present."

Several so noted as present requested, after their names had been announced, that they be allowed to be recorded on the roll.

Mr. Joseph W. Bailey, of Texas, raised a point of order as to the right of a Member who was marked "present" to cast his vote.

The Speaker pro tempore [3] said:

The Chair will call the attention of the gentleman from Texas to the last clause of section 1 of Rule XV,[4] which provides "the Speaker shall not entertain a request to record a vote or announce a pair unless the Member's name has been noted under clause 3 of this rule."

The rule provides that thereafter the Chair shall not entertain a request for unanimous consent to record a vote or pair unless the Member named has been "noted as present," in which case he may have the privilege of recording his vote under the rule.

2908. The point of order being made that a Member noted as present under section 3 of Rule XV [5] was actually absent, his name was erased from the list before the announcement of the result.—On February 20, 1891,[6] the House was considering a resolution reported by Mr. Joseph G.

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] Congressional Record, second session Fifty-fifth Congress, p. 6555.

[3] Sereno E. Payne, of New York, Speaker pro tempore.

[4] For sections 1 and 3 of Rule XV, see sec. 6046 of Vol. V of this work.

[5] For section 3 of Rule XV, see sec. 2095 of this chapter.

[6] Second session Fifty-first Congress, Journal, p. 273; Record, pp. 2997, 2999.

Cannon, of Illinois, from the Committee on Rules providing for the consideration of certain bills relating to the courts of the United States.

Mr. James H. Blount, of Georgia, having moved that the resolution be recommitted with instructions, there were yeas 12, nays 150.

The roll call having been recapitulated, the Speaker announced from a list noted and furnished by the Clerk, at the suggestion of the Speaker, the following named Members as present in the Hall when their names were called and not voting:

Messrs. Brunner, Buchanan of Virginia, Candler of Georgia, Catchings, Clunie, Covert, Crisp, Culberson of Texas, Dunphy, Edmunds, Fithian, Geary, Gibson, Henderson of North Carolina, Hooker, Kerr of Iowa, Lawler, McClammy, Oates, O'Ferrall, Perry, Pindar, Rogers, Stockdale, Stump, Turner of Georgia, Vaux, and Whitelaw.

Mr. Benton McMillin, of Tennessee, having made the point of order that Mr. Oates, noted by the Clerk as present and not voting, was not present in the Hall when his name was called, the name of Mr. Oates was ordered to be deducted from the list.

The Speaker[1] thereupon stated that the said Members present and refusing to vote (27 in number), together with those recorded as voting (162 in number), showed a total of 189 Members present, constituting a quorum present to do business, and that, the yeas being 12 and the nays 150, the motion to recommit the resolution with the instructions was disagreed to.

Upon the question of agreeing to the resolution there were, yeas 156, nays 4, whereupon the roll call having been recapitulated, the Speaker pro tempore[2] announced from a list noted and furnished by the Clerk, at the suggestion of the Speaker, the following-named Members as present in the Hall when their names were called and not voting, viz:

Messrs. Bland, Blount, Boatner, Cutcheon, Culberson, Flood, Hansbrough, Kerr of Iowa, McMillin, Post, Rogers, Wickham, and the Speaker.

Mr. McMillin having made the point of order that Mr. Boatner, noted by the Clerk as present and not voting, was not present in the Hall when his name was called, the name of Mr. Boatner was ordered to be stricken from the said list.

The Speaker thereupon stated that the said Members present and refusing to vote (12 in number), together with those recorded as voting (160 in number), showed a total of 172 Members present, constituting a quorum present to do business, and that the yeas being 156 and the nays 4, the said resolution was agreed to.

2909. Mr. Speaker Reed in 1890 revived the count by the Chair as a method of determining the presence of a quorum at times when no record vote is ordered.—Mr. Speaker Reed not only counted as present Members who sat silent during the constitutional call of the yeas and nays for entry on the Journal, but he exercised, in the face of much objection, the right to count the Members to ascertain if a quorum were present whenever the point of no quorum was made at a time when no entry of the yeas and nays had been ordered by the House,[3] and

[1] Thomas B. Reed, of Maine, Speaker.

[2] Lewis E. Payson, of Illinois, Speaker pro tempore.

[3] See, for instances, Journal, first session Fifty-first Congress, pp. 337, 520; second session Fifty-first Congress, pp. 178, 371, 364, 363, 38, 208, 288, 107, etc.; and Congressional Record, first session Fifty-fourth Congress, p. 596.

this right has been exercised by his successors.[1] But when Mr. Speaker Reed began to count in this way in 1890 the practice had become fixed that there was ordinarily no way of ascertaining the presence of a quorum except by a call of the roll, and on October 19, 1888,[2] Mr. Speaker Carlisle denied the power of the Chair to count the House even prior to the reading of the Journal. This view was not, however, in harmony with the earlier practice. While no Speaker had ever, before Mr. Speaker Reed, counted Members not voting to show the validity of a vote wherein an actual quorum did not appear as voting, many Speakers had made the actual count of the Members to ascertain the presence of a quorum on occasions when the validity of a vote was not in issue. Thus counts were made as follows: On February 27, 1807,[3] by Mr. Speaker Macon; on March 1, 1821,[4] by Mr. Speaker Taylor; on December 23, 1830,[5] by Mr. Speaker Stevenson; on March 3, 1835,[6] by Mr. Speaker Bell; on July 5, 1838,[7] by Mr. Speaker Polk; on April 27, 1840,[8] by Mr. Speaker Hunter; on December 29, 1852,[9] and also on another occasion, by Mr. Speaker Boyd, who gave the subject some consideration at the time; on June 9, 1856,[10] by Mr. Speaker Banks; on May 18, 1858,[11] by Mr. Speaker Orr.

On February 27, 1877,[12] Mr. Speaker Randall counted the House "under the rules," as he expressed it.[13] But when a Member, on another occasion, challenged the count of the same Speaker a motion for a call of the House was entertained.[14]

On June 7, 1878,[15] Mr. Speaker Randall said that if it be the desire he would count the House again to ascertain the presence of a quorum. Mr. John M. Thompson, of Pennsylvania, said: "The Chair has no right to count the House." The Speaker replied: "The rules make it the imperative duty of the Chair to count the House when it is stated a quorum is not present and a Member makes the demand that the House be counted." Jefferson's Manual was quoted in support of the above, but the Speaker explained that on a roll call he could not go outside the roll and count Members not answering. He could merely count when during business it was observed that a quorum did not seem to be present.

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[1] But as late as April 25, 1892 (Congressional Record, first session, Fifty-second Congress, p. 3638), Mr. Speaker Crisp even declined to make the "actual count" required by section 2 of Rule XVII. (See section 5447 of Vol. V of this work.) In this he followed the example of Mr. Speaker pro tempore Hunton (third session Forty-sixth Congress, Journal, p. 502; Record, p. 2053), but on January 23, 1863, third session, Thirty-seventh Congress, Journal, pp. 263, 265; Globe, p. 579), Mr. Speaker Grow made the actual count.

[2] First session Fiftieth Congress, Journal, p. 2945; Record, p. 9607.

[3] Second session Ninth Congress, Annals, p. 655.

[4] Second session Sixteenth Congress, Annals, p. 1270.

[5] Second session Twenty-first Congress, Debates, p. 382.

[6] Second session Twenty-third Congress, Debates, p. 1662.

[7] Second session Twenty-fifth Congress, Journal, p. 1246; also Globe, pp. 405 and 503.

[8] First session Twenty-sixth Congress, Globe, p. 360.

[9] Second session Thirty-second Congress, Globe, p. 168 second session Thirty-third Congress, Globe, p. 287.

[10] First session Thirty-fourth Congress, Globe, p. 1379.

[11] First session Thirty-fifth Congress, Globe, pp. 2164, 2211.

[12] Second session Forty-fourth Congress, Record, pp. 1988, 2024.

[13] Evidently referring to Jefferson's Manual.

[14] Second session Forty-fourth Congress, Record, p. 2025.

[15] Second session Forty-fifth Congress, Record, p. 4279.

On March 3, 1879,[1] Mr. Speaker Randall again counted the House after a yea and nay vote had disclosed the absence of a quorum; and the House went on to business before another yea and nay vote had shown a quorum of record. Later, on February 24, 1881, in the next Congress,[2] a Speaker pro tempore declined to count the House, saying:

> The Chair thinks that under the practice of the House the Speaker has counted Members present to ascertain whether there was a quorum; but that ha-, been in the absence of a recent roll call. When the last thing occurring in the proceedings of the House is a roll call, the Chair is bound to recognize that as determining whether a quorum is present or not.

At this time the following paragraph from the Manual and Digest of the House was read:

> The practice of counting the House by the Speaker of late years has frequently been resorted to to ascertain the presence of a quorum, and is a more expeditious method than calling the roll.

2910. Review of practice and proceedings in the Senate as to Senators present and not voting when a quorum fails.—The Senate of the United States has not often met difficulties because of the willful refusal of Senators to vote in order to break a quorum, and has not changed the old system of taking into account on a roll call only those voting. But in a few instances complications have arisen. On May 20, 1880,[3] the Senate adjourned because no quorum voted, although those Senators voting and those rising to announce that they were paired constituted a quorum.

2911. On March 3, 1881,[4] [really the early morning hours of March 4], in the Senate Mr. Roscoe Conkling, of New York, called for the yeas and nays, and then on the call did not vote, there appearing yeas 33, nays 3, absent 39. Immediately after the vote Mr. Conkling (who was recorded as absent) raised a question of order against the motion of Mr. John S. Williams, of Kentucky, for a call of the Senate. Thereupon Mr. James E. Bailey, of Tennessee, questioned Mr. Conkling's position and asked whether action by one not present could be recognized. On call of the Senate forty Senators responded—a quorum. Mr. Conkling gave notice that if the Senate proposed to act on certain contested nominations he was ready to resist until noon (it was then 3 a. m., March 4, before President Garfield's inauguration).

Mr. Bailey denounced this as a threat. An attempt was made to vote and some Senators did not answer, although present.

The Presiding Officer[5] ruled that in accordance with the precedents it was impossible to compel a Senator to vote.

The Presiding Officer read from a digest, evidently private:

> The practice of the Senate in permitting its Members without question or challenge to withhold their votes whenever they have thought fit to do so has been so uniform and unbroken that, so far as precedent can make it so, it has become an absolute parliamentary right, etc.

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[1] Third session Forty-fifth Congress, Record, p. 2380; Journal, p. 663.

[2] Third session Forty-sixth Congress, Journal, p. 502; Record, p. 2053. The Journal indicates that this ruling was made by Mr. Speaker Randall, but the Record seems to make it plain that Mr. Eppa Hunton, of Virginia, was in the chair as Speaker pro tempore.

[3] Second session Forty-sixth Congress, Record, pp. 3571, 3572.

[4] Third session Forty-sixth Congress, Record, pp. 2419–2424.

[5] Augustus H. Garland, of Arkansas.

Another attempt to vote resulted yeas 36, nays 0, absent 39. Messrs. Conkling and Ingalls were "absent," although actually participating in the debate, and they with the 36 would have made 38, a quorum.

Mr. Joseph E. McDonald, of Indiana, declared:

> The failure of Senators in the Senate Chamber to vote can not withdraw their presence from the Senate Chamber, so as to destroy the quorum. * * * In my State the same difficulty has been encountered, and the legislative rules of the legislature of Indiana now provide for it. They provide for it by requiring the officer who calls the roll to note the Senators present, those voting and those not voting; and if counting those who have voted, either yea or nay, and those present not voting there is a quorum, then the proposition is passed, etc.

There was much confusion, and Mr. Conkling intimated that Mr. McDonald was lecturing the Senate.

A motion for a recess was proposed, and a question arose as to whether it was in order or not, the fact depending on whether there was a quorum present or not.

Mr. Allen G. Thurman, of Ohio, declared that he as Presiding Officer had once counted the Senate.

The Presiding Officer said:

> The Chair has counted forty Senators in the Senate Chamber, and as the Chair is advised it has heretofore been the decision in such a case, the Chair will adhere to that decision, and decide that there is a quorum present.

Then the motion for a recess was entertained.

2912. February 2, 1883,[1] in the Senate a quorum failed to vote on the pending amendment to the tariff bill. A quorum was present in the Hall, but several Senators announced that they could not, on account of pairs, vote on the pending question. Thereupon Mr. George F. Edmunds, of Vermont, proposed an order that the Sergeant-at-Arms bring in certain named Senators who were actually absent. A question at once arose as to the constitutional power to compel attendance of absentees when a quorum was present, and also as to standing of the order under the rules of the Senate. After considerable debate the order was withdrawn, Mr. Edmunds stating that apparently enough Senators were present to enable them to proceed.

2913. The breaking of a quorum by refraining from voting occurred in the Senate on February 17, 1875.[2]

Also on June 18 and 19, 1879,[3] there were prolonged dilatory proceedings in the Senate, the Republican Members declining to vote and thereby breaking a quorum during consideration of the Army bill, which contained a clause relating to use of troops at the polls. Mr. Allen G. Thurman, of Ohio, deplored this as a new procedure in the Senate, and Mr. Benjamin H. Hill, of Georgia, denounced it as revolutionary. Mr. Eli Saulsbury, of Delaware, made the point that, as a quorum was manifestly present, a vote just taken should stand, although a quorum did not vote, but the President pro tempore[4] said:

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[1] Second session Forty-seventh Congress, Record, pp. 1981–1987.

[2] Second session Forty-third Congress, Record, p. 1356.

[3] First session Forty-sixth Congress, Record, pp. 2147, 2175, 2180.

[4] Allen G. Thurman, of Ohio.

That is a question on which the Chair has reflected very considerably and had consultation with some of the most experienced Senators some time ago. The conclusion at which they arrived, and at which the Chair arrived, was that less than a quorum voting could not pass a bill or adopt any measure, unless it was one of those things that can be done by less than a quorum, as to adjourn. If Senators will reflect a moment they will see how that would operate. Suppose all the seventy-six Senators were here, and one of them voted to pass a bill, and the other seventy-five did not vote at all, it would hardly be contended that that bill had passed by one vote. * * * In the opinion of the Chair it requires a majority of a quorum, a quorum voting, to adopt any measure except one of those which may by the rules be adopted by less than a quorum.

2914. On June 19, 1879,[1] however, President pro tempore Thurman entertained a motion (which would require a quorum to agree to) after a roll call had just disclosed no quorum voting. He said that he had a right to count the Senate to ascertain the presence of a quorum, since the fact that no quorum had voted was not conclusive evidence that a quorum was not present. It was, he said, the practice of Vice-President King to count the Senate at the commencement of each sitting to see if a quorum was present, and if the rules were observed strictly the Chair would be obliged to do this now.

2915. On October 17, 1893,[2] in the Senate, the question of recording Senators present and not voting in order to demonstrate the presence of a quorum was debated at length, and a proposition relating thereto was tabled.

2916. The Speaker's count of a quorum is not subject to verification by tellers.—On May 7, 1906,[3] a vote was taken by tellers on a motion to suspend the rules and agree to an order providing for the consideration of certain bills. There appeared on the vote ayes 119, noes 29.

Mr. John S. Williams, of Mississippi, made the point that there was no quorum present. After counting, the Speaker announced 208 present, a quorum.

Mr. John S. Williams, of Mississippi, demanded tellers on the count.

Mr. Sereno E. Payne, of New York, made the point of order that the demand was not in order.

The Speaker[4] sustained the point of order, holding that the demand for tellers was not in order.[5]

2917. The point of order must be that no quorum is present; not that no quorum has voted.—On March 3, 1897,[6] the House was considering the conference report on the District of Columbia appropriation bill, and on ordering the previous question there were 111 ayes to 9 noes.

Mr. William E. Barrett, of Massachusetts, raised the point of order that "no quorum voted."

The Speaker[7] said:

The Chair overrules that point of order. * * * It is the presence of a quorum on which the point of order can be made.

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[1] First session Forty-sixth Congress, Record, p. 2175.

[2] First session Fifty-third Congress, Record, pp. 2544, 2575, 2588, 2628, 2649, 2686.

[3] First session Fifty-ninth Congress, Record, p. 6465.

[4] Joseph G. Cannon, of Illinois, Speaker.

[5] See section 2888 of this chapter for an instance wherein Mr. Speaker Reed permitted his count to be verified by tellers, although he expressly declined to concede that such verification might be demanded as a right.

[6] Second session Fifty-fourth Congress, Record, p. 2966.

[7] Thomas B. Reed, of Maine, Speaker.

2918. A line of rulings made under the old theory as to the quorum and since disregarded held that the point of no quorum might not be made after the House had declined to verify a division by tellers or the yeas and nays.—On July 14, 1890,[1] the House was considering the bill (H. R. 8243) relating to the Baltimore and Potomac Railroad in the District of Columbia, and a question being taken on a motion to lay on the table a motion to reconsider, there appeared on division, yeas 64, nays 55. Mr. James Buchanan, of New Jersey, demanded the yeas and nays;

When Mr. Louis E. Atkinson, of Pennsylvania, made the point of order that no quorum was present.

The Speaker[2] overruled the point of order on the ground that it was made too late.[3]

2919. On January 26, 1893,[4] Mr. William S. Holman, of Indiana, moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the purpose of considering general appropriation bills.

Upon division, the Speaker announced that the noes have it.

Mr. C. B. Kilgore, of Texas, demanded the yeas and nays; when, one-fifth of the Members failing to concur in the demand, the yeas and nays were refused.

Mr. Kilgore then made the point that no quorum had voted on the motion of Mr. Holman.

The Speaker[5] declined to entertain the point of no quorum, holding that by demanding the yeas and nays; on agreeing to said motion, and the yeas and nays being refused, the right to make the point of no quorum was waived.

2920. On September 6, 1893,[6] a question being taken on a division, the Speaker announced the question decided in the negative.

Mr. D. A. De Armond, of Missouri, having demanded the yeas and nays, and not one-fifth of those present concurring in said demand, the yeas and nays were refused.

Mr. De Armond then made the point that no quorum had voted on the division which had been previously taken, and demanded tellers on agreeing to the amendment.

Objection being made to the request for tellers, on the ground that the point of no quorum was waived by the demand for and the action of the House in refusing to order the yeas and nays, the Speaker[5] stated that under the practice of the House the point of no quorum was waived by a demand for and refusal of the yeas and nays, but that inasmuch as no rules had yet been adopted by the House he would entertain the point and would accordingly order tellers.

2921. On March 27, 1896,[7] on the motion of Mr. William P. Hepburn, of Iowa, that when the House adjourn it be to meet on Monday next, there appeared on division 123 ayes and 25 noes.

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[1] First session Fifty-first Congress, Journal, p. 856; Record, p. 7262.

[2] Thomas B. Reed, of Maine, Speaker.

[3] It is to be observed that all of this line of rulings took place prior to the ruling of Mr. Speaker Reed on June 30, 1898 (see sec. 2935 of this chapter) that the presence of a quorum is necessary for the transaction of business at all times. The restoration of the old and correct theory of the quorum has caused these rulings to be reversed by later Speakers. (See secs. 2935–2949 of this chapter.)

[4] Second session Fifty-second Congress, Journal, p. 58; Record, p. 834.

[5] Charles F. Crisp, of Georgia, Speaker.

[6] First session Fifty-third Congress, Journal, p. 30.

[7] First session Fifty-fourth Congress, Record, p. 3299.

Mr. Joseph G. Cannon, of Illinois, demanded tellers, which were refused by the House.

Mr. Cannon then demanded the yeas and nays, which were also refused by the House.

Thereupon Mr. Cannon made the point of no quorum.

The Speaker [1] decided that it was too late to make that point.

2922. On January 20, 1893,[2] Mr. F. E. Beltzhoover, of Pennsylvania, moved that the House resolve itself into Committee of the Whole House for the purpose of considering business on the Private Calendar; which motion was disagreed to.

After the Speaker had announced the vote by which said motion was lost, but before the result was finally stated, Mr. Beltzhoover demanded tellers on said motion.

The demand for tellers being refused by the House, one-fifth of a quorum not voting therefor, Mr. Beltzhoover then made the point that no quorum had voted on his motion.

Mr. Joseph H. Outhwaite, of Ohio, made the point of order that it was too late after refusal of the House to order tellers to make the point of no quorum.

The Speaker [3] sustained the latter point of order.

2923. On May 27, 1896,[4] on a motion to concur in a Senate amendment to the sundry civil appropriation bill, the House divided, and there were 41 ayes and 72 noes.

Mr. William L. Terry, of Arkansas, asked for tellers, which were refused by the House.

Mr. Omer M. Kem, of Nebraska, made the point of no quorum.

The Speaker [1] said:

The Chair thinks the point is raised too late, tellers having been demanded and refused.

2924. On April 14, 1898,[5] the question was on the passage of the bill (H.R. 4104) regulating the jurisdiction of United States courts, etc., and on a division there were 39 ayes and 23 noes.

Mr. Champ Clark, of Missouri, asked for tellers, which were refused by the House.

Thereupon Mr. Clark made the point of no quorum.

The Speaker [1] said:

The Chair thinks it is too late to make the point of no quorum. In making this ruling the Chair follows two previous decisions upon the same point.

2925. On May 21, 1900,[6] the House was considering the bill (H. R. 8665) authorizing and requiring the Metropolitan Railroad Company to extend its lines on old Sixteenth street, and the question being on the passage, there were, on division, ayes 44, noes 42.

Mr. Henry C. Smith, of Michigan, demanded tellers, but tellers were refused by the House, and the Speaker declared the bill passed.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Fifty-second Congress, Journal, p. 53.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] First session Fifty-fourth Congress, Record, p. 5824.

[5] Second session Fifty-fifth Congress, Record, p. 3863.

[6] First session Fifty-sixth Congress, Record, p. 5815.

Mr. Smith made the point of no quorum.

The Speaker[1] held that the point of no quorum could not be made after the demand for tellers.

2926. On January 9, 1905,[2] the question was put on a motion to lay on the table the resolution of the House, No. 403, relating to the so-called "beef trust." The House having divided, there appeared ayes 87, noes 57.

Mr. Robert Baker, of New York, demanded tellers.

The Speaker announced that the number in support of the demand for tellers was insufficient and that tellers were refused.

Thereupon Mr. Baker made the point of no quorum.

Objection was made that the point came too late.

The Speaker[3] said:

The Chair thinks not. The Chair will count. [After counting.] Two hundred and thirty-nine gentlemen present—a quorum. The ayes have it; the motion prevails, and the resolution is laid on the table.

2927. The Journal having been read and approved it is too late to make the point of order that a quorum was not present when it was done.—On December 23, 1882,[4] the Journal of the preceding session was read and approved.

Thereupon Mr. John D. White, of Kentucky, made the point of order that under section 1 of Rule I[5] it was not in order to approve the Journal in the absence of a quorum, and also made the further point that a quorum was not present.

The Speaker pro tempore[6] overruled the point of order on the ground that the Journal had been read and approved in the usual manner without objection and that it was now too late to raise the question of a quorum.

2928. The point of no quorum may not be withdrawn after the absence of a quorum has been ascertained and announced by the Chair.—On January 22, 1897,[7] the House was considering the bill (S. 1128) granting a pension to Isabella Morrow, and the question being taken on an amendment, there were ayes 26, noes 40.

Mr. W. Jasper Talbert, of South Carolina, made the point of no quorum.

The Speaker pro tempore,[8] having counted the House, announced that 151 Members were present—not a quorum.

Then Mr. John F. Lacey, of Iowa, asked unanimous consent that the gentleman from South Carolina be permitted to withdraw the point of no quorum.

The Speaker pro tempore said that he had counted the House and found no quorum present, and the gentleman from South Carolina could not withdraw the point.

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[1] David B. Henderson, of Iowa, Speaker.

[2] Third session Fifty-eighth Congress, Record, p. 600.

[3] Joseph G. Cannon, of Illinois, Speaker.

[4] Second session Forty-seventh Congress, Journal, p. 134; Record, p. 631.

[5] See sec. 1310 of Vol. II of this work for this rule.

[6] Horace F. Page, of California, Speaker pro tempore.

[7] Second session Fifty-fourth Congress, Record, p. 1077.

[8] Sereno, E. Payne, of New York, Speaker pro tempore.

2929. On May 3, 1898,[1] the House was considering the bill (S. 1133) to pay the claim of the Richmond Locomotive and Machine Works, and the previous question having been demanded, there appeared 43 ayes and 35 noes.

Mr. William H. Moody, of Massachusetts, made the point of no quorum.

The Speaker,[2] having counted the House, announced the presence of 132 Members-not a quorum.

Mr. Charles S. Hartman, of Montana, rising to a parliamentary inquiry, asked:

Would it be in order now to submit this proposition for unanimous consent: That the point of "no quorum" be withdrawn, that the ordering of the previous question be vacated, and that at the end of twenty minutes' debate, ten minutes of which shall be controlled by the gentleman from Massachusetts, the previous question may be considered as ordered.

The Speaker said:

That would not be in order now, it appearing that there is not a quorum present.

2930. On February 2, 1900,[3] at a Friday evening session, the absence of a quorum had been announced and a call of the House had been ordered.

Mr. John J. Gardner, of New Jersey, asked unanimous consent that the point of no quorum might be withdrawn and that the record of the proceedings relating to the absence of the quorum be expunged, so that the House might proceed to business.

The Speaker pro tempore [4] said:

The record shows that there is not a quorum of the House present. Until a quorum is disclosed the House can take no action except to adjourn or to adopt measures for securing the attendance of a quorum.

2931. On February 28, 1907,[5] the question was taken on the engrossment and third reading of the bill (H.R. 22543) granting to the town of Pawnee, in Pawnee County, Okla., certain lands for park, educational, and other purposes, when there appeared on division, ayes 70, noes 10.

Mr. Thaddeus M. Mahon, of Pennsylvania, made the point of order that there was not a quorum present.

The Speaker,[6] after inspection of the House, declared that as there was not a quorum present, the doors would be closed and the roll called under section 4 of Rule XV.

During the call of the roll Mr. Mahon asked unanimous consent that the roll call be dispensed with and the point of no quorum be withdrawn.

The Speaker pro tempore [7] said:

The Chair is of the opinion and is advised that such a disposition of the matter in the middle of the roll call is not permissible under the rules of the House, and therefore the roll call will proceed. * * * The Chair will state that it will take the House to decide the matter now pending, and it is now developed that the House is not present. The roll call is proceeding to determine whether or not the House is present. As soon as that condition is developed, then it will be for the House to take such action as it desires.

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[1] Second session Fifty-fifth Congress, Record, pp. 4529, 4530.

[2] Thomas B. Reed, of Maine, Speaker.

[3] First session Fifty-sixth Congress, Record, p. 1465.

[4] John F. Lacey, of Iowa, Speaker pro tempore.

[5] Second session Fifty-ninth Congress, Record, pp. 4303–4305.

[6] Joseph G. Cannon, of Illinois, Speaker.

[7] Adin B. Capron, of Rhode Island, Speaker pro tempore.

2932. It is necessary that a quorum be present in order for business to be transacted; but when the quorum is present a vote is valid although those participating are less than the quorum.

If a quorum be present it is not necessary that a quorum actually participate in a vote by tellers on seconding a motion to suspend the rules.

Mr. Speaker Reed held in 1890 that it was the function of the Speaker to determine in such manner as he should deem accurate and suitable the presence of quorum.

On February 17, 1890,[1] Mr. John W. Candler, of Massachusetts, by direction of the World's Fair Committee, moved to suspend the rules and pass a resolution making the bills H.R. 6883 and 6884 special orders.

A second being demanded, the Speaker appointed, tellers, who reported yeas 114, nays 8, voting thereon.

Mr. C.B. Kilgore, of Texas, made the point of order that no quorum had voted.[2]

The Speaker (after counting the House) announced that 172 Members were present in the Hall, and there being a quorum present, the said motion to suspend the rules was seconded.

Mr. Benton McMillin, of Tennessee, made the point of order that the rule prescribed the method of ascertaining the presence or absence of a quorum and of determining whether or not a majority of the House voted on a motion to second the demand for a suspension of the rules.

After debate on the point of order, the Speaker[3] overruled the same on the following grounds:

The provision of the rule, second clause of the twenty-eighth rule, is somewhat peculiar. It provides that a motion to suspend the rules shall, before being submitted to the House, be seconded by a majority by tellers.

Perhaps a, very proper construction might be that those who passed between the tellers axe alone to be considered in the determination of the question of a second, it being immaterial whether or not a quorum expressed an opinion or were present, were it not for the fact that a quorum must be present at all times in order to transact business. Therefore, the question before the House is a question very much like that which has been passed upon already repeatedly by the House of Representatives.

Under the Constitution of the United States it is necessary that a quorum, or a majority of the Members, shall be present in order to transact the public business. Whether it is necessary for them to act or not is a point in dispute. Since that question has come up in the House the matter has been discussed from one end of the country to the other, resulting in a display of precedents and in judgments of courts which can leave no doubt in the mind of anyone who has examined them. The courts of very many of the States and the legislatures of very many of the States have taken that course in regard to the matter, so far as the principle and practice are concerned, which has been indorsed by the House of Representatives.

We must, therefore, in this House at least, consider the question settled, that if a majority are present to do business, their presence is all that is required in order to make a quorum. If they decline to vote, their inaction can not be in the pathway of the action of those who do their duty. The idea

[1] First session Fifty-first Congress, Journal, p. 243; Record, p. 1415.

[2] On January 27, 1875 (second session Forty-third Congress, Record, p. 786), Mr. Speaker Blaine had ruled that when on a vote by tellers less than a quorum voted, the Chair must take notice of the lack of a quorum as well as on a yea and nay vote; but this must be regarded as an extreme ruling, since the figures of a vote by tellers are not recorded in the Journal (first session Thirty-fourth Congress, Globe, p. 1418), and even under the usages of that time a quorum would naturally be assumed to be present, as on a viva voce vote or a division.

[3] Thomas B. Reed, of Maine, Speaker.

that silence can be stronger than a negative vote seems to have been unknown to our ancestors. It seems to be a modern parliamentary fiction which has never been able to stand the examination of courts where business questions were involved. I have yet to see a single decision of a court against the position which has been lately taken by the House of Representatives.

The only question, then, remaining is one of detail: By what method shall the presence of a quorum be ascertained? I think an examination of all the books of parliamentary practice will show that it has been the custom from time immemorial for the presiding officer to determine, in such manner as he deems accurate and suitable, the presence of a quorum. The rules of this House contain nothing derogatory, not to that power, for it is not a power in his hands; it is merely the performance of his duty. He can do it by a count which satisfies him, or, if it is seriously questioned, as it has not been in this case, the fact can be ascertained by other methods.

In truth, in the earlier days of the House of Representatives the determination of a vote was made even by tellers differently from what it is now, there being two tellers to take the affirmative and two other tellers to take the negative vote. If it be suggested that evil is likely to follow from any misconduct on the part of the person who counts, the answer is very simple. It is that whatever officer is intrusted with the duty of taking a count, whether of a vote or of the presence of a quorum, is liable to the same objection, and that objection, which is inherent in all human affairs, is not to prevent action, which always proceeds upon the assumption of the right performance by public officers of their public duties.

Moreover, in the House of Representatives a correction of any material mistake is made very ready and very simple, because if any number of Members, equal to or exceeding one-fifth, have doubt in regard to the transaction, they have the right to demand the yeas and nays upon the passage of the bill, or upon questions arising. Under those circumstances it seems that there can no evil follow from the practice. If Members who are present and who are silent desire to record themselves against a measure they have full opportunity to do so. In this case the Chair had repeatedly counted the House during the vote, and after the voting had ceased and before it was announced, and therefore, being satisfied that a constitutional quorum was present to do business, the Chair announces that the yeas are 114 and the nays 8, and that the motion has been seconded.[1]

2933. When a count of the House on division discloses a lack of a quorum the pending business is suspended.—In Section XLI of his Manual Mr. Jefferson has the following rule, derived from the practice of Parliament:

When from counting the House on a division it appears that there is not a quorum the matter continues exactly in the state in which it was before the division and must be resumed at that point on any future day.

2934. The failure of a quorum necessitates the suspension of even the most highly privileged business.—On July 3, 1890,[2] the House was considering the conference report on the District of Columbia appropriation bin, when, on a division by tellers, there were 83 yeas and 4 nays.

Mr. Thomas J. Clunie, of California, made the point of no quorum.

The Speaker thereupon counted the House and announced the presence of 133 Members.

Then Mr. Joseph G. Cannon, of Illinois, moved that the House adjourn.

Mr. Louis E. McComas, of Maryland, made the point of order that the motion to adjourn did not take precedence over the vote on a conference report.

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[1] An illustration of the extent to which obstruction went under the old theory that only those voting could be counted for the quorum was given on May 17, 1878 (second session Forty-fifth Congress, Record, p. 3522), during a prolonged contest over a proposition to investigate the Presidential election of 1876. Mr. Eugene Hale, of Maine, was appointed a teller on a vote wherein the remaining Members of the side which he represented were declining to vote. When the vote was announced he was reported as casting the solitary negative vote. He protested that he did not vote, and the attempt to count him was given up. So he could not figure, in making up the quorum, although present, acting, and protesting.

[2] First session Fifty-first Congress, Journal, p. 827; Record, p. 6973.

The Speaker [1] overruled the point of order, a quorum not being present.

2935. According to the earlier and later practice of the House the presence of a quorum is necessary during debate and other business.—On June 30, 1898,[2] the motion to adjourn had been negatived by a yea-and-nay vote, on which a quorum had not appeared of record.

The reading of the bill which the House had voted to consider (H. R. 10807) relating to the International American Bank was then about to proceed, when Mr. John W. Maddox, of Georgia, made this point of order:

While I know it is not necessary to have a quorum on a motion to adjourn, I raise this point: If a roll call develops that there is no quorum, can we go on with business? I make the point of no quorum present now, and that the bill can not be read.

After debate, the Speaker [1] said:

The question which has been raised by the gentleman from Georgia, Mr. Maddox, is a question which has been a somewhat troublesome one in the House of Representatives on account of the provision in the Constitution which requires one more than one-half of the Members of the House to constitute a quorum. I think it has been for a long time the custom of the House to regard that as a matter to be determined by the record, as "closed by the preceding vote, when that vote requires a quorum.

The present occupant of the Chair recollects that the question was raised in the Fifty-first Congress, and he thinks that the Journal shows a ruling upon the subject as having been made by him, which ruling is incorrectly stated in the Journal. The Record shows very well how the question came up. The then Member from Kentucky, Mr. Breckinridge, having made the point of no quorum just as the Speaker was putting a question to the House, the Speaker said, "That will be determined by the vote," and put the question. The Journal states the decision to be general that the point of no quorum "could only be raised when that fact was established by a division." As Will be seen by the Record of second session Fifty-first Congress, page 1631, no such ruling was made.[3]

Mr. Crisp ruled upon the question that under the practice of the House a Member having been recognized could not be taken off the floor upon the point of no quorum.[4]

"The Speaker hold that under the practice of the House a Member having been recognized could not be taken off the floor upon the point of no quorum, and that after the reading and approval of the Journal the failure of a quorum is only taken notice of when the same is disclosed from the vote upon some question or upon a call of the House."

The Chair does not think that is parliamentary law, although it might be an answer to the gentleman from Georgia. He thinks a quorum of the House is necessary to do business; although perhaps such a quorum may not necessarily be in the Hall itself of the House at the time. The House consists not only of the Hall of the House, but of the cloakrooms and the lobby in the rear as well.

The Chair does not see how the requirement that a majority of Members shall be present to do business can be dispensed with. Such demands for a quorum can not, however, be used for delay only. As there may be some doubt if a quorum is present now, the Chair will proceed to see if there is a quorum present in the House. [After having counted the House.] One hundred and eighty Members are present—a quorum. The clerk will read.[5]

2936. On June 13, 1840,[6] Mr. Levi Lincoln, of Massachusetts, called attention to the impropriety of debate proceeding without a quorum, and a call of the House was ordered.

2937. On March 7, 1838,[1] during the debate in Committee of the Whole on an appropriation bill, Mr. John Reed, of Massachusetts, said he had some remarks to make, but there was no House to make them to. The Chair then appointed tellers

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[1] Thomas B. Reed, of, Maine, Speaker.

[2] Second session Fifty-fifth Congress, Record, p. 6557.

[3] See section 2940 of this chapter.

[4] See section 2941 of this chapter.

[5] Jefferson's Manual, See. VI, provides " * * * whenever, during business, it is observed that a quorum is not present, any Member may call for the House to be counted, and being found deficient, business is suspended."

[6] First session Twenty-sixth Congress, Globe, p. 462.

to count the House, when it was found that there were but 72 Members in their seats—not a quorum. So the committee rose and reported the fact to the House.

2938. On February 24, 1875,[2] the Speaker,[3] in the course of a decision, said:

If any gentleman raises the question that business is proceeding without the presence of a quorum, it is within the competence of the Chair to decide that a quorum is present; and he will not allow the business of the House to be interrupted by any dilatory proceeding. He assumes the responsibility for that purpose of declaring that a quorum is present, because no business can proceed without a quorum. Even a gentleman speaking is entitled to have a quorum present. If the point be raised, a gentleman addressing the Chair may be taken off the floor by any Member raising the point that no quorum is present.

2939. On February 12, 1877,[4] a question of order was raised that debate could not proceed without a quorum.

In the course of the discussion of the question Mr. Nathaniel P. Banks, of Massachusetts, a former Speaker, said:

If any Member states that a quorum is not present, the Speaker counts the House, as he is bound to do, and if a quorum is found not to be present, business is suspended and a motion for a call of the House may be made.

The Speaker[5] said: "The House is not a House without a quorum," and the debate was not permitted to proceed.

2940. On Wednesday, January 21, 1891,[6] the Journal of the proceedings of yesterday's sitting having been read, and the question being on its approval,

Mr. William McKinley, jr., of Ohio, demanded the previous question, when Mr. W. C. P. Breckinridge, of Kentucky, made the point of order that no quorum was present.

The Speaker[7] ruled that the point of order that no quorum was present could only be raised when that fact was established by a division.[8]

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[1] Second session Twenty-fifth Congress, Globe, p. 224.

[2] Second session Forty-third Congress, Record, p. 1733.

[3] James G. Blaine, of Maine, Speaker.

[4] Second session Forty-fourth Congress, Record, pp. 1488, 1489.

[5] Samuel J. Randall, of Pennsylvania, Speaker.

[6] Second session Fifty-First Congress, Journal, p. 102; Record, p. 1630.

[7] Thomas B. Reed, of Maine, Speaker.

[8] The actual transaction is recorded as follows in the Record:

Mr. McKinley. Mr. Speaker——

The Speaker. The gentleman from Ohio [Mr. McKinley] is recognized.

Mr. Breckinridge, of Kentucky. I raise the question of order——

Mr. McKinley. I move the previous question.

Mr. Breckinridge, of Kentucky (continuing). That there is no quorum in the House to do business.

The Speaker. The gentleman from Ohio [Mr. McKinley] moves the previous question.

Mr. Breckinridge, of Kentucky. I raise the question of order that there is no quorum present.

The Speaker. That will be determined by the vote. As any as are in favor of ordering the previous question will say "aye."

2941. On April 12, 1894,[1] the Journal of the proceedings of the previous day was read and approved.

Mr. Thomas C. Catchings, of Mississippi, from the Committee on Rules, submitted a privileged report from the Committee on Rules.

Before the report was read, Mr. Julius C. Burrows, of Michigan, made the point that no quorum was present.

The Speaker[2] held that, under the practice of the House, a Member having been recognized could not be taken off the floor upon a point of no quorum, and that after the reading and approving of the Journal the failure of a quorum is only taken notice of when the same is disclosed upon a vote on some question or upon a call of the House.[3]

2942. On January 3, 1901,[4] Mr. Marlin E. Olmsted, of Pennsylvania, presented, as involving a question of privilege, a resolution relating to the basis of representation of the several States in the House of Representatives and the electoral college.

While the Clerk was reading the resolution, Mr. James D. Richardson, of Tennessee, made the point of order that the resolution was not privileged.

The Chair had responded that he could not determine until the resolution had been read, when Mr. Oscar W. Underwood, of Alabama, made the point that there was no quorum in the House.

The Speaker[5] at once announced that he would count, and after counting announced the number present, not a quorum.

2943. On January 4, 1901,[6] Mr. Marlin E. Olmsted, of Pennsylvania, had addressed the Speaker, presumably for the purpose of calling up a pending measure, when Mr. Oscar W. Underwood, of Alabama, made the point of order that there was no quorum present.

The Speaker pro tempore[7] at once counted the House.

2944. On January 28, 1901,[8] Mr. Joseph W. Babcock, of Wisconsin, called up the motion to reconsider a vote of the House recommitting the bill (H. R. 13660) relating to the Washington Gaslight Company, and for other purposes.

Mr. William P. Hepburn, of Iowa, made the point of order that no quorum was present.

Mr. Babcock raised the question that there had been no vote taken on which to determine whether or not a quorum was present.

The Speaker pro tempore[9] said:

> The point being made that there is no quorum present, the Chair will ascertain the fact by count.

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[1] Second session Fifty-third Congress, Journal, pp. 326, 327.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] This ruling represents a practice of the House at the time the theory prevailed that the only method of ascertaining the presence of a quorum was by the record of the vote. That theory having been overturned, the related theory that the failure of a quorum may be taken notice of only when a vote discloses it naturally falls also, and the House returns to the older practice.

[4] Second session Fifty-sixth Congress, Journal, pp. 81, 82; Record, pp. 517–520.

[5] David B. Henderson, of Iowa, Speaker.

[6] Second session Fifty-sixth Congress, Record, p. 553.

[7] John Dalzell, of Pennsylvania, Speaker pro tempore.

[8] Second session Fifty-sixth Congress, Record, p. 1577.

[9] William H. Moody, of Massachusetts, Speaker pro tempore.

2945. May 12, 1902,[1] while the bill (H. R. 13405) "authorizing the Washington Gaslight, Company to purchase the Georgetown Gaslight Company, and for other purposes," was under debate, in Committee of the Whole House on the state of the Union, Mr. John W. Gaines, of Tennessee, made the point of order that no quorum was present.

Mr. John J. Jenkins made the point of order that there was no requirement that a quorum should be present during debate.

The Chairman[2] said:

> The Chairman will state to the gentleman from Wisconsin that a quorum is necessary at all times.

The Chairman then proceeded to count the committee.

2946. On May 28, 1902,[3] while the Committee of the Whole House on the state of the Union was considering the bill (H. R. 12704) to increase the subsidiary silver coinage, and during general debate, Mr. Charles F. Cochran on two occasions raised the question of order that no quorum was present.

In each case the Chairman[4] entertained the point of order, and counted the committee.

2947. On February 24, 1903,[5] during the reading of the report of the Committee of Elections No. 2 in the contested-election case of Wagoner *v.* Butler, Mr. Oscar W. Underwood, of Alabama, made the point of order that a quorum was not present.

The Speaker[6] entertained the point of order, and having counted found less than a quorum present.

Thereupon a call of the House was ordered.

2948. On the Calendar day of April 28, 1904[7] (the legislative day of April 26), the House was considering the bill (H. R. 12273) granting authority to the President, in his discretion, to appoint certain midshipmen to the naval service.

Mr. John F. Lacey, of Iowa, had been recognized and was proceeding in debate, when Mr. John W. Maddox, of Georgia, made the point of order that there was no quorum present.

Mr. Lacey objected that he might not be taken off his feet by the point of no quorum.

The Speaker pro tempore[8] entertained the point of order and counted the House.

2949. On May 3, 1906,[9] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, Mr. George E. Foss, of Illinois, having the floor in general debate.

Mr. John S. Williams, of Mississippi, interrupting while Mr. Foss still had the floor, made the point that there was no quorum present.

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[1] First session Fifty-seventh Congress, Record, p. 5328.

[2] Kittredge Haskins, of Vermont, Chairman.

[3] First session Fifty-seventh Congress, Record, pp. 6057, 6059.

[4] James A. Tawney, of Minnesota, Chairman.

[5] Second session Fifty-seventh Congress, Record, p. 2589.

[6] David B. Henderson, of Iowa, Speaker.

[7] Second session Fifty-eighth Congress, Record, p. 5839.

[8] Marlin E. Olmsted, of Pennsylvania, Speaker pro tempore.

[9] First session Fifty-ninth Congress, Record, p. 6330.

Mr. J. Warren Keifer, of Ohio, said:

Mr. Chairman, I make the point of order that the gentleman from Illinois in charge of the bill has the floor, making a speech, and the distinguished gentleman from Mississippi is not entitled to take him off the floor.

After debate the Chairman [1] held:

The Chair is of opinion that a question of order involving the presence of a quorum may be raised, and the Chair will count to ascertain whether a quorum is present.

2950. A quorum not being present, no motion is in order but for a call of the House or to adjourn.—On February 5, 1846,[2] the House was in Committee of the Whole House on the state of the Union, considering joint resolution (No. 5) of notice to Great Britain to "annul and abrogate" the convention between Great Britain and the United States of the 6th of August, 1827, relative to the country "on the northwest coast of America, westward of the Stony Mountains," commonly called Oregon. Finding itself without a quorum, the committee rose. A motion to adjourn having been decided in the negative, on motion of Mr. George W. Jones, of Tennessee, a call of the House was ordered; and the roll having been called as far as the name of Stephen Adams, of Mississippi, a motion was made by Mr. Robert B. Rhett, of South Carolina, that further proceedings in the call be dispensed with. And the question being put, it was decided in the affirmative.

A motion was made by Mr. Howell Cobb, of Georgia, that the House take a recess until 7.30 o'clock.

Mr. Robert C. Winthrop, of Massachusetts, raised the question of order that, a quorum of Members not being present, it was not competent for the Chair to entertain a motion for a recess.

The Speaker [3] decided that, it appearing from the record that there was not a quorum present, no motion was in order except for a call of the House or to adjourn.

In this decision the House acquiesced.

2951. The absence of a quorum having been disclosed, the only proceedings in order are the motions to adjourn or for a call of the House; and not even by unanimous consent may business proceed.—On May 24, 1872,[4] the House, while considering the bill of the Senate (No. 569) for the relief of Thomas B. Wallace, of Lexington, Mo., found itself without a quorum on the vote on the passage of the bill. A call of the House was ordered, and then a motion to adjourn was defeated, a yea and nay vote being had on each of these motions.

At this point Mr. James A. Garfield, of Ohio, proposed that by unanimous consent further proceedings under the call be dispensed with, and that the bill be acted on by a rising vote, on the assumption that a quorum was present.

The Speaker pro tempore [5] said:

The vote upon the passage of this bill by yeas and nays has disclosed the fact that there is not a quorum in the House. The House thereby becomes constitutionally disqualified to do further business,

[1] Edgar D. Crumpacker, of Indiana, Chairman.

[2] First session Twenty-ninth Congress, Journal, p. 355.

[3] John W. Davis, of Indiana, Speaker.

[4] Second session Forty-second Congress, Globe, p. 3855.

[5] Clarkson N. Potter, of New York, Speaker pro tempore.

except that business which the Constitution authorizes the House to do when a quorum is not present, to adjourn, or to order a call of the House, and the proceedings in respect to that bill fell, and the bill, should there be a quorum in the House, must again come before the House for its passage.

2952. The absence of a quorum having been disclosed, there must be a quorum of record before the House may proceed to business.—On February 28, 1849,[1] at an evening session, Mr. Caleb B. Smith, of Indiana, moved a resolution to close debate in Committee of the Whole on a bill to establish the Territorial government of New Mexico.

On this motion the question stood, ayes 41, noes 64, no quorum voting. On a motion for a call of the House no quorum voted.

Mr. Samuel F. Vinton, of Ohio, proposed that by common consent they go into committee and take up the amendments of the Senate to the Indian appropriation bill.

The Speaker[2] said the Chair was obliged to state to the gentleman from Ohio that the last two votes showed that there was no quorum present. There must be a quorum of record before the House could proceed to business.

2953. On February 11, 1901,[3] Mr. James D. Richardson, of Tennessee, moved that the House adjourn. The yeas and nays being demanded and ordered, there appeared, yeas 59, nays 80, answering present, 6.

The result being announced, Mr. William S. Knox, of Massachusetts, announced his purpose to call up a report of the Committee of the Whole House on the state of the Union, in relation to an occurrence in the committee.

The Speaker said:

The Chair, however, is compelled to take cognizance of the fact that the House is without a quorum and not in a position to do business.

2954. The absence of a quorum being disclosed, a motion to fix the day to which the House shall adjourn may not be entertained.

A motion which was by the rules more highly privileged than the motion to adjourn was not entertained after an affirmative vote on a motion to adjourn.

On February 21, 1894[4] no quorum appearing, Mr. Richard P. Bland, of Missouri, moved that the House do now adjourn, pending which motion, Mr. J. Fred C. Talbott, of Maryland, moved that when the House adjourn to-day it be to meet on Friday next.

The Speaker[5] declined to entertain the motion of Mr. Talbott, for the reason that a quorum was required to decide it, the roll of the last preceding vote not having disclosed a quorum.

The question being put, Will the House adjourn? it was decided in the affirmative, yeas 141, nays 107.

Before the result of the foregoing vote was announced, Mr. Julius C. Burrows, of Michigan, moved that when the House adjourn to-day it be to meet on Friday next.

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[1] Second session Thirtieth Congress, Globe, p. 624.

[2] Robert C. Winthrop, of Massachusetts, Speaker.

[3] Second session Fifty-sixth Congress, Record, pp. 2286, 2287.

[4] Second session Fifty-third Congress, Journal, p. 188.

[5] Charles F. Crisp, of Georgia, Speaker.

The Speaker declined to entertain the motion, holding as follows:

When the Chair announces the result of this vote two things will appear, one is that there is a quorum present, and the other that the House has decided to adjourn. The record will not disclose the presence of a quorum until at the same moment it discloses that that quorum has decided to adjourn. On this question 141 have voted in the affirmative and 107 in the negative. The ayes have it, and the House stands adjourned until to-morrow at 12 o'clock.[1]

2955. When less than a quorum is present a motion for a recess is not in order.—On February 13, 1847,[2] a motion was made that the House resolve itself into Committee of the Whole House on the state of the Union. On this motion no quorum voted. A motion to adjourn having then been decided in the negative, Mr. Howell Cobb, of Georgia, moved that the House take a recess until Monday morning next at 9 o'clock.

After debate on this motion the Speaker[3] decided that a motion to take a recess was not in order, it appearing from the record that there was no quorum present.

2956. On February 5, 1846,[4] a quorum of Members not being present, Mr. Howell Cobb, of Georgia, moved that the House take a recess until half past seven o'clock.

Mr. Robert C. Winthrop, of Massachusetts, raised the question of order that, a quorum not being present, it was not competent for the Chair to entertain a motion for a recess.

The Speaker[3] decided that, it appearing from the record that there was not a quorum present, no motion was in order except for a call of the House or to adjourn.

The House acquiesced in this decision.

2957. On July 1, 1898,[5] Mr. Sereno E. Payne, of New York, moved that the House take a recess until 8 o'clock.

Mr. Eugene F. Loud, of California, made the point of order that the last vote had shown no quorum.

The Speaker pro tempore[6] decided that he could not entertain the motion when the point of no quorum had been made.

2958. Less than a quorum may not determine to take a recess, even by unanimous consent.—On March 3, 1853,[7] Mr. James H. Duncan, of Massachusetts, moved that the rules be suspended so as to enable him to move that the resolution of the Senate (No. 79) "in amendment of a joint resolution relating to the duties of inspectors of steamers, approved January, 7, 1853," be taken from the Speaker's table; which motion was disagreed to, two-thirds not voting in favor thereof.

Mr. Fayette McMullen, of Virginia, moved that the House take a recess until 6 o'clock p. m.

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[1] Under the rules as they existed at that time the motion to fix the day to which the House should adjourn had precedence of a motion to adjourn. (See sec. 5301 of Vol. V of this work.)

[2] Second session Twenty-ninth Congress, Journal, p. 343; Globe, p. 421.

[3] John W. Davis, of Indiana, Speaker.

[4] First session Twenty-ninth Congress, Journal, pp. 355, 356; Globe, p. 318.

[5] Second session Fifty-fifth Congress, Record, p. 6602.

[6] John Dalzell, of Pennsylvania, Speaker pro tempore.

[7] Second session Thirty-second Congress, Journal, p. 388.

Pending this, Mr. Frederick S. Martin, of New York, moved a call of the House, which motion was disagreed to.

The question then recurred on the motion of Mr. McMullen, and it being put, no quorum voted.

Mr. McMullen made the point of order that, a majority having voted affirmatively upon his motion for a recess, it was not necessary that a quorum should have voted, and consequently that the House had determined to take a recess.

The Speaker pro tempore [1] overruled the point of order, and decided that less than a quorum could not determine the question as to whether the House should take a recess.

Mr. Robert Toombs, of Georgia, appealed, but the motion for a recess being subsequently withdrawn, the appeal fell.

2959. On February 21, 1893,[2] the absence of a quorum having been disclosed, Mr. Charles J. Boatner, of Louisiana, asked unanimous consent that a recess be taken until to-morrow at 10:55 o'clock a. m.

The Speaker [3] declined to entertain the proposition, holding that the last roll can having disclosed the fact that a quorum was not present, and it not having since appeared that a quorum was present, a recess could not be taken, even by unanimous consent.

2960. On February 18, 1884,[4] the House was considering a resolution to make a bill relating to pensions for soldiers of the Mexican war a special order, when the absence of a quorum was disclosed on a vote by tellers.

A motion having been made that the House take a recess, Mr. Thomas B. Reed, of Maine, made the point of order that there was no quorum.

The Speaker [5] said:

> It will not preclude the taking of a vote on the recess, but a quorum will be required.

A motion to adjourn was then made and took precedence of the motion for a recess.

2961. The assumption that a quorum was present when the House acted being uncontradicted by the Journal, it may not be overthrown by expressions of opinion by Members individually.—On January 6, 1893,[6] the the House proceeded to the consideration of the bill (H. R. 6649) to extend the provisions of an act to provide for the muster and pay of certain officers and enlisted men of the volunteer forces, which was heretofore postponed and made a special order for the day.

The bill having been engrossed and read the third time, Mr. C. B. Kilgore, of Texas, made the point of order that when the order was made postponing the consideration of the bill until to-day, it appeared, from statements of Members on the floor, that no quorum was present in the House, and that therefore the order of postponement was void.

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[1] Charles E. Stuart, of Michigan, Speaker pro tempore.

[2] Second session Fifty-second Congress, Journal, p. 105.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] First session Forty-eighth Congress, Record, p. 1217.

[5] John G. Carlisle, of Kentucky, Speaker.

[6] Second session Fifty-second Congress, Journal, p. 33; Record, p. 380.

The Speaker[1] overruled the point of order on the ground that when the order was made the absence of a quorum was not disclosed by any proceeding in the House and did not appear in the Journal of the House, and that the statements of Members on the subject were merely expressions of their individual opinions.

2962. The absence of a quorum should appear from the Journal if a legislative act is to be vacated for such reason.—On June 9, 1856,[2] Mr. George W. Jones, of Tennessee, moved that the Journal of the preceding legislative day be amended by striking out the notice of a bill filed by Mr. Edwards, there being no quorum present on that day.[3]

It was objected in opposition to this motion that the Journal of that day did not show the absence of a quorum; but Mr. Jones urged that it was a matter of common knowledge that there was no quorum present. This was not denied.

Various attempts to dispose of the motion were made, but failed for lack of a quorum until June 20, when Mr. Jones's motion was laid on the table, yeas 89, nays 38.

2963. When a vote taken by yeas and nays shows that no quorum has voted it is the duty of the Chair to take notice of that fact.—On June 5, 1884,[4] the House having under consideration a bill forfeiting certain land grants, the yeas and nays were ordered and taken on the passage of the bill. After the vote had been taken the Speaker[5] announced that no quorum had voted and that the bill had not passed.

Upon the question being made by Mr. Poindexter Dunn, of Arkansas, that no Member had made the point that a quorum had not voted, the Speaker decided that when a vote was taken by yeas and nays it would be entered on the Journal of the House, and it was the duty of the Chair to take notice of the fact that a quorum had not voted and that the bill had not passed by a constitutional vote.

2964. The previous question having been ordered on a bill by unanimous consent in the absence of a quorum, the Speaker on the next day ruled that the action was null and void.—On February 19, 1873,[6] pending the demand for the previous question on the bill of the House (No. 2354) to provide for the recomputation of the accounts between the United States and the several States growing out of moneys expended by the States in the war of 1812, a quorum failed to vote and a call of the House was ordered. After the roll had been called, the doors closed, and excuses offered, on motion of Mr. Leonard Myers, of Pennsylvania, by unanimous consent, this order was agreed to.

Ordered, That all further proceedings under the call be dispensed with, that the previous question shall be considered as seconded, and the main question ordered, upon the bill of the House (H. R. 2354) to provide for the recomputation of the accounts between the United States and the several States growing out of moneys expended by said States in the war of 1812, and that the House shall now adjourn.

The House accordingly, at 12 o'clock m., adjourned.

On the next day, the Journal having been read, Mr. Nathaniel P. Banks, of Massachusetts, made the point of order that the main question on the bill of the

[1] Charles F. Crisp, of Georgia, Speaker.

[2] First session Thirty-fourth Congress, Journal, pp. 1079, 1095; Globe, pp. 1379, 1427.

[3] Formerly bills were introduced by leave, and a previous notice was required.

[4] First session Forty-eighth Congress, Journal, p. 1385.

[5] John G. Carlisle, of Kentucky, Speaker.

[6] Third session Forty-second Congress, Journal, p. 447; Globe, p. 1518.

House (No. 2354), having been ordered while the doors were closed, and, as appeared from the Journal, while less than a quorum was present, the order should be treated as a nullity.

The Speaker sustained the point of order, and in this decision of the Chair the House acquiesced.

The Speaker,[1] in ruling, said:

It is obviously impossible under the rule to do that. Here was the demonstrated, recorded fact that one hundred and forty gentlemen, more than one-half the whole number of Members, were absent from the Hall. The doors were closed. There was no presumption possible by which the presence of a quorum could be inferred. And the gentleman from Massachusetts, Mr. Banks, raises an appropriate point of order, that it is impossible the House could perform a legislative act, under the rules, in the absence of a quorum. Aside from the obvious propriety of the matter, the rule is very distinct upon that point. It is not in order for the House even to take a recess during a call of the House, and indeed no motion except to adjourn, or with reference to the call, is ever entertained during a call. It was no more competent for the hundred gentlemen in the Hall to give their assent to the previous question than it was for them to pass an appropriation bill or do anything else of a legislative character. Therefore the Chair would rule on the point made by the gentleman from Massachusetts that the bill, on which the previous question was ordered merely by a minority of the House, is not before the House.

2965. The hour fixed by the rules for a recess having arrived, the Speaker declares the House in recess, although less than a quorum may be present.—On Friday, August 8, 1890,[2] the House was voting by yeas and nays on the passage of a resolution reported from the Committee on Rules for fixing a time for the consideration of the Indian appropriation bill, when the hour of 5 p. m. arrived.

The roll call having been completed, the Speaker[3] stated that no quorum had voted; but that under the rule 4 the House would take a recess until 8 p. m.

2966. When a quorum falls in Committee of the Whole the roll is called and the committee rises and reports.

The quorum of the Committee of the Whole is 100.

Form and history of section 2 of Rule XXIII.

Section 2 of Rule XXIII provides—

Whenever a Committee of the Whole House or of the Whole House on the state of the Union finds itself without a quorum, which shall consist of 100 Members, the Chairman shall cause the roll to be called and thereupon the committee shall rise, and the Chairman shall report the names of the absentees to the House, which shall be entered on the Journal; but if on such call a quorum shall appear, the committee shall thereupon resume its sitting without further order of the House.

It was the early practice of the Committee of the Whole to rise when it found itself without a quorum,[5] and on December 18, 1847,[6] this rule was adopted:

Whenever the Committee of the Whole on the state of the Union, or the Committee of the Whole House, finds itself without a quorum, the Chairman shall cause a roll of the House to be called, and thereupon the committee shall rise and the Chairman shall report the names of the absentees to the House, which shall be entered on the Journal.

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[1] James G. Blaine, of Maine, Speaker. When the order was made, on February 19, Mr. Luke P. Poland, of Vermont, was in the chair.

[2] First session Fifty-first Congress, Journal, p. 934; Record, p. 8352.

[3] Thomas B. Reed, of Maine, Speaker.

[4] Section 2 of Rule XXVI; see section 3281 of this volume.

[5] Section 2977 of this chapter.

[6] Globe, first session Thirtieth Congress, p. 47.

This was rule No. 106 when the rules were revised in 1880. The Committee on Rules then reported the old rule with a few changes. They omitted the words "the Committee of the Whole on the state of the Union, or."[1] In the revision of 1890 these words were in substance restored; and the important addition was made of the clause fixing the quorum at 100 Members.[2] Previous to that time the quorum of the Committee of the Whole had been held in practice to be the same as that of the House. In the Fifty-second and Fifty-third Congresses the quorum was restored to its old number, but again in the Fifty-fourth and succeeding Congresses the quorum of 100 was restored.[3] The last clause of the rule providing that if a quorum shall appear on the call of the roll the committee shall thereupon resume its sitting was adopted in the revision of 1880, being declaratory of what had been the practice.

2967. On the failure of a quorum in Committee of the Whole the roll is called but once.—On March 9, 1894,[4] the Committee of the Whole having risen, because of the failure of a quorum, Mr. Charles J. Boatner, of Louisiana, suggested that the roll of Members had only been called once in the committee and that under the practice of the House it should have been called a second time. He therefore demanded that the Journal should show that he was present when the roll of the committee was called.

The Speakers[5] held that when a Committee of the Whole finds itself without a quorum the rule requires the roll to be called but once, and that such had been the practice of the House.

2968. When a Committee of the Whole rises and reports the lack of a quorum, the sitting of the committee is resumed upon the appearance of a quorum.—On March 23, 1842,[6] the Committee of the Whole House on the state of the Union having risen for want of a quorum, and a quorum having subsequently appeared on the vote on a motion to adjourn, a motion was made by Mr. Henry A. Wise, of Virginia, that there be a call of the House.

The Speaker[7] decided that, as the Committee of the Whole on the state of the Union had risen for the want of a quorum, and for no other reason, and as a quorum was now present (as was shown by a vote just taken), it was not in order to move a call, and that the regular course of proceeding was to resume the Committee of the Whole on the state of the Union.

Mr. John Quincy Adams, of Massachusetts, took an appeal, and the Chair was sustained on March 24. And so it was decided that when a Committee of the Whole House shall rise and report that it finds itself without a quorum, and upon a vote or

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[1] Congressional Record, second session Forty-sixth Congress, p. 206.

[2] House Report No. 23, first session Fifty-first Congress.

[3] As early as January 13, 1846 (first session Twenty-ninth Congress, Journal, p. 243), Mr. Joseph R. Ingersoll, of Pennsylvania, proposed, and the House instructed the Committee on Rules to consider, the power and expediency of reducing the number of Members necessary for a quorum in Committee of the Whole. And on February 4, 1887 (second session Forty-ninth Congress, Journal, p. 489; Record, p. 1363), Mr. James B. McCreary, of Kentucky, proposed 100 as a quorum; but nothing came of the suggestion.

[4] Second session Fifty-third Congress, Journal, p. 237; Record, p. 2798.

[5] Charles F. Crisp, of Georgia, Speaker.

[6] Second session Twenty-seventh Congress, Journal, p. 589; Globe, p. 350.

[7] John White, of Kentucky, Speaker.

count of the House immediately thereafter it shall be ascertained that a quorum is present, it is not then in order to move a call of the House, but that the Committee of the Whole must be immediately resumed.

2969. When the roll, which is called in Committee of the Whole when a quorum fails, shows that a quorum responded, the Speaker directs the committee to resume its session, although less than a quorum may have appeared on an intervening motion to adjourn.

When the Committee of the Whole, for supposed lack of a quorum, rises and reports a roll call, a motion to adjourn may be admitted before the Speaker, on information of a quorum, directs the committee to resume its sitting.

On February 15, 1881,[1] the House being in Committee of the Whole House on the state of the Union considering the river and harbor bill, and on an amendment offered by Mr. Nelson W. Aldrich, of Rhode Island, less than a quorum having voted, it was moved that the committee rise. This motion having been defeated, the Chairman ordered the roll to be called, under the rule. The roll having been called over, the names of the absentees were then called.

The committee then rose, and, the Speaker pro tempore having taken the chair, the Chairman reported that the Committee of the Whole House on the state of the Union had had under consideration the river and harbor appropriation bill, and finding itself without a quorum, he had, under the rule, directed the roll to be called, and now reported the names of those Members who had failed to answer.

The Speaker pro tempore[2] then announced:

> The Committee of the Whole House on the state of the Union having found itself without a quorum, in obedience to the rule the roll of members was called, and the committee rose and its Chairman reported to the House the names of those not responding when called. A quorum having appeared, there is nothing now for the Chair to do except to announce that the Committee of the Whole will resume its session upon the river and harbor appropriation bill, unless there be made a motion that the House now adjourn.

Mr. Edward K. Valentine, of Nebraska, moved that the House adjourn. This motion was negatived, 81 noes to 38 ayes.

Mr. John Van Voorhis, of New York, made the point that no quorum had voted.

The Speaker pro tempore said:

> A quorum is not needed to determine the question on a motion to adjourn. The call of the roll, upon the completion of which the Committee of the Whole rose, indicated the presence of a quorum. Under the rule the Committee of the Whole will now resume its session.

The Committee of the Whole accordingly resumed its session.

2970. Where the report of absentees by the Committee of the Whole, after a call of the roll, discloses a quorum of the committee but not of the House, the Speaker, nevertheless, directs the committee to resume its sitting.

In counting to ascertain the presence of a quorum, the Chair counts all Members in sight, whether in the cloakrooms or within the bar.

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[1] Third session Forty-sixth Congress, Record, pp. 1628, 1629.

[2] Joseph C. S. Blackburn, of Kentucky, Speaker pro tempore.

On February 21, 1907,[1] during proceedings in Committee of the Whole House on the state of the Union, Mr. John S. Williams, of Mississippi, made the point of order that a quorum was not present.

The Chairman[2] proceeded to count, whereupon Mr. James A. Tawney, of Minnesota, asked if Members in the cloakrooms might not be counted.

The Chairman replied:

The Chair has counted the head of every Member looking out of the cloakrooms that is visible, and the Chair finds 80 Members present; not a quorum.

Thereupon the Chairman directed the roll to be called under the rule, and at the conclusion of the call the committee rose, and the Speaker having taken the chair, the Chairman reported the names of the absentees, 268 in all.

The Speaker[3] having received the report, announced that it appeared that a quorum of the Committee of the Whole House on the state of the Union was present, and that the committee would resume its session.[4]

2971. A Committee of the Whole finding itself without a quorum, and the roll having been called, rose and made a report showing a quorum of the committee but not of the House; whereupon the Speaker directed that the committee resume its sitting.

While the Committee of the Whole is dividing on a motion, a new motion may not be made.

On February 27, 1905,[5] the bill (S. 3343) to authorize the Anacostia, Surrattsville and Brandywine Electric Railway Company to extend its street railway in the District of Columbia was under consideration in Committee of the Whole House on the state of the Union, when Mr. Joseph W. Babcock, of Wisconsin, moved that the committee rise and report the bill with a favorable recommendation.

The failure of a quorum being demonstrated on this vote, the roll was called under the rule, and the committee rose and reported the names of the absentees.

The Speaker[3] said:

The Chairman of the Committee of the 'Whole House on the state of the Union reports that that committee found itself without a quorum, and reports the names of the absentees, which will be entered upon the Journal. The roll shows 139, a quorum, and the committee will resume its session.[6]

The Chairman of the Committee of the Whole said, after the committee had resumed its sitting:

The question now is on the motion made by the gentleman from Wisconsin [Mr. Babcock], that the committee do now rise and report the bill to the House with amendments, with a favorable recommendation.

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[1] Second session Fifty-ninth Congress, Record, pp. 3571, 3572.

[2] James E. Watson, of Indiana, Chairman.

[3] Joseph G. Cannon, of Illinois, Speaker.

[4] It is to be noted that as 190 was a quorum of the House, and 268 were absent, there was not present a quorum of the House when the Speaker made the announcement. But as there was a quorum of the Committee of the Whole, the return to the committee seemed to fulfill the intent of the rule, although at the time that rule was framed the quorum of the Committee of the Whole was the same as the quorum of the House.

[5] Third session Fifty-eighth Congress, Record, pp. 3530, 3531.

[6] The number reported, 139, was a quorum of the Committee of the Whole, although not of the House.

Mr. Charles L. Bartlett, of Georgia, said:

Mr. Chairman, I desire to offer a motion as a substitute for the motion of the gentleman from Wisconsin. I move that the committee rise and report the bill back to the House with the recommendation that it do lie on the table.

Mr. Babcock said:

Mr. Chairman, I make the point of order that the committee has already divided upon the motion that I made to rise with a favorable recommendation.

The Chairman: [1]

The committee was dividing on the motion of the gentleman from Wisconsin at the time the fact of no quorum was developed. The Chair is inclined to think that the motion of the gentleman from Georgia is too late. * * * The Chair understands the gentleman, but the fact that no quorum was present made that vote that was taken null. It did not nullify the proceedings up to that point, and the fact that the committee was divided, so that we now come back to the point where we divided upon the motion which had been made by the gentleman from Wisconsin. But, aside from that, the gentleman from Georgia [Mr. Bartlett] realizes that if the motion of the gentleman from Wisconsin is negative, it amounts to the same thing as if his motion were affirmative, and the tellers having been ordered on this vote the gentleman from Wisconsin [Mr. Babcock] and the gentleman from Georgia [Mr. Bartlett] will take their places as tellers.

2972. A Committee of the Whole, rising without a quorum, may not report the bills it has acted on.

The passage of a bill by the House is not invalidated by the fact that the Committee of the Whole reported it on an erroneous supposition that a record vote had disclosed a quorum.

On May 29, 1858,[2] the Committee of the Whole House rose, and the Chairman reported that it had had under consideration the Private Calendar, and finding itself without a quorum he had directed the roll to be called and the names of the absentees to be reported to the House. Thereupon the Speaker announced that only 110 Members had answered to their names.

This not being a quorum, a motion was made to adjourn, and on this motion the Speaker announced 32 yeas and 96 nays, a quorum voting.

The motion to adjourn being decided in the negative, and a quorum being announced as present, the committee resumed its session.

The Committee of the Whole House thereupon voted to rise and report to the House certain bills which it had laid aside with a favorable recommendation.

Thereupon the committee rose, the bills were reported, and passed by the House.

Later in the day the Speaker called the attention of the House to the fact that upon the call of the yeas and nays on the question of adjournment the Clerk had made a mistake of 10 votes in counting, and that in reality a quorum was not present.

A question arose as to the proper course of procedure, and the Speaker [3] held that the bills, having been passed by a quorum in the House, had been properly passed.

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

[2] First session Thirty-fifth Congress, Journal, p. 971; Globe, pp. 2523 2524.

[3] James L. Orr, of South Carolina, Speaker.

As to the difficulty of the record vote showing no quorum it was obviated by the following entry in the Journal:

After the foregoing result was declared several other Members appeared, and a quorum being present, etc.

2973. On June 24, 1842,[1] the Committee of the Whole House was considering bills on the Private Calendar, and had laid aside three to be reported favorably, when a motion was made that the committee rise. On this vote there were ayes 57, noes 48, no quorum voting.

The committee rose, according to the vote, and the Chairman[2] reported to the House the three bills acted on favorably by the committee.

Mr. John Quincy Adams, of Massachusetts, raised the point of order that it was not competent for the committee to report bills when there was no quorum.

The Chairman thereupon stated that it was through inadvertence that the bills were reported, and he begged leave to amend his report, which he did, stating that the Committee of the Whole House, finding itself without a quorum, had risen.[3]

2974. The Committee of the Whole having voted to rise after a point of no quorum had been made but before the Chair had ascertained, the bills which the committee had acted on were reported to the House.

No quorum being present when a vote is taken in Committee of the Whole, that vote is not made valid by the fact that the roll call, prescribed by rule when a quorum fails in committee, discloses a quorum present.

On January 31, 1896,[4] the Committee of the Whole House was considering the bill (H. R. 995) granting a pension to Kate A. Pitman. The question being taken upon an amendment, there were 14 ayes and 66 noes.

The point of no quorum being made, it appeared on the count of the Chairman that no quorum was present. Therefore he ordered the roll to be called, whereupon the committee rose, and, the Speaker pro tempore having resumed the chair, Mr. Hepburn, as Chairman of the Committee of the Whole, reported that, the committee having found itself without a quorum, he had directed the roll to be called and that the Clerk would report the names of absentees.

The roll call having disclosed the presence of 104 Members, a quorum, the Committee of the Whole at once resumed its sitting.

The Chairman then announced that the question was upon the amendment, whereupon Messrs. G. C. Crowther, of Missouri, and Joseph H. Walker, of Massachusetts, raised the point of order that the question on the amendment had been settled.

The Chairman[5] overruled the point of order, on the ground that the count disclosed no quorum when the vote was taken, and while the roll call disclosed the presence of a quorum now it did not disclose the presence of one then.

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[1] Second session Twenty-seventh Congress, Journal, p. 1010; Globe, p. 680.

[2] John C. Clark, of New York, Chairman.

[3] It should be noted that under the present practice the mere fact that a quorum does not vote is not accepted as conclusive as to the presence of a quorum.

[4] First session Fifty-fourth Congress, Record, p. 1195.

[5] William P. Hepburn, of Iowa, Chairman.

The question on the amendment being again taken, there were 10 ayes, 69 noes,

Mr. W. Jasper Talbert, of South Carolina, made the point of no quorum.

Mr. John A. Pickler, of South Dakota, then moved that the committee rise. which was agreed to. The committee accordingly rose; and Mr. Sereno E. Payne, of New York, having resumed the chair as Speaker pro tempore, Mr. Hepburn reported that the Committee of the Whole, having had under consideration the bill (H. R. 2800) to pension Martha Brooks, had directed that it be reported to the House with a favorable recommendation; and that the committee, having also had under consideration the bill (H. R. 952) granting a pension to Susan B. Wright, had directed that it be reported to the House with an amendment and with the recommendation that as amended the bill be passed.

2975. The presence of a quorum is not necessary for a motion that the Committee of the Whole rise.—On February 15, 1881,[1] the House was in the Committee of the Whole House on the state of the union, considering the river and harbor appropriation bill.

Mr. E. B. Finley, of Ohio, moved that the committee rise, and on a division on this question there were ayes 35, noes 91.

Mr. John Van Voorhis, of New York, made the point of order that no quorum had voted.

The Chairman[2] ruled:

The Chair will now decide this point of order, as it is now presented directly. The point of order made is, that it is necessary to have a quorum in order that the committee may rise. The Chair will decide, and in accordance with a large vote of this House in Committee of the Whole during the last session of this Congress, that a quorum is not necessary to rise; which decision the Chair has here before him.

2976. On August 6, 1890,[3] the House was in Committee of the Whole House on the state of the Union, considering the general deficiency appropriation bill.

Mr. Joseph H. Outhwaite, of Ohio, moved that the committee rise. Upon a division there were 30 ayes and 52 noes, so the committee determined not to rise.

Mr. John H. Rogers, of Arkansas, made the point of no quorum.

The Chairman[4] ruled:

On a motion that the committee rise it is not necessary that a quorum should be present. It is tantamount to a motion to adjourn, and a quorum is not necessary on such a motion.

2977. Early practice of the House on the failure of a quorum in Committee of the Whole.

Under a former rule the Chair, in counting the House, might not count Members without the bar. (Footnote.)

Early instance of obstruction caused by Members refusing to vote in order to break a quorum.

Instance wherein a chairman, disregarding the vote of the Committee of the Whole, rose and reported the absence of a quorum. (Footnote.)

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[1] Third session Forty-sixth Congress, Record, p. 1628.

[2] John G. Carlisle, of Kentucky, Chairman.

[3] First session Fifty-first Congress, Record, p. 8249.

[4] Lewis E. Payson, of Illinois, Chairman.

On March 24, 1840,[1] the House being in Committee of the Whole considering the bill (H. R. 18) to provide for issuing Treasury notes, Mr. Daniel D. Barnard, of New York, moved that the committee rise. On a vote by tellers there were 10 in the affirmative and 85 in the negative, "the Whig members generally, sub silentio, refusing to vote." A quorum not having voted, Mr. George C. Dromigoole, of Virginia, said that he was under the impression that there was a quorum present, and he would therefore inquire if it was in order to have a count of the Members who were within the bar.[2]

The Chairman[3] said that as a quorum had not voted, the committee must rise and report that fact to the House. The yeas and nays could not be taken in committee, and there was no way of ascertaining whether a quorum was present but by an actual count.

A question arose as to whether, a quorum not appearing, the committee should rise by order of the Chairman, or by a vote, on motion. The Chair thought that, the quorum failing, the committee must rise and report.[4] Under decision of the Chair the committee rose and reported to the House that there was no quorum voting.[5] In the House a quorum appeared, and again the House resolved itself into committee. Immediately, before any business had been transacted, a motion was made that the committee rise. On this motion there were 11 ayes and 92 noes, the Whigs again generally refusing to vote.

Mr. George M. Keim, of Pennsylvania, asked for an actual count of the committee, and Mr. David Petrikin, of Pennsylvania, made the point that it was the duty of the Chair to make the count. Mr. Aaron Vanderpoel, of New York, thought it very important to settle the question, as the idea was not to be tolerated that the Committee of the Whole was powerless, and it was not to be pretended that when a quorum was sitting about the Chairman could not count.

The Chairman, being thus called on to make a count, said he had ascertained that under a former decision of the House he had the power to count, but he would observe that when he should do so, and announce the result, it was very questionable whether the Members could be compelled to vote. He would now proceed to count those within the bar.

As he began to count the Whigs generally retreated without the bar. A quorum not being found within the bar, the committee rose.

During further proceedings on this day, a quorum not voting in the committee, the Chairman counted and reported that there were 129 Members present, but said

[1] First session Twenty-sixth Congress, Globe, pp. 285, 286, 288.

[2] At that time Rule 36 provided that "upon a division and count of the House on any question, no Member without the bar shall be counted." This distinction is now abolished. Under the present practice the Chairman counts the committee to ascertain the presence of a quorum if the vote does not show a quorum.

[3] William C. Dawson, of Georgia, Chairman.

[4] On June 13, 1840 (1st sess. 26th Cong., Globe, p. 462), the Committee of the Whole, under such circumstances, refused by vote to rise; but the Chairman (Mr. Lynn Banks, of Virginia), rose and reported the fact of no quorum to the House.

[5] Earlier reports in similar cases were that the Committee of the Whole, "finding that a quorum was not present, had risen." (See instance on February 19, 1829, 2d sess. 20th Cong., Journal, p. 310.)

that he could not act otherwise than to have the committee rise and report that on a division there was no quorum.

2978. On April 22, 1834,[1] the House was considering in Committee of the Whole House on the state of the Union the bill (H. R. 283) making appropriations for the civil and diplomatic expenses of the Government for the year 1834, when a motion for the committee to rise was decided in the negative, ayes 37, noes 78. This being less than a quorum[2] the Chairman rose and reported the fact to the House.

Mr. George Evans, of Maine, moved an adjournment, which motion, on a call of the yeas and nays, was decided in the negative, yeas 53, nays 87.

This vote having developed the fact that a quorum was present, and thereupon the chairman of the Committee of the Whole resumed the chair of the committee.

Mr. John Quincy Adams, of Massachusetts, announcing that he intended to move a call of the House, moved that the committee rise. The vote being taken, there were ayes 26, noes 80.

The vote showing the absence of a quorum, the Chairman[3] again rose and reported the fact to the House.

Mr. Adams moved an adjournment, and the yeas and nays being taken on that motion, there were yeas 39, nays 86, a quorum voting.

Mr. Adams thereupon moved a call of the House.

The Speaker pro tempore[4] said that as a quorum had appeared, he considered it his duty to resign, and that the House would resolve itself into Committee of the Whole House on the state of the Union, in which they had been when the committee rose to report the fact that there was not a quorum in attendance. This procedure was in accordance with the practice of the House.

On the succeeding day, April 23, by a motion to amend the Journal, Mr. Adams brought this proceeding into review. After debate the motion to amend the Journal was laid on the table.

2979. On January 4, 1809,[5] the Committee of the Whole having risen without a quorum, the Chairman could not report, but on the succeeding day, a quorum of the House being present, reported that on the day before "the committee found themselves without a quorum and thereby dissolved." The resolution which the, committee had under discussion was ordered by the House to lie on the table.

On February 13, 1809,[6] the Committee of the Whole rose without a quorum, and the chairman reported that fact to the Speaker.

But the House, without any ascertainment as to the presence of a quorum, resolved itself into Committee of the Whole to consider another bill.

On March 1,[7] in a similar case, the House adjourned.

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[1] First session Twenty-third Congress, Journal, pp. 552–554; Debates, pp. 3757–3770.

[2] The quorum of the Committee of the Whole was then the same as in the House.

[3] Henry Hubbard, of New Hampshire, Chairman.

[4] Jesse Speight, of North Carolina, Chairman.

[5] Second session Tenth Congress, Journal, pp. 439, 441 (Gales and Seaton ed.); Annals, pp. 980, 982.

[6] Journal, p. 521

[7] Journal, p. 577.

Chapter LXXXVI.

THE CALL OF THE HOUSE.

1. **Provision of the Constitution for compelling the presence of a quorum. Sections 2980, 2981.**
2. **The older rule for procuring a quorum. Sections 2982–2984.**
3. **House may under all circumstances compel attendance of absent Members. Sections 2985–2990.**
4. **The roll call. Sections 2991–2993.**
5. **Motions in order during a call. Sections 2994–2999.**
6. **Leaves of absence and excuses. Sections 3000–3007.**
7. **Procedure during a call. Sections 3008–3012.[1]**
8. **Arrest of Members. Sections 3013–3023.[2]**
9. **Continuing orders of arrest. Sections 3024–3035.**
10. **Dispensing with proceedings under call. Sections 3036–3040.**
11. **The later rule combining the vote with a call. Sections 3041, 3042.**
12. **Arrest of Members and Speaker's warrant. Sections 3043–3049.[3]**
13. **Motions and procedure under later rule. Sections 3050–3052.**
14. **Application to vote on seconding a motion to suspend the rules. Sections 3053–3055.**

2980. A smaller number than a quorum may adjourn from day to day and compel the attendance of absent Members.

Reference to proceedings in the Senate to compel attendance of absentees. (Footnote.)

The Constitution of the United States provides, in Article I, section 5, that—

> A majority of each [House] shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.[4]

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[1] Questions of privilege during. Section 2545 of Vol. III. Reception of messages in absence of quorum. Section 6600 of Vol. V.

[2] Doorkeeper arraigned for permitting escape of Member under arrest. Section 291 of Vol. I.

[3] Warrant issued on order of House. Section 287 of Vol. I.

[4] The House, by sections 2 and 4 of Rule XV (see secs. 2982 and 3041 of this chapter) has provided for compelling attendance of absent Members. The Senate has a rule (sec. 3 of Rule V) which permits a majority of those present to "direct the Sergeant-at-Arms to request, and, when necessary, to compel the attendance of the absent Senators." On February 24, 1879 (third session Forty-fifth Congress, Record, p. 1856), the Senate was proceeding to order its Sergeant-at-Arms to compel the attendance of absent Senators and use all necessary means for that purpose, when a quorum appeared. On February 23, 1871 (third session Forty-first Congress, Globe, p. 1592), the Senate debated at length its rule for

2981. A call of the House is in order both under the general parliamentary law and the Constitution.—On December 26, 1855,[1] before the election of a Speaker or the adoption of rules, Mr. Emerson Etheridge, of Tennessee, moved that there be a call of the House.

Mr. Thomas S. Bocock, of Virginia, made the point of order that there was no such motion known to the parliamentary law.

The Clerk[2] said:

According to the parliamentary law, in a call of the House each Member rises in his place as he is called, and the absentees are then the only ones noticed. The Clerk thinks that the motion is also in order under the Constitution of the United States.

On this occasion the motion was withdrawn, but later, on December 26, before the election of Speaker or adoption of rules, a call of the House was ordered and had.

Again, on January 16, 1856[3] while the House still continued disorganized, no Speaker having been elected, the Clerk held a motion for a call of the House in order, after the demand for the previous question, on the ground that they were acting, not under the rules of the House but under the parliamentary law, and that the motion for a call of the House was in order both under that law and under the Constitution, which made the motion a privileged question.

2982. The old rule providing for a call of the House.

In the absence of a quorum, fifteen Members, including the Speaker, if there be one, are authorized to compel the attendance of absent Members.

Form of warrant for the arrest of absent Members under the old rule for a call of the House. (Footnote.)

Form and history of section 2 of Rule XV.

Until the adoption of section 4 of Rule XV the[4] only rule for procuring the attendance of Members was section 2 of Rule XV, which is as follows:

In the absence of a quorum, fifteen Members, including the Speaker, if there is one, shall be authorized to compel the attendance of absent Members, and in all calls of the House the doors shall be closed, the names of the Members shall be called by the Clerk, and the absentees noted; and those for whom no sufficient excuse is made may, by order of a majority of those present, be sent for and arrested, wherever they may be found, by officers to be appointed by the Sergeant-at-Arms for that

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securing attendance of absentees. On February 23, 1883 (second session Forty-seventh Congress, Record, pp. 3178–3186), the Senate considered a proposition to compel the attendance of absent Senators, a Cabinet officer at whose house several were dining having denied admission to the officer of the Senate who was sent to "request" the attendance of absentees.

In the Senate it seems to have been held that under the Constitution there is no power to compel the attendance of absentees except at the first meeting of the Senate, and that for subsequent meetings the power must be given by a rule, as in the House. See statement of Senator Fessenden on May 4, 1864. (First session Thirty-eighth Congress, Globe, p. 2089.)

On January 15 and 17, 1877, the Senate, in the course of the revision of its rules, debated at length a rule to compel the attendance of absent Senators, especially with reference to the provision of the Constitution on that subject. (Second session Forty-fourth Congress, Record, pp. 622, 690.)

[1] First session Thirty-fourth Congress, Journal, p. 183; Globe, p. 79.

[2] John W. Forney, Clerk.

[3] Globe, p. 235.

[4] See sec. 3041 of this chapter.

purpose, and their attendance secured and retained,[1] and the House shall determine upon what condition they shall be discharged. Members who voluntarily appear shall, unless the House otherwise direct, be immediately admitted to the Hall of the House, and they shall report their names to the Clerk to be entered upon the Journal as present.

This rule, which has not been satisfactory when a determined attempt has been made to break a quorum,[2] is now used in cases where the lack of a quorum is developed in other ways than by a vote, and where a quorum fails on a vote on which no quorum is required. The first form of the rule dates from the First Congress. On April 7, 1789,[3] this rule was adopted:

Any fifteen members (including the Speaker, if there be one) shall be authorized to compel the attendance of absent Members.

On April 13, 1789,[4] this rule was adopted:

Upon a call of the House, for which at least one day's notice shall be requisite, the names of the Members shall be called over by the Clerk, and the absentees noted, after which the names of the absentees shall be again called over; the doors shall then be shut, and those for whom no excuses, or insufficient excuses, are made, may, by order of the House, be taken into custody.

This rule seems to have required a vote of the House to arrest absent Members. It was changed on December 14, 1795,[5] to the form which was retained for many years and which was adopted with little change in the revision of 1880.[6] On

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[1] The form of warrant for the arrest of absent Members under this rule is as follows:

——— Congress, ——— session.
Congress of the United States.
IN THE HOUSE OF REPRESENTATIVES.

To ——— ———, Sergeant-at-Arms of the House of Representatives, or his deputies:

Whereas the House of Representatives has adopted the following order, viz: [Here follows the order, in form: "*Ordered,* That the Sergeant-at-Arms take into custody and bring to the bar of the House such of its Members as are found absent without leave or the House."]

And whereas, the following-named Members of the House are absent without its leave, to wit: [Here follows the names of Members.]

Now, therefore, I, ——— ———, Speaker ——— of the House of Representatives, by virtue of the power vested in me by the House, hereby command you to execute the said order of the House, by taking into custody and bringing to the bar of the House said above-named Members who are so absent without leave; hereof fail not, and make due return in what manner you execute the same.

In testimony whereof I have hereunto set my hand and caused to be affixed the seal of the House of Representatives of the United States, this the ——— day of ———, A. D. 190–.
[SEAL OF THE HOUSE OF REPRESENTATIVES.]

——— ———, *Speaker.*

Attest:

——— ———, Clerk.

The Sergeant-at-Arms, having arrested Members under a writ of the House, sometimes makes a written report. See instances on January 8, 1894, and February 22. (2d sess. 53d Cong., Journal, pp. 74, 192.)

[2] Under the practice a vote has been required to dispense with proceedings under this call, and while that vote would be taken the quorum would again vanish. The new rule prevents these tactics. See section 3041 of this chapter.

[3] First session First Congress, Journal, p. 10.

[4] First session First Congress, Journal, p. 13.

[5] Third and Fourth Congresses, Journal, p. 375 (Gales and Seaton ed.).

[6] Second session Forty-sixth Congress, Record, p. 206.

February 14, 1888,[1] the clause relating to Members who voluntarily appear was added, and in 1890 the provision regarding the closing of the doors was so changed that the doors should be closed before instead of after the call.

2983. Under the rule of the House a call of the House may not be ordered by less than fifteen Members.—On May 8, 1844,[2] the House at 5.35 p. m. took a recess until 7 p. m.

At 7 p. m. the Speaker took the chair and called the Members present to order.

A motion was made by Mr. Richard F. Simpson, of South Carolina, at 7.05 p. m. that the House do adjourn, which was decided in the negative.

Mr. George W. Hopkins, of Virginia, moved a call of the House.

The Speaker[3] said that, under the sixty-fifth rule,[4] less than fifteen Members could not compel the attendance of absent Members; and that number not being present, the motion could not be entertained.

2984. The call of the House must be ordered by a majority vote, and may not be ordered by a minority of fifteen or more.—On August 10, 1894,[5] Mr. Henry M. Baker, of New Hampshire, moved that there be a call of the House; and the question being taken on division, the yeas were 18 and the nays were 24.

The Speaker pro tempore[6] announced that the motion was disagreed to.

Mr. John Van Vorhis, of New York, made the point that under Rule XV, clause 2, fifteen or more Members may order a call of the House notwithstanding a majority vote against it.

The Speaker pro tempore overruled the point.

2985. The constitutional power of the House to compel the attendance of absent Members is not confined to cases wherein there is a lack of a quorum.—On April 28, 1892,[7] on a motion that the House adjourn, there were 17 yeas and 187 nays, a quorum voting. So the House refused to adjourn.

Mr. James H. Blount, of Georgia, then submitted the following:

Whereas there are a large number of Members absent from the House and the public business is delayed, the Sergeant-at-Arms is directed to bring in all absentees; and the proceedings in connection therewith shall be in accordance with Rule XV in cases where a call of the House is ordered; and all leaves of absence are hereby revoked, except for providential cause.

Mr. Christopher A. Bergen, of New Jersey, and Mr. Nelson Dingley, of Maine, respectively, submitted the questions of order:

Whether pursuant to clause 2 of Rule XV[8] the resolution just submitted by Mr. Blount was in order, the absence of a quorum not having been disclosed; and it is competent for the House to order

[1] It seems evident that in the early days the call was sometimes resorted to for the purpose of bringing in Members even when the point of no quorum had not been made. See instance on April 15, 1830, First session Twenty-first Congress, Journal, p. 537; Debates, p. 804. Indeed, on May 18, 1830, such an object was avowed by the mover, who said he wanted a full House for the decision of the pending question. (1st sess. 21st Cong., Debates, p. 1037.)

[2] First session Twenty-eighth Congress, Journal, p. 885.

[3] John W. Jones, of Virginia, Speaker.

[4] Now section 2 of Rule XV. (See sec. 2982 of this chapter.)

[5] Second session Fifty-third Congress, Journal, p. 559; Record, p. 8409.

[6] Elijah V. Brookshire, of Indiana, Speaker pro tempore.

[7] First session Fifty-second Congress, Journal, pp. 166, 167; Record, p. 3758.

[8] See sec. 2982.

the arrest of absent Members until there has been a call of the House under the rule, disclosing the names of the absentees.

The Speaker [1] replied that the majority of the House has the right, under the Constitution, to transact business, and it has the right to compel the attendance of absent Members. But inasmuch as the Constitution provides that less than a quorum can not transact business, unless there was a special exception in the Constitution permitting less than a majority to send for absentees, less than a majority could not do it. The expression of the idea that less than a majority can send for absent Members does not exclude the idea that a majority can transact business and can require the attendance of all Members of the House in order to do so.[2]

2986. On May 31, 1892,[3] the Committee of the Whole House on the state of the Union found itself without a quorum, and the roll was called under the rule. The committee then rose and the Chairman reported the names of the absentees.

It appearing that a quorum was present, the Speaker announced that the committee would resume its sitting, which it did.

Immediately, on motion made, the committee rose, and Mr. John A. Buchanan, of Virginia, reported that the committee having had under consideration the bill (H. R. 8224) had come to no resolution thereon.

Mr. John S. Henderson, of North Carolina, moved that there be a call of the House.

Mr. Julius C. Burrows, of Michigan, submitted the question of order whether, a quorum being present, it is in order to move a call of the House.

The Speaker[1] decided that the motion for a call of the House is in order although a quorum is shown to be present.

2987. On April 25, 1892,[4] the House voted by yeas, and nays on a motion made by Mr. Thomas B. Reed, of Maine, to lay on the table a resolution relating to alleged unparliamentary language used in a speech printed in the Congressional Record by Mr. Joseph H. Walker, of Massachusetts. A quorum failing to vote, a call of the House was ordered.

A quorum having been secured, Mr. James D. Richardson, of Tennessee, offered a resolution that "the Sergeant-at-Arms take into custody and bring to the bar of the House such of its Members as are now absent without leave of the House."

Mr. Charles A. Boutelle, of Maine, submitted the question of order, whether, under the rules of the House and under constitutional provisions, it is competent for the House to send for and compel the attendance of absent Members except in cases where it is developed that no quorum is present.

The Speaker [1] held that the House had the right to have every Member present; that if but one or two Members were absent it could send for them if it should desire.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] See also footnote to section 2982 of this chapter.

[3] First session Fifty-second Congress, Journal, p. 206;- Record, pp. 4881, 4882.

[4] First session Fifty-second Congress, Journal, p. 160; Record, pp. 3632, 3633.

2988. It is always in order, the failure of a quorum being shown, to proceed to secure the attendance of absent Members.

When a vote by yeas and nays shows no quorum, the House must take cognizance of the fact.

The lack of a quorum being disclosed, two motions only are in order—for a call of the House or to adjourn.

On April 4, 1888,[1] dilatory proceedings were going on in the House over the question of the refunding of the direct tax of 1861. There had been a call of the House, which had developed the presence of a quorum, and then, a motion to dispense with further proceedings under the call being made, it was agreed to by 122 yeas to 38 nays.

Mr. William C. Oates, of Alabama, then moved to reconsider the vote by which further proceedings under the call were dispensed with.

The question being taken by yeas and nays, the motion to reconsider was decided in the negative, 130 nays to 28 yeas.

The Speaker announced that there was not a quorum, whereupon Mr. Clifton R. Breckinridge, of Arkansas, moved that there be a call of the House.

Mr. Samuel Dibble, of South Carolina, made a point of order as follows:

> That the House having suspended proceedings under the call, and having refused to reconsider that vote, it would not be in order to renew the motion for a call of the House.

The Speaker[2] ruled:

> The Chair understands that, according to the practice and the rules of the House, when the roll call discloses the fact that no quorum is present, but two motions are in order—for a call of the House and to adjourn. The Chair does not think it required a quorum to determine the last vote taken, but the roll call disclosed the fact that no quorum is present. * * * When a vote is taken by yeas and nays that shows no quorum to be present, the House must take cognizance of the fact. * * * The Chair does not see how the House can, when the record of a vote shows that no quorum is present, transact any other business except to proceed to a call of the House or to adjourn. The proceedings to which the gentleman refers are also different from these. There the House had just refused to order a call. * * * The Chair thinks that it is always and necessarily in the power of the House to compel the attendance of its absent Members for the transaction of the public business. The last vote discloses the fact that no quorum is present, which fact the Chair thinks may be disclosed a dozen times during a legislative day, and yet it must be always in the power of the House, in the event of the absence of a quorum, to enforce the attendance of its Members. To deprive the House of that power would destroy its functions as a legislative body.

2989. There may be a call of the House with a Speaker pro tempore in the chair.—On April 3, 1876,[3] during a call of the House, it was ordered, on motion of Mr. Samuel J. Randall, of Pennsylvania, that the Sergeant-at-Arms take into custody and bring to the bar of the House such of its Members as were absent without leave.

Mr. George F. Hoar, of Massachusetts, made the point of order that there could be no call of the House unless there be a Speaker in the chair.

The Speaker pro tempore[4] overruled the point of order.

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[1] First session Fiftieth Congress, Record, pp. 2718, 2719.

[2] John G. Carlisle, of Kentucky, Speaker.

[3] First session Forty-fourth Congress, Journal, p. 740; Record, p. 2172.

[4] Samuel S. Cox, of New York, Speaker pro tempore.

Mr. Hoar having appealed, the appeal was laid on the table.

2990. A call of the House, ordered when no question is pending, is taken in the old form.—On January 28, 1901,[1] Mr. Joseph W. Babcock, of Wisconsin, called up the motion to reconsider the vote whereby the House recommitted the bill (H. R. 13660) relating to the Washington Gaslight Company, and for other purposes, and Mr. William P. Hepburn, of Iowa, made the point that there was no quorum present.

The Chair, having counted, announced 92 Members present—not a quorum.

Mr. Babcock, as a parliamentary inquiry, asked whether the question would be taken on the motion to reconsider at the same time with the call of the House.

The Speaker pro tempore[2] said:

The gentleman from Wisconsin stated his purpose to call up the motion to reconsider. The point was made by the gentleman from Iowa that a quorum was not present for the transaction of business. There was no motion then pending before the House, and therefore this call of the House is a call under the ordinary form.

2991. During proceedings under a call of the House the roll call may be repeated on order of those present.—On February 21, 1893,[3] during a call of the House, Mr. William D. Bynum, of Indiana, moved that there be a call of the roll to ascertain who of the Members were present and who were absent.

Mr. John M. Allen, of Mississippi, made the point of order that said motion was not in order.

The Speaker pro tempore[4] overruled the point of order.

The said motion of Mr. Bynum was then agreed to.

2992. On a call of the House the roll call may not be interrupted by a motion to dispense with further proceedings under the call.—On February 21, 1882,[5] a quorum having failed to vote, and a call of the House having been ordered, Mr. William H. Calkins, of Indiana, moved that the House adjourn.

This motion was disagreed to.

The Clerk thereupon proceeded to call the roll of Members, and called the first two names thereon, when Mr. George M. Robeson, of New Jersey, moved that the House adjourn.

The Speaker[6] held the motion to be not in order, on the ground that it was not in order to interrupt a roll call.

Then Mr. Robeson moved to dispense with further proceedings under the call.

The Speaker said:

You can not interrupt a roll call by such a motion.

2993. There is no rule or practice requiring a recapitulation of the names of those who appear on a call of the House after their names have been called.—On August 26, 1891,[7] the House had ordered a call of the House and the roll call had been completed.

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[1] Second session Fifty-sixth Congress, Record, p. 1577.

[2] William H. Moody, of Massachusetts, Speaker pro tempore.

[3] Second session Fifty-second Congress, Journal, p. 107; Record, p. 1990.

[4] Joseph W. Bailey, of Texas, Speaker pro tempore.

[5] First session Forty-seventh Congress, Journal, p. 641; Record, p. 1366.

[6] J. Warren Keifer, of Ohio, Speaker.

[7] First session Fifty-first Congress, Journal, p. 991; Record, p. 9184.

The Speaker pro tempore[1] having stated that the proceedings disclosed the presence of 178 members, more than a quorum,

Mr. William E. Mason, of Illinois, asked for the reading of the names of those noted by the Clerk as having appeared after their names were called.

The Speaker pro tempore overruled the request on the ground that there was no rule or practice requiring or authorizing the reading at the present time of such list, which, being kept by a sworn officer of the House, was supposed to be a true and accurate one.

2994. A quorum is not required on motions incidental to a call of the House.—On August 26, 1890,[2] a motion having been made to dispense with all further proceedings under the call, it resulted, on a roll call, yeas 127, nays 21.

Mr. William E. Mason, of Illinois, made the point of order that no quorum was present.

The Speaker pro tempore[1] overruled the said point of order on the ground that a quorum was not required on any motion or proposition touching a call of the House.

2995. A motion for a recess is not in order during a call of the House.—On April 27, 1840,[3] the House having under consideration the diplomatic appropriation bill, a quorum failed and a call of the House was in progress. During this call a motion was made that the House take a recess until 11 o'clock a. m. on Tuesday, the 28th instant of April.

A question was raised whether, pending a call, it is in order to take a recess.

The Speaker[4] decided that it was not in order to take a recess pending a call, unless it were by unanimous consent of those present.

From this decision Mr. Joel Holleman, of Virginia, appealed; and, on the question being put, the decision of the Chair was affirmed.

2996. On February 18, 1884,[5] during proceedings relating to a bill to pension soldiers of the Mexican war, a quorum failed. A call of the House was made, the Sergeant-at-Arms was instructed to arrest absent Members, and the doors were closed.

Pending this Mr. Goldsmith W. Hewitt, of Alabama, move that the House take a recess until 11 o'clock next day.

Mr. Frank Hiscock, of New York, made the point of order that the motion was not in order during a call of the House.

The Speaker[6] sustained the point of order on the ground stated, and the motion was not entertained.

2997. Under the old rule for a call of the House motions to excuse Members are in order while the roll is being called for excuses.—On April 12, 1894,[7] during proceedings under a call of the House, the roll being called for

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[1] Lewis E. Payson, of Illinois, Speaker pro tempore.

[2] First session Fifty-first Congress, Journal, p. 991; Record, p. 9183.

[3] First session Twenty-sixth Congress, Journal, p. 843; Record, p. 361.

[4] Robert M. T. Hunter, of Virginia, Speaker.

[5] First session Forty-eighth Congress, Journal, p. 618.

[6] John G. Carlisle, of Kentucky, Speaker.

[7] Second session Fifty-third Congress, Journal, pp. 326, 327; Record, p. 3703.

excuses, Mr. John H. Gear, of Iowa, moved that Mr. John A. T. Hull, of Iowa, be excused. A demand for the yeas and nays having been made on the question of excusing Mr. Hull, Mr. William M. Springer, of Illinois, made the point that the call of the absentees could not be interrupted by a motion to excuse and a roll call thereon.

After debate, the Speaker pro tempore [1] held that the call of the absentees was simply for the presentation of excuses pursuant to the rule; that it had been customary as a matter of convenience, to call such absentees in the alphabetical order of their names; and that the motion to excuse Mr. Hull must therefore be entertained.

2998. Under the old rule for a call of the House a motion to adjourn is in order in the midst of a call of the roll for excuses.—On January 6, 1894,[2] during a call of the House, as the roll was being called for excuses, when the name of Mr. George D. Perkins, of Iowa, was called, Mr. John A. T. Hull, of Iowa, moved that Mr. Perkins be excused from attendance, and the question being put it was decided in the affirmative, yeas 133, nays 117.

Mr. Thomas B. Reed, of Maine, thereupon moved that the House adjourn.

Mr. Benton McMillin, of Tennessee, submitted the question whether there was not an uncompleted roll call pending when the vote was taken on excusing Mr. Perkins and whether a motion to adjourn was in order until such incomplete roll call should be concluded.

The Speaker [3] held as follows:

The rule provides that when a call of the House is ordered the roll shall be called, that the doors shall then be closed, and that the House may, by order, send for those Members for whom no sufficient excuse is offered. As a, matter of practice it has been the custom, instead of having a number of gentlemen rising at the same time to offer excuses, to call the roll for excuses; but that is not a call of the roll in any such sense as when the roll is called for a vote. When the name of the gentleman from Iowa [Mr. Perkins] was reached, unanimous consent was asked that he be excused; that was objected to, and a motion to excuse him was made and submitted to the House, and that motion has been disposed of. The gentleman from Maine [Mr. Reed] now moves that the House adjourn. That motion, the Chair thinks, is in order pending a call of the roll for excuses.

2999. While the names of absentees are being called for excuses on a call of the House neither a motion to excuse nor an incidental appeal is debatable.—On July 28, 1892 [4] during a call of the House, while the absentees were being called for excuses, the name of Mr. Clarke Lewis, of Mississippi, was called. Mr. Joseph Wheeler, of Alabama, moved that he be excused from attendance, and demanded the right to debate his motion.

The Speaker pro tempore [5] held that debate was not in order on this motion at this time, and that the roll was being called for the presentation of excuses only.

Mr. Wheeler appealed from the decision of the Chair, and proposed to discuss the appeal.

The Speaker pro tempore said:

It is not debatable. The house is now proceeding under a call.

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[1] James D. Richardson, of Tennessee, Speaker pro tempore.

[2] Second session Fifty-third Congress, Journal, pp. 68, 69; Record, p. 512.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] First session Fifty-second Congress, Journal, p. 342; Record, p. 6904.

[5] Alexander M. Dockery, of Missouri, Speaker pro tempore.

The question then being put on the appeal, the decision of the Chair was sustained.

3000. During a call of the House less than a quorum may excuse a Member from attendance.—On February 6, 1893,[1] during a call of the House, Mr. John T. Heard, of Missouri, moved that Mr. Robert W. Fyan, of Missouri, be excused from attendance.

And the question being put thereon, and no quorum voting,

Mr. C. B. Kilgore, of Texas, made the point that a quorum was necessary to decide said motion.

The Speaker pro tempore[2] overruled the point of order, holding that a quorum was not required to excuse a Member from attendance pending a call of the House.

Mr. Kilgore appealed from the decision, and the question being put, "Shall the decision of the Chair stand as the judgment of the House?" it was decided in the affirmative.

3001. On January 8, 1897,[3] during a call of the House, several Members were arrested and brought to the bar of the House, where the Speaker pro tempore demanded of them severally what excuses they had to offer.

Mr. Fred A. Woodard, of North Carolina, having responded that he had no excuse, save that he had not thought his presence would be needed, Mr. John A. T. Hull, of Iowa, moved that he be excused.

Mr. Henry M. Baker, of New Hampshire, rising to a parliamentary inquiry, asked:

> Can the House excuse a Member when it finds itself without a quorum?

The Speaker pro tempore[4] said:

> The House has a right to do anything in the matter of procuring the attendance of a quorum, and this is a step in that direction. The gentleman is excused.

3002. While less than a quorum may excuse a Member from attendance at the time, they may not grant a leave of absence.—On April 12, 1894,[5] during a call of the House the Clerk was calling the names of absentees for the presentation of excuses. When the name of Mr. John A. T. Hull, of Iowa, was called Mr. John H. Gear, of Iowa, moved that he be excused for three days.

Mr. T. C. Catchings, of Mississippi, made the point that the failure of a quorum being disclosed, it was not in order to move to excuse a Member for more than one day, as provided in clause 2, Rule XV,[6] and that the excuse contemplated in the rule was an excuse for absence and not a leave of absence.

The Speaker pro tempore[7] sustained the point of order, and held that less than a quorum was not empowered to grant the leave of absence implied in the motion of Mr. Gear.

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[1] Second session Fifty-second Congress, Journal, p. 77; Record, p. 1259.

[2] Alexander M. Dockery, of Missouri, Speaker pro tempore.

[3] Second session Fifty-fourth Congress, Record, p. 606.

[4] Sereno E. Payne, of New York, Speaker pro tempore.

[5] Second session Fifty-third Congress, Journal, pp. 326, 327.

[6] See sec. 2982.

[7] James D. Richardson, of Tennessee, Speaker pro tempore.

3003. A resolution revoking leaves of absence, being a proceeding to compel the attendance of absent Members, does not require a quorum for its adoption.—On February 18, 1884,[1] the House having under consideration a bill granting pensions to certain soldiers of the Mexican war, a quorum having failed, but the House having refused to adjourn,

Mr. Albert S. Willis, of Kentucky, submitted the following resolution, which was read, considered, and agreed to (the yeas being 59 and the nays 22):

Resolved, That the leaves of absence heretofore granted Members of this House for the present legislative day be, and they are hereby, revoked, and the Sergeant-at-Arms is hereby instructed to notify them of this action of the House, and to request their immediate attendance.

Mr. Thomas B. Reed, of Maine, made the point of order that a quorum was required on the adoption of the resolution.

The Speaker[2] overruled the point of order on the ground that it was a proceeding to secure the attendance of absent Members, on which a quorum was not required.[3]

3004. On September 10, 1890,[1] Mr. N. P. Haugen, of Wisconsin, offered this resolution:

Resolved, That all leaves of absence heretofore granted, except on account of sickness, are hereby revoked, and the Sergeant-at-Arms is instructed to notify the absent Members by telegraph of the passage of this resolution.

The question being on agreeing to the resolution,

Mr. Charles T. O'Ferrall, of Virginia, made the point of order that it was not competent for less than a quorum to revoke leaves of absence granted by a full House or by a quorum.

The Speaker pro tempore[5] overruled the point of order for the following reasons:

It is not a new question. It has been presented in prior Congresses, and one particular occasion in the Forty-ninth Congress suggests itself to the present occupant of the chair. The proposition under discussion was the allowance of the French spoliation claims. A resolution similar to this was offered pending a call of the House and in the absence of a quorum, and Mr. Speaker Carlisle then decided, and several precedents were cited in support of the decision, that a resolution of this character is an incident to a call of the House.

Of course it is agreed on all hands that during the absence of a quorum no motion is in order except a motion to adjourn, a motion for a call of the House, or some motion which is incident to a call. Any resolution, the object of which is to secure a quorum that the business of the House may proceed in a parliamentary way, has been uniformly held to be in order; and that is precisely the character of the resolution offered by the gentleman from Wisconsin.

Mr. O'Ferrall appealed from the decision of the Chair,

The question being on the appeal, and being put,

"Shall the decision of the Chair stand as the judgment of the House?" It was decided in the affirmative, yeas 104, nays 16.

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[1] First session Forty-eighth Congress, Journal, p. 621.

[2] John G. Carlisle, of Kentucky, Speaker.

[3] Speaker pro tempore John H. Rogers, of Arkansas, held the same way in 1888. (First session Fiftieth Congress, Journal, p. 1571; Record, p. 2859.)

[4] First session Fifty-first Congress, Journal, p. 1031; Record, p. 9949.

[5] Lewis E. Payson, of Illinois, Speaker pro tempore.

3005. A resolution revoking leaves of absence and directing the Sergeant-at-Arms to telegraph for absent Members is in order pending a call of the House, although a quorum may have been disclosed.—On March 20, 1894,[1] during a call of the House, the Speaker announced the presence of 242 Members, more than a quorum. Then, before the proceedings under the call had been dispensed with, Mr. Josiah Patterson, of Tennessee, submitted the following resolution:

Resolved, That all leaves of absence, except for the sickness of the Member or in his family, be revoked, and that the Sergeant-at-Arms be directed to telegraph all Members absent without such leave and request them to return to Washington at once and attend the sessions of the House, in order that the public business may be transacted.

Mr. Thomas B. Reed, of Maine, submitted the point of order that a quorum having been disclosed, the resolution submitted by Mr. Patterson was not in order.

The Speaker[2] overruled the point of order and held that any resolution the object of which was to secure the attendance of absent Members was in order, pending proceedings under a call of the House.

3006. A resolution revoking leaves of absence, directing absentees to attend, and dispensing with proceedings under an existing call, was held to have precedence of a simple motion to dispense with the call.—On April 12, 1894,[3] during proceedings under a call of the House, and after a yea-and-nay vote had shown a quorum present, Mr. Thomas C. Catchings, of Mississippi, submitted a resolution providing that leaves of absence be revoked, that the Sergeant-at-Arms be directed to notify absent Members to attend, and that proceedings under the call be dispensed with.

Mr. Catchings, having called for the previous question on the resolution submitted by him, Mr. Thomas B. Reed, of Maine, moved to dispense with further proceedings under the call.

Mr. Joseph H. Outhwaite, of Ohio, made the point of order that the motion of Mr. Reed was not now in order.

The Speaker pro tempore[4] sustained the point of order, holding that the resolution submitted by Mr. Catchings, having for its object the securing of a quorum, took precedence over a motion to dispense with the proceedings under the call; also that the said resolution itself provided for dispensing with further proceedings under the call.

3007. On a motion for a call of the House a motion to excuse a Member from voting was held not in order, although the rule at that time permitted the motion generally.—On September 25, 1850,[5] the army appropriation bill being under consideration, a call of the House was moved by Mr. Jacob Thompson, of Mississippi.

Mr. George W. Jones, of Tennessee, moved that he be excused from voting thereon.

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[1] Second session Fifty-third Congress, Journal, pp. 256–258; Record, p. 3156.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] Second session Fifty-third Congress, Journal, pp. 330, 331; Record, pp. 3705, 3715.

[4] Benton McMillin, of Tennessee, Speaker pro tempore.

[5] First session Thirty-first Congress, Journal, p. 1538; Globe, p. 1970.

The Speaker[1] decided that the rule which authorized a Member to ask to be excused from voting did not extend the privilege to motions for a call of the House, and consequently that the motion was not in order.[2]

3008. During a call of the House a resolution construing the rule relating to the call or making a new rule is not in order.—On February 25, 1885,[3] during consideration of the river and harbor bill, a quorum having failed, a call of the House began.

Mr. John D. Long, of Massachusetts, rose to a question of personal privilege, and stated that he had been refused admission to the floor of the House by the doorkeeper, in violation of the rules of the House and of the privileges of its Members.[4]

Pending this, Mr. George E. Adams, of Illinois, submitted the following resolution:

Resolved, That it is the sense of the House that the rule requiring the doors to be closed upon a call of the House should not be so construed as to prevent Members from voluntarily returning to the Chamber, provided they are not under arrest by the Sergeant-at-Arms.

Mr. Albert S.Willis, of Kentucky, made the point of order that the resolution was not in order.

The Speaker[5] sustained the point of order, and the resolution was not received.

Mr. Adams thereupon modified the resolution so as to read as follows:

Resolved, That hereafter the order of the House that the doors be closed and absent Members be sent for shall not be so construed as to prevent Members not in arrest from voluntarily entering the Hall of the House.

The Speaker held the resolution to be not in order for consideration, except by unanimous consent, for the reason that it changed, or had the effect of changing, one of the standing rules of the House.

3009. Less than a quorum, engaged in a call of the House to compel attendance of absentees, may not order the record of any of the procedure to be omitted from the Journal.—On February 21, 1893,[6] during a call of the House, Mr. William H. Crain, of Texas, submitted the following resolution:

Resolved, That the motion to excuse Mr. Allen, of Mississippi, and all subsequent proceedings thereunder, and the remarks of the gentleman from Mississippi upon the excuse offered by the gentleman from Michigan [Mr. Stephenson], be expunged from the Journal and from the Record.

Mr. Jason B. Brown, of Indiana, made the point of order that the resolution was not in order.

The Speaker pro tempore[7] sustained the point of order, saying:

Against this motion of the gentleman from Texas, the gentleman from Indiana submitted the point of order that it is not competent for the House, less than a quorum being present, to expunge from the

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[1] Howell Cobb, of Georgia, Speaker.

[2] It was the old rule of the House that a Member might be excused from voting on motion made and decided without debate. This provision was abolished in 1890 as encouraging obstruction.

[3] Second session Forty-eighth Congress, Journal, p. 675; Record, pp. 2165, 2166.

[4] See section 2982 of this chapter.

[5] John G. Carlisle, of Kentucky, Speaker.

[6] Second session Fifty-second Congress, Journal, p. 107; Record, p. 1994.

[7] Joseph W. Bailey, of Texas, Speaker pro tempore.

Record or Journal of the House any of its proceedings. This seems to involve more than the simple power of the House over its Record. The resolution of the gentleman goes further and proposes to exclude matter from the Journal. That Journal is kept in accordance with a constitutional requirement and the Chair is of the opinion that less than a constitutional quorum of the House has no power whatever to expunge anything from it. Therefore the Chair decides that the point of order made by the gentleman from Indiana is well taken.

3010. The yeas and nays may be ordered during a call of the House.

An appeal from a decision of the Chair is in order during a call of the House.

On May 23, 1879,[1] during proceedings under a call of the House, the yeas and nays were demanded on a motion to adjourn.

Mr. Casey Young, of Tennessee, made the point of order that it was not in order to move for a call of the yeas and nays pending proceedings under a call.

The Speaker pro tempore[2] overruled the point of order, saying that the Constitution provided that the yeas and nays should be taken upon any question on the demand of one-fifth of the Members present.

Mr. Young, having asked if he might appeal from the ruling of the Chair, the Speaker pro tempore held: "It is in order for the gentleman to appeal."

The appeal having been taken, it was laid on the table by a vote of 92 ayes, 21 noes.

3011. A quorum not being present, a resolution directing the enforcement of the statute relating to deductions from the pay of Members is not in order as a measure to compel the attendance of absentees.

Instance wherein deductions were made from the salaries of Members because of absence. (Footnote.)

The House once established a fine for absence. (Footnote.)

On September 9, 1890,[3] a quorum not being present, Mr. N. P. Haugen, of Wisconsin, submitted a resolution that the Sergeant-at-Arms take into custody and bring to the bar of the House such of its Members as were absent without leave of the House.

Mr. James Buchanan, of New Jersey, moved to amend the resolution by adding thereto the following:

> That the Sergeant-at-Arms be, and he is hereby, directed to enforce the provisions of section 40 of the Revised Statutes[4] of the United States.

Mr. C. R. Buckalew, of Pennsylvania, made the point of order that the said amendment was not in order, on the ground that while the resolution was, of course,

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[1] First session Forty-sixth Congress, Record, p. 1577.

[2] William M. Springer, of Illinois, Speaker pro tempore.

[3] First session Fifty-first Congress, Journal, p. 1025; Record, p. 9922.

[4] Section 40, Revised Statutes, provides for deductions from the salaries of Members in certain cases of absence. In the Fifty-third Congress there was an extended discussion and examination by the Judiciary Committee as to whether it was still in force (see Congressional Record, second session Fifty-third Congress, pages 5042–5046), and Chairman Richardson, in Committee of the Whole, on May 21, 1894, assumed that it was still in force in a ruling made at that time (Congressional Record, second session Fifty-third Congress, pages 5049—5051). In fact, portions of the salaries of Members were withheld during the Fifty-third Congress, and a paragraph making an appropriation to pay these amounts was stricken from an appropriation bill in the Fifty-fourth Congress (Congressional Record, second session Fifty-fourth Congress, pages 2049–2056).

in order to obtain the attendance of the absent Members, the amendment was to be an order of the House on the Sergeant-at-Arms, and would require a quorum of the Members to pass it.[1]

Mr. Richard P. Bland, of Missouri, made the further point of order that the House was proceeding under the rules for a call of the House. That it was, in the present condition, without a quorum, and no other business could be transacted until that was disposed of.

The Speaker pro tempore[2] sustained the said point of order made by Mr. Buckalew, on the following grounds:

By the uniform course of decision as to proceedings when less than a quorum is present, nothing is in order except a motion to adjourn, or some motion that is incident to the necessary proceedings under a call of the House; and the amendment proposed by the gentleman from New Jersey, Mr. Buchanan, is an affirmative direction, which would require, if in order at all, the action of a majority of the House when transacting its ordinary business. The Chair sustains the point of order.

3012. After the roll has been called for excuses and the House has ordered the arrest of those who are unexcused, a motion to excuse an absentee is in order when he is brought to the bar.

As to the propriety of calling the roll a second time during a call of the House to ascertain who have absented themselves since the first call.

On Friday evening, March 13, 1896,[3] during a call of the House,[4] and after the adoption of a resolution directing the Sergeant-at-Arms to arrest and take into custody absent Members, Mr. Joseph W. Bailey, of Texas, moved that Mr. Joseph G. Cannon, of Illinois, be excused from attendance.

The Speaker pro tempore[5] said:

The Chair will state to the gentleman from Texas that in the opinion of the Chair the motion is not in order, for this reason: Under the rule the Clerk proceeded to call the names of absentees, when excuses were in order. Subsequently to that the House adopted a resolution to send for absent Members. When any absent Member is brought into the House, it will be competent then for the House to excuse him. Otherwise, while the House is under this order to bring in absent Members, the Chair thinks that no motion to excuse a Member is in order.

Mr. Charles Curtis, of Kansas, asked whether or not it would be in order to have another call of the House to ascertain who had left the House since the former call.

The Speaker pro tempore said:

The Chair thinks it is not in order to have another call upon a call. The officers of the House are engaged in executing the former order of the House.

3013. Those present on a call of the House may prescribe a fine as the condition on which an arrested Member may be discharged.—On Feb-

[1] On December 18, 1882 (second session Forty-seventh Congress, Record, pages 408, 409), the House by resolution, a quorum being present, provided that any Member absent without leave or valid excuse from December 22 to January 3 should be fined $50 for each day of absence, the same to be deducted from his pay.

[2] Lewis E. Payson, of Illinois, Speaker pro tempore.

[3] First session Fifty-fourth Congress, Record, p. 2805.

[4] This being a Friday evening, section 4 of Rule XV did not apply. See section 3041 of this chapter.

[5] Sereno E. Payne, of New York, Speaker pro tempore.

ruary 24, 1881,[1] the Speaker pro tempore[2] held that on a call of the House the House might excuse a Member on the payment of a fine, basing his decision on the line of the rule:

And the House shall determine upon what condition they shall be discharged.

He further held that the House authorized to do this was the same House which was authorized to compel the attendance of Members, i. e., a House of 15 Members.

The House in this case declined to impose the fine.

3014. On February 24, 1881,[3] during a call of the House, a motion was made that Mr. Leopold Morse, of Massachusetts, who was under arrest, be discharged upon the payment of a fine of 5 cents.

Mr. John T. Harris, of Virginia, made the point of order that the House had no authority to impose a fine under such circumstances.

After debate as to the effect of the clauses of Constitution and rules relating to the subject, the Speaker pro tempore[2] held:

The question raised by the point of order of the gentleman from Virginia is whether the House can excuse a Member on the condition of paying a fine. The Chair has no doubt of the power of the House to do it. The last clause of Rule XV reads:

"And the House shall determine upon what condition they shall be discharged."

The motion of the gentleman from New York is that the gentleman from Massachusetts be discharged on condition that he pay 5 cents. Now, the argument of the gentleman from Massachusetts is it took the House to do this—that is, a quorum of the whole House, a majority of the whole House. If that were true, the last vote discloses more than a quorum were present. Therefore the House as it stands is thoroughly able to do what the House can do on any other subject. But the Chair believes the House mentioned in this rule is that House which is authorized to compel the attendance of Members, 15 in number. The Chair thinks it would have been an exceptionally poor rule which would have authorized 15 Members to excuse a Member absent without leave of the House and not allow that same number to impose a condition. The House spoken of there is the House authorized to compel the attendance of absentees, and that House may be composed only of 15 Members. But that question can not arise here, because there is a quorum of a full House. The point of order of the gentleman from Virginia is therefore overruled.

3015. Under the old rule for a call of the House an order of arrest for absent Members may be made after a single calling of the roll.—On April 26, 1890,[4] during a call of the House, Mr. Benjamin Butterworth, of Ohio, submitted the following resolution; which was read:

Resolved, That the Sergeant-at-Arms take into custody and bring to the bar of the House such of its Members as are now absent without leave of the House.

Mr. Charles F. Crisp, of Georgia, made the point of order that the roll must be called a second time before the adoption and execution of the foregoing order.

The Speaker pro tempore[5] overruled the point of order on the ground that the rules did not provide for a second call of the roll, but that upon a call being ordered the doors were closed, the names of the Members called and the absentees noted, and

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[1] Third session Forty-sixth Congress, Record, p. 2048.

[2] Eppa Hunton, of Virginia, Speaker pro tempore.

[3] Third session Forty-sixth Congress, Record, pp. 2046–2048.

[4] First session Fifty-first Congress, Journal, p. 527; Record, p. 3903.

[5] Lewis E. Payson, of Illinois, Speaker pro tempore.

that then "those for whom no sufficient excuse is made" may be arrested and their attendance secured and retained.

3016. On August 9, 1890,[1] during a call of the House, Mr. Joseph Wheeler, of Alabama, made the point of order that under the provisions of Rule XV the roll should be called the second time.

The Speaker[2] overruled the point of order, but stated that without objection the list of absentees would be again called, and there being no objection it was so called.[3]

3017. On a call of the House the Sergeant-at-Arms is required to execute an order of arrest wherever the Members referred to may be found.

Instance wherein the Sergeant-at-Arms reported at the bar of the House his proceedings under a continuing order of arrest.

On February 21, 1894,[4] the Sergeant-at-Arms appeared at the bar of the House and submitted the following report:

As a supplementary report of my further proceedings under the House warrant of February 19, 1894, directing the Sergeant-at-Arms to arrest absentees, I report all of them here or on their way here, except those sick or excused by the House, and seven others who are sent for by duly authorized deputies.

The Sergeant-at-Arms submitted the question whether he was required by said writ to make arrest of Members on the floor of the House.

The Speaker[5] stated that, the Sergeant-at-Arms was required to execute the order of the House wherever Members referred to in the order might be found.

3018. A proposition to arrest Members who absent themselves after answering on a call of the House is in order during continuance of the call.

Form of resolution for directing the Sergeant-at-Arms to arrest absent Members. (Footnote.)

On February 21, 1893,[6] during a call of the House, it having been ordered that the roll be called in order to ascertain which of the Members were present and which were absent,

Mr. George D. Wise, of Virginia, submitted the following:

Ordered, That the Sergeant-at-Arms of the House be directed to take into custody and bring to the bar of the House such Members as have absented themselves since the first call of the roll.

Mr. Thomas C. McRae, of Arkansas, made the point of order that the said resolution was not in order.

After debate, the Speaker[5] overruled the point of order.[7]

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[1] First session Fifty-first Congress, Journal, p. 935; Record, p. 8371.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Under the call provided in section 4 of Rule XV (see sec. 3041 of this chapter) the roll is called twice.

[4] Second session Fifty-third Congress, Journal, p. 185.

[5] Charles F. Crisp, of Georgia, Speaker.

[6] Second session Fifty-second Congress, Journal, p. 106; Record, p. 1969.

[7] The ordinary form of motion for ordering the arrest of absent Members is as follows: "*Ordered*, That the Sergeant-at-Arms take into custody and bring to the bar of the House such of its Members as are absent without leave."

3019. A Member who appears and answers during a call of the House is not subject to arrest for absence.—On February 20, 1894,[1] during proceedings over a continuing order of arrest which had been adopted on the preceding day, Mr. Philip S. Post, of Illinois, stated that after the call of the House on yesterday, and pending proceedings under the call, he had voted and his vote was recorded on a motion to adjourn. He submitted the question of order whether or not his appearance during the call being thus disclosed he was subject to arrest under the order directed to the Sergeant-at-Arms.

The Speaker[2] held as follows:

> The rule is that on a call of the House Members who have failed to answer may be sent for; but the rule also provides that any gentleman coming in voluntarily pending the call may have his name entered as present. That is the privilege of a Member, and the Chair thinks that even though a Member had failed to answer on the call of the House, if he came in later and even failed to report his name to the Clerk, but it appeared by a subsequent roll call, pending the proceedings under the call, that he was present and answered to his name, it would hardly be proper to send for him as an absentee.

3020. Leave for a committee to sit during sessions of the House does not release its members from liability to arrest during a call of the House.—On May 20, 1882,[3] Mr. Speaker Keifer held that the fact of a committee having obtained leave of the House to sit during the sessions of the House did not release its members from the liability to be brought into the House on the call of the House. This order of attendance might deal with the Members individually, but not with the committee.

3021. A Member complaining that he had been wrongfully arrested during a call of the House, the House ordered the Sergeant-at-Arms to investigate and amend the return of his writ.—On February 23, 1894,[4] Mr. Henry U. Johnson, of Indiana, complained to the House that he had been arrested by the Sergeant-at-Arms as an absent Member when in fact he had been present. The House thereupon ordered the Sergeant-at-Arms to investigate, and in case it should be found that Mr. Johnson had been wrongfully arrested to amend the return on his writ.

3022. A Member having escaped from arrest during a call of the House, it was held that he might not be brought back on the same warrant.—On June 6, 1860,[5] during a call of the House, a Member who had been arrested and brought to the House during a call walked out. It was proposed to bring him back, when the point of order was made that he could not be brought back on the same warrant. Speaker pro tempore Schuyler Colfax, of Indiana, sustained the point. There was little debate.

3023. A Member under arrest for absence may not, when called on for an excuse, question the authority of the House.—On June 6, 1860,[6] during a call of the House, the Sergeant-at-Arms appeared at the bar, having in his custody

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[1] Second session Fifty-second Congress, Journal, p. 180; Record, pp. 2300, 2325.

[2] Charles F. Crisp of Georgia, Speaker.

[3] First session Forty-seventh Congress, Record, p. 4141.

[4] Second session Fifty-third Congress, Journal, p. 195.

[5] First session Thirty-sixth Congress, Globe, p. 2710.

[6] First session Thirty-sixth Congress, Journal, p. 1023; Globe, p. 2701.

Mr. William Howard, of Ohio. Mr. Howard having been arraigned, and, in response to the inquiry of the Speaker as to his excuse for absenting himself without the leave of the House, having proceeded to question the authority under which he was arrested and arraigned,

Mr. William A. Howard, of Michigan, raised the point of order that it was only in order at this time for the Member to submit an excuse for his absence.

The Speaker pro tempore sustained the point of order.

On appeal this decision was sustained.

3024. During a call, but after the appearance of a quorum, penalties were once imposed which contemplated the future appearance of absent Members at the bar.—On April 6, 1842,[2] during proceedings under a call of the House, and after motions to dispense with further proceedings under the call had been decided in the negative, Mr. Landaff W. Andrews, of Kentucky, moved the following resolution:

Resolved, That all such Members of the House as have not appeared in pursuance of the call of the House and given satisfactory excuse shall be fined the amount of the fees of the Sergeant-at-Arms, subject to be released from the payment of the same on appearing hereafter and making such excuse as shall be deemed satisfactory to the House.[3]

This resolution was adopted,[4] the previous question having been demanded and put. Further proceedings under the call were then dispensed with and the doors were opened.

3025. Under proceedings of a call of the House, and sometimes by less than a quorum, the House has made an order of arrest which continued beyond that day's session.

Instance wherein Members in custody on a call of the House were discharged on payment of fees.

On July 12, 1848,[5] during proceedings under a call of the House, Mr. William Sawyer, of Ohio, moved that the Sergeant-at-Arms require all Members now absent, except such as have been excused, to appear at the meeting of the House to-morrow morning to give excuses for their absence at this time.

This motion was agreed to, 69 yeas to 48 nays, a total of 117—a quorum, the entire membership being 227.

On the succeeding day the Speaker announced that, pursuant to an order of the House on the previous day, the Sergeant-at-Arms had arrested and was now present with the absent Members.

A motion to dispense with further proceedings under the call having been laid on the table by a vote of 70 yeas to 57 nays, Mr. Henry W. Hilliard, of Alabama, moved that all the absent Members who are now in custody of the Sergeant-at-Arms

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[1] Schuyler Colfax, of Indiana, Speaker.

[2] Second session Twenty-seventh Congress, Journal, p. 672.

[3] At this time Rule 64 provided that "the fees of the Sergeant-at-Arms shall be, for every arrest, the sum of $2." This rule had been for some time a dead letter when the rules were revised in 1880, and was then dropped. (See Congressional Record, second session Forty-sixth Congress, p. 199.)

[4] The Congressional Globe (second session Twenty-seventh Congress, p. 393) shows that the resolution was adopted by a vote of 80 to 53, a total of 133, the quorum being 121.

[5] First session Thirtieth Congress, journal, pp. 1034, 1035; Globe, p. 926.

be admitted to their seats on payment of fees:[1] *Provided, however,* That any of such Members who desired to make excuses might be heard.

This motion was decided in the affirmative, and several gentlemen were excused.[2]

3026. On April 28, 1892,[3] during a call of the House, Mr. James H. Blount, of Georgia, submitted the following resolution:

Resolved, That except as to the revocation of leaves of absence and the arrest by the Sergeant-at-Arms of absent Members of the House, as heretofore ordered, all further proceedings under the call of the House be, and the same are hereby, dispensed with.

Mr. W. C. P. Breckinridge, of Kentucky, submitted the question of order: Whether the House has, under its rules, power to dispense in part with proceedings taken in part, and whether the resolution just offered was not out of order.

The Speaker[4] replied:

It seems to the Chair that it must be competent for the House in the present situation to continue the order of arrest, notwithstanding an adjournment. A recess can not be taken in the absence of a quorum, and a motion for a recess is not in order pending a call of the House. If an adjournment dispenses necessarily (notwithstanding the desire of the House to the contrary) with all proceedings under the call, including the order for the arrest of absent Members, then if the House wanted to send for a Member, say in Texas, it would have to stay in session until the Sergeant-at-Arms could go there and return. The House could not adjourn without causing the proceeding to fall and could not take a recess in the absence of a quorum. So that it seems to the Chair it must be in the power of a minority of the House, when a call has been entered upon, to adopt a resolution to continue the order of arrest and then to adjourn, the Constitution contemplating that less than a quorum may adjourn from day to day and may also enforce the attendance of absent Members. It seems, therefore, to the Chair that this resolution is in order.

The resolution was then agreed to.

On April 29 the Sergeant-at-Arms appeared at the bar of the House and announced that he had, pursuant to the order of the House, notified certain Members to appear at the bar of the House on this day.

Mr. James W. Owens, of Ohio, submitted the point of order that the adjournment on yesterday terminated all proceedings under the call of the House, and that the resolution purporting to continue the proceedings in force after adjournment was void and of no effect.

The Speaker overruled the point of order, stating that the question had, after full consideration, been decided on yesterday and the decision acquiesced in by the House.

Mr. W. W. Dickerson, of Kentucky, moved that Members under arrest be discharged and that all further proceedings under the call be dispensed with.

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[1] Rule 69 at this time allowed the Sergeant-at-Arms $2 as a fee for each arrest. If Members did not pay it he received it out of the contingent fund.

[2] Proceedings of this nature were not new at this time. In the second session of the Twenty-seventh Congress (Journal, p. 672) a resolution was passed to fine absent Members. In the Twenty-ninth Congress (Journal, first session Twenty-ninth Congress, p. 1045) during a call of the House a resolution was offered that absent Members be required to present themselves next morning and make excuses. Mr. Speaker Davis ruled such a resolution not in order when a quorum was not present, but those present, on appeal, overruled the Speaker. The next day, when a quorum was present, the vote overruling the Speaker was reconsidered and the Member making the appeal, Mr. Ashmun, withdrew it.

[3] First session Fifty-second Congress, Journal, pp. 166, 167; Record, pp. 3761, 3765, 3766.

[4] Charles F. Crisp, of Georgia, Speaker.

The Speaker expressed the opinion that each of the Members who appeared pursuant to the order of the House should be permitted to state the reasons why he was absent. The motion of Mr. Dickerson was accordingly not then submitted.

Mr. Benton McMillin, of Tennessee, submitted the question of order: Whether the Members who were brought in by the Sergeant-at-Arms to-day are to be held under arrest in like manner as they would have been if they had been brought in yesterday evening.

The Speaker held that such was the effect of the proceedings which had been taken.

3027. On March 29, 1894,[1] during a call of the House, Mr. Josiah Patterson of Tennessee, moved the adoption of the following order:

Ordered, That the Sergeant-at-Arms take into custody and bring to the bar of the House such of its Members as are absent without leave of the House; this order shall continue in force beyond the adjournment of the session of today and until the further order of the House; the Sergeant-at-Arms is directed to employ a sufficient number of deputies to execute this order and to take into custody such absentees wherever they may be found, and all leaves of absence, except for sickness, are hereby revoked.

Mr. Patterson demanded the previous question thereon, and a vote being taken, the Speaker announced the result to be yeas 104, nays 3.

Mr. Thomas B. Reed, of Maine, made the point that no quorum had voted and that a quorum was required on the adoption of the proposed order.

The Speaker[2] overruled the point of order, holding as follows:

The question is not new. Under the Constitution and the rules of the House 15 Members, with the Speaker, if there be one, may compel the attendance of absent Members; and in the absence of a quorum nothing can be done except to adjourn or to adopt measures relating to obtaining a quorum. The proposition of the gentleman from Maine is that less than a quorum can not continue from day to day an order for the arrest of absent Members. The practical effect of that suggestion, if it were adopted, would be that the Members who might be here, constituting less than a quorum—15 or 18 or 20, perhaps—would be forced to stay in session (because they could not take a recess), if they desired to obtain the attendance of absentees, until such absentees were brought in; and if any of such absentees lived, for instance, in California or Texas, the Members engaged here in the endeavor to obtain a quorum would be obliged to remain in session continuously four, five, six, seven, or eight days and nights, until the Sergeant-at-Arms should return with the Members who had been absent.

A recess can not be taken under such circumstances; and if by reason of an adjournment the proceeding to secure the attendance of absentees falls, then the House would be utterly powerless to secure the presence of a quorum. The Chair submits that it has been repeatedly held in the history of the House that no such absurd contention as that could be right or ought to be enforced. On the contrary, it has been uniformly held that the House, in the absence of a quorum, may do anything looking to obtaining a quorum. The present proposition is nothing more than a revocation of leaves of absence and an effort to compel the attendance of absent Members by ordering the Sergeant-at-Arms to arrest them, it being further provided that the proceeding shall not fall by reason of an adjournment. It seems to the Chair that this resolution suggests the only practical method of obtaining the presence of a quorum.[3]

On April 7, the Speaker laid before the House the report of the Sergeant-at-Arms.

Mr. William M. Springer, of Illinois, moved that the Sergeant-at-Arms be discharged from further proceedings under the warrant of the 29th ultimo.

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[1] Second session Fifty-third Congress, Journal, pp. 284, 286, 287, 318, 319; Record, p. 3333.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] See also Journal, second session Fifty-third Congress, pp. 143, 149, 323.

The question being put on agreeing to the motion, no quorum appeared.

Mr. C. B. Kilgore, of Texas, made the point that a quorum was not required to discharge the Sergeant-at-Arms from taking further action under the said warrant.

The Speaker held that, inasmuch as the House was not now proceeding under a call of the House, a quorum was required to dispose of the motion.

3028. On January 8, 1897,[1] at a Friday evening session,[2] during a call of the House, Mr. Henry F. Thomas, of Michigan, offered this resolution:

Resolved, That the order directing the Sergeant-at-Arms to take into custody and to bring to the bar absent Members be made returnable on Tuesday morning next after the reading of the Journal.

Mr. John J. Gardner, of New Jersey, made the point of order that this resolution was not in order.

The Speaker pro tempore[3] ruled:

The Chair thinks the motion of the gentleman from Michigan is in order. This is a proceeding to compel the attendance of Members at this session of the House. It is the prerogative of the House when the Members are brought in either to excuse or punish them as the House may see fit, and this resolution provides that the return of the warrants for the arrest of absent Members shall be made at some future day to the House, namely, next Tuesday.

The Chair think, under the rule, that the House has the power to compel a quorum at these Friday night sessions, and has the power also to provide for the return of the warrant at such time as it shall determine at this session.

The question, therefore, is on the motion presented by the gentleman from Michigan.

The resolution was agreed to by those present.

On the next day, January 9, the question was raised whether or not, if many Members were under arrest, they could participate in the proceedings of the House. Mr. David B. Henderson, of Iowa, moved that the resolution be reconsidered. This was done. The House then, the question being on the resolution, decided it in the negative. Finally proceedings under the call were dispensed with.

3029. On February 19, 1894,[4] during a call of the House, Mr. Richard P. Bland, of Missouri, offered a resolution that the Sergeant-at-Arms arrest absent Members, that the order should continue in force beyond the adjournment of that day and until the further order of the House, and that a sufficient number of deputies be appointed to execute the order.

A motion to adjourn having been made and decided in the negative, Mr. Charles Tracey, of New York, thereupon moved that when the House adjourn to-day it be to meet on Wednesday next.

Mr. Bland made the point of order that pending proceedings under a call of the House the motion of Mr. Tracey was not in order.

The Speaker pro tempore[2] sustained the point of order, holding that no motion, except to adjourn or with reference to the call, was in order during a call of the House.

Mr. Tracey moved to dispense with proceedings under the call.

Mr. Bland made the point of order that the latter motion was not in order pending the motion that the Sergeant-at-Arms take into custody absent Members.

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[1] Second session Fifty-fourth Congress, Record, pp. 607, 612; Journal, p. 65.

[2] At such evening session section 4 of Rule XV was not operative. (See sec. 3041 of this chapter.)

[3] Sereno E. Pane, of New York, Speaker pro tempore.

[4] Second session Fifty-third Congress, Journal, pp. 177, 194; Record, pp. 2297, 2300, 2388.

The Speaker pro tempore[1] sustained the point of order, holding, as was held in the Forty-fourth Congress, that "a motion to dispense with proceedings under the call is not in order pending a motion that the Sergeant-at-Arms take into custody absent Members."

The question recurring and being put on the motion of Mr. Bland for the previous question on his motion for an order directing the Sergeant-at-Arms to take into custody absent Members, and the vote being taken, the Speaker pro tempore[1] announced that the yeas were 122 and the nays were 3.

Mr. Thomas B. Reed, of Maine, made the point that no quorum had voted and that a quorum was required to decide said question.

The Speaker pro tempore[1] overruled the point, holding that upon all motions incidental to the call and while the House is operating under the call, according to the uniform practice of the House, a quorum is not required.

So the previous question was ordered. And the question being put, "Will the House adopt the order proposed by Mr. Bland?" there appeared, yeas 116, nays none.

Mr. Reed made the point that no quorum had voted, and that a quorum was necessary to decide the question.

After debate, the Speaker pro tempore[1] overruled the latter point, holding that the motion of Mr. Bland being a proceeding to compel the attendance of absent Members, and having been submitted pending a call of the House, a quorum was not required to decide the question.

So the motion of Mr. Bland was agreed to, and the order proposed by him was adopted.

On February 23, 1894, Mr. Bland moved to dispense with all further proceedings under the call of the House of the 19th instant, under which call Members had been arrested and were in custody, and on that motion demanded the previous question.

Mr. Reed made the point of order that the motion of Mr. Bland was not in order, for the reason that proceedings under the call had already been dispensed with.

The Speaker pro tempore[2] held that the proceeding before the House in relation to Members in custody was a proceeding under the call of the House of the 19th instant, and that the motion of Mr. Bland was therefore in order.

3030. A quorum appearing on a call, the House sometimes orders absent Members to be arraigned on the succeeding day.—On February 9, 1865,[3] during proceedings incident to a call of the House, and a quorum having appeared on a motion to adjourn, which was decided in the negative, Mr. John M. Broomall, of Pennsylvania, offered the following resolution:

Resolved, That the Sergeant-at-Arms be directed to bring the Members now absent without leave before the bar of the House at 1 o'clock to-morrow, Friday, February 10, 1865, or as soon thereafter as possible; and that they then be required to show cause why they shall not be declared in contempt of the House and abide the order of the House.

A question having been raised as to this resolution, the Speaker[4] referred to the precedent of 1842 as justifying it.

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[1] Alexander M. Dockery, of Missouri, Speaker pro tempore.

[2] James D. Richardson, of Tennessee, Speaker pro tempore.

[3] Second session, Thirty-eighth Congress, Journal, pp. 224, 238; Globe, pp. 710, 735, 736.

[4] Schuyler Colfax, of Indiana, Speaker.

The resolution was then agreed to.

On the next day the Members arrested were arraigned in the House and excused on the payment of fees.

3031. On January 22, 1867,[1] the House, a quorum having been ascertained on the last vote, ordered that the Sergeant-at-Arms be directed to bring all the absent Members before the bar of the House at 1 p. m. to-morrow. Accordingly, on January 23, the Sergeant-at-Arms appeared with the absentees, who were then arraigned and dealt with.

3032. Less than a quorum may not order the arraignment of absent Members at a future meeting of the House.—On July 7, 1846, less than a quorum being present, the following resolution was offered:

Resolved, That all Members now absent, except such as have been excused, be required at the meeting of the House on to-morrow morning, to give excuses for their absence at this time; and it shall be the duty of the Clerk to enter their names on the Journal for that purpose.

The Speaker[2] ruled the resolution out of order, but the Members present overruled him and agreed to the resolution.

On the next day, the House reconsidered the vote whereby the ruling of the Speaker was reversed, as well as the vote whereby the resolution was held to be in order, and then the resolution was withdrawn.[3]

3033. On July 8, 1846,[4] Mr. George C. Dromgoole, of Virginia, moved to reconsider the vote, of the preceding day, whereby the House had agreed to the following:

Resolved, That all Members now absent, except such as have been excused, be required, at the meeting of the House to-morrow morning, or when they shall next attend, to give excuses for their absence at this time: and it shall be the duty of the Clerk to enter their names on the Journal for that purpose.

Mr. Milton Brown, of Tennessee, moved to rescind the said resolution.

The Speaker[2] stated that under the rule of the House declaring that a motion to reconsider should take precedence of all motions except a motion to adjourn, the motion to reconsider was first in order.

The question being put on the motion to reconsider, after the yeas and nays had been called through, and before the vote was announced, Mr. Garrett Davis, of Kentucky, raised the question of order that the said resolution proposed to be reconsidered, having been adopted by a minority, was a nullity, and therefore it was not in order to move that it be reconsidered.

The Speaker overruled the point of order.

3034. On February 19, 1869,[1] during a call of the House, Mr. Robert C. Schenck, of Ohio, moved that the Sergeant-at-Arms be directed to bring to the bar of the House at its meeting to-morrow such Members as are now absent without leave.

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[1] Second session Tbirty-Ninth Congress, Journal, pp. 237, 147; Globe, pp. 663, 686.

[2] John W. Davis, of Indiana, Speaker.

[3] First session Twenty-ninth Congress, Journal, pp. 1045, 1051; Globe, p. 1070.

[4] First session Twenty-ninth Congress, Journal, pp. 1048, 1049 Globe, pp. 1069, 1070.

[5] Third session Fortieth Congress, Journal, p. 400; Globe, p. 1402.

The Speaker pro tempore[1] decided, in view of the precedents, that the motion was not in order in the absence of a quorum.

Mr. Schenck having appealed, the appeal was laid on the table.

3035. On July 7, 1838,[2] but the calendar day of Sunday, July 8, a quorum had failed, and there had been a call of the House. In the course of the proceedings incident to this call, the Sergeant-at-Arms handed in the following report:

The following-named Members of the House of Representatives were notified by me of the order of the House that their attendance was required; they refused to attend, and left the city on the morning railroad cars for the eastward, viz: (Here follows a list of sixteen names.)

RODERICK DORSEY,
Sergeant-at-Arms of the House of Representatives.

SUNDAY MORNING, *July 8, 1838.*

Then it was

Resolved, That the sixteen members reported by the Sergeant-at-Arms be called on, when they next appear in this Hall,[3] to render a reason why they disobeyed the order of this House.

It was also—

Resolved, That all Members now absent, except such as have been excused, and the sixteen Members who have been reported by the Sergeant-at-Arms as having defied the execution of the order of the House, be required, upon the reassembling of Congress, to give excuses for their absence at this time; and it shall be the duty of the Clerk to enter their names on the Journal for that purpose; and the Speaker shall bring the same to the notice of the House.

Both the above resolutions were evidently adopted by less than a quorum. The second resolution was reconsidered and decided in the negative on the succeeding day.

3036. A motion directing the Speaker to issue his warrant for the arrest of absent Members being pending, a motion to dispense with further proceedings under the call was ruled out.

An appeal may not be entertained on a question of order on which an appeal has just been taken and decided.

On August 14, 1876,[4] during proceedings to secure the attendance of a quorum, Mr. George F. Hoar, of Massachusetts, moved to dispense with all further proceedings under the call; which motion the Speaker pro tempore declined to submit to the House, holding it to be not in order, the motion of Mr. Morrison that the Speaker pro tempore issue his warrant to the Sergeant-at-Arms to take into custody and bring to the bar of the House all Members absent without leave being pending and the only motion in order at this time.

Mr. Hoar appealed from the decision of the Chair.

The Speaker pro tempore[5] held that the House having just laid upon the table an appeal from the decision of the Chair upon the same question of order, the second appeal was not in order and could not be entertained.

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[1] George S. Boutwell, of Massachusetts, Speaker pro tempore.

[2] Second session Twenty-fifth Congress, Journal, pp. 1300–1304.

[3] It does not appear that any action was taken in this matter at the third session.

[4] First session Forty-fourth Congress, Journal, p. 1494; Record, pp. 5650, 5651.

[5] Milton Sayler, of Ohio, Speaker pro tempore.

3037. A motion to dispense with proceedings under the call, having been once entertained, was ruled not to be in order again pending a motion for the arrest of absent Members.

An appeal from a decision of the Chair may be entertained during proceedings to secure the attendance of a quorum.

During proceedings to secure a quorum the Chair ruled out of order a motion to reconsider the vote whereby an appeal had been laid on the table.

On July 31, 1876,[1] a message from President Grant was laid before the House, wherein he announced his approval of the sundry civil appropriation bill, but pointing out certain defects in the measure. This message having been referred to the Committee on Appropriations by vote of the House, a motion to reconsider that vote was made by Mr. Eugene Hale, of Maine. Over this motion a parliamentary struggle occurred, during which there was a call of the House and votes on several dilatory motions. On August 14, a quorum having failed to vote, after votes upon various dilatory motions, a motion to adjourn was defeated, yeas 44, nays 70, not voting 172.

The question then recurred on the motion of Mr. William R. Morrison, of Illinois, that the Speaker pro tempore issue his warrant to the Sergeant-at-Arms to take into custody and bring to the bar of the House all Members absent without leave.

Pending this motion,

Mr. George F. Hoar, of Massachusetts, moved that all further proceedings under the call be dispensed with.

The Speaker pro tempore[2] held that the only motion now in order was the motion that a warrant issue to the Sergeant-at-Arms to take into custody and bring to the bar of the House all Members absent without its leave. In making this decision the Chair said:

> The Chair has entertained that motion and also the motion to adjourn. While the Chair recognizes the fact that all proceedings under the call can be dispensed with, yet the Chair does not understand the rule to apply to such an extent as to destroy the whole proceedings under the call. The Chair, therefore, having entertained that motion and also a motion to adjourn, he will now entertain a motion that warrants be issued to the Sergeant-at-Arms to arrest and bring to the bar of the House the absentees.

From this decision Mr. Hoar appealed, and considerable discussion arose about entertaining an appeal when less than a quorum were present. But the Speaker pro tempore declared that he could not decline to entertain the appeal.

The appeal was laid on the table by a vote of yeas 82, nays 19, not voting 185.

Mr. John K. Luttrell, of California, moved to reconsider the vote last taken, and also moved that the motion to reconsider be laid on the table.

Mr. William M. Springer, of Illinois, made the point of order that a motion to reconsider the vote by which an appeal from the decision of the Chair was laid on the table was not in order.

The Speaker pro tempore sustained the point of order, holding that the only motions in order were the motion to issue the Speaker's warrant to compel the attendance of absentees and the motion to adjourn.

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[1] First session Forty-fourth Congress, Journal, p. 1492; Record, pp. 5647, 5649.

[2] Milton Sayler, of Ohio, Speaker pro tempore.

In this decision of the Chair the House acquiesced.

3038. A quorum is not required on a motion to dispense with further proceedings under a call of the House.—On September 10, 1890,[1] during a call of the House, a motion was made that the House adjourn. On this question there were 50 yeas and 92 nays. The Chair announced that there were 172 Members present, a quorum.

Then, a motion being made by Mr. Nils P. Haugen, of Wisconsin, that all further proceedings under the call be dispensed with, there were 122 yeas, 15 nays, and 188 not voting

Mr. Charles T. O'Ferrall, of Virginia, made the point of order that no quorum was present.

The Speaker pro tempore[2] overruled the point of order on the ground that the former proceedings had disclosed the presence of 172 Members—more than a quorum—and that a motion to dispense with all further proceedings under a call did not require a quorum for its adoption.

3039. The motion to dispense with proceedings under a call is in order, although Members under arrest may not have had opportunity to make excuses.—On April 29, 1892,[3] during proceedings under a call of the House, Mr. William W. Bowers, of California, presented his excuse for failure to attend part of the session of the previous day.

Mr. Richard P. Bland, of Missouri, moved that Mr. Bowers be excused, which motion was agreed to, 123 yeas to 53 nays. Then Mr. Charles J. Boatner, of Louisiana, submitted the following resolution:

Resolved, That all further proceedings against Members for nonattendance at the sessions of the House on yesterday are hereby dispensed with.

Mr. Bland made the point of order that each Member who is included in the warrant of the Sergeant-at-Arms and is under arrest has a right to give his excuse for his absence, and to make such explanation as he thinks proper, and that the resolution submitted by. Mr. Boatner was therefore not in order.

The Speaker[4] overruled the point of order and decided that the resolution was in order.

3040. A call of the House ordered under the old rule may be dispensed with on the appearance of a quorum, although actual proceedings may not have begun.—On July 10, 1890,[5] there being no quorum present, Mr. James B. McCreary, of Kentucky, moved a call of the House. The question being taken by yeas and nays, there were yeas 115, nays 69, not voting 144.

As soon as the Speaker had announced the result, Mr. McCreary said that, as a quorum was present, he would move that all further proceedings under the call be dispensed with.

Mr. William D. Bynum, of Indiana, made the point of order that the House having determined upon a call of the House, the call could not be dispensed with except by a motion to reconsider.

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[1] First session Fifty-first Congress, Journal, p. 1028; Record, p. 9946.

[2] Julius C. Burrows, of Michigan, Speaker pro tempore.

[3] First session Fifty-second Congress, Journal, p. 167; Record, p. 3770.

[4] Charles F. Crisp, of Georgia, Speaker.

[5] First session Fifty-first Congress, Journal, p. 844; Record, p. 7111.

The Speaker[1] overruled the point of order.

3041. The rule whereby a quorum is obtained and the vote taken on the pending proposition by one roll call.

The process of arresting absent Members under the new rule for a call of the House.

Form of warrant issued under the new rule for a call of the House. (Footnote.)

Form and history of section 4 of Rule XV.

Section 4 of Rule XV provides:

Whenever a quorum fails to vote on any question, and a quorum is not present and objection is made for that cause, unless the House shall adjourn, there shall be a call of the House, and the Sergeant-at-Arms shall forthwith proceed to bring in absent Members, and the yeas and nays on the pending question shall at the same time be considered as ordered. The Clerk shall call the roll, and each Member as he answers to his name may vote on the pending question, and, after the roll call is completed, each Member arrested[2] shall be brought by the Sergeant-at-Arms before the House, whereupon he shall be noted as present, discharged from arrest, and given an opportunity to vote and his vote shall be recorded. If those voting on the question and those who are present and decline to vote shall together make a majority of the House, the Speaker shall declare that a quorum is constituted, and the pending question shall be decided as the majority of those voting shall appear; and thereupon further proceedings under the call shall be considered as dispensed with. At any time after the roll call has been completed the Speaker may entertain a motion to adjourn, if seconded by a majority of those present, to be ascertained by actual count by the Speaker; and if the House adjourns all proceedings under this section shall be vacated; but this section of the rule shall not apply to the sessions of Friday night until further order of the House.

This rule was adopted on January 23, 1896.[3] It had been proposed, in a modified form, by Mr. John Randolph Tucker, of Virginia, at the time of the revision of the rules in 1880,[4] but had been withdrawn after debate.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] The form of warrant issued by the Speaker under this rule is as follows:

——— Congress, ——— session.

Congress of the United States.

IN THE HOUSE OF REPRESENTATIVES.

To —— ———, Sergeant-at-Arms of the House of Representatives, or his deputies:

Whereas clause 4, of rule 15, of the House of Representatives, provides as follows:

[Here follows the Rule.]

And whereas the conditions specified in the said rule have arisen, and the following-named Members of the House are absent, to wit:

[Here follow the names of Members.]

Now, therefore, I, ——, Speaker——— of the House of Representatives, by virtue of the power vested in me by the House, hereby command you to execute the said order of the House, by taking into custody and bringing to the bar of the House said above-named Members who are so absent; hereof fail not, and make due return in what manner you execute the same.

In testimony whereof I have hereunto set my hand and caused to be affixed the seal of the House of Representatives of the United States this the —— day of——, A. D. 190—.

[SEAL OF THE HOUSE OF REPRESENTATIVES.]

——— ———, *Speaker.*

Attest:

——— ———, *Clerk.*

[3] First session Fifty-fourth Congress, Record, pp. 923–938.

[4] Congressional Record, second session Forty-sixth Congress, pp. 575, 603.

In 1892 Mr. Thomas B. Reed, of Maine, brought the proposition again before the House and advocated it.[1] It was not adopted, however, until the Fifty-fourth Congress, when Mr. Reed again became Speaker. Under the old call of the House, provided for in section 2 of Rule XV,[2] the vote on the pending proposition could not be taken until the proceedings under the call had been dispensed with. Thus an opportunity was given for a quorum secured by the call to vanish before the vote could be taken. The new rule has been used often and has superseded the old form of call except in cases where the absence of a quorum is developed by other means than by a vote, or where a quorum fails on a motion for which a quorum is not required, and on Friday nights.

3042. The new rule for a call of the House applies only to cases where a quorum is required on the vote, and hence not to motions to adjourn.—On May 6, 1896,[3] the Committee of the Whole House rose without a quorum and the Chairman reported the names of the absentees to the House. After the names of the absentees had been read, Mr. Nelson Dingley, of Maine, moved that the House adjourn.

The yeas and nays being ordered, there were 38 yeas, 58 nays, and 259 not voting.

The result of the vote having been announced, Mr. John A. Pickler, of South Dakota, moved a call of the House.

Mr. John F. Lacey, of Iowa, made the point that under section 4 of Rule XV the call would be ordered without further action of the House.

The Speaker[4] said:

The Chair thinks this is not one of the cases covered by the rule, as a quorum is not needed to adjourn.

3043. Discussion of the authority of the Speaker to issue a warrant for the arrest of absent Members during a call of the House.

The Speaker asks consent to address the House, even on a question of order.

On May 29, 1906,[5] Mr. Arthur P. Murphy, of Missouri, claiming the floor for a question of personal privilege, stated that on the preceding day he had been arrested by an Assistant Sergeant-at-Arms, of whom he said:

He presented to me this paper, a portion of which I want to read:

"Fifty-ninth Congress, first session, Congress of the United States.

"IN THE HOUSE OF REPRESENTATIVES.

"To HENRY CASSON,

"Sergeant-at-Arms of the House of Representatives, or his deputies:

"Whereas clause 4 of Rule XV of the House of Representatives provides as follows:"

Then it recites clause 4 of Rule XV.

"And whereas the conditions specified in the said rule have arisen and the following-named persons are absent, to wit, Arthur P. Murphy (and fifty-nine others who a4e named), now, therefore, I,

[1] Congressional Record, first session Fifty-second Congress, p. 767.

[2] See section 2982 of this chapter.

[3] First session Fifty-fourth Congress, Record, p. 4915.

[4] Thomas B. Reed, of Maine, Speaker.

[5] First session Fifty-ninth Congress, Record, pp. 7625, 7626.

J. G. Cannon, Speaker of the House of Representatives, by virtue of the power vested in me by the House, hereby command you to execute the said order of the House by taking into custody and bringing to the bar of the House the said above-named Members who are so absent; hereof fail not, and make due return in what manner you execute the same.

"In testimony whereof I have hereunto set my hand and caused to be affixed the seal of the House of Representatives of the United States this 28th day of May, 1906.

"J. G. CANNON, *Speaker.*
A. MCDOWELL, *Clerk."*

"Attest:

With the seal of the House of Representatives thereon.

I fail to find, Mr. Speaker, in my opinion, any authority whatever under law or under the rules of the House or under the Constitution for the issuance of such a paper, which purports to be a warrant. Section 5 of Article I of the Constitution of the United States provides:

"SEC. 5. Each House shall be the judge of the elections, returns, and qualifications of its own Members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent Members in such manner and under such penalties as each House may provide."

That provides the House may do that. I find that under Rule I of the House, clause 4, in relation to the duties of the Speaker:

"SEC. 4. He shall sign all acts, addresses, joint resolutions, writs, warrants, and subpoenas of, or issued by order of, the House, and decide all questions of order, subject to an appeal by any Member, on which appeal no Member shall speak more than once, unless by permission of the House."

I find in clause 3 of Rule III, in relation to the duties of the Clerk, as follows:

"Attest and affix the seal of the House to all writs, warrants, and subpoenas issued by order of the House, certify to the passage of all bills and joint resolutions."

I find in Rule IV, clause 1, that the duties of the Sergeant-at-Arms are as follows:

"1. It shall be the duty of the Sergeant-at-Arms to attend the House and the Committee of the Whole during their sittings, to maintain order under the direction of the Speaker or Chairman, and, pending the election of a Speaker or Speaker pro tempore, under the direction of the Clerk; execute the commands of the House, and all processes issued by authority thereof, directed to him by the Speaker."

Then I find under Rule XV, in clause 2, it provides:

"2. In the absence of a quorum, fifteen Members, including the Speaker, if there is one, shall be authorized to compel the attendance of absent Members, and in all calls of the House the doors shall be closed, the names of the Members shall be called by the Clerk, and the absentees noted; and those for whom no sufficient excuse is made may, by order of majority of those present, be sent for and arrested, wherever they may be found."

Then we find in clause 4 of Rule XV—and this warrant under which the Sergeant-at-Arms was acting especially states upon its face that it was under clause 4 of Rule XV—this:

"4. Whenever a quorum fails to vote on any question, and a quorum is not present and objection is made for that cause, unless the House shall adjourn, there shall be a call of the House, and the Sergeant-at-Arms shall forthwith proceed to bring in absent Members."

There is not a single provision in that rule that authorizes the Speaker of the House of Representatives to issue a warrant. There is no authority in that rule or in any other rule of this House that authorizes the Speaker of the House of Representatives to issue a warrant except upon the order of the House. Rule XV is on the subject of "Calls of the roll and House," and, under all of the rules of construction of law, all of these sections would be considered together. If you take clause 4 and construe it alone, it would be ambiguous, but in construing ambiguity, it is not in favor of arrest, but more in the opposite direction.

I looked over the Record this morning, and the Journal, and there is not a single entry directing, ordering, or authorizing the Speaker of the House of Representatives to issue a warrant, a rule, an order, or any other process to bring a single Member before the bar of this House. * * * Now, I want to call attention to the closing words of the warrant:

"Now, therefore, I, J. G. Cannon, Speaker of the House of Representatives, by virtue of the power vested in me by the House."

I do not understand what authority you would get unless it would be by a vote of the majority of the Members present.

The Speaker,[1] rising in his place, said:

The Chair desires to state, and can only do it by unanimous consent of the House, because there is nothing before the House—— * * * for the Chair to rule upon. Is there objection to a very brief statement by the Chair? [After a pause.] The Chair hears none.

The Chair examined with some care, and caused to be examined with some care, the propriety of issuing the warrant referred to. Clause 4 of Rule XV is a rule that was adopted in the Fifty-fourth Congress; and in the absence of a quorum, shown upon a vote taken, the rule provides what the Sergeant-at-Arms shall do. The Chair is inclined to believe that, on such a fact arising, the Sergeant-at-Arms, without a warrant, would be legally authorized, upon the order of the Speaker verbally given, as the rule provides, to bring in absent Members. Such was the old practice of Parliament. The Chair is quite well aware that no act that he performs as Representative or Speaker should be performed or can be performed properly or legally except under the Constitution, under the law, or under the rules of the House which the House adopts, not only from necessity, but by express provision.

Clause 4 was adopted, the Chair stated, in the Fifty-fourth Congress. Prior to that the House had proceeded under clause 2 of the same Rule XV, which was a provision that has dwelt in the rules, perhaps, almost from the organization of the House, but that was a proceeding for the House to get a quorum in all cases, and not especially upon the passage of a bill, as is provided for in clause 4.

Now, the gentleman from Missouri has read the authority from Rule I for the Speaker issuing subpoenas, warrants, orders, etc. There is not now, and never has been any rule, so far as the Chair can find out, that authorizes in express terms the Speaker to issue a warrant, and the Chair has caused to be examined the practice of the House under clauses 1 and 2 of Rule XV prior to the Fifty-fourth Congress and has found that uniformly on a call of the House those present gave authority in form, as follows:

"Resolved, That the Sergeant-at-Arms take into custody and bring to the bar of the House such of its Members as are absent without leave."

That resolution is in substance the authority that is given by terms of the rule in cases arising under clause 4 of Rule XV, and the Chair, on inquiry, finds it was the invariable practice of substantially all the Speakers prior to the Fifty-fourth Congress, on the strength of the resolution and without further authority, to issue a warrant.

The Chair is still of opinion that under the practice in the House he is authorized to issue the warrant, although, as stated before, the Chair is inclined to be of the opinion that when the fact arises under clause 4 of Rule XV the Sergeant-at-Arms, on the verbal direction of the Speaker, as that rule provides, can bring in absent Members. If he can under the verbal direction, much more he can under the written direction.

Mr. Murphy called attention to section 4 of Rule XV, and pointed out that it did not provide that the Speaker should direct the Sergeant-at-Arms to arrest absent Members or that he should issue a warrant.

The Speaker replied:

No; nor has the resolution, so far as the Chair can find, usually adopted by the House under the old rule, provided that the Speaker should issue the warrant. That authority is inferred from Rule I and other rules; but especially is derived from the old practice of the House as well as the ancient usage of the courts and Parliament.[2]

Now, the Chair has no doubt but that under the rule and under the warrant the gentleman was legally arrested, and the question as to whether the Chair had the right to issue the warrant is a barren question, in the opinion of the Chair, because the gentleman was lawfully and legally arrested under the rules of the House without or with the warrant.

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] May's Parliamentary Practice (Chap. III) states: "In earlier times it was not the custom to prepare a formal warrant for executing the orders of the House of Commons; but the sergeant arrested persons with the mace, without any written authority."

3044. Proceedings of arrest of Members and arraignment at the bar under section 4 of Rule XV for securing attendance of a quorum.—On May 28, 1906,[1] the House was considering the bill (S. 1243) providing for compulsory education in the District of Columbia, when, on the division on the passage of the bill it appeared that there was no quorum present.

Thereupon the Speaker[2] ordered a call of the House under section 4 of Rule XV.

During the call the Assistant Sergeant-at-Arms appeared and said:

Mr. Speaker, in accordance with the rules of the House and the warrant of the Speaker, I present at the bar of the House, under arrest, Mr. Buckman and Mr. Rucker.

The Speaker pro tempore[3] said:

The gentlemen will be noted as present under the rule and discharged from arrest.

Thereupon the Speaker interrogated each gentleman as to whether or not he desired to vote, and each having stated that he did, their names were called and they voted.

The same procedure was called as to other gentlemen brought in under arrest.

3045. On a call of the House under the new rule the Sergeant-at-Arms is required to detain those Members who are present and bring in absentees.—On December 14, 1896,[4] the question being taken on the engrossment and third reading of the bill (H. R. 1888) to amend an act relating to the sale of intoxicating liquors in the District of Columbia, there were, on a yea and nay vote, 130 yeas and 31 nays.

Mr. Rowland B. Mahany, of New York, made the point of no quorum.

Mr. Elijah A. Morse, of Massachusetts, moved a call of the House.

The Speaker[5] said that the rule provided for such a contingency, and caused to be read section 4 of Rule XV. He then said:

Under the rule there will now be a call of the House, the Sergeant-at-Arms will proceed to bring in absent Members, and the yeas and nays on the pending question will be considered as ordered. The Clerk will therefore call the roll and the responses will show whether the Member is present or not, and will also show his vote upon the pending question. The Doorkeeper will close the doors.

During the roll call, as there seemed to be a misunderstanding, the Speaker said:

The Chair will state to the House that under this rule, when Members are called they are required to vote "yea" or "nay" upon the engrossment and third reading of the pending bill, unless they desire not to vote, in which case they will respond "present." Thus the roll call will answer the double purpose of taking a vote on the bill and of showing what Members are present. The Chair desires to add also that we are now under a call of the House, so that it is the duty of Members who are present to remain until the call and the vote is completed, and the Sergeant-at-Arms is required to keep Members here who are present, and also to bring in the absentees.

3046. On January 25, 1897,[6] during the consideration of a bill (H. R. 9099) for the regulation of cemeteries of the District of Columbia, there appeared, on a division, aye 1, noes 19.

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[1] First session Fifty-ninth Congress, Record, p. 7585.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] Marlin E. Olmsted, of Pennsylvania, Speaker pro tempore.

[4] Second session Fifty-fourth Congress, Record, p. 152.

[5] Thomas B. Reed, of Maine, Speaker.

[6] Second session Fifty-fourth Congress, Record, p. 1132.

Mr. Henry M. Baker, of New Hampshire, made the point of no quorum.

The Speaker,[1] having counted the House, announced—

One hundred and twenty-four Members are present, not a quorum, and, under the rules of the House, the yeas and nays will be considered as ordered, and also a call of the House. As the roll is called, Members desiring to vote will vote yea or nay, and Members desiring to record themselves as present will announce their presence. * * * The Chair desires to call the attention of Members to the fact that, under the rules, not only is a vote to be now taken, but also a call of the House. The doors will be closed and Members are expected to remain within the precincts of the Hall, and the Sergeant-at-Arms and doorkeepers have no right to permit any Member to leave the House during the continuance of the call. The Chair hopes Members will understand this, and will stay in the Hall until a conclusion of the vote.

3047. On January 21, 1897,[2] the House was considering the contested-election case of Jacob Yost *v.* Henry St. George Tucker, from Virginia, and the question was on the adoption of the resolutions confirming Mr. Tucker in his seat. There were, on division, yeas 115, nays 7.

Mr. William P. Hepburn, of Iowa, made the point of order that no quorum was present.

After a count the Speaker announced 150 Members present; not a quorum.

A motion to adjourn having been entertained and rejected, the Speaker[1] said:

A call of the House will be considered as ordered; the Sergeant-at-Arms will close the doors and the Clerk will call the roll, and Members will answer in two ways, yea or nay upon the question and "present" on the roll call, and the Sergeant-at-Arms will bring in absentees.

The roll call having been completed, the Speaker announced—

On this question the yeas are 119, the nays 47; 14 gentlemen are present and not voting. A quorum being present, the resolutions are adopted. In order to avoid the possibility of mistake, the Clerk will announce the names of gentlemen present, so that if there be any error it may be corrected.

The names of Members present and not voting were read, as follows: Messrs. Dalzell, Daniels, Grow, Mahon, Meredith, Raney, Steele, Tucker, Wilson of Ohio, Bowers, Foote, Foss, Atwood, and Miller of West Virginia.

Mr. J. H. Bankhead, of Alabama, stated that he was present and desired to be so recorded.

The Speaker said:

The gentleman is not recorded. He will be marked as present. The report of Members present and not voting has been read as made up by the Clerk, and whether the name of the gentleman from Virginia, Mr. Tucker, should be counted or not is not material, as it is not necessary to make up a quorum.

3048. On February 8, 1897,[3] the question being on an amendment to the bill (H. R. 9470) to incorporate the Washington and Gettysburg Railway Company, there were on division ayes 40, noes 11.

The point of no quorum having been made, the Speaker counted the House and announced the presence of 160 Members, not a quorum.

The Speaker[1] then said:

By the rules of the House the yeas and nays are ordered, and at the same time a call of the House is directed.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Fifty-fourth Congress, Record, p. 1042.

[3] Second session Fifty-fourth Congress, Record, p. 1658.

The Clerk will call the roll, and Members will answer either for against the proposition, and those who desire simply to be recorded without voting will answer "present."

The Chair desires to say to the Members of the House that under this rule the doors of the House are closed, and the doorkeepers and Sergeant-at-Arms are not authorized, neither the one nor the other, to allow Members to go out. Of course every convenience will be afforded to Members, but all are expected to remain in the House or in the adjoining rooms.

The Chair has deemed it proper to make this statement, as there seems to have been some misunderstanding or misapprehension heretofore as to the operation of the rule. Those Members here are expected to remain, and those who are not here are expected to be brought in.

3049. Under the new rule for a call of the House a resolution of the House is not required to empower the Sergeant-at-Arms to bring in absentees.—On May 27, 1898,[1] a quorum having failed to vote on the motion to lay on the table the appeal taken by Mr. Joseph G. Cannon, of Illinois, from the decision of the Chair on a point of order raised by Mr. William L. Greene, of Nebraska, the Speaker pro tempore ordered the doors to be closed and the roll to be called under the provisions of section 4 of Rule XV. After the roll had been called twice Mr. James D. Richardson, of Tennessee, rising to a parliamentary inquiry, asked whether or not, under the rule, the Sergeant-at-Arms was required, without the passage of a resolution by the House, to bring in absent Members.

The Speaker[2] replied: "The Chair thinks he is, under the rule."[3]

3060. A motion to adjourn may be made before the call of the roll under section 4, of Rule XV.—On February 16, 1899,[4] the sundry civil appropriation bill being under consideration, an appeal was taken from the decision of the Chair on a point of order, and a motion was made to lay the appeal on the table. The yeas and nays being ordered on the latter motion, there appeared, yeas 96, nays 68; "present" 9; not a quorum.

The regular order being demanded, the Speaker announced that the regular order was a call of the House; that the yeas and nays were ordered, and that the doors would be closed.[5]

Before the call of the roll had begun Mr. William Sulzer, of New York, as a parliamentary inquiry, asked whether or not a motion to adjourn would be in order. The Speaker[2] held that the motion would be in order.

3051. After the roll has been called under the new rule for a call of the House, and while the proceedings to obtain a quorum are going on, motions to excuse Members are in order.—On Monday, February 15, 1897,[6] at a special evening session for the consideration of bills usually in order at a Friday evening session, on a motion to go into Committee of the Whole House, there were 64 yeas, 3 nays.

The point of no quorum being made, the Speaker pro tempore caused[7] section 4 of Rule XV to be read, after which the doors were closed and the roll call began.

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[1] Second session Fifty-fifth Congress, Record, p. 5304.

[2] Thomas B. Reed, of Maine, Speaker.

[3] In this case no warrant was issued to the Sergeant-at-Arms, as he only found it necessary to notify Members.

[4] Third session Fifty-fifth Congress, Record, p. 1962.

[5] Under section 4 of Rule XV. (See sec. 3041 of this chapter.)

[6] Second session Fifty-fourth Congress, Record, p. 1858; Journal, p. 175.

[7] Sereno E. Payne, of New York, Speaker pro tempore.

After the roll had been called through, but before the announcement of the result, Mr. John E. McCall, of Tennessee, asked that his colleague, Mr. Foster V. Brown, of Tennessee, be excused.

Mr. Henry F. Thomas, of Michigan, made the point of order that excuses were not in order at this time.

The Speaker pro tempore said:

The Chair thinks that it is in order at this time. This rule provides that after the completion of the roll, the call shall still be in operation, that absent Members may be brought to the bar of the House and given an opportunity to vote until after further proceedings are dispensed with.

Before the announcement of the result also, Mr. W. Jasper Talbert, of South Carolina, moved that the House adjourn.

The Speaker pro tempore said:

The gentleman from South Carolina moves that the House do now adjourn. Under the rule it requires a majority of those present to second the motion. As many as are in favor of seconding the motion that the House do now adjourn will stand until counted. [A pause.] No one rising to second the motion to adjourn, the motion is out of order.

3052. Under the new rule for a call of the House the roll is called over twice, and those appearing after their names are called may vote.—On June 9, 1896,[1] the House was voting by yeas and nays to lay on the table a motion to reconsider a vote on the District of Columbia appropriation bill. There appeared, yeas 99, nays 31, not voting 224.

No quorum being present, the Speaker announced that under the rule there would be a call of the House, and the Sergeant-at-Arms would proceed at once to bring in absent Members.

Mr. Joseph W. Bailey, of Texas, inquired whether or not those who had answered on the previous roll call should vote again.

The Speaker[2] said:

The Chair thinks the only solution as the matter stands is for each Member to vote when his name is called, and then when the roll call is finished the absentees may vote. The Sergeant-at-Arms will close the doors, and the Clerk will call the roll.

The Clerk proceeded with the roll call, and the same having been finished, the Speaker said:

The Clerk will now call the names of Members failing to respond to the first call. The Chair trusts that gentlemen who are present and do not vote will announce that they are present, to avoid confusion.

The second call having been concluded, the Speaker announced:

On this question the yeas are 126 and the nays are 43. The following-named gentlemen are present: Mr. Apsley, Mr. Heatwole, Mr. Leisenring, Mr. Tracey, Mr. Richardson, Mr. McMillin, Mr. Warner, Mr. Belknap, Mr. Fitzgerald, Mr. Johnson, of North Dakota, and Mr. De Witt.

The Chair desires to say to these gentlemen that under a misapprehension he stated a while ago that they could not vote, but they are marked present and their presence is necessary to constitute a quorum, and under the rule they have a right to vote if they desire to do so.

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[1] First session Fifty-fourth Congress, Record, p. 6330.

[2] Thomas B. Reed, of Maine, Speaker.

Several of these gentlemen having voted, the Speaker announced the corrected vote as yeas 131, nays 45; answering "present," Messrs. Apsley, Heatwole, Leisenring, Tracey, Richardson, Hurley, and McMillin, a quorum being present.

3053. On seconding, by tellers, a motion to suspend the rules, a quorum failed, whereupon the Speaker ordered the doors closed and the roll called.—On March 2, 1901,[1] Mr. Nehemiah D. Sperry, of Connecticut, moved to suspend the rules and pass the bill (H. R. 12551) "to prevent the sale of firearms, opium, and intoxicating liquors in certain islands of the Pacific."

Mr. Joseph W. Bailey, of Texas, demanded a second, and on the vote by tellers there were 53 ayes and 9 noes.

Mr. Bailey made the point that no quorum was present.

After counting, the Speaker[2] announced 91 Members present, not a quorum. Thereupon he ordered the doors closed, and announced that those favoring the seconding of the motion would answer "aye," those opposed "no," and those not voting "present."

The roll being called there were yeas 93, nays 8, answering "present" 82. The Speaker thereupon announced that a quorum was present and that a second was ordered.

3054. On June 16, 1902,[3] Mr. Fred C. Stevens, of Minnesota, by authority of the Committee on Military Affairs, moved to suspend the rules and pass with amendment the bill (H. R. 14441) to authorize the Secretary of War, in his discretion, to favor American-built ships in the transportation of Government supplies to the Philippines across the Pacific Ocean.

A second having been demanded, there appeared on a vote, by tellers, ayes 77, noes 0.

Mr. James D. Richardson, of Tennessee, made the point of order that there was no quorum present.

The Speaker, having counted the House, announced the presence of 129 Members, not a quorum.

Mr. Oscar W. Underwood, of Alabama, moved that the House adjourn, which was negatived on division, ayes 41, noes 81, a demand for the yeas and nays on the motion to adjourn being refused.

Then the Speaker[2] said:

> There being no quorum present, the Doorkeeper will close the doors and the Sergeant-at-Arms will a bring in absent Members to answer to their names. The question is on seconding the motion to suspend the rules and pass the bill.

Thereupon Mr. Richardson, of Tennessee, made the point of order that the rule required the seconding of the motion to suspend the rules to be by tellers, and that there was no provision in the rule for calling the yeas and nays on such motion.

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[1] Second session Fifty-sixth Congress, Record, p. 3444.

[2] David B. Henderson, of Iowa, Speaker.

[3] First session Fifty-seventh Congress, Journal, p. 815; Record, p. 6886.

The Speaker said:

Tellers were duly ordered in this case. The Chair admits that the question raised by the gentleman from Tennessee is not without difficulty. But a rule of the House requires that when a quorum fails to appear the doors shall be closed and Members brought in. On another occasion the Chair held that that rule would apply in a case of this kind. Therefore the Chair overrules the point of order.

Thereupon the yeas and nays were called, a quorum answered, and by a vote of yeas 105, nays 66, answering present 11 the second was ordered.

3055. On April 2, 1906,[1] a vote was taken by tellers on ordering a second on a motion to suspend the rules and pass the bill (H. R. 15266) "to amend existing law relating to the fortification of pure sweet wines."

The tellers reported ayes 83, noes 20.

Mr. Champ Clark, of Missouri, made the point of order that a quorum was not present.

The Speaker[2] then announced:

The Chair will count. [After counting.] One hundred and fifty-nine gentlemen are present, not a quorum. The doors will be closed and the Clerk will call the roll. Those in favor of ordering a second will, as their names are called, answer "aye", those opposed will answer "no," and those not voting will answer "present," and the Sergeant-at-Arms will bring in the absentees.

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[1] First session Fifty-ninth Congress, Record, p. 4609.

[2] Joseph G. Cannon, of Illinois, Speaker.

Chapter LXXXVII.

THE ORDER OF BUSINESS.

1. **Rule prescribing the order of business. Sections 3056, 3057.**
2. **Proceedings by unanimous consent. Sections 3058–3060.**
3. **Motions relating to priority of business not debatable. Sections 3061–3063.**
4. **Business sometimes limited at special sessions. Sections 3064–3069.**
5. **Privileged matters may interrupt. Sections 3070, 3071.**
6. **Privileged consideration of revenue and appropriation bills. Sections 3072–3085.**
7. **In relation to privileged motions. Sections 3086–3088.**
8. **Business on the Speaker's table. Sections 3089–3111.**
9. **Unfinished business. Sections 3112–3114.[1]**
10. **The calendars for reports of committees. Sections 3115–3117.**
11. **Consideration under call of committees. Sections 3118–3130.**
12. **Interruption of call of committees. Sections 3131–3133.**
13. **Interruption after sixty minutes by motion to go into Committee of Whole. Sections 3134–3141.**
14. **Privilege of bills reported under leave to report at any time. Sections 3142–3147.**
15. **Privileged matters in general. Sections 3148–3151.[2]**

3056. The order of business in the House is prescribed by rule. The old methods of arranging business in the House, and evolution of the present system.

Form and history of section 1 of Rule XXIV.

Section 1 of Rule XXIV prescribes the regular order of business.

The daily order of business shall be as follows:
First. Prayer by the Chaplain.
Second. Reading and approval of the Journal.
Third. Correction of reference of public bills.
Fourth. Disposal of business on the Speaker's table.
Fifth. Unfinished business.
Sixth. The morning hour for the consideration of bills called up by committees.
Seventh. Motions to go into Committee of the Whole House on the state of the Union.
Eighth. Orders of the day.

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[1] Unfinished private business. Sections 3276–3280 of this volume.

Unfinished business in Committee of the Whole. Sections 4735–4736 of this volume.

[2] Precedence of questions of privilege. Sections 2521–2531 of Vol. ii.

Precedence after an adjournment of a bill on which the previous question is ordered. Sections 5510–5520 of Vol. V.

Privilege of conference reports. Sections 6443–6446 of Vol. V.

Request for conference not privileged before disagreement. Section 6301 of Vol. V.

The rule relating to the order of business has undergone great changes. Indeed, in the first rules of the House there was no rule relating distinctively to the order of business.[1] The House being able to dispose of all that came before it, the question of order and precedence was not important. But as the business of the House enlarged and became more than could be comfortably transacted, order and selection became vital questions. Originally, Members presented petitions at any time when recognized by the Speaker, and committees reported in the same way. The first proposition for a rule to prescribe the order of business seems to have been made on February 19, 1807,[2] by Mr. Joseph Clay, of Pennsylvania, who suggested an order both for the House and Committee of the Whole; but the House after consideration postponed it indefinitely. A similar proposition was made in vain February 16, 1808.[3] A ruling by Mr. Speaker Varnum on May 29, 1809,[4] indicates that at that time custom had created an order which gave the first hour of the session to the presentation of petitions and communications. In accordance with the custom he ruled a resolution out of order in that hour. But when the rules were revised on December 23, 1811,[5] it was provided that, as soon as the Journal was read each day, the Speaker should call the Members and Delegates by States and Territories for the presentation of petitions; and, the petitions having been presented and disposed of, reports from standing and select committees should be called for and disposed of. It was specified that these two classes of business should be in order at no other part of the day. The remainder of the day would be devoted largely to "orders of the day,"[6]—that is, such reports as had not been acted on when made and had been assigned to a day in the future for consideration. On March 13, 1822,[7] a rule was adopted limiting the time for reports and resolutions (which seem to have worked into a place in the morning period) to one hour daily, after which should come Speaker's table business and orders of the day. On January 5, 1832,[8] the hour allowed for the presentation of reports and resolutions was found too short. The expiration of the time would often come in the midst of a discussion, and the debate would be "snipped off," as Mr. John Randolph, of Virginia, expressed it. Resolutions also had multiplied greatly, Members even in matters of private claims discarding the use of petitions and introducing resolutions directing committees to investigate certain subjects.[9] So

[1] First session First Congress, Journal, p. 9.

[2] Second session Ninth Congress, Journal, pp. 595, 601. Mr. Speaker Clay wrote: "The object of all bodies, on this subject [determining what shall be considered], is the same—so to arrange the subjects of deliberation as best to promote the public interest." (Annals, fast session, Twelfth Congress, p. 1472.)

[3] First session Tenth Congress, Journal, pp. 179, 180; Annals, p. 1618.

[4] First session Eleventh Congress, Journal, p. 23.

[5] Twelfth Congress, Journal, pp. 89, 91.

[6] "Orders of the day" are still mentioned in the order of business, but they became obsolete many years ago. Now the House makes "special orders" which supersede often the entire order of business. See the next chapter, sections 3152–3265, of this work.

[7] First session Seventeenth Congress, Journal, p. 350; Annals; pp. 1299, 1300.

[8] First session Twenty-second Congress, Journal, p. 155; Debates, pp. 1482,1483.

[9] For discussions as to the difficulties occasioned by this presentation of resolutions instructing committees to examine subjects, see Debates, First session Twentieth Congress, pp. 823–827, 1794–1756. The old parliamentary practice of allowing the introduction of bills only by motions for leave or through a committee to whom petitions had been referred or instructions had been given still obtained, and hence the more expeditious method of referring resolutions in the morning hour became so popular, especially for private claims, as to seriously hold back the reports of committees. (First session Twenty-second Congress, Debates, p. 1482.)

the House adopted a rule on January 5, 1832, that after the hour for petitions and resolutions had expired, it should be in order, pending discussion or consideration of such petitions or resolutions, to entertain a motion to proceed to business on the Speaker's table and to the orders of the day. Meanwhile the congestion of business was serious. As early as 1829[1] so many petitions were left unacted on as to cause complaint that the constitutional right of petition was impaired. The congestion also affected the disposition of other business, and on March 31, 1830[2], Mr. Henry R. Storrs, of New York, said that "they continued to make bills the order of the day for to-morrow, while to-morrow never came."

On February 6, 1838, it was found necessary to set apart each alternate Monday for calling the States and Territories for resolutions, those giving rise to debate going over. Finally the problem of disposing of resolutions was solved by including them with bills and giving a time for their presentation.[3]

Before 1838, it had been found desirable to restrict the presentation of petitions to Mondays, except during the first six days in the session, when they were in order every day;[4] and in that year the time for presenting petitions was still further encroached upon in the interest of other business. Finally, on March 29, 1842, the presentation of petitions had become so difficult that the House, at the suggestion of Mr. John Quincy Adams, of Massachusetts, adopted the plan of allowing petitions to be handed to the Clerk for entry on the Journal and reference in accordance with the Member's indorsement.[5] Thus the presentation of petitions was removed from the order of business, much time being saved thereby. In the same way, although at a much later period, the problem of the introduction of bills and the presentation of reports was solved, thereby relieving the House greatly of the congestion of business.[6]

At the time of the revision of 1880[7] the House was confronted with a difficulty arising from the fact that such reports of committees as were not of a nature to go to Committee of the Whole had to be considered in the hour for reports. Thus, lengthy consideration of a bill, whether in good faith or for the purpose of obstruction, would hold back committee reports, and the condition became such that important measures could be reported to the House only by suspension of the rules or by unanimous consent. Therefore, in 1880, it was provided that as soon as reported each bill should be referred to one of three calendars, there to await the action of the House in regular order. Finally, in 1890,[8] the morning hour for reports was abolished, and they were delivered to the Clerk for reference to the calendars, as petitions and bills were delivered for reference to committees.

Prior to 1880 unfinished business had been in order after the reading of the Journal; but in that revision it was placed after the morning hour for the presentation of reports. In the Forty-ninth Congress a second morning hour was introduced

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[1] Second session Twentieth Congress, Debates, pp. 297, 298.

[2] First session Twenty-first Congress, Debates, p. 720.

[3] January 10, 1837, Mr. Speaker Polk entered into an elaborate discussion of the order of business as it existed at that time. (Second session Twenty-fourth Congress, Debates, pp. 1340–1345.)

[4] Second session Twenty-fifth Congress, Globe, p. 162.

[5] Second session Twenty-seventh Congress, Globe, p. 367.

[6] See section 3364 of this volume.

[7] See report of committee, second session Forty-sixth Congress, Record, p. 200.

[8] See Report No. 23, first session Fifty-first Congress.

for the consideration of bills that committees might present, and unfinished business became still more difficult to reach.

In 1890 unfinished business was restored to a position of privilege, in accordance with the principle that business once begun should be completed.

Thus in the order of business the time occupied in the presentation of bills, petitions, and reports has been gradually eliminated from the regular order, and the time of the House is devoted to the orderly consideration of measures that have received the sanction of committees.

3057. Discontinuance of the use of "Orders of the day" for controlling the order of business.—On January 21, 1818,[1] the old practice of assigning business for consideration on future days, was beginning to become unwieldy, and two propositions were made for new rules, one for printing a calendar of the orders of the day and another that any subject made a "special order of the day" by leave of the House should have precedence over all other orders of the day. Before this time also disappears the old entry found at the end of each day's Journal since the beginning of Congress: "The several orders of the day were postponed until tomorrow." It is last seen in Journals of the Eleventh Congress.[2]

3058. As a request for unanimous consent to consider a bill is in effect a request to suspend the order of business temporarily, a demand for the regular order may be made at any time and is equivalent to an objection.—On August 3, 1892,[3] Mr. Augustus N. Martin, of Indiana, asked unanimous consent that the House now proceed to the consideration of certain bills on which the previous question had been ordered. Before the request was concluded and the business desired to be considered was indicated, Mr. Thomas B. Reed, of Maine, demanded the regular order.

Mr. Martin made the point of order that, having been recognized and having proceeded to make a request of the House, he could not be taken off the floor until his request was completely stated.

The Speaker[4] held:

> The demand for the regular order is of course equivalent to an objection, and when demanded the Chair is required to enforce it. The gentleman making a request for unanimous consent can not submit the request as against the demand for the regular order. So if at any period the regular order is demanded it is understood to be equivalent to an objection to anything but the regular order. The gentleman has the right to demand the regular order. The gentleman may state that he wants unanimous consent to consider a bill, and the Chair would direct the Clerk to read it, but any gentleman, even during the reading of the bill, could demand the regular order, and the Chair has always held that equivalent to an objection, and suspended the further reading of the bill.

3059. Unanimous consent to consider a bill implies a setting aside of the order of business for that purpose, hence the withdrawal of an objection thereto does not bring the bill up if other business has intervened.—

[1] First session Fifteenth Congress, Journal, pp. 181, 167; Annals, p. 798.

[2] The present rule for the order of business (section 3056 of this chapter) has as its eighth stage "orders of the day." This is a survival of the past and does not represent any business under the present practice. The use of special orders is very frequent; but they have priority over the rule for the order of business.

[3] First session Fifty-second Congress, Journal, p. 351; Record, p. 7028.

[4] Charles F. Crisp, of Georgia, Speaker.

On May 24, 1898,[1] Mr. Charles A. Boutelle, of Maine, asked unanimous consent for the consideration of a bill relating to the hospital service of the Navy. Mr. Oscar W. Underwood, of Alabama, objected. Later Mr. Boutelle announced that the gentleman from Alabama had withdrawn his objection.

Mr. John W. Gaines, of Tennessee, made the point of order that the objection could not be withdrawn.

The Speaker[2] said:

> The gentleman from Tennessee [Mr. Gaines] is right in making the point that the objection can not be withdrawn, because it is effectual when it happens; therefore that matter will have to come up at some other time. * * * Objection cannot be withdrawn after we have passed to another thing. The matter may again be presented to the House, but the objection can not be withdrawn.

3060. Before the adoption of rules, and the consequent establishment of an order of business, it was held in order, without unanimous consent, to offer on the floor and consider at once a proposition relative to the transaction of business.—On December 12, 1889,[3] the House had not adopted a system of rules, and business was proceeding under general parliamentary law, excepting that the Committees on Rules, Accounts, Enrolled Bills, and Mileage had been authorized by a special resolution.[4] Mr. Nelson Dingley, Jr., of Maine, offered a series of resolutions providing for a call of the States and Territories on December 16 for the introduction of public bills and also for the presentation through the Clerk of private bills, petitions, and memorials.

The House having proceeded to the consideration of the resolutions,

Mr. Richard P. Bland, of Missouri, and Mr. Roger Q. Mills, of Texas, made the point of order that, the House having adopted a rule by which all propositions touching the rules of the House should be referred to the Committee on Rules, the said resolution must be so referred.

Mr. Charles F. Crisp, of Georgia, made the further point of order that unanimous consent was required for the introduction and consideration of the said resolutions, which had not been asked for or granted.

The Speaker[2] overruled the said points of order on the ground that the said resolutions related to the order of business on a given day and not to the rules, and that it was not necessary to ask unanimous consent for their introduction and consideration, as well as on the further ground that the said points of order were submitted too late.

3061. Questions relating to the priority of business are decided without debate.

Early reference to the use of debate as a method of obstruction.

Form and history of Rule XXV.

Rule XXV is as follows:

> All questions relating to the priority of business shall be decided by a majority without debate.

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[1] Second session Fifty-fifth Congress, Record, pp. 5159, 5161.

[2] Thomas B. Reed, of Maine, Speaker.

[3] First session Fifty-first Congress, Journal, pp. 19; Record, p. 166, 167.

[4] Record, p. 84.

This rule was first adopted on February 21, 1803, and the record of debates shows that it was used on that day to stop debate where a gentleman was suspected of "a wish to procrastinate, in order to frustrate a great deal of important business, necessary to be transacted."[1] At the time of the revision of 1880[2] this rule, which was No. 66 in the old system, was made Rule XXV. With this change came a few unimportant changes in verbiage.

3062. A motion relating to the order of business is not debatable.—The motion to go into Committee of the Whole is not debatable.

On January 26, 1900,[3] the House went into Committee of the Whole House; and thereupon Mr. Thaddeus M. Mahon, of Pennsylvania, moved that the committee take up the bill (H. R. 6909) to pay the claim of the Eastern Extension Australasia and China Telegraph Company, Limited.

Mr. George W. Ray, of New York, as a parliamentary inquiry asked if the motion was debatable.

The Chairman[4] said:

As it relates to the order of business, it is not debatable.

3063. On February 15, 1906,[5] Mr. Sereno E. Payne, of New York, moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 14606) to provide for the consolidation and reorganization of customs collection districts, and for other purposes.

Mr. Charles R. Thomas, of North Carolina, asked the floor for debate on the motion.

The Speaker[6] held that the motion was not debatable.

3064. At an extraordinary session the House sometimes adopts a rule limiting the business to be considered.—On September 11, 1837[7] at the extra session called by proclamation of the President of the United States, Mr. Francis O. J. Smith, of Maine, offered this resolution:

Resolved, That the action of the several standing committees of this House on all matters not embraced by the message of the President of the United States to the two Houses of Congress, communicated on the second day of the current session, be suspended until the commencement of the annual session of Congress in December next; and that the consideration of all petitions on such suspended matters be also postponed to the period above specified.

Mr. James Garland, of Virginia, moved to amend by adding the words: "With the exception of private business."

This amendment was disagreed to, and then the resolution was agreed to, without division.

On September 13[8] this rule was rescinded so far as it applied to the Elections Committee.

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[1] Second session Seventh Congress, Journal, p. 358; Annals, p. 580.

[2] Second session Forty-sixth Congress, Record, p. 207.

[3] First session Fifty-sixth Congress, Record, p. 1225.

[4] George W. Steele, of Indiana, Chairman.

[5] First session Fifty-ninth Congress, Record, p. 2608.

[6] Joseph G. Cannon, of Illinois, Speaker.

[7] First session Twenty-fifth Congress, Journal, p. 47; Globe, pp. 20, 21.

[8] Journal, p. 52.

3065. On June 12, 1841,[1] at the special session of the Congress convened by proclamation of the President, the Committee on Rules reported and the House agreed to, yeas 105, nays 61, the following rule:

Upon the presentation of petitions and other papers, on subjects not specially referred to the consideration of the House in the message of the President at the opening of the present extra session, objection to the reception shall be considered as made, and the question of reception shall be laid on the table. This rule to be considered only in force during the present session. Petitions and other papers for or against a bankrupt law to be excepted from the operation of this rule. The action of all committees on all subjects not specially referred to the consideration of the House in the message of the President shall be suspended during the present session. This suspension not to apply to business before the Committee on Elections, on Ways and Means, on Accounts, and on Mileage, nor, if the House shall so determine, to the subject of a general bankrupt law.

3066. On July 8, 1861[2] the House, on motion of Mr. William S. Holman, of Indiana, agreed to the following resolution:

Resolved, That the House, during the present extraordinary session, will only consider bills and resolutions concerning the military and naval operations of the Government and the financial affairs therewith connected; and all bills and resolutions of a private character, and all other bills and resolutions not directly connected with the raising of revenue or affecting the military or naval affairs of the Government, shall be referred to the appropriate committees without debate, to be considered at the next regular session of Congress.

3067. The first session of the Fortieth Congress was convened by law on March 4, 1867,[3] and by concurrent resolution stood in recess from March 30 to July 3. On the latter day, when Congress had reassembled, the House adopted a resolution that no proposition for general legislation should be entertained during the session, except reconstruction legislation.[4]

On July 5, after debate, the Senate adopted a similar but not identical resolution.

3068. At the extraordinary session, convened according to law in 1871, the Senate adopted a resolution which, in its final form as amended on March 30, 1871,[5] was as follows:

Resolved, That the Senate will consider at the, present session no other legislative business than the deficiency appropriation bill, the concurrent resolution for a joint committee of investigation into the condition of the States lately in insurrection, and the resolution now pending instructing the Committee on the Judiciary to report a bill or bills that will enable the President and the courts of the United States to execute the laws in said States, and the report that may be made by the Committee on the Judiciary on that subject, and any bill that may be sent to the Senate from the House of Representatives on the same subject.

3069. The time occupied by a joint meeting of the two Houses is not counted in the time of the House's legislative session.—On February 11, 1885,[6] when the session of the House was resumed after the joint session of the two Houses to count the electoral vote, the Speaker pro tempore announced the regular

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[1] First session Twenty-seventh Congress, Journal, p. 121; Globe, p. 49.

[2] First session Thirty-seventh Congress, Journal, p. 46; Globe, p. 24.

[3] First session Fortieth Congress, Journal, p. 162; Globe, pp. 480, 481.

[4] At the special session of the Fifty-fifth Congress the House attained the object of considering certain business only by the adoption of a standing order in accordance with which it sat only on two days of the week. (See Journal and Record, first session, Fifty-fifth Congress.)

[5] First session Forty-second Congress, Globe, pp. 154, 226, 227, 345.

[6] Second session Forty-eighth Congress, Journal, pp. 521, 522; Record, p. 1533.

order to be the further consideration of the bill (H. R. 483) for the erection of a public building at Keokuk, Iowa.

Mr. William M. Springer, of Illinois, made the point of order that the hour given to the consideration of that bill under the special rule had expired.

The Speaker pro tempore[1] overruled the point of order, on the ground that the time occupied by the two Houses of Congress under the terms of the concurrent resolution providing for counting the votes for President and Vice-President could not be counted or included as a part of said hour, the House not having been in session for legislative business during that time.

3070. Privileged questions often interrupt the regular order of business, but when they are disposed of it continues on from the point of interruption.

Business on the Speaker's table and the call of committees, although in order early in the day, may be deferred by privileged questions.

On February 5, 1885,[2] pending a request that a House bill with Senate amendments might be taken up, Mr. William. S. Holman, of Indiana, made the point of order that the special rule establishing a morning hour[3] for consideration of bills fixed this hour at a time immediately after the approval of the Journal.

The Speaker pro tempore[4] held:

Under the rule, the morning hour comes at a stated time in the day, yet frequently it comes twenty-four[5] hours after the time when it would be due by the clock. This new rule, declares that immediately after the approval of the Journal an hour shall be set apart for the calling up of bills and resolutions subject to consideration under the rule. But a rule of the House, which is imperative, declares that questions of personal privilege, or privileged reports, or privileged questions, shall take precedence of all other questions, and that their consideration, and the time consumed therein, shall not to be taken account of by the Chair or by the House. The Chair has no arbitrary power to deny the right of the House to state and to be heard upon its privileged reports, its questions of privilege, and its privileged questions. The Chair therefore overrules the point of order made by the gentleman from Indiana, Mr. Holman, and holds that nothing has occurred since the reading of the Journal but the acceptance and entertaining of a privileged report, or the consideration of a question of privilege, or a privileged question.

3071. On May 2, 1896,[6] near the close of the day's session, which had been occupied by a special order, Mr. Charles F. Crisp, of Georgia, called for the regular order.

The Speaker thereupon laid before the House business on the Speaker's table.

Mr. Crisp raised a question as to whether or not this business should not come after the reading of the Journal.

The Speaker[7] held that, as a special order had intervened to prevent business on the Speaker's table coming after reading of the Journal, such business was in order after the execution of the special order.

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[1] Joseph C. S. Blackburn, of Kentucky, Speaker pro tempore.

[2] Second session Forty-eighth Congress, Journal, p. 476; Record, p. 1295.

[3] This was a special morning hour established temporarily in addition to the regular morning hour for the call of committees for reports. In the next Congress a similar morning hour for consideration of bills was regularly established.

[4] Nathaniel J. Hammond, of Georgia, Speaker pro tempore.

[5] Meaning the regular morning hour for reports of committees.

[6] First session Fifty-fourth Congress, Record, p. 4761.

[7] Thomas B. Reed, of Maine, Speaker.

3072. The motion to go into Committee of the Whole House on the state of the Union to consider a revenue or general appropriation bill may, when authorized by a committee, be made at any time after the Journal is read.

Form and history of section 9 of Rule XVI.

Section 9 of Rule XVI provides:

At any time after the reading of the Journal it shall be in order, by direction of the appropriate committees, to move that the House resolve itself into the Committee of the Whole House on the state of the Union for the purpose of considering bills raising revenue, or general appropriation bills.

The necessity of giving a special privilege to the appropriation bills became evident many years ago. On December 10, 1835, Mr. John Quincy Adams, of Massachusetts, criticised at length the long delays of these bills, and at that time, with his approval, Mr. Horace Everett, of Vermont, suggested an amendment to the rules providing that "the general appropriation bill shall always be in order in preference to any other bill of a public nature." [1]

The suggestion was not adopted, however, until September, 14, 1837.[2] On March 11, 1844,[3] on motion of Mr. Cave Johnson, of Tennessee, a rule was adopted providing that the House might at any time, by a vote of a majority of the Members present, suspend the rules [4] and orders for the purpose of going into the Committee of the Whole House on the state of the Union.[5] Four years later the practice under this rule compelled business on the Calendar of this committee to be taken up in order; so that, on July 28, 1848,[6] on recommendation of the Committee on Rules, the House adopted a rule that in Committee of the Whole House on the state of the Union general appropriation bills, and, in time of war, bills for raising men and money and bills concerning a treaty of peace, should be preferred to all other bills, at the discretion of the committee; and that, when demanded by any Member, the question should be first put in regard to them.

When the revision of 1880 [7] was made the Committee on Rules in their report omitted these provisions, leaving the appropriation bills to take their chance in the rule for the order of business, which brought motions to go into Committee of the Whole House on the state of the Union in a very unfavorable place near the end of the order. To remedy this difficulty the committee offered during the debate what is now section 9 of Rule XVI. In the form then agreed to the motion was made in order after the morning hour for the call of committees; and the authorization of a committee was not required. In the revision of 1890 [8] the motion was made privileged

[1] On February 10, 1834 (First session Twenty-third Congress, Journal, p. 312) Mr. Adams had proposed a rule making it the duty of the Committee on Ways and Means to report the appropriation bills within thirty days after the beginning of the session.

[2] First session Twenty-fifth Congress, Journal, p. 55.

[3] First session Twenty-eighth Congress, Globe, p. 367.

[4] For ruling as to privilege of appropriation bills on a suspension day under the old system see second session Forty-fourth Congress, Journal p. 270.

[5] Until March 4, 1828 (First session Twentieth Congress, Debates, p. 1721), the motion to go into Committee of the Whole House on the state of the Union seems to have retained an old privilege of being in order at any time.

[6] First session Thirtieth Congress, Globe, p. 1006.

[7] Second session Forty-sixth Congress, Record, pp. 206, 830.

[8] See House Report No. 23, first session Fifty-first Congress.

after the reading of the Journal, and the requirement that the motion be authorized by a committee was inserted. In the Fifty-second and Fifty-third Congresses the old form was restored, but in the Fifty-fourth the form of 1890 was again adopted.

3073. A motion to go into Committee of the Whole House on the state of the Union is most highly privileged only for revenue and appropriation bills.—On May 24, 1890,[1] Mr. Thomas J. Henderson, of Illinois, moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill of the House (H. R. 9486) making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes.

Mr. John H. Rogers, of Arkansas, made the point of order that the motion was not in order, according to section 9 of Rule XVI,[2] until after the morning hour.

The Speaker pro tempore[3] sustained the point of order.[4]

3074. The motion to go into Committee of the Whole House on the state of the Union to consider revenue or appropriation bills may designate the particular bill to be considered.—On April 10, 1890,[5] Mr. Charles A. Boutelle, of Maine, moved that the House resolve itself into Committee of the Whole House on the state of the Union for the consideration of the naval appropriation bill.

Mr. William D. Bynum, of Indiana, rising to a parliamentary inquiry, made the point that under section 9 of Rule XVI[6] it was not in order to specify a particular bill, as that could only be done under section 5 of Rule XXIV.[7] The Speaker[8] held:

> The Chair thinks that under section 9 of Rule XVI the motion may be made to go into Committee of the Whole for the purpose of considering a particular bill. The intention of the rule was, as the Chair understands, to give the Appropriations Committee and the revenue committees the right of way before and above everything else; in fact, to give them the control, so far as that is concerned.

3075. The motion to go into Committee of the Whole to consider revenue bills and the motion to do the same to consider general appropriation bills are of equal privilege.—On February 22, 1893,[9] Mr. John S. Henderson, of North Carolina, moved that the House resolve itself into Committee of the Whole House on the state of the Union to consider general appropriation bills.

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[1] First session Fifty-first Congress, Journal, p. 660; Record, p. 5239.

[2] See section 3072. The river and harbor bill is not one of the general appropriation bills. See sections 3897–3903 of this volume.

[3] Bishop W. Perkins, of Kansas, Speaker pro tempore.

[4] At this time also the Speaker pro tempore entertained a motion to dispense with the morning hour, ruling that such a motion was in order. The rules of the preceding Congress had authorized such a motion; but those of the Fifty-first did not. The right of the Committee on Rivers and Harbors to report at any time carries with it the right to consider at any time; and it is probable that on this view a motion to go into Committee of the Whole to consider a river and harbor appropriation bill would be given precedence of the call of committees. But this privilege of river and harbor bills would probably not be of avail on days set apart for special business, such as Fridays and Mondays.

[5] First session Fifty-first Congress, Record, p. 3256.

[6] See section 3072 of this chapter.

[7] See section 3134 of this chapter.

[8] Thomas B. Reed, of Maine, Speaker.

[9] Second session Fifty-second Congress, Journal, p. 108.

Pending this motion, Mr. William H. Hatch, of Missouri, moved that the House resolve itself into Committee of the Whole House on the state of the Union to consider bills raising revenue.

Thereupon Mr. Hatch submitted the point that the motion just submitted by him took precedence over the motion submitted by Mr. Henderson, of North Carolina.

The Speaker[1] overruled the point of order, holding that the motion to resolve into Committee of the Whole to consider appropriation bills and the motion to resolve into Committee of the Whole to consider revenue bills were of equal privilege, and consequently that the motion first submitted should be first put.

3076. On April 8, 1902,[2] Mr. Sereno E. Payne, of New York, as a privileged motion, moved that the House resolve itself into Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 12765) to provide for reciprocal trade relations with Cuba.

Mr. James A. Tawney, of Minnesota, rising to a parliamentary inquiry, asked on what grounds the motion was considered privileged.

The Speaker[3] said:

The Chair will call the attention of the gentleman from Minnesota to Rule XI, clause 59, which provides that the Committee on Ways and Means may report at any time on bills raising revenue; and it has been repeatedly held that that included bills affecting the revenue. So that under the decisions under that rule, the Chair is clearly of the opinion that the gentleman has a right to call up the bill.

3077. The motion to go into Committee of the Whole to consider a general appropriation bill may not be amended by a nonprivileged proposition, and the previous question may not be demanded on it.—On February 17, 1899,[4] Mr. Charles A. Boutelle, of Maine, moved that the House resolve itself into Committee of the Whole House on the state of the Union to consider the naval appropriation bill. On this motion Mr. Boutelle demanded the previous question.

The Speaker[5] said:

The Chair decides that the gentleman from Maine can not ask for the previous question upon the motion which he has made.

Mr. William P. Hepburn, of Iowa, as a parliamentary inquiry, asked whether or not it would be in order to amend the motion by instructing the committee to consider the bill (S. 4792) relating to the Nicaragua Canal.

The Speaker said:

It would not be in order because this is a general appropriation bill.

Mr. Hepburn then asked whether it would be in order to strike out of the motion the portion relating to the particular bill and thus leave the Committee of the Whole to take up any bill which it might choose.

The Speaker said:

The Chair thinks it would not be competent, because the gentleman from Maine makes a privileged motion, and the other is not. One can not be substituted for the other.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] First session Fifty-seventh Congress, Record, p. 3847.

[3] David B. Henderson, of Iowa, Speaker.

[4] Third session Fifty-fifth Congress, Record, pp. 1995,1996.

[5] Thomas B. Reed, of Maine, Speaker.

3078. The motion to resolve into Committee of the Whole to consider a privileged bill is not amendable or debatable.—On May 22, 1906,[1] Mr. Robert Adams, jr., of Pennsylvania, moved that the House resolve itself into Committee of the Whole House on the state of the Union for the consideration of the consular and diplomatic appropriation bill, and on this motion demanded the previous question.

Pending this motion, Mr. Augustus P. Gardner, of Massachusetts, rising to a parliamentary inquiry, asked if it would be in order to move to amend the motion; and also raised the question of order that the previous question was not in order on the motion.

The Speaker[2] said:

This motion, the Chair finds, after consulting one who knows the precedents, is not amendable and is not debatable.

Therefore the Speaker ignored the demand for the previous question, which was not pressed.

3079. On February 15, 1901,[3] Mr. Joseph G. Cannon, of Illinois, moved that the House resolved itself into Committee of the Whole House on the state of the Union, for the consideration of general appropriation bills.

Mr. John F. Fitzgerald, of Massachusetts, rising to a parliamentary inquiry, asked if the motion was debatable.

The Speaker[4] replied that it was not.

3080. The privileged motion to go into the Committee of the Whole to consider revenue or appropriation bills may be made on a "suspension day" as on other days.—On February 16, 1891,[5] Mr. Bishop W. Perkins, of Kansas, moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of general appropriation bills.

Mr. Albert J. Hopkins, of Illinois, by way of a parliamentary inquiry, suggested the point of order that under the rules the day was set apart for motions to suspend the rules.

The Speaker[6] thereupon made the following statement:

The Chair desires to say, with regard to this matter, in order that the House may understand it that the provision in the rule is that the rules shall be suspended at no other time than on certain Mondays and during the last six days of the Session.[7] That is simply a permission for suspension of the rules upon those days; but it has been permissible upon proper occasions to allow the appropriation bills to be presented in order to test the sense of the House with regard to the order of business, and, in the present condition of the public business, the Chair thought that the gentleman from Kansas, Mr. Perkins, ought to be recognized to make the motion to go into Committee of the Whole House on the state of the Union for the consideration of general appropriation bills, and the Chair accordingly entertains and submits that motion, which is itself highly privileged.

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[1] First session Fifty-ninth Congress, Record, p. 7248.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] Second session Fifty-sixth Congress, Record, p. 2476.

[4] David B. Henderson, of Iowa, Speaker.

[5] Second session Fifty-first Congress, Journal, p. 251.

[6] Thomas B. Reed, of Maine, Speaker.

[7] For this rule see section 6790 of Vol. V of this work.

3081. A motion to go into Committee of the Whole to consider general appropriation bills is in order Friday as on other days.—On March 28, 1890,[1] Mr. Byron M. Cutcheon, of Michigan, moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the general army appropriation bill.

Mr. Benjamin A. Enloe, of Tennessee, made the point of order that under the rule the House could only consider business on the Private Calendar on Fridays.

The Speaker[2] ruled that under section 9 of Rule XVI[3] the motion was in order.

3082. The motion to go into Committee of the Whole to consider general appropriation bills has precedence on a Friday of a motion to go into Committee of the Whole to consider the Private Calendar.—On Friday, February 4, 1898,[4] Mr. James A. Hemenway, of Indiana, from the Committee on Appropriations, moved that the House resolve itself into Committee of the Whole House on the state of the Union for the consideration of general appropriation bills.

Mr. Joseph W. Bailey, of Texas, made the point that the motion to go into Committee of the Whole House to consider business on the Private Calendar was of higher privilege than the motion made by Mr. Hemenway.

The Speaker[2] said that it had been the invariable construction of the rule that public business had the right of way. If the House did not desire to consider appropriation bills it could vote down the motion of the gentleman from Indiana; and then the motion to go into Committee of the Whole to consider the Private Calendar[6] would be next in order.

3083. On Friday, June 17, 1898,[6] Mr. Joseph G. Cannon, of Illinois, moved that the House resolve itself into Committee of the Whole House on the state of the Union for the further consideration of the deficiency appropriation bill.

Mr. Gevrge W. Ray, of New York, made the point of order that this day being Friday such motion was not in order.

The Speaker pro tempore 7 overruled the point of order.

3084. On December 16, 1898,[8] a Friday, Mr. Nelson Dingley, of Maine, moved that the House resolve itself into Committee of the Whole House on the state of the Union to consider the bill (H. R. 11191) to extend the laws relating to customs and internal revenue over the Hawaiian Islands.

Mr. C. N. Brumm, of Pennsylvania, demanded the regular order, which would be, under the rule, the consideration of the Private Calendar.

The Speaker[2] held that the motion to go into the Committee of the Whole House on the state of the Union to consider the revenue bill had precedence.

3085. On February 15, 1901,[9] a Friday, Mr. Joseph G. Cannon, of Illinois, moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of general appropriation bills.

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[1] First session Fifty-first Congress, Record, p. 2747; Journal, p. 398.

[2] Thomas B. Reed, of Maine, Speaker.

[3] See section 3072 of this chapter.

[4] Second session Fifty-fifth Congress, Record, p. 1436.

[5] See sections 3266, 3267 of this volume.

[6] Second session Fifty-fifth Congress, Record, pp. 6077, 6078.

[7] John Dalzell, of Pennsylvania, Speaker pro tempore.

[8] Third session Fifty-fifth Congress, Record, p. 266.

[9] Second session Fifty-sixth Congress, Record, p. 2476.

Mr. James D. Richardson, of Tennessee, rising to a parliamentary inquiry, asked if it was not in order, under the rules, to move to go into Committee of Whole House to consider business on the Private Calendar.

The Speaker,[1] replied that if the motion of the gentleman from Illinois should be voted down, the motion to go into Committee of the Whole House would then be in order; and the latter motion could be reached only in this way.

3086. A motion to go into Committee of the Whole to consider a specified bill is privileged when the bill has been reported by a committee under its leave to report at any time.—On February 7, 1894,[2] Mr. Richard P. Bland, of Missouri, presented as a matter of privilege the bill (H. R. 4956) directing the coinage of the silver bullion held in the Treasury, and for other purposes, heretofore reported from the Committee on Coinage, Weights, and Measures[3] and referred to the Committee of the Whole House on the state of the Union.

Mr. Bland moved that the House resolve itself into Committee of the Whole House on the state of the Union to consider the bill.

Mr. C. W. Stone, of Pennsylvania, made the point of order that it was not in order to move to resolve into committee for the purpose of considering a particular measure.

The Speaker[4] held that when a privileged report was presented, the consideration of which was required to be in Committee of the Whole, it was in order to move to resolve into committee to consider it, since, were it otherwise, its privileged character would be lost.

3087. A motion that the House resolve itself into Committee of the Whole, or a demand that the House return to committee, may not take precedence of a motion to reconsider.—On January 28, 1847,[5] the Committee of the Whole House on the state of the Union, finding itself without a quorum, rose, and the Chairman reported that the committee, while considering the bill making appropriations for the naval service, had found itself without a quorum.

Mr. Seaborn Jones, of Georgia, moved that the vote whereby the House had this day agreed to the resolution terminating all debate on the said bill at 1 o'clock to-morrow be reconsidered.

A call of the House having been moved and decided in the negative, sufficient Members being recorded on the vote to make a quorum of record, Mr. George Ashmun, Of Massachusetts, moved that the House resolve itself into the Committee of the Whole House on the state of the Union.

The Speaker[6] decided that pending a motion to reconsider a vote, that being a privileged motion, it was not in order to entertain a motion that the House resolve itself into the Committee of the Whole House on the state of the Union. The record of debates also shows that Mr. Robert C. Winthrop, of Massachusetts, made the point

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[1] David B. Henderson, of Iowa, Speaker.

[2] Second session Fifty-third Congress, Journal, p. 145.

[3] In the Fifty-third Congress this committee was included by section 57 of Rule XI, but is not so included at present.

[4] Charles F. Crisp, of Georgia, Speaker.

[5] Second session Twenty-ninth Congress, Journal, pp. 246–250; Globe, pp. 281, 282.

[6] John W. Davis, of Indiana, Speaker.

that, the presence of a quorum being ascertained, it was the duty of the Chair to resign and for the House to return into the Committee of the Whole. The Speaker replied that this would be so but for the high privilege of the motion to reconsider.

The Speaker's decision was sustained on appeal.

3088. By refusing to go into Committee of the Whole to consider a bill which has been made a special order for consideration therein the House may then consider business prescribed by the regular order.—On Friday, March 7, 1902,[1] Mr. Eugene F. Loud, of California, moved that the House resolve itself into the Committee of the Whole House on the state of the Union, in accordance with the terms of the following special order:

On motion of Mr. Loud, by unanimous consent, it was ordered that the bill (H. R. 11728) "to classify the rural free delivery service and fix the compensation to employees thereof "shall be taken up on Monday next, immediately after the reading of the Journal, and shall become a continuing order until disposed of; the bill to be considered in the Committee of the Whole House on the state of the Union; the same to be subject to appropriation bills, bills raising revenue, and conference reports, and the time of debate to be equally divided between those in favor of and those opposed to said bill.

Mr. Thetus W. Sims, of Tennessee, rising to a parliamentary inquiry, asked whether, if the motion of Mr. Loud should be decided in the negative, it would be in order to make a motion to go into Committee of the Whole House for consideration of the Private Calendar.

The Speaker[2] replied that such a motion would be in order under those conditions.

3089. The rule governing the disposition of business on the Speaker's table.

Messages from the President and communications from the heads of Departments and from other sources are referred from the Speaker's table.

Messages, and bills from the Senate are either referred from the Speaker's table or placed before the House directly.

Form and history of section 2 of Rule XXIV.

Section 2 of Rule XXIV provides:

Business on the Speaker's table shall be disposed of as follows:

Messages from the President shall be referred to the appropriate committees without debate. Reports and communications from the heads of Departments and other communications addressed to the House, and bills, resolutions, and messages from the Senate may be referred to the appropriate committees in the same manner and with the same right of correction as public bills presented by Members; but House bills with Senate amendments which do not require consideration in a Committee of the Whole may be at once disposed of as the House may determine, as may also Senate bills substantially the same as House bills already favorably reported by a committee of the House and not required to be considered in Committee of the Whole be disposed of in the same manner on motion directed to be made by such committee.

This rule in substantially its present form was adopted in the revision of 1890.[3] In the general revision of 1880[4] the committee had revised old rule 54, which dated

[1] First session Fifty-seventh Congress, Record, p. 2498.

[2] David B. Henderson, of Iowa, Speaker.

[3] First session Fifty-first Congress, Congressional Record, p. 1287, and House Report No. 23, first session Fifty-first Congress.

[4] See Record, second session Forty-sixth Congress, p. 207.

from January 5, 1832,[1] and which specified the order of taking up business on the Speaker's table.[2] The rule of 1880 brought the Speaker's table after the morning hour for the reports of committees and after the unfinished business. In a few years it was found difficult to reach this order and much time was consumed by requests for unanimous consent to go to the Speaker's table merely for the purpose of referring Senate bills to committees. So the Speaker's table was given the first place in the following rule, adopted in the Forty-ninth Congress:[3]

After the Journal is read and approved each day other than Monday the Speaker shall lay before the House, for reference, messages from the President, reports and communications from the heads of Departments and other communications addressed to the House, and also such bills, resolutions, and other messages from the Senate as may have been received on previous days.

This rule was modeled after the Senate rule and was intended to secure the prompt reference of President's messages, Executive documents, Senate bills, etc.

In 1890 the principle of saving the time of the House by having the reference of Executive documents and Senate bills made by rule under direction of the Speaker was adopted in the present form of the rule.[4]

3090. A Senate amendment being such as requires consideration in Committee of the Whole, the bill and amendment are referred directly from the Speaker's table to the appropriate standing committee.

A request for a conference before there has been actual disagreement between the Houses confers no privilege on the bill affected.

History of practice of the House as to disposition of business on the Speaker's table.

On January 26, 1889,[5] the Speaker laid before the House the bill (H. R. 9051) to reduce taxation and simplify the laws in relation to the collection of the revenue with an amendment by the Senate in the nature of a substitute, and with a request of the Senate for a conference.

Mr. Thomas B. Reed, of Maine, proposed that the House concur in the Senate amendment, or, if the House determined to nonconcur, that a committee of conference be granted.

Mr. Roger Q. Mills, of Texas, made the point of order that the bill must first go to the Committee on Ways and Means.

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[1] First session Twenty-second Congress, Journal, p. 155.

[2] On April 21, 1836 (1st sess. 24th Cong., Journal, p. 735), we find the Clerk directed to make up a weekly printed statement of the resolutions and bills, including Senate bills, on the Speaker's table. Under the present system of rules no such list is kept, as bills on the Speaker's table are at once referred by direction of the Speaker or are acted on by the House without much delay.

[3] First session Forty-ninth Congress, Record, p. 171.

[4] The Speaker's table should be distinguished from "the table" of the House referred to in the motion to lay on the table. Under the usage of the House a matter laid on the table is finally disposed of adversely. There is no method of taking it from the table except by unanimous consent. In this respect the usage of the House differs from the usage of general parliamentary law. The Speaker's table, on the other hand, as the rule indicates, receives many matters from the Executive Departments and the Senate, which are distributed from it under the rule.

[5] Second session Fiftieth Congress, Journal, p. 348; Record, pp. 1216–1220.

After debate, the Speaker[1] ruled:

The Chair decided the same question now presented not only in the case of the oleomargarine bill but upon several other occasions; yet it may not be inappropriate to restate briefly the grounds of those decisions.

Prior to the beginning of the Forty-ninth Congress all bills coming from the Senate, and Senate amendments to House bills, went upon what was called the Speaker's table, which was one of the Calendars of the House. The business on the Speakers' table was reached precisely in the same way as the business upon any other calendar—by a motion to proceed to its consideration; and when that motion was agreed to by the House, the bills and amendments in their regular order were laid before the House, not for reference to a committee, but for immediate consideration, subject, of course, in the case of Senate bills or Senate amendments to House bills making appropriations or creating liabilities on the part of the Government, to the point of order that they must first have consideration in the Committee of the Whole on the state of the Union. So long as that practice continued it was in order for any gentleman, when a Senate amendment was taken up from the Speaker's table, to move to concur or nonconcur, as the case might be, subject, as the Chair has stated, to the point of order that the proposition should go to the Committee of the Whole on the state of the Union, if it was a proposition which the rules of the House required to go there.

But at the beginning of the Forty-ninth Congress the Speaker's table, as one of the calendars of the House, was abolished; and in lieu of that proceeding the House adopted a rule[2] which made it the duty of the Speaker every morning, immediately after the reading of the Journal, except on Monday mornings, to lay before the House for reference all bills, amendments, and other communications from the Senate and communications from the heads of Departments; and under that rule the invariable practice has been to send Senate amendments to House bills to the appropriate standing committee of the House, unless unanimous consent was given to concur or nonconcur. So the Chair thinks that under that rule this Senate amendment must go to the Committee on Ways and Means, and can not, except by unanimous consent, go to the Committee of the Whole on the state of the Union, which is one of the House calendars, until it has been reported back.

On the other point, as to the effect of a request by the Senate for the appointment of a committee of conference before there has been an actual disagreement between the two Houses, the Chair has repeatedly ruled that until there has been an actual vote of disagreement between the two Houses the privileged stage of the bill has not been reached, and it can not be taken up for consideration, under the other rule to which the Chair has referred, but must go to the committee.

The Chair has reexamined this rule, and reexamined the practice of the House, and is constrained to adhere to the rulings heretofore made, because the Chair believes it is the only proper practice under the rules which the House itself has established, and which has been the uniform practice ever since they were adopted.

3091. General discussion of rule requiring reference from the Speaker's table to a standing committee of House of bills returned with Senate amendments such as require consideration in Committee of the Whole.

Instance wherein an act performed by the Speaker under the rules was reversed by an amendment changing the Journal entry.

The Speaker held that he could not prevent a majority of the House from so amending the Journal as to undo an actual transaction.

On June 19, 1890,[3] pending the question on the approval of the Journal, Mr. Roger Q. Mills, of Texas, submitted the following resolution:

Whereas the order of reference made by the Speaker referring House bill 5381, which was returned to the House yesterday with a Senate amendment, to the Committee on Coinage, Weights, and Measures was incorrect under the rules of the House and without authority under said rules: Therefore

[1] John G. Carlisle, of Kentucky, Speaker.

[2] For this rule see section 3089.

[3] First session Fifty-first Congress, Journal, p. 758; Record, p. 6281.

Resolved, That the Journal of yesterday, Wednesday, June 18, be corrected by striking therefrom this entry, to wit:

"Under clause 2 of Rule XXIV, a House bill of the following title with Senate amendments was taken from the Speaker's table and referred as follows:

"A bill (H. R. 5381) directing the purchase of silver bullion and the issue of Treasury notes thereon, and for other purposes—to the Committee on Coinage, Weights, and Measures."

Mr. Joseph G. Cannon, of Illinois, made the point of order that the said resolution was not in order for the following reasons: First, it proposes to strike out an entry in the Journal that records a matter of fact. Second, it is not in order for the reason, under the rule, that if adopted it would have the effect, if it has any effect at all, to change a reference of a bill with a Senate amendment otherwise than as provided by Rule XXIV, clause 2.[1]

After debate on the point of order made by Mr. Cannon, the Speaker[2] overruled it on the following grounds:

The Chair desires first that the House, if any Member of it has that impression, should rid itself of the idea that any unusual procedure has taken place in connection with this bill. The reference of bills of this kind and in this way has been of daily occurrence since the adoption of the present rules of the House. The Chair desires also that the House should know that this particular transaction did not take place in a corner. In the regular course of business the officer of the House to whom the Speaker had intrusted the clerical work of the reference of bills, the Journal clerk, informed the Speaker that upon his list of bills which were to be referred, under the rules, to committees of the House, in the same manner as hundreds, and possibly thousands, of bills have been referred heretofore, was the bill known as the bill for silver coinage which had come from the Senate, with amendments, and the Chair was asked if he had any particular direction to make in regard to it.

Knowing the bill to be one of grave public importance, and anxious that he might have all the light that could be thrown upon it, he consulted with two Members upon the other side on the Committee on Rules, also the gentleman who was specially in charge of the bill upon the Democratic side, the gentleman from Missouri [Mr. Bland], and with another gentleman upon the left of the Chair, not for the purpose of throwing any responsibility upon them, but for the purpose of obtaining whatever light it might be possible to obtain in that way. After listening to and conversing with those gentlemen it seemed very clear to the Speaker that the rules of the House covered the question, and that his duty was to treat this bill the same as he would treat any other. Accordingly the clerk was not directed to make any change in regard to the reference. It is due to the House, since the question has been made—and the Chair is appreciative of the courteous manner in which the question has been discussed—it is due to the House that the Chair should give the reasons which induced him to make such reference and to feel perfectly clear that that reference was in accordance with the rules of the House.

The House must bear in mind that this is not a question of politics or of currency, but a question of parliamentary law, and that upon its decision depends the carrying out of the system of rules which the House has adopted. That system of rules, like every other, is an evolution from the preceding rules. Under the former rules of the House every bill which came from the Senate had to be referred in open House to a committee. No other motion was permissible unless by unanimous consent. When the tariff bill, for instance, came over here, suggestion was made that it go at once to the Committee of the Whole House on the state of the Union, but the Speaker ruled that it should go to the Committee on Ways and Means, and it went there. The only control which the House had left to itself, under its rules, was to change the reference if it was not satisfied with the reference directed by the Speaker. Under the present system of rules the same reference is to be given to Senate bills, because the same language which applied to them then is applied to them now. The only difference is that, instead of being done in open House, it is done by the Speaker, with a right of correction which the House thought ample; because if the committee to whom the bill was wrongfully referred did not desire it, or if there was another committee that thought the bill ought rightfully be referred to them, either committee could make a motion in open House (there being a special provision to the order of business for the time of that motion) for a change of reference.

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[1] See section 3089.

[2] Thomas B. Reed, of Maine, Speaker.

Such had been the case for a long time with petitions. Such had been the case for a considerable time with private bills, and under the new rules of the House it was made so with regard to public bills, both those sent in by Members and those which came from the Senate, but the new rules made two exceptions: First, Senate bills, the like of which had been passed upon favorably by a committee of the House, could be taken up and disposed of when that committee voted that it should be done whenever the bills came over from the Senate; second, House bills with Senate amendments which were not subject to be considered in Committee of the Whole could also be laid before the House for its disposal. The question is, Was this a House bill? Undoubtedly it was. Did it have a Senate amendment? Unquestionably. The third test is: Does it contain provisions which under our rules require it to be considered in a Committee of the Whole? There was a provision in the original House bill by which certain bullion was to be purchased, for coinage or otherwise, and certificates were to be issued.

The Senate amendment was an amendment for free coinage, or for fashioning the silver into bars without charge to those who deposited it, and for that an appropriation was made. It has been said that the House dispensed with the consideration of the original bill in Committee of the Whole. That is perfectly true, and it was perfectly competent for the House in a proper way so to do, but the fact that the House dispensed with the consideration in Committee of the Whole of a provision which it knew does not in any way indicate that it was its intention to dispose in the same way of an amendment which it did not know. This being a Senate amendment, the question is, What rule of the House is applicable to it? And the Chair desires to call the attention of the House to the very strong language of the rule, which is Rule XX.[1] It does not content itself with saying that an amendment of the Senate to a House bill shall be subject to the point of order, but it says any amendment of the Senate to any House bill shall be subject to the point of order. If there is anything clear in parliamentary law it is that this bill was one of those that would be properly considered in a Committee of the Whole and consequently was not within the exception. What, then, was the duty of the Speaker in regard to it? Obviously, to refer it in the same manner in which hundreds and thousands of bills have been referred at this session.

Some gentlemen contend, not many, but some contend, that it was not intended that bills which came from the Senate, which were subject to the point of order under Rule XX, should go to a committee at all, but must go directly to the Calendar. The Chair think that if any gentleman will carefully examine the rule he will perceive that it is impossible for the bill to go to the Calendar in that manner.

The Chair desires also to animadvert upon a decision which has been the subject of so much studied compliment on the part of the gentleman from Kentucky, a decision said to have been made with regard to a bill which came over from the Senate. The fact that that bill contained an appropriation, or required an appropriation, for a matter different from the House bill, was not in any way called to the attention of the Chair, and there are too many lawyers in this House for the House to fail to comprehend that when the matter is not brought to the attention of the presiding officer or the judge he can not be making a direct decision upon that point.

If the Chair recollects this matter correctly, the answer which was made to the inquiry of the gentleman from Arkansas [Mr. Rogers] was with reference to the request, or the Chair had in mind rather the request, for a conference on the part of the Senate. The former Speaker of the House decided both ways in regard to that question of asking for a conference, that it was to be permitted, and afterwards, upon what was perhaps maturer consideration, that it was not. The present occupant of the chair had a different opinion, and until argument convinced him to the contrary he would be disposed to regard that as a desirable thing; not meaning, however, now or at any other time, except at the proper time, to enter into the consideration of the question whether the point of order upon an appropriation bill would send it to the committee, even if the conference had been asked by the Senate.

But the particular point of order which has been presented here by the gentleman from Illinois puts the Chair in the position somewhat of embarrassment, because the proposed action of the House is the declaration that an error has been made in parliamentary law upon this subject, and it is proposed to erase from the Journal a statement of fact. While the Chair might have some doubt upon that point of order, it feels this to be a question which the House ought to determine. As to what would be the effect of overruling a statement in the Journal which was a fact would have to be a matter of after consideration, but it is a matter now for consideration on the part of the House. If the House sees fit to put anything which is or is not a fact into its Journal, the Chair has no mean of interfering and no desire to interfere, and the Chair will therefore overrule the point of order and submit the question on the motion of the gentleman from Texas.

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[1] See section 4796 of this volume.

3092. On June 20, 1890,[1] Mr. Richard P. Bland, of Missouri, on the ground of its being a privileged question, submitted the following resolution:

Resolved, That the Speaker lay before the House the bill No. 5381, directing the purchase of silver bullion and the issue of Treasury notes therefor, and for other purposes, with Senate amendments, for consideration.

Mr. William McKinley, jr., of Ohio, made the point of order that the resolution was not in order for present consideration, not being a privileged question, and also being a change of the order of business.

After debate on the point of order Mr. Bland modified the resolution so as to read as follows:

Resolved, That the Speaker proceed under Rule XXIV to lay the matter on the Speaker's table under said rule, and to lay House bill 5381, directing the purchase of silver bullion and issue of Treasury notes thereon, and for other purposes, with Senate amendments, before the House for its action.

Mr. McKinley renewed the point of order made by him on the original resolution.

After further debate on the point of order the Speaker[2] sustained the same on the ground that the resolution proposed to change the rule relating to the order of business, and was not in order for present consideration.

From this decision of the Chair Mr. Bland appealed; and Mr. McKinley moved to lay the appeal on the table. This motion was decided in the affirmative on June 21.

3093. On June 21, 1890,[3] the regular order of business being demanded, the Speaker made the following statement in regard thereto, viz:

The Chair desires the attention of the House on this matter.

The question was somewhat discussed on yesterday as to the condition of the silver-coinage bill (H. R. 5381, with Senate amendments) which had been referred by the Speaker, and the record of which in the Journal was not concurred in by the House, but was rejected, or, if it can be mid to be—the Journal not having been then adopted—erased. The provision of our rules requires not only that such bills should be referred, but that a statement of the reference should be put into the Journal and also into the Record. The statement was made in the Record. It was also put into the Journal, which was submitted to the consideration of the House. The House saw fit not to permit that record to be made and to become a part of the Journal. That left a somewhat difficult question as to the status of the bill.

The opinion of the present occupant of the chair, as an individual, would be very much in accord with what was said by the gentleman from Iowa [Mr. Conger], that the refusal to record a fact did not obliterate the fact itself any more than the destruction of a deed would prevent the transfer of property which had already taken place, or the scuttling of a boat which had carried a man across a lake would reland him on the other side. Nevertheless, the action of the House may have had its origin in another motive, which was that it would not give its sanction, by recording it in the Journal, to a transaction which it desired to subvert; and while it might seem to the Chair that some definite action ought to be taken by the House, yet, as gentlemen may have noticed within the last few days, parliamentary law does not seem to be an exact science.[4]

The great object which everyone must have is in trying to arrive, in proper fashion, at a legitimate decision; and it is especially the business of the occupant of the chair to give the House, so far

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[1] First session Fifty-first Congress, Journal, p. 767; Record, pp. 6314, 6353.

[2] Thomas B. Reed, of Maine, Speaker.

[3] First session Fifty-first Congress, Journal, pp. 770–772; Record, pp. 6354–6364.

[4] On March 23, 1880 (second session Forty-sixth Congress, Record, pp. 1804–1807), in a case wherein a bill had been referred to the Committee on Revision of the Laws when many in the House thought that it had been wrongly, even surreptitiously, referred, Mr. James A. Garfield, of Ohio, moved to correct the fact by changing the entry in the Journal. But there was a diversity of opinion as to the proposed method, and it was abandoned.

as in him lies, all proper opportunity for the transaction of business in the manner which the House may determine upon, subject to all the rules of the House.

The Chair, therefore, in order to enable the House to pass its judgment upon this question, whether the bill should go to the Committee on Coinage, Weights, and Measures, will take action in regard to it, with an opportunity for the House to review the same, believing that that will enable the House to come quickest to its conclusion upon the subject. That conclusion, the Chair need not say, ought to be arrived at with reference to all the business of the House; and the House ought to come to its decision in some way that will not disarrange its business. As the Chair remarked the other day, this reference which was made of the bill was made in accordance with the custom which has prevailed ever since the establishment of the rules of the House.

The Chair believes, after a careful examination of the Senate amendments to the House bill, which is known as the silver bill, that it comes within the purview of Rule XX, which prescribes that any amendment made by the Senate to any House bill must be considered first in the Committee of the Whole, which would have been so liable to be considered had it originated in the House. It is not necessary to enlarge upon that point except to point out the fact that the Senate amendments to the House bill entirely strike out the first section, which contains the words of appropriation in the House bill and substitutes another section containing no words of appropriation, but embodying an altogether different line of action, to wit, the substitution of the fashioning of silver bars and the coinage of all silver which may be presented instead of the purchase by the Treasurer of a certain amount of silver and the coining of it for the use of the Government. Another section is also stricken out and a substitution made; and in that substitution is an appropriation for the purpose of carrying out, not what the House ordered, but what the Senate ordered.

This plainly is a new proposition, which requires its consideration in the Committee of the Whole House. Its consideration being required in the Committee of the Whole House—and this does not depend upon the point of order being made because it is a description of a class of bills—the Chair is of opinion that it should be referred to the committee, and the reason for the opinion that it should be referred to the committee arises from this provision in the rule, that all proposed legislation must be referred to certain committees. Legislation can be proposed to this House either by a Member of it or by the Senate. Such has always been the construction of the identical language which is used in this set of rules and in those which preceded it. Under those circumstances, and in conformity to the rules, the Chair announces to the House that in obedience to the rules the bill has been referred, is now referred, to the Committee on Coinage, Weights, and Measures. From that decision, if the House think the Chair is wrong, an appeal can be taken.

From this action and decision of the Speaker Mr. Bland appealed. and the question being put, "Shall the decision of the Chair stand as the judgment of the House?" Mr. McKinley moved to lay the appeal on the table; which was agreed to by the House.

3094. The point being made and sustained that a Senate amendment to a House bill must be considered in Committee of the Whole, the bill is referred directly from the Speaker's table to the standing committee having jurisdiction.—On September 6, 1890,[1] as part of the business on the Speaker's table, the Speaker pro tempore[2] laid before the House the bill of the House (H. R. 901) for the erection of a new tower near the site of the light-house on Smiths Island, Virginia, with amendments of the Senate thereto and a request for a conference with the House on the bill and amendments.

Mr. Joseph G. Cannon, of Illinois, made the point of order that the bill had no place on the Speaker's table and no right to be thus laid before the House, but that under the rules it should properly be referred either to the Committee on Commerce or the Committee on Appropriations without being laid before the House.

[1] First session Fifty-first Congress, Journal, p. 1018; Record, p. 9827.

[2] Julius C. Burrows, of Michigan, Speaker pro tempore.

Mr. Cannon also made the further point of order that the amendments to the bill should receive their first consideration in the Committee of the Whole House on the state of the Union.

After debate on the points of order, the Speaker pro tempore sustained the point of order that the said amendments must receive their first consideration by the House in the Committee of the Whole House on the state of the Union.

Then the bill and amendments were referred to the Committee on Commerce.

3095. On March 2, 1891,[1] Mr. Byron M. Cutcheon, of Michigan, by unanimous consent, called up from the Speaker's table the bill of the House (H. R. 3865) to provide for the reorganization of the artillery force of the Army, with amendments of the Senate thereto, and a request for a conference with the House on the bill and amendments.

Mr. Clifton R. Breckinridge, of Arkansas, made the point of order that the amendments must receive their first consideration in the Committee of the Whole House on the state of the Union.

After debate on the point of order, the Speaker[2] sustained the same.

Mr. Cutcheon moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the said named Senate amendments; which motion was disagreed to.

Subsequently the Speaker stated that without objection the bill and amendments would be referred to the Committee on Military Affairs where they should have been referred under his ruling.

There being no objection, it was so ordered.

3096. A Senate bill, in order to be brought up directly from the Speaker's table, must have come to the House after and not before a House bill substantially the same has been placed on the House Calendar.—On June 30, 1898,[3] Mr. Ebenezer J. Hill, of Connecticut, called up from the Speaker's table Senate bill No. 3414, and asked for its consideration under Rule XXIV, section 2,[4] the bill of the House No. 10807, reported from the Committee on Banking and Currency, and substantially the same as the Senate bill, being on the House Calendar.

Mr. Joseph W. Bailey, of Texas, made the point of order that the Senate bill had been passed by that body June 17, and that the House bill had not been reported by the Committee on Banking and Currency and placed on the House Calendar until June 27. Therefore the Senate bill had been retained on the Speaker's table without warrant under the rules, and could not be called up in the regular order under the rules.

The Speaker[2] decided as follows:

The Chair would like to have the House understand what the course of practice was intended by the rule to be which the Chair intends to follow and has intended to follow. There is a provision that two classes of bills may be taken from the Speaker's table. One is House bills with Senate amendments which do not have to go to the Committee of the Whole, and the other is Senate bills substantially the

[1] Second session Fifty-first Congress, Journal, p. 340; Record, p. 3689.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Second session Fifty-fifth Congress, Record, p. 6552.

[4] See section 3089 of this chapter.

same as House bills already favorably reported by committees of the House, and not required to be considered in Committee of the Whole.

Now, the reason for having those bills left upon the Speaker's table, to be disposed of by the House without reference to a committee, was that House bills with Senate amendments would not be a surprise to any Member of the House, because they had already passed through the House and been amended by the Senate, and therefore were in a favorable condition to be finished. Then, also, it was determined when the rule was adopted that whenever the Senate passed a bill which was not required to go to the Committee of the Whole, not involving an appropriation of money, that if a House committee had passed a similar bill and reported it favorably to the House, in that event, by notifying the Speaker, the Senate bill would be retained on the Speaker's table, to be acted upon whenever the matter came up in the regular order—that is, when there was not prior business superseding it.

If the House bill was not already reported, the Senate bill ought to have been referred to the Committee on Banking and Currency; and the point having been made it must be sustained. The Chair thinks the practice is a simple one. It is not a retention to oblige anybody, but simply a retention under the rules where notification has been given that a similar bill has been reported by the committee of the House.

The object of the safeguards thrown about both these classes of bills was to prevent any surprise to the House by making a bill the regular order of which the House could not be presumed to have any notice.

3097. A Senate concurrent resolution substantially the same as a House bill on the House Calendar may be taken from the Speaker's table for consideration.—On April 29, 1890,[1] the Speaker laid before the House a concurrent resolution of the Senate providing for an adjustment of certain difficulties occasioned along the Rio Grande River by changes in its channel.

Mr. Daniel Kerr, of Iowa, made the point of order that no committee had reported favorably upon this or any similar resolution.

The Speaker[2] overruled the point of order and held that the resolution was the substance of the bill H. R. 3924 on the House Calendar, reported by the Select Committee on Arid Lands; that the resolution was in order for present consideration under clause 2 of Rule XXIV, as stated by the Chair in laying it before the House.

3098. The three conditions needed in order that a Senate bill on the Speaker's table may be taken up for direct action by the House.—On January 16, 1897,[3] Mr. William H. Doolittle, of Washington, asked that Senate bill No. 3375 be taken from the Speaker's table and put upon its passage, it being identical with House bill No. 9922, already on the House Calendar.

Mr. William L. Terry, of Arkansas, having, as a parliamentary inquiry, asked how the bill could come up under the rule, the Speaker[2] said:

This is a Senate bill, which does not require reference to the Committee of the Whole House on the state of the Union, a bill substantially like which, not necessarily identically the same, is on file and has been reported by a House committee. Such bills can be called up without unanimous consent by the committee. The three requisites are: First, that the bill shall not require reference to the Committee of the Whole House on the state of the Union; second, that it shall be similar, substantially the same, as one that has already received the approval of the committee having it in charge; and third, that it shall be called up at the request of the committee. There are two kinds of business which can be disposed of at once from the Speaker's table. First, House bills with Senate amendments not involving consideration by the Committee of the Whole House on the state of the Union, where the amendments do not require that; and second, this class of Senate bills.

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[1] First session Fifty-first Congress, Journal, p. 541; Record, p. 3977.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Second session Fifty-fourth Congress, Record, p. 847.

3099. Interpretation of the words "substantially the same" as used in the rule providing for calling a Senate bill from the Speaker's table for immediate consideration.—On May 11, 1898,[1] Mr. Lorenzo Danford, of Ohio, called up from the Speaker's table, by direction of the Committee on Immigration, the bill (S. 112) to amend the immigration laws of the United States, and asked its consideration on the ground that it was substantially the same as a House bill already on the House Calendar.

Mr. Richard Bartholdt, of Missouri, made the point of order that the two bills were not substantially the same, but differed in several particulars, notably as regarded an exemption of all persons arriving from Cuba, and an educational requirement which specified "reading and writing" in one bill and "reading or writing" in the other.

The Speaker[2] held:

In this case the rule is invoked which permits a committee to call up from the Speaker's table a measure which is "substantially" the same as one already reported by the committee. The object of the restriction is that no committee shall have it in its power to bring before the House a matter of which there has not been sufficient and reasonable notice. In other words, while it was desired under the rules to facilitate legislation, it was also desired that there should be nothing in the nature of a surprise to the House.

This bill having come over from the Senate, the question arising is, therefore, whether it shall be retained on the Speaker's table as being substantially the same as one already reported to the House. In order that it may be so kept upon the table, the Chair must be notified that a committee has passed upon the subject and made a report to the House and asks that the bill be retained on the table for action. The next question to be considered is whether the bill upon the Speaker's table from the Senate is "substantially" the same as the House bill which has been reported. The reason it ought to be substantially the same is that the House may be notified of the subject that is to come up, that it may have due information as to what is to be brought before it, and if it is so informed by a bill having been considered and reported by its committee, that is enough.

The rule does not say that the two measures shall be absolutely the game. It only requires that they shall be "substantially" the same. Now, as the Chair understands, the bill reported to the House provides that only certain persons shall be admitted into this country as immigrant—persons who can read and write or who can pass a certain kind of examination. That is the plan in the House bill and also the plan in the Senate bill. The only difference is that the Senate bill allows for only a limited time and to a limited portion of a foreign community the right to be admitted. It seems to the Chair that the two bills are substantially the same, if any effect is to be given to the word "substantially."

Now, it may be that this proviso is an inopportune and unsuitable proviso, in which case the House can deal with it directly; but the Chair feels constrained to hold that the two bills are substantially the same, providing for the same examination and also for the same exclusion, the only difference being that, owing to what are thought to be peculiar circumstances, a certain set of persons only are to be admitted and for only a limited time. The Chair therefore overrules the point of order.

During the consideration of this subject, Mr. Joseph W. Bailey, of Texas, as a parliamentary inquiry, asked if the bill, which had come from the Senate some time before, should not have been referred to a committee instead of being allowed to remain on the Speaker's table.

The Speaker replied that, as the committee had given notice that a similar House bill was on the House Calendar, the Senate bill was held until the committee should choose to call it up.

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[1] Second session Fifty-fifth Congress, Record, pp. 4804, 4805.

[2] Thomas B. Reed, of Maine, Speaker.

3100. Although a committee must authorize the calling up of a Senate bill directly from the Speaker's table, the actual motion need not be made by one of the committee.—On July 11, 1890,[1] the Speaker laid before the House the bill of the Senate (S. 1258) for the relief of Charles Murphy, on the Speaker's table, the bill being identical with House bill No. 2232, heretofore reported from the Committee on Claims.

Mr. W. C. P. Breckinridge, of Kentucky, made the point of order that the motion must now be submitted by a member of the Committee on Claims by direction of that committee, or the authority for the presentation of the bill furnished.

The Speaker[2] overruled the point of order on the ground that the written authority of the Committee on Claims for the presentation of the bill by the Chair to the House had been heretofore furnished the Speaker and read to the House, and that the bill was properly before the House under clause 2 of Rule XXIV.

3101. If a Senate bill be such as to require consideration in Committee of the Whole, it may not be taken from the Speaker's table for direct action of the House.

The rule providing for consideration of Senate bills on the Speaker's table applies to private as well as public bills.

Formerly a bill referring a claim to the Court of Claims did not require consideration in Committee of the Whole; but a rule has changed this practice.

On June 10, 1890,[3] the Speaker laid before the House, from the Speaker's table, the bill of the Senate (S. 1205) for the relief of Hyland C. Kirk and others, assignees of Addison C. Fletcher.

Mr. Wm. M. Springer, of Illinois, made the point of order that the bill, under clause 3 of Rule XXIII,[4] must receive its first consideration in a Committee of the Whole.

After debate, the Speaker[2] overruled the same on the following grounds:

The Chair desires to say that this matter is not entirely free from doubt, but the best construction that the Chair has been able to give it leads to this result. This bill is not governed by Rule XIII,[5] for that refers exclusively to House bills. This does not go to the Committee of the Whole by virtue of Rule XIII, because it is not a House bill, and it is not a bill reported from a committee. The Chair should not use the term "House bill," but simply "a bill reported from a committee."

It is not governed by Rule XIII. It must therefore be governed by the second clause of Rule XXIV,[6] taken in connection with the third clause of Rule XXIII,[4] and the House will notice that the expression used in the second clause of Rule XXIV is:

"As may also Senate bills substantially the same as House bills already favorably reported by a committee of the House, and not required to be considered in Committee of the Whole, be disposed of in the Fame manner on motion directed to be made by such committee."

The Chair thinks that the letter "a" was omitted in the second use of the expression "Committee of the Whole," and that it should have the same interpretation as this in the first use of the phrase "Committee of the Whole," where it is designated as "a Committee of the Whole," intended to refer

[1] First session Fifty-first Congress, Journal, pp. 849, 850; Record, p. 7161.

[2] Thomas B. Reed, of Maine, Speaker.

[3] First session Fifty-first Congress, Journal, p. 726; Record, p. 5907.

[4] See section 4792 of this work.

[5] See section 3115.

[6] See section 3089.

both to the Committee of the Whole House on the state of the Union and to the Committee of the Whole to which private bills would naturally go if reported by a committee. The question, then, is whether this is a bill which is required to be considered in Committee of the Whole; if not, being substantially the same as House bills already reported, and being brought up on a motion directed to be made by said committee, it is in condition under this rule to be considered.

The provision of the third clause of Rule XXIII,[1] with which the House is familiar, and which governs all proceedings touching appropriations of money, etc., has been repeatedly construed by previous occupants of the Chair. In the Forty-fifth Congress, third session, page 244 of the Journal, the Speaker [Mr. Randall] decided that a bill like this did not require to be considered in Committee of the Whole; and that has been sustained by other Speakers, and has already been ruled upon in this House.[2]

If, then, it is the same as a House bill already favorably reported by a committee of the House, and is not required to be considered in Committee of the Whole, and is brought up on motion directed to be made by the committee of the House which actually pawed upon it, it then becomes ready for the action of the House. There are three safeguards: First, that it has been favorably reported in substance by a committee of the House; second, that it is not a bill that is required under our rules to be considered in Committee of the Whole; and, third, the committee asks for it's consideration at this time. That does not put the Senate in control of the rules of the House, because it is to be offered under the rules of the House itself, and thus the bill becomes ready to be acted on. The Chair therefore is obliged to overrule the point of order, inasmuch as the bill is not required by the rules to be considered in Committee of the Whole.

3102. On August 13, 1890,[3] the Speaker laid before the House the bill of the Senate (S. 846) for the relief of Nathaniel McKay and the executors of Donald McKay, on the Speaker's table, it being identical with the bill of the House (H. R. 4687) reported favorably from the Committee on War Claims.

Mr. William M. Springer, of Illinois, made the point of order that the bill being a private bill was not in order for consideration under this class of business; that the bill involved an appropriation and should have its first consideration in a Committee of the Whole, and that it had not been shown that the bill, if in order under clause 2, Rule XXIV, had been called up by direction of the Committee on War Claims.

After debate on the points of order, the Speaker[4] overruled the same on the grounds that the rule (clause 2, Rule XXIV[5]) under which this bill was retained on the Speaker's table and laid before the House made no distinction between public and private bills, and that the rule invoked-paragraph third of clause 1 of Rule XIII[6]—applied to bills "reported from committees," as stated in the first paragraph of that rule; that the usual notice had been given by the Committee on War Claims, and that the bill pending did not involve an appropriation of money for the reason—uniformly held in such cases—that it could not be asserted with certainty that the Court of Claims would find anything due the claimant.

Mr. Springer appealed from the decision of the Chair, and the question being put, "Shall the decision of the Chair stand as the judgment of the House?" there appeared, yeas 108, nays 21.

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[1] See section 4792 of this work.

[2] The bills in this case referred claims to the Court of Claims. In the Fifty-fourth Congress section 3 of Rule XXIII was amended to cover such cases. See section 4792 of this work.

[3] First session Fifty-first Congress, Journal, p. 951; Record, p. 8527.

[4] Thomas B. Reed, of Maine, Speaker.

[5] See section 3089.

[6] See section 3115.

3103. On February 13, 1891,[1] the Speaker also laid before the House, from the Speaker's table, the bill of the Senate (S. 4472) for the relief of Charles B. Stivers, the same being identical with the bill of the House (H. R. 12294) on the Private Calendar.

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

The Speaker[2] sustained the point of order, and the bill was referred to the Committee on Military Affairs.

3104. On January 19, 1893,[3] the bill (H. R. 9757) to provide for the better protection of commerce and for the general welfare, for the establishment of a national quarantine, etc., was read twice.

Mr. Isidor Rayner, of Maryland, submitted a motion that the bill on the Speaker's table (S. 2707) granting additional quarantine powers, imposing additional duties upon the Marine-Hospital Service, and making an appropriation therefor, be considered in lieu of bill H. R. 9757.

Objection being made to this motion, the Speaker[4] declined to entertain the motion of Mr. Rayner, on the ground that the Senate bill must receive its first consideration in one of the committees of the House.[5]

3105. Under the former rules, a House bill with Senate amendments requiring to be referred was referred by vote of the House.—On February 3, 1893,[6] the House was considering the Senate amendments to the bill (S. 7845) defining "options" and "futures," imposing special taxes on dealers therein, etc.

Mr. William H. Hatch, of Missouri, moved that the bill and amendments be referred to the Committee on Agriculture.

Mr. Charles J. Boatner, of Louisiana, made the point of order that the motion of Mr. Hatch to refer was not in order, because, under the rules, the bill appropriately should be referred to the Committee on Ways and Means.[7]

Mr. C. B. Kilgore, of Texas, made the further point of order that if the proper reference was to the Committee on Agriculture, no motion to that effect was required or was in order.

The Speaker[4] overruled both points of order.

3106. A House bill with Senate amendments requiring consideration in Committee of the Whole should be referred from the Speaker's table to the proper standing committee under the rules.—On February 9, 1905,[8] Mr. John A. Moon, of Tennessee, rising to a parliamentary inquiry, said:

> There was reported to the House to-day from the Senate a House bill to create the States of Oklahoma and Arizona, with certain amendments passed by the Senate. That bill with amendments, as I understand it, is now on the Speaker's table. The inquiry I desire to make is this, Can a motion be now made under the rules of the House to concur in the Senate amendments?

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[1] Second session Fifty-first Congress, Journal, p. 241; Record, p. 2623.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Second session Fifty-second Congress, Journal, p. 52; Record, p. 717.

[4] Charles F. Crisp, of Georgia, Speaker.

[5] Section 2 of Rule XXIV was section 1 in the Fifty-second Congress, and so different that this precedent does not apply fully to the rule as it now is.

[6] Second session Fifty-second Congress, Journal, pp. 68, 79; Record, p. 1150.

[7] The rule at that time provided that House bills with Senate amendments should be laid before the House for reference. By the present rule they are referred by the Speaker.

[8] Third session Fifty-eighth Congress, Record p. 2206.

The Speaker[1] said:

The Chair will answer the parliamentary inquiry, first, upon the question of fact. Under the rules of the House the Chair found upon examination of the bill that one of the Senate amendments provides for an appropriation of money. That is original, and under the rule of the House the bill went to the Committee on Territories, in contemplation of the rule, at once, and the Chair directed that it go manually.

3107. On the calendar day of February 27, 1903[2] (but the legislative day of February 26), the Speaker called the House to order after a recess, and after the presence of a quorum had been ascertained, Mr. Oscar W. Underwood, of Alabama, raised the question of order that the agricultural appropriation bill, returned from the Senate with amendments, was still on the Speaker's table and should be referred.

The Speaker[3] said:

There is a certain discretion given to the Speaker, and he always has exercised it, to hold the appropriation bills for the usual custom of having them referred to a conference committee.[4]

3108. A House bill returned with Senate amendments involving a new matter of appropriation, whether with or without a request for a conference, is referred directly to a standing committee, and on being reported therefrom is referred to the Committee of the Whole.—On May 22, 1896,[5] Mr. William R. Ellis, of Oregon, from the Committee on the Public Lands, reported the bill (H. R. 5819) to provide for the examination and classification of certain lands in the State of Florida, which, with Senate amendments, had been committed to that committee.

The Speaker stated that the bill would be referred to the Committee of the Whole.

Mr. Eugene F. Loud, of California, raised a question of order as to why the bill should have been sent to the Committee on the Public Lands.

The Speaker[6] said:

The Chair will state precisely how it went to the committee. Being a House bill with Senate amendments, with a request for a conference, it went to the committee. That committee had the right to report, because the Senate requested a conference. Being reported, it goes to the Committee of the Whole, because that is the rule of the House. * * * Pension bills for increases of pensions, with Senate amendments, or Senate amendments representing increases by the Senate are not within the rule of measures like this, where a new item is presented involving a new appropriation, which Rule XX of the House sends to the Committee of the Whole. The matter is very clear. That bill was submitted to the Chair, and the Chair was not aware on a cursory examination that there was a new appropriation in it; but on a careful examination it is quite evident there are expenditures not in the original bill, and relating to a new or cognate subject; that is, including another State.

3109. On September 16, 1890,[7] Mr. Charles S. Baker, of New York, by unanimous consent, from the Committee on Commerce, to which was referred the bill of the House (H. R. 901) for the erection of a new tower near the site of the lighthouse

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] Second session Fifty-seventh Congress, Record p. 2756.

[3] David B. Henderson, of Iowa, Speaker.

[4] Such reference to conference can only be effected under these circumstances by unanimous consent, suspension of the rules or by special order.

[5] First session Fifty-fourth Congress, Record, pp. 5564, 5565.

[6] Thomas B. Reed, of Maine, Speaker.

[7] First session Fifty-first Congress, Journal, p. 1046; Record, p. 10111.

on Smiths Island, Virginia, with amendments of the Senate thereto, and a request for a conference with the House on the bill and amendments, reported the same with the recommendation that the House nonconcur in all of the amendments and agree to the conference asked by the Senate.

Mr. Benton McMillin, of Tennessee, made the point of order that the amendments to the bill must receive their first consideration in the Committee of the Whole House on the state of the Union, as the bill was in effect an omnibus bill including millions of dollars of appropriations.

The Speaker[1] sustained the point of order, and the bill, amendments, and report were referred to the Committee of the Whole House on the state of the Union.

3110. On February 3, 1893,[2] the House resumed consideration of the point of order submitted by Mr. William D. Bynum, of Indiana, against the motion of Mr. William H. Hatch, of Missouri, that the House disagree to the amendments of the Senate to the bill (S. 7845) defining "options "and "futures," imposing special taxes on dealers therein, and requiring such dealers and persons engaged in selling certain products to obtain license, and for other purposes.

After further debate, the Speaker[3] sustained the point of order, holding that since the Senate amendments provided for a new and distinct subject-matter of taxation not included in the original bill they must receive their first consideration in the Committee of the Whole, and therefore the motion to disagree to the amendment was not in order at this time.

3111. Discretion of the Speaker in referring to committees bills on the Speaker's table.—On March 1, 1901,[4] Mr. John Dalzell, of Pennsylvania, reported from the Committee on Rules, and the House agreed to this resolution:

Resolved, That immediately upon the adoption of this resolution it shall be in order to take from the Speaker's table the bill (H. R. 14017) making appropriations for the Army and without intervening motion to move to concur in the Senate amendments thereto in gross; after two hours, debate (one hour on each side) the previous question shall be considered as ordered on said motion, and a vote then be had thereon without delay or intervening motion.

Mr. James D. Richardson, of Tennessee, then made the point of order that the rule was inoperative, since under the rule the bill, which on the preceding day came from the Senate, must have been referred from the Speaker's table to the Committee on Military Affairs.

The Speaker[5] having had read section 2 of Rule XXIV,[6] said:

The House is well aware—and the Chair presumes no one more so than the gentleman from Tennessee, who submits this point of order—that in the rule which the Chair has had read the language is "may be referred," not "must be referred."

Furthermore, every Speaker since the service of the present occupant of the Chair began in this House has exercised a discretion in regard to the matter of making references of bills immediately. This bill, according to the practice for many years—the Chair does not know how long—was not referred to the Committee on Military Affairs, and is in fact upon the Speaker's table. If the Speaker erred or departed from the rule in retaining the bill on the table, that error would not do away with the fact that here

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Fifty-second Congress, Journal, p. 68; Record, pp. 1150–1153.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] Second session Fifty-sixth Congress, Journal, pp. 303–305; Record, pp. 3331–3337.

[5] David B. Henderson, of Iowa, Speaker.

[6] See section 3089 of this work.

is the bill upon his table; and that alone destroys the effect of the point of order submitted by the gentleman from Tennessee.

But the Chair believes that in this matter he has simply exercised a discretion which has usually been exercised in this House by occupants of the chair. There is scarcely a Member of this House who, when interested in a bill coming from the Senate, as this bill came, has not requested the Chair to hold the bill upon the Speaker's table until it could be disposed of by unanimous consent or otherwise.

It was just as easy to make this special rule applicable to the bill in the Committee of the Whole as on the Speaker's table. It was absolutely within the right of the Committee on Rules to provide for discharging the Committee on Military Affairs from the consideration of the bill and taking it up in the House for consideration. But the bill was not with that committee.

There is another point to which the Chair desires to invite the attention of the House. No Member of this House has lost any rights by reason of the bill remaining upon the Speaker's table. No one is injured. If it had gone to the Committee on Military Affairs the special rule would have been differently drafted. * * * The point of order is overruled, * * * because the bill is on the Speaker's table. That being the fact nothing more need have been said in deciding the point of order. Whatever else the Chair may have said in this ruling was designed to show that he has been acting in the line set by his predecessors and in accordance with the practice of this House.

Mr. Richardson having called the attention of the Chair to a decision of Mr. Speaker Reed,[1] wherein the language "should be" referred, not "may be," had been used, the Speaker said:

That is true as to ultimate action; but nowhere in the rules or the decisions can be found any notation, decision, or ruling saying just when a bill shall be referred. This course is pursued-and the Chair invites the attention of the gentleman-in the interest of the public business, to facilitate and expedite the work of the House. It is the course that has been repeatedly and in fact daily pursued, and the Chair thinks it has been for the good of the public service, no one being damaged.

3112. The rule governing the disposal of unfinished business. Form and history of section 3 of Rule XXIV.

Section 3 of Rule XXIV provides:

The consideration of the unfinished business in which the House may be engaged at an adjournment, except business in the morning hour, shall be resumed as soon as the business on the Speaker's table is finished, and at the same time each day thereafter until disposed of, and the consideration of all other unfinished business shall be resumed whenever the class of business to which it belongs shall be in order under the rules.

This is the form adopted in the revision of 1890,[2] and in its general features is the form of the 1880 revision.[3] But in 1880 unfinished business was placed after the morning hour for the call of committees; and when, five years later, in the Forty-ninth Congress, the second morning hour was instituted for the consideration of bills brought up by committees,[4] the unfinished business came so late that bills on its list were reached only with great difficulty.

In 1890 the present rule restored it to a privileged position which it had occupied prior to 1880.

The early rule relating to unfinished business was framed November 13, 1794:[5]

The unfinished business in which the House was engaged at the last preceding adjournment shall have the preference in the orders of the day; and no motion on any other business shall be received, without special leave of the House, until the former is disposed of.

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[1] See section 3093 of this work.

[2] First session Fifty-first Congress, House Report No. 23; also Record, p. 1171 and following pages.

[3] Second session Forty-sixth Congress, Congressional Record, p. 207.

[4] First session Forty-ninth Congress, Record, pp. 171, 337.

[5] Third and Fourth Congresses, Journal, p. 228 (Gales and Seaton ed.).

The practice of the House in regard to this rule had so grown up that at the time of the revision of 1860 a bill pending at the time of adjournment, and ready to be acted on, went to the Speaker's table unless the previous question was ordered or a motion to recommit was pending. In the order of business at that time the Speaker's table was so encumbered and so far down on the list that in not one case in a thousand could an unfinished bill be reached.[1] Therefore in 1860 the House adopted a rule which contained, in somewhat different form, the principles of the present rule:

The consideration of the unfinished business in which the House may be engaged at an adjournment shall be resumed as soon as the Journal of the next day is read, and at the same time each day thereafter until disposed of; and if, from any cause, other business shall intervene, it shall be resumed as soon as such other business is disposed of. And the consideration of all other unfinished business shall be resumed whenever the class of business to which it belongs shall be in order under the rules.

In the Fifty-second and Fifty-third Congresses the morning hour was put back again to the place it occupied in the Fiftieth Congress, prior to 1890, but unfinished business was again restored to its place of privilege in the Fifty-fourth and succeeding Congresses.

3113. A bill brought up in the morning hour and undisposed of, remains as unfinished business during call of committees only.—On March 9, 1906,[2] a Friday set apart under the rules for consideration of pension bills, and after the consideration of such bills had been concluded, Mr. Robert W. Bonynge, of Colorado, pursuant to an order of the House made on March 5, moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 15442) to establish a bureau of immigration and naturalization and to provide for a uniform rule for the naturalization of aliens throughout the United States.

The order of March 5 provided that this bill should have the privilege belonging to bills reported from committees having leave to report at any time.

Mr. George W. Prince, of Illinois, called for the regular order, claiming that the bill (H. R. 15744) to abolish the office of Lieutenant-General of the Army of the United States, which had been called up under call of committees on a preceding day, and on which the House was dividing on the question of consideration at the adjournment on that day, was the regular order, as unfinished business.

The Speaker pro tempore[3] held:

The Chair will state that is unfinished business, the Chair is informed, under the call of committees; and the Chair will state that the call of committees would be in order at this time were it not for the privileged motion which has been presented by the gentleman from Colorado. The gentleman from Colorado moves that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill H. R. 15442, the title of which the Clerk will read.[4]

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[1] See statement of Mr. Israel Washburn, of Maine. (First session Thirty-sixth Congress, Globe, p. 1180.)

[2] First session Fifty-ninth Congress, Record, pp. 3639, 3640.

[3] Adin B. Capron, of Rhode Island, Speaker pro tempore.

[4] Of course the House might have controlled the matter by voting down the motion to go into Committee of the Whole.

3114. A motion relating to the order of business does not recur as unfinished business on a succeeding day, even though the yeas and nays may have been ordered on it before adjournment.—On September 15, 1893,[1] the Speaker proceeded to call the committees for reports,[2] whereupon Mr. Julius C. Burrows, of Michigan, made the point that when the House adjourned on the previous day the pending question was on his motion to dispense with the morning hour,[3] on which question the yeas and nays had been ordered, and no quorum having voted thereon, that the business first in order to-day was the motion submitted by himself, on which the yeas and nays had been so ordered on the day before.

The Speaker[4] overruled the point of order, holding that the motion made by Mr. Burrows on the previous day, to dispense with the morning hour, expired with the adjournment, as in case of a motion for a recess or other motions incidental to the order of business, and that the practice ordinarily prevailing where the yeas and nays have been ordered did not apply to such questions; also, that if the motion of Mr. Burrows could by any construction be considered as unfinished business it would still not be in order until after the morning hour on this day.[5]

3115. Bills reported from committees are distributed to three Calendars, there to await action by the House.

Description of the House, Union, and Private Calendars.

Form and history of section 1 of Rule XIII.

The three Calendars, on which are classified the business reported from committees, are established by section 1 of Rule XIII.

> There shall be three Calendars of business reported from committees, viz:
>
> First. A Calendar of the Committee of the Whole House on the state of the Union, to which shall be referred bills raising revenue, general appropriation bills, and bills of a public character directly or indirectly appropriating money or property.
>
> 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.
>
> Third. A Calendar of the Committee of the Whole House, to which shall be referred all bills of a private character.

This rule is in the form adopted in the revision of 1880.[6] While the Calendars may be said to have been established at that time, yet two of them had existed for many years as indispensable to the orderly procedure with bills referred to the Committee of the Whole House and the Committee of the Whole House on the state of the Union. On March 25, 1820,[7] Mr. Joseph W. Taylor, of New York, proposed a rule, which was agreed to on March 28, directing the Clerk under direction of the

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[1] First session Fifty-third Congress, Journal, p. 88.

[2] Under the present rules committees are not called for reports.

[3] Rule XXIV, section 3, of the Fifty-third Congress provided for dispensing with the morning hour by a two-thirds vote. There is no provision of this kind in the present rule. See section 3112.

[4] Charles F. Crisp, of Georgia, Speaker.

[5] In the Fifty-third Congress the morning hour came before unfinished business. This is not the case now. See section 3056.

[6] Second session Forty-sixth Congress, Record, p. 205.

[7] First session Sixteenth Congress, Journal, pp. 335, 344 (Gales and Seaton ed.); Annals, p. 1675 The above rule was temporary, and we find it proposed again at the next session. (Second session Sixteenth Congress, Journal, p. 190 (Gales and Seaton ed.); Annals, p. 1000.)

Speaker to arrange the business referred "to the Committee of the Whole House" in the following order: (1) Private Senate bills favorably reported by a House committee; (2) private House bills reported by a committee; (3) bills of a public nature; (4) Senate bills unfavorably reported by a House committee; (5) reports unfavorable to petitions. In those days nearly all business was referred to Committee of the Whole, whether it required an appropriation or not. And from that time onward there were orderly lists of business before the Committees of the Whole.[1] The old rule No. 129, dating from January 25, 1839,[2] referred to a Calendar of the private bills committed to the Committee of the Whole House, and old rule No. 114, dating from July 27, 1848,[3] in the same way referred to a Calendar for bills sent to the Committee of the Whole House on the state of the Union. In 1880 the House Calendar was established for a class of bills which did not belong in either of the Committees of the Whole. Such bills had formerly been considered during the hour for reports of committees, thereby seriously interfering with that order of business and making it impossible to report many important measures from committees.[4] To reform that abuse the House Calendar was created.

3116. Nonprivileged reports are delivered to the Clerk for reference to the Calendars under direction of the Speaker.

The record of reports filed with the Clerk is entered in the Journal and printed in the Record.

Adverse reports do not go to the Calendars except by direction of a committee or request of a Member.

Form and history of section 2 of Rule XIII.

Section 2 of Rule XIII prescribes the method of making nonprivileged reports from committees.

Before 1890 all reports were made in open House from the floor; and the system of discriminating in favor of the more important business had been established by giving certain committees leave to report at any time. These favored committees still report from the floor; but their privilege is valuable only in that it gives their bills a privileged status for consideration. See section 4621 of this volume.

All reports of committees, except as provided in clause 61 of Rule XI, together with the views of the minority, shall be delivered to the Clerk for printing and reference to the proper Calendar under the direction of the Speaker, in accordance with the foregoing clause, and the titles or subjects thereof shall be entered on the Journal and printed in the Record.

Provided, That bills reported adversely shall be laid on the table unless the committee reporting a bill, at the time, or any Member within three days thereafter, shall request its reference to the Calendar, when it shall be referred as provided in clause 1 of this rule.

This rule dates from the revision of 1890.[5] Previous to that time reports of committees were made in open House during what was called the morning hour for

[1] On January 30, 1829 (Second session Twentieth Congress, Debates, pp. 296–298), we find complaint that adverse reports from the Committee on Claims went to the foot of the docket, and could not be reached by the House until favorable reports had been acted on. Of 2,000 committee reports in the first session of the Twentieth Congress about three-fourths were adverse.

[2] Third session Twenty-fifth Congress, Globe, p. 146.

[3] First session Thirtieth Congress, Globe, p. 1006.

[4] Second session Forty-sixth Congress, Congressional Record, p. 200.

[5] First session Fifty-first Congress, House Report No. 23; Record, pp. 1284, 1340.

reports, and were referred to the proper Calendars in accordance with the rule unless a vote should be demanded, when the House decided the reference without debate. The old rule was restored in a modified form in the Fifty-second and Fifty-third Congress, but in the Fifty-fourth the revision of 1890 was restored.

3117. A bill improperly reported from a committee is not entitled to its place on the Calendar.—On January 17, 1899,[1] Mr. James T. McCleary, of Minnesota, made the following statement:

It has been found that the vote by which the bill No. 10289 (a bill to provide for strengthening the public credit, for the relief of the United States Treasury, and for the amendment of the laws relating to national banking associations) was reported to the House from the Committee on Banking and Currency was not taken in due form. I am therefore authorized and directed by the committee to ask that the bill be recommitted.

The Speaker[2] said:

The Chair desires to say that if the vote in committee was improperly taken the bill would not be properly on the files of the House. The easiest way, therefore, to reach the matter would be to ask unanimous consent, which proposition the Chair will regard as agreed to if there be no objection, that the bill be recommitted. The Chair hears no objection.

On January 20, 1899,[3] Mr. Marriott Brosius, of Pennsylvania, made this statement:

I have been authorized by the Committee on Reform in the Civil Service to ask to recommit to that committee the bill (S. 3256) in reference to the civil service and appointments thereunder, which was reported to the House and went upon the Calendar some time ago in an irregular manner. I ask to have it recommitted.

The bill was recommitted by unanimous consent.

3118. The rule for consideration of bills on the House Calendar on call of committees.

Form and history of section 4 of Rule XXIV.

Section 4 of Rule XXIV is the rule of the morning hour:

After the unfinished business has been disposed of, the Speaker shall call each standing committee in regular order and then select committees, and each committee when named may call up for consideration any bill reported by it on a previous day and on the House Calendar, and if the Speaker shall not complete the call of the committees before the House passes to other business he shall resume the next call where he left off, giving preference to the last bill under consideration: *Provided,* That whenever any committee shall have occupied the morning hour on two days it shall not be in order to call up any other bill until the other committees have been called in their turn.

The morning hour is one of the older institutions of the House, but its use has varied greatly. For many years, and until 1885, the morning hour meant the time during which committees were called for reports.

In 1885[4] a second morning hour was instituted, to follow the morning hour for reports, and to be devoted to bills on the House or Union Calendars; that is, public bills called up by committees. This second morning hour was of sixty minutes, length, and whenever any bill had occupied two hours it went to the Calendar of

[1] Third session Fifty-fifth Congress, Record, p. 705.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Third session Fifty-fifth Congress, Record, p. 851.

[4] First session Forty-ninth Congress, Record, pp. 171, 337.

unfinished business,[1] at that time an order reached with difficulty. In 1890[2] the present form of rule was adopted and the first morning hour for reports of committees was abolished, reports instead being filed with the Clerk.[3] This rule relates only to such bills as are on the House Calendar and the hour is not limited to sixty minutes, thus enabling a bill once taken up to be concluded, and obviating the great disadvantage of the morning hour created in 1885. Previous to the revision of 1880[4] public bills not appropriating money were considered during the morning hour for the call of committees. As this arrangement often obstructed reports, this class of bills were given a Calendar which was in order so near the end of the day (coming after morning hour, unfinished business, and business of the Speaker's table) as to make it very difficult to reach it. So in 1885 the second morning hour was instituted for public bills of both kinds, and placed before unfinished business. In 1890, the old morning hour being abolished, the term came to mean the time for considering bills on the House Calendar. The Fifty-second and Fifty-third Congresses returned to the system of two morning hours, in use previous to 1890, but the Fifty-fourth Congress restored the rule of 1890.

3119. The call of committees in the morning hour does not necessarily end in sixty minutes.—On March 24, 1896,[5] the House was considering in the morning hour for the call of committees the bill (S. 1179) relating to the appointment of officers in the Army and Navy.

During the consideration Mr. Albert J. Hopkins, of Illinois, made the point of order that the morning hour had expired.

The Speaker[6] held:

Under the rules of the House any Member is at liberty to make a motion which will close the morning hour, but the morning hour does not expire of itself.

3120. A bill once brought up on call of committees continues before the House in that order of business until finally disposed of.—On July 1, 1898,[7] while the bill (H. R. 10807) relating to the International American Bank was pending in the morning hour, a question arose as to the length of time during which the bill would be entitled to consideration.

Mr. Joseph W. Bailey, of Texas, suggested that after a bill had been considered in the morning hour during two sessions of the House it then lost its privilege.

The Speaker[6] said that this was an error, the rule being intended to allow business to be finished. The language of the rule was intended to prevent a committee that had used the morning hour for two days from calling up any new bill until other committees had been called; but a bill once taken up might be continued in the morning hour until concluded.

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[1] See Rules Fiftieth Congress, section 5 of Rule XXIV.

[2] Home Report No. 23, first session Fifty-first Congress.

[3] See section 3166.

[4] Second session Forty-sixth Congress, Record, p. 200.

[5] First session Fifty-fourth Congress, Record, p. 3156.

[6] Thomas B. Reed, of Maine, Speaker.

[7] Second session Fifty-fifth Congress, Record, pp. 6593, 6594.

3121. Interpretation of the rule of the call of committees in the form existing prior to 1890.—On October 25, 1893,[1] the House proceeded to business in the second morning hour,[2] the call resting on the Committee on the Public Lands, and the question being on the point of order submitted by Mr. Albert J. Hopkins, of Illinois, on the 23d instant, to wit, that it was not in order during the consideration hour for a committee to present for consideration a proposition which had previously occupied the hour on two successive days.

The Speaker[3] overruled the point of order, holding as follows:

The gentleman from Arkansas [Mr. McRae], chairman of the Committee on the Public Lands, calls up for consideration a bill (H. R. 119) which had heretofore been called up under the morning hour, and had its consideration for two hours under the rule. The question is raised against the bill that under the rule providing the second morning hour, or consideration hour, it is not the privilege of a committee to call up in this hour any bill which has been reported by the committee and which has already had the two hours' consideration specified by the rule. The Chair will read the rule:

"4. After the morning hour shall have been devoted to reports from committees (or the call completed), the Speaker shall again call the committees in regular order for one hour, upon which call each committee, on being named, shall have the right to call up for consideration any bill reported by it on a previous day. And whenever any committee shall have occupied the said hour for one day, it shall not be in order for such committee to designate any other proposition for consideration until all the other committees shall have been called in their turn; and when any proposition shall have occupied two hours on this call it shall thereafter remain on the Calendar as unfinished business and be taken up in its order."

The Chair has had some difficulty in determining exactly what was the proper construction of that rule, but, after such examination as the Chair has been able to give to it, is of opinion that the power of the committee to call up any bill reported by it on a previous day is not limited or taken away by the fact that they have once called it up and that it has had its consideration for the two hours specified in the rule. The practice, as the Chair understands it, is expressed in the Digest for the second session of the last Congress, on page 384:

"A bill having been considered in this hour on two days takes precedence on the calendars as unfinished business, according to provisions of clause 5 of Rule XXIV, or, if the committee presenting it so elect, they may again present it for consideration during the consideration hour when that committee is again called in its turn."

Now the suggestion is made that this construction of the rule may operate badly. Of course that suggestion would have force, and does have force, when a rule is subject to two constructions; and the Chair is frank to say that this rule is not perfectly clear. Yet it seems to the Chair that the practice just stated is more consistent with the language of the rule than any other; and the Chair does not see that this practice, as thus suggested, could ever interfere with the right of the committee or the orderly business of the House.

3122. A bill must be actually on the House Calendar, and properly there also, in order to be considered in the morning hour.—On December 10, 1896,[4] during the call of committees, Mr. H. Henry Powers, of Vermont, from the Committee on Pacific Railroads, called up the bill (H. R. 6398) relating to the

[1] First session Fifty-third Congress, Journal, p. 154.

[2] The first morning hour was for the call of committees for reports. (See sec. 3118.) This precedent has no application to the present rule of the morning hour. The present rule was adopted in 1890 and readopted in 1895. From 1892 to 1895 the old rule, which had existed before 1890, was temporarily restored.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] Second session Fifty-fourth Congress, Record, p. 83.

Atlantic and Pacific Railroad Company, stating that the bill had inadvertently been referred to the calendar of the Committee of the Whole House on the state of the Union, but that it properly belonged on the House Calendar, as it involved no appropriation.

Mr. Thomas C. McRae, of Arkansas, made the point of order that the bill was not in order for consideration.

The Speaker[1] held:

The point of order is that the bill is not in order at the present time, because the rule expressly provides that only bills recommended by the committees, and on the House Calendar, shall be considered in this order. This bill is not on the House Calendar, but on the Union Calendar. * * * The placing of a bill on the House Calendar is intended for two purposes—first, that it shall not carry an appropriation or the equivalent of it, and that there shall be notice to the House that it is liable to be taken up. Not being on the House Calendar, even if it ought to have been, there is no notice. * * * Therefore if the point of order is insisted on it must be sustained on that ground.

3123. On January 18, 1897,[2] during the call of committees, Mr. Joseph A. Scranton, of Pennsylvania, called up the bill (S. 2555) to authorize the issuance of leases of certain islands in Alaska.

The bill not being on the House Calendar, the Speaker[1] said:

It must be on the Calendar to be in order under this call. * * * The idea of this committee hour, so called, is to bring up bills which are on the Calendar of the House and which do not involve an appropriation. The bill is required to be on the Calendar, so that the House may have some notice of its existence as a bill.

3124. On February 9, 1897,[3] during the morning hour for the call of committees, Mr. W. C. Anderson, of Tennessee, called up the bill (H. R. 7539) to facilitate the payment of pensions, which was on the House Calendar.

Mr. Sereno E. Payne, of New York, made the point of order that the bill was improperly on the House Calendar.

The Speaker[1] ruled:

The Chair sustains the point of order. The bill has been placed on the House Calendar, but there is a rule of the House which provides that a point of order may be made as to the reference of a bill at any time before consideration; and, while the charge upon the Treasury made by the bill is a small one, nevertheless it is a charge, and the question is not one of amount, but of principle.

3125. On March 1, 1900,[4] during the call of committees in the morning hour Mr. H. Henry Powers, of Vermont, from the Committee on Pacific Railroads, asked leave to call up the bill (H. R. 2864), which in full was as follows:

Be it enacted, etc., That the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General of the United States are hereby authorized and empowered to make settlement and adjustment with the Sioux City and Pacific Railroad Company of its indebtedness to the Government of the United States, and when such settlement is approved by the President it shall become operative, and the Attorney-General shall make the necessary acquittances to said railroad company.

This bill being on the Union Calendar, Mr. Powers asked that it be transferred to the House Calendar, as properly belonging there.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Fifty-fourth Congress, Record, p. 903.

[3] Second session Fifty-fourth Congress, Record, p. 1686.

[4] First session Fifty-sixth Congress, Record, p. 2455.

After debate the Speaker[1] said:

The Chair is of opinion, after examining the authorities, that the bill ought to be on the House Calendar, and will make the change of reference. He must state, however, that the bill can not be again called up on the same day without unanimous consent, as it is due to the House that the bill, when called up, should be on the printed Calendar, so that members shall be duly notified, shall have timely warning, that a bill is liable to be brought up on this call.

3126. On December 7, 1906,[2] the Committee on Insular Affairs was called on the call of committees, and Mr. Henry A. Cooper, of Wisconsin, called up the bill (H. R. 17661) providing that the inhabitants of Puerto Rico shall be citizens of the United States.

A question arising as to the position of the bill, the Speakers[3] said:

The gentleman from Wisconsin seeks to call up the bill (H. R. 17661) reported from the Committee on Insular Affairs, with an amendment, providing that the inhabitants of Puerto Rico shall be citizens of the United States. This bill is on the Union Calendar and not upon the House Calendar. Being upon the Union Calendar, it is, therefore, not within the rule. The gentleman, however, makes the point that the bill should not be upon the Union Calendar, but ought to be upon the House Calendar. The Chair, upon examination of the bill, is inclined to the opinion that the bill ought to be upon the House and not upon the Union Calendar. The bill, however, is upon the Union Calendar.

The Speaker thereupon directed that the bill be transferred to the House Calendar.

Mr. Cooper thereupon proceeded to call up the bill for consideration.

A question of order having been raised by Mr. Champ. Clark, of Missouri, the Speaker held:

Now, then, upon that motion it has been held that a bill must be actually on the House Calendar, and properly so also, in order to be considered in the morning hour. The idea is, as the Chair understands the ruling and the rule, that the House should have notice of what is liable to be called upon the House Calendar in the morning hour. Now, the House did not have that notice upon the Calendar when the gentleman called the bill, and the gentleman then elected to make the point of order that the bill should be upon the House Calendar and not upon the Union Calendar. In the opinion of the Chair, as the gentleman from Missouri objects, the bill is not subject to call to-day in the morning hour.

3127. On the call of committees each bill must be called on authorization of the committee; but in case of dispute as to the authorization the Speaker can not decide as to the fact.—On December 8, 1886,[4] in the morning hour, when the Committee on Naval Affairs had been called, Mr. Hilary A. Herbert, of Alabama, proposed to bring before the House a resolution fixing a time for the consideration of the bill (H. R. 7635) to consolidate certain bureaus of the Navy Department.

Mr. Charles A. Boutelle, of Maine, having made the point of order that the gentleman from Alabama was not authorized by the committee to bring up the proposition under the call of committees, and a difference of opinion having arisen as to whether or not the committee had given an authorization, the Speaker[5] held:

The Chair decides that under the rule a measure must be called up by the committee having it in charge, which means that the committee must authorize it to be called up, just as a committee author

[1] David B. Henderson, of Iowa, Speaker.

[2] Second session Fifty-ninth Congress, Record, p. 172.

[3] Joseph G. Cannon, of Illinois, Speaker.

[4] Second session Forty-ninth Congress, Record, p. 43.

[5] John G. Carlisle, of Kentucky, Speaker.

izes a report to be made, or as a committee is required to authorize a motion to suspend the rules when committees are called for that purpose. But whether the committee did or did not authorize its chairman to call up a particular measure is a question of fact which, of course, the Chair can not decide. * * * That is a question of fact which must be decided by the committee itself, and the Chair must depend, of course, upon the good faith of Members in regard to that matter. Where there is a difference of opinion upon a question of that sort, it is impossible for the Chair to decide it.

3128. The Speaker may, upon statements from the chairman and other members of a committee, rule that the calling up of a bill has been authorized by a committee.—On December 15, 1898,[1] Mr. Ebenezer J. Hill, of Connecticut, called up the bill (H. R. 10807) relating to the incorporation of the International American Bank, which had come over from the preceding session of Congress with a point of order pending.

This point of order was presented anew by Mr. Joseph W. Bailey, of Texas, who contended that Mr. Hill was not authorized by the Committee on Banking and Currency to call up this bill, but had in fact been authorized to call up a Senate bill relating to the same subject.

Mr. Joseph H. Walker, of Massachusetts, chairman of the committee, having been recognized, stated that the committee had authorized Mr. Hill to call up the House bill; but that by an error the records of the committee had been made up to show that the authorization was given for the Senate bill. This error the committee had corrected at its earliest opportunity, which was at its meeting of the previous day, December 14.

After further debate the Speaker[2] decided:

The Chair desires to say that the point of order which was made by the gentleman from Texas was amply justified by the record of the committee as it stood at that time. But the committee has since corrected the record, presumably, necessarily, and we have got to look at the point of order now in accordance with the facts which are now before us, which seem to indicate, in fact indicate absolutely, that the gentleman was authorized to bring up the bill. If that be the case, the Chair does not see how he can do anything but overrule the point of order.

3129. A bill taken up during the call of committees may be withdrawn by the committee at any time before amendment or other action which puts it into possession of the House.—On January 12, 1897,[3] during the call of committees in the morning hour, Mr. James D. Richardson, of Tennessee, for the Committee on Printing, called up the bill (H. R. 9601) relating to the franking privilege.

After consideration of the bill and after an amendment had been offered, the previous question was demanded. On this question there were yeas 37, nays 73.

Mr. Richardson then proposed to withdraw the bill from consideration.

Mr. Charles A. Boutelle, of Maine, raised a question of order as to the right of the gentleman to withdraw the bill at this stage.

The Speaker,[2] after having raised a question as to whether or not amendments had been voted on by the House, and it having been stated that an amendment had been informally suggested and accepted without a vote on the part of the House, decided that with the authority of the committee the bill might be withdrawn.

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[1] Third session Fifty-fifth Congress, Record, pp. 221, 222; Journal, p. 34.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Second session Fifty-fourth Congress, Record, pp. 740, 764; Journal, p. 77.

3130. The Speaker has declined to allow the call of committees to be interrupted by a request for unanimous consent.—On December 12, 1904,[1] a call for the regular order having been made, the House proceeded to the call of committees, and during that call Mr. William Richardson, of Alabama, asked unanimous consent for the present consideration of the bill (H. R. 2510) for the construction of a steam revenue cutter. This bill, being on the Union Calendar, was not in order under the call of committees, and the Speaker[2] said:

Under the rule, being on the Union Calendar, it cannot be considered in the morning hour. * * * I think unanimous consent is universally refused on the call. The Chair would be compelled to exercise his right as a Member if nobody else appeared to make objection. * * * The Chair will state, as the Chair's recollection, it has been the practice of the Speaker on his own motion as presiding officer not to allow this order of business to be interrupted to consider matters in the morning hour on the Union Calendar.

3131. The call of committees may be interrupted at the end of sixty minutes by a privileged report as well as by a motion to go into Committee of the Whole.

A report which is privileged to be reported at any time is also privileged for consideration at any time, irrespective of the rule for the order of business.

On August 19, 1890,[3] the House was proceeding in the morning hour with the consideration of a bill (H. R. 4654) relating to alien landowners. At the expiration of sixty minutes, and while Mr. Thomas H. Carter, of Montana, had the floor, Mr. Joseph G. Cannon, of Illinois, interrupted to make a privileged report from the Committee on Rules.

Mr. W. C. P. Breckinridge, of Kentucky, made the point of order that the morning hour did not expire at the expiration of sixty minutes.

The Speaker pro tempore[4] overruled the point of order as to the termination of the morning hour, and held that it might be terminated by the presentation of privileged reports as well as by a motion to go into the Committee of the Whole House on the state of the Union, as provided by clause 5 of Rule XXIV;[5] and as clause 51,[6] Rule XI, gave the Committee on Rules the right to report at any time propositions relating to the daily order of business, the right to consider such report when made followed under the established practice of the House, subject, of course, to the "question of consideration," as provided in clause 3, Rule XVI.[7]

3132. On December 17, 1902,[8] Mr. Speaker Henderson declined to allow the call of committees to be interrupted by a privileged report from the Committee on Ways and Means before the expiration of sixty minutes.

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[1] Third session Fifty-eighth Congress, Record, p. 163.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] First session Fifty-first Congress, Journal, p. 969; Record, p. 8819.

[4] Lewis E. Payson, of Illinois, Speaker pro tempore.

[5] See section 3134.

[6] Now clause 61 of Rule XI.

[7] See section 4936 of Vol. V of this work.

[8] Second session Fifty-seventh Congress, Record, p. 420.

3133. The House having completed the order of business and not being ready to adjourn, the Speaker directed the call of committees to be resumed.—On February 13, 1902,[1] after the House had proceeded with the call of committees for sixty minutes, a motion was made and carried that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (S. 88) for the relief of persons for property taken from them by military forces of the United States.

After some time the committee rose and reported the bill favorably, and it was passed by the House.

Then, a call being made for the regular order and no further motion to go into Committee of the Whole being made, the Speaker[2] directed that the Call of committees be resumed.[3]

3134. The rule for interrupting a call of committees at the end of sixty minutes.

Conditions under which motions may be made to go into Committee of the Whole House on the state of the Union to consider nonprivileged bills.

Form and history of section 5 of Rule XXIV.

Section 5 of Rule XXIV is:

> After one hour shall have been devoted to the consideration of bills called up by committees, it shall be in order, pending consideration or discussion thereof, to entertain a motion to go into Committee of the Whole House on the state of the Union, or, when authorized by a committee, to go into the Committee of the Whole House on the state of the Union to consider a particular bill, to which motion one amendment only, designating another bill, may be made; and if either motion be determined in the negative, it shall not be in order to make either motion again until the disposal of the matter under consideration or discussion.

This rule dates from 1890,[4] and has been in use in the Fifty-first, Fifty-fourth, and succeeding Congresses. It places motions to go into Committee of the Whole House on the state of the Union very nearly at the end of the order of business, which has been its position for many years. But the shortening of the order in 1890 has rendered it possible to reach this class of business early in the day if no privileged matters intervene to consume the time.[5]

3135. The motion to go into Committee of the Whole House on the state of the Union may be made after sixty minutes of morning hour, or sooner if that order fails.

An instance wherein the House, by recess, remained for two calendar days at the stage of business wherein the motion under Rule XXIV, section 5, was in order.

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[1] First session Fifty-seventh Congress, Record, pp. 1716, 1719.

[2] David B. Henderson, of Iowa, Speaker.

[3] This is a rare instance of a day wherein the House has gone entirely through with the order of business. Often privileged matters intervene to such an extent as to prevent the House from reaching even the call of committees for days at a time.

[4] House Report No. 23, first session Fifty-first Congress.

[5] See section 3072 for the rule which gives precedence to motions for going into Committee of the Whole to consider revenue and appropriation bills.

An instance wherein the House came to the end of its order of business.

On January 19, 1904,[1] in the regular order of business the Speaker directed the Clerk to call the committees for consideration of bills called up from the House Calendar. The call proceeding, and Mr. William P. Hepburn, of Iowa, having the floor, a question arose as to the next order of business, when the Speaker[2] said:

If the call of committees is proceeded with, the Chair is of opinion that at the end of sixty minutes the gentleman can be recognized to make any motion that he may desire, or if the call expires before sixty minutes, and the committees have all been called, the gentleman's motion will be in order if he desires to reach the Union Calendar. When the call of committees is completed, even though sixty minutes be not used, it would be in order, the Chair thinks, and at the end of sixty minutes whatever may be under consideration.

The call of committees proceeding and being exhausted before the end of sixty minutes, Mr. Hepburn was recognized and moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 6295) for preventing the adulteration, misbranding, and imitation of foods, beverages, candies, drugs, and condiments in the District of Columbia and the Territories, and for regulating interstate traffic therein, and for other purposes.

This motion was agreed to, and after some time spent in Committee of the Whole, the committee rose and the Chairman reported that it had come to no resolution on the pending bill.

Then, after the transaction of sundry matters of business, the House, on motion of Mr. Hepburn, took a recess until 11:55 a. m. the next calendar day.

When the House met at 11:55 a. m. on the calendar day of January 20,[3] Mr. Hepburn was at once recognized and moved that the House resolve itself into Committee of the Whole House on the state of the Union for the consideration of the said bill (H. R. 6295) for preventing the adulteration of foods, etc. The motion was agreed to, and after some time the Committee of the Whole rose and reported the bill with sundry amendments and a favorable recommendation.

The amendments were voted on by the House, and the bill as amended was engrossed, read a third time, and passed.

3136. The motion to go into Committee of the Whole House on the state of the Union under section 5 of Rule XXIV may be repeated, although the committee may have risen after having considered a bill under that order of business.—On April 30, 1900,[4] after sixty minutes under the call of committees, a motion was made under section 5 of Rule XXIV, to go into Committee of the Whole House on the state of the Union to consider the bill (H. R. 6634) to enlarge the powers of the Department of Agriculture in relation to transportation of game, etc. The committee having risen and reported this bill, and the same having been passed, the Speaker entertained another motion to go into Committee of the Whole House on the state of the Union, to consider the bill (S. 1939) authorizing the appointment of a commission to study commercial and industrial conditions in China and Japan.

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[1] Second session Fifty-eighth Congress, Record, pp. 877, 878, 900, 901.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] Record, pp. 924, 940.

[4] First session Fifty-sixth Congress, Record, pp. 4875, 4876; Journal, pp. 522, 524.

3137. At the end of one hour of the call of committees the House may on motion resolve itself into the Committee of the Whole House on the state of the Union one or several times.—On March 14, 1902,[1] in the regular order of business, there was a call of committees for the consideration of bills on the House Calendar. After this call had proceeded for sixty minus Mr. Llewellyn Powers, of Maine, moved, under the rule, that the House resolve itself into Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 11997) granting to the Hawaii Ditch Company (Limited) right of way, etc. This motion was agreed to, and after some time the Committee of the Whole rose and the bill was reported favorably. Thereupon it was passed by the House.

Then, on motion of Mr. De Alva S. Alexander, of New York, the House resolved itself again into Committee of the Whole House (no particular bill being mentioned). In committee motions were successively made and carried to take up several bills, which were successively considered and laid aside with favorable recommendations.

Then the committee rose and reported the bills, which were acted on by the House.

3138. The motion to go into Committee of the Whole House on the state of the Union to consider a particular bill must be authorized by a committee, but the individual Member may move to go in generally.

The House, at the end of the morning hour, having gone into Committee of the Whole generally, the committee may determine the order of considering business on its Calendar.

The amendment referred to in section 5 of Rule XXIV does not refer to motions to take up bills after the House has gone into Committee of the Whole.

On December 12, 1904, after the House had spent an hour in the call of committees, Mr. Ebenezer J. Hill, of Connecticut, moved that the House resolve itself into Committee of the Whole House on the state of the Union for consideration of the bill (H. R. 4831) "to improve currency conditions,"

Mr. Charles L. Bartlett, of Georgia, after reading section 5 of Rule XXIV, called attention to the fact that Mr. Hill was not a member of the committee which had reported the bill, and questioned whether or not Mr. Hill had been "authorized by a committee" to specify this "particular bill" in his motion.

Mr. Hill being unable to show his authority when interrogated by the Speaker, the Speaker[3] said:

> Any Member has a right to make a motion to go into Committtee of the Whole, but to designate a particular bill it seems to the Chair, the gentleman must first have the authorization of that committee.

Thereupon Mr. Hill moved that the House resolve itself into Committee of the Whole House on the state of the Union.

Mr. Bartlett, rising to a parliamentary inquiry, said:

> I desire to make a parliamentary inquiry as to whether, if we go into the Committee of the Whole generally, the Union Calendar will then be taken up in the order in which we find the bills reported on the Calendar.

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[1] First session Fifty-seventh Congress, Record, pp. 2805, 2809, 2811, 2813.

[2] Third session Fifty-eighth Congress, Record, pp. 167, 168.

[3] Joseph G. Cannon, of Illinois, Speaker.

The Speaker said:

The Chair understands that this particular bill (meaning H. R. 4831) is upon the Calendar. * * * The Chair understands that it is quite within the power of the gentleman from Connecticut [Mr. Hill], if the House should resolve itself into the Committee of the Whole House on the state of the Union, to move to take up this particular bill. * * * It is for the committee to regulate its own order of business. The question is on the motion of the gentleman from Connecticut that the House resolve itself into the Committee of the Whole House on the state of the Union.

Mr. Bartlett having inquired if the motion was debatable, the Speaker said, "No; it is not."

Thereupon the motion was agreed to.

In the committee, Mr. John S. Williams, of Mississippi, having made an inquiry as to the order of business, the Chairman [1] said:

It is within the power of the committee to designate what bill it shall consider.

Mr. Hill having moved to take up the bill (H. R. 4831), Mr. Williams moved as a substitute to this motion "that the committee proceed to consider the bills upon the Union Calendar in the order of their priority."

Mr. Sereno E. Payne, of New York, made the point of order that Mr. Hill's motion might be amended only by a motion to take up another bill.

The Chairman said:

The gentleman from New York [Mr. Payne] has in mind another rule, which applies to a motion made before the House resolves itself into the Committee of the Whole, which is section 5 of Rule XXIV. The Chair considers that the rule applicable now is section 4 of Rule XXIII.

3139. The motion to go into Committee of the Whole to consider a particular bill after a call of committees may be amended only by substituting another bill on the Union Calendar.—On May 17, 1898,[2] after an hour had been consumed in the consideration of bills called up by committees, Mr. John J. Gardner, of New Jersey, moved that the House resolve itself into Committee of the Whole House on the state of the Union for the purpose of considering the bill (H. R. 4073) authorizing the appointment of a nonpartisan labor commission.

Mr. William H. Moody, of Massachusetts, proposed an amendment: "And also to consider House bill No. 369," which was a private claim bill on the Calendar of the Committee of the Whole House.

Points of order having been made against this motion, the Speaker pro tempore [3] held that under the rule the amendment extended only to the substitution of another bill, not to the addition of one; and that only bills on the Calendar of the Committee of the Whole House on the state of the Union were intended.[4]

3140. When, by authority of a committee, a motion is made to go into Committee of the Whole House on the state of the Union to consider a particular bill (not a revenue or appropriation bill) an amendment designating another bill may be offered by a Member individually.—On January, 6, 1891,[5] after one hour devoted to the consideration of bills called up by commit-

[1] John Dalzell, of Pennsylvania, Chairman.

[2] Second session Fifty-fifth Congress, Record, p. 4988.

[3] Sereno, E. Payne, of New York, Speaker pro tempore.

[4] See section 3134 for the rule.

[5] Second session Fifty-first Congress, Journal, p. 103: Record, p. 961.

tees, Mr. John M. Farquhar, of New York, by direction of the Committee on Merchant Marine and Fisheries, moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill of the Senate (S. 3738) to place American merchant marine engaged in the foreign trade upon an equality with that of other nations.

Mr. William M. Springer, of Illinois, moved to amend the motion, so as to provide that the said committee proceed to the consideration of the bill of the House (H. R. 5353), defining "options" and "futures" and imposing special taxes upon dealers therein, and for other purposes.

Mr. Nelson Dingley, jr., of Maine, made the point of order that Mr. Springer was not authorized by any committee to make the motion, and, therefore, the motion was not in order.

The Speaker[1] overruled the point of order.

3141. It is not in order, before the expiration of sixty minutes of the call of committees, to move to go into Committee of the Whole House on the state of the Union to consider a bill that is not privileged.—On December 19, 1906,[2] after the reading of the Journal and before there had been a call of committees in accordance with the rule for the order of business, Mr. Charles E. Littlefield, of Maine, moved that the House resolve itself into Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 2) requiring all corporations engaged in interstate commerce to make returns, and for other purposes.

Mr. James R. Mann, of Illinois, made a point of order that the motion was not in order.

The Speaker[3] sustained the point of order, on the ground that the morning hour had not expired.

3142. The right of a committee to report at any time carries with it the right to have the matter reported considered.—On January 12, 1852,[4] Mr. Willis A. Gorman, of Indiana, from the Committee on Printing, reported a resolution for the printing of copies of the Coast Survey Report. Debate having arisen thereon, Mr. Joshua R. Giddings, of Ohio, made the point of order that under the twenty-sixth rule[5] this day was set apart for the introduction, upon a call of the States, of resolutions which should give rise to no debate, and that the pending resolution must consequently be passed over.

The Speaker[6] decided that, inasmuch as the twenty-first joint rule permitted the Committee on Printing to report at any time, he was of the impression that the

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Fifty-ninth Congress, Record, p. 555.

[3] Joseph G. Cannon, of Illinois, Speaker.

[4] First session Thirty-second Congress, Journal, p. 195; Globe, p. 253.

[5] The twenty-sixth rule provided "All States and Territories shall be called for resolutions on each alternate Monday during each session of Congress," etc. This rule is no longer in existence.

[6] Linn Boyd, of Kentucky, Speaker.

[7] The twenty-first joint rule was: "It shall be in order for the Committee on Printing to report at any time." The House and Senate have not had joint rules since 1875, when the Forty-fourth Congress did not adopt them. There had been such rules from the First Congress until that time. The House rule giving the Committee on Printing leave to report at any time was not adopted until 1860.

authority to report carried with it the authority to dispose of the matter reported; he therefore overruled the point of order.

Mr. Giddings appealing, the decision of the Chair was sustained.

3143. On August 4, 1852,[1] the Speaker announced as the business first in order the bill of the House (No. 146) to regulate the fees and costs to be allowed clerks, marshals, and attorneys of the circuit and district courts of the United States, and for other purposes.

Mr. Charles E. Stuart, of Michigan, made the point of order that this bill, not having been made a special order, was not entitled to precedence over bills previously reported and which had not yet been disposed of.

The Speaker[2] decided:

On last Monday, after a suspension of the rules by a two-thirds vote, it was ordered by the House that the Committee on the Judiciary should report this particular bill. The order having been given thus to report it, the Chair thinks it carries with it the right to consider; and that you can not separate the right to report and the right to consider when it is reported. There is difficulty about the matter, the Chair admits, but that is his opinion with regard to the point of order.

On an appeal the decision of the Chair was sustained.[3]

3144. On June 8, 1860,[4] Mr. John Hickman, of Pennsylvania, called up the report of the Committee on the Judiciary on the message of the President protesting against certain proceedings of the House.

Mr. Martin J. Crawford, of Georgia, made a point of order against the consideration of the report.

The Speaker[5] overruled the point of order on the ground that the committee had authority to report at any time, which, under the precedents, carried with it the right to consider at any time the report when made.

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

3145. A bill reported by a committee under its right to report at any time remains privileged for consideration until disposed of.—On July 27, 1886,[6] Mr. Lewis E. Payson, of Illinois, moved that the House proceed to the further consideration of the bill of the Senate restoring certain railroad lands, reported from the Committee on Public Lands on the preceding day with an amendment in the nature of a substitute, and pending when the House adjourned.

Mr. Horace B. Strait, of Minnesota, made the point of order that the motion was not in order at the present time, for the reason that the bill and amendment, though in order for consideration on the day reported, did not retain their privileged character beyond that day. Not being disposed of at the adjournment, the bill and amendment had gone to the Calendar of Unfinished Business, and their consideration was not now in order.

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[1] First session Thirty-second Congress, Journal, p. 1009; Globe, p. 2065.

[2] Linn Boyd, of Kentucky, Speaker.

[3] For similar ruling see also second session Forty-seventh Congress, Journal, pp. 162, 163; Record, p. 860.

[4] First session Thirty-sixth Congress, Journal, p. 1039; Globe, p. 2774.

[5] William Pennington, of New Jersey, Speaker.

[6] First session Forty-ninth Congress, Journal, p. 2360; Record, p. 7602.

The Speaker[1] overruled the point of order on the ground that the bill was a privileged matter, under clause 49, Rule XI,[2] and there being no restriction in the rule as to its privileged character, it remained a privileged matter until disposed of, subject to the question of consideration and matters of higher privilege.

3146. Bills from a committee having leave to report at any time must be reported from the floor of the House and not by filing them with the Clerk.

Although a privileged matter may lose its privilege by an informal manner of making the report, the injury may be repaired by a new report.

On March 26, 1890,[3] Mr. Byron M. Cutcheon, of Michigan, moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of general appropriation bills, the object being to reach the Army bill.

Mr. Mark S. Brewer, of Michigan, made the point of order that the bill was not properly referred to the Committee of the Whole, having been filed with the Clerk under clause 2, Rule XIII, instead of under clause 51, Rule XI.[4]

The Speaker[5] sustained the point of order, but said that the report could be made to the House then.

This was done, and the bill was at once referred to the Committee of the Whole, Mr. Brewer reserving points of order.

3147. The report of a select committee appointed "to examine and report" on a certain subject is not privileged.—On February 24, 1897,[6] Mr. William W. Grout, of Vermont, from the select committee on the investigation of the Leavenworth Soldiers' Home, submitted a report, accompanied by a bill. This committee had been authorized at the preceding session, and had been "empowered to examine and report to the House" and "recommend by bill or otherwise" such action as should seem proper.[7]

Mr. Grout, as a parliamentary inquiry, asked whether or not the report was privileged.

The Speaker[5] said:

> The Chair does not think it is privileged in such sense that the measure comes before the House for consideration. It is privileged to be reported.

3148. The highly privileged character of general appropriation bills continues at all stages, including the period after they are returned with Senate amendments.—On Friday, August 1, 1890,[8] Mr. Benjamin A. Enloe, of

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[1] John G. Carlisle, of Kentucky, Speaker.

[2] Now section 61 of Rule XI. This rule enumerates the committees which have leave to report at any time.

[3] First session Fifty-first Congress, Journal, p. 392; Record, p. 2713.

[4] Now section 61 of Rule XI.

[5] Thomas B. Reed, of Maine, Speaker.

[6] Second session Fifty-fourth Congress, Record, p. 2211.

[7] First session Fifty-fourth Congress, Record, p. 5066.

[8] First session Fifty-first Congress, Journal, p. 910; Record, p. 8027.

Tennessee, moved that the House resolve itself into the Committee of the Whole House for the consideration of business on the Private Calendar.

Pending this, Mr. Joseph G. Cannon, of Illinois, as a privileged question, called up the amendments of the Senate to the bill of the House (H. R. 10884), the sundry civil appropriation bill, coming over as unfinished business from the preceding day's session.

The Speaker[1] held that the motion submitted by Mr. Cannon took precedence of the motion submitted by Mr. Enloe, for the reason that, by clause 51, Rule XI,[2] and clause 9, Rule XVI,[3] general appropriation bills were given a highly privileged character, and that this privileged character attached to that class of bills at all subsequent stages of proceedings.[4]

3149. A bill with amendments of the other House is privi1eged after the stage of disagreement has been reached.—On January 29, 1901,[5] Mr. John A. T. Hull, of Iowa, as a privileged matter, called up the bill (S. 4300) to increase the efficiency of the military establishment of the United States, which had been returned from the Senate with the announcement that the Senate had disagreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the amendment of the House, had further insisted on its amendments to the amendment of the House, asked a further conference, and had appointed conferees thereto.

Mr. James D. Richardson, of Tennessee, made the point of order that the matter was not privileged.

The Speaker[6] said:

The only question before the House is, Has the gentleman from Iowa the right to call up this bill? * * * That is the only question now before the House—whether it is privileged or not, so that he can call it up. In this case the point of disagreement has been reached, and it is back here with a message from the Senate saying that they hold to their position. Clearly after a bill has reached the point of disagreement, as it has in this case, it is certainly within the power of the gentleman in charge of the bill to call the matter up. * * * It is in the stage of disagreement, which makes it privileged to be called up. The Chair overrules the point of order.

Mr. Hull moved that the House further insist on its disagreement to the Senate amendments, and agree to the conference asked by the Senate.

Mr. Richardson made a point of order that this motion was not in order.

After debate the Speaker said:

It seems to the Chair that we have a very simple question before us. A conference report, signed by managers on the part of the two Houses, was submitted of the House. It was a complete report—a full and complete agreement. This House, having the papers, had to act first upon that conference report, and did so. The House agreed to the report. Then the papers, with the action of the House thereon, had to go to the Senate. The Senate took up the report and considered it. Had the Senate

[1] Thomas B. Reed, of Maine, Speaker.

[2] Now section 61 of Rule XI.

[3] See section 3072 of this work.

[4] A general appropriation bill returned with a Senate amendment that provides a new and distinct object of expenditure of money or property is privileged, but may not be taken up directly from the Speaker's table, being subject to the requirements of section 2 of Rule XXIV. (See sec. 3089 of this work.)

[5] Second session Fifty-sixth Congress, Journal, pp. 169, 170; Record, p. 1625.

[6] David B. Henderson, of Iowa, Speaker.

also agreed to the conference report that would have ended the matter, so far as the two Houses were concerned, and the bill would have gone to the President. But what do we find? A message from the Senate, in which it is stated:

"Resolved, That the Senate further insists upon its amendments to the amendment of the House of Representatives to the bill (S. 4300) to increase the efficiency of the military establishment of the United States, and asks a further conference on the disagreeing votes of the two Houses thereon.

"Ordered, That Mr. Hawley, Mr. Proctor, and Mr. Cockrell be the conferees on the part of the Senate."

(Duly attested by the Secretary.)

That situation brings before this House two facts: First, that the Senate did not agree to the conference report, and they have notified the House of that fact; and second, that they ask for a further conference with the House in respect to the disagreement. This is a parliamentary condition which toward the last of the session, when conference reports come in, is of almost daily occurrence; and there is but one thing for the House now to do—that is, to say whether it insists on its disagreement or agrees with the position taken by the Senate. If it will not agree to the amendments and desires to insist upon its disagreement, then it must agree to the conference. It seems to the Chair clear that the motion made by the gentleman from Iowa [Mr. Hull] is the usual motion, and the Chair is therefore constrained to overrule the point of order made by the gentleman from Tennessee.

3150. On June 20,1902,[1] Mr. John A. T. Hull, of Iowa, called up the army appropriation bill which had been returned from the Senate with the message that they further insisted on their amendments, and asked a full and free conference.

Mr. Hull was about to ask unanimous consent to take up the bill, when the Speaker[2] said:

This matter does not require unanimous consent. The bill has reached the state of disagreement and is privileged. The gentleman can call it up at once.

3151. By usage of the House requests for leaves of absence and reports of the Committee on Enrolled Bills may be presented pending the announcement of the vote that the House adjourn.—On March 21, 1874,[3] immediately after the reading of the Journal, Mr. Samuel J. Randall, of Pennsylvania, arose and said:

Mr. Speaker, on last evening, pending your statement of the vote of the House on the motion to adjourn, I raised a controversy as to your right to interject public business from the Speaker's table when you had knowledge of the disposition of the House as to its adjournment. I would ask the Speaker in perfect politeness by what rule he claims the right to interject business under such circumstances.

The Speaker[4] replied:

The Chair did not interject public business. He interjected what has always been deemed to be a matter of privilege, and of very high privilege, for the convenience of Members, the asking of leave of absence. That was all he interjected. The motion to adjourn had been carried obviously by the sound, but the rules especially provide that it is not a vote until it is declared by the Chair that the motion is carried; and even upon a yea-and-nay vote, and when the Chair holds in his hand the record of the tally clerk showing it to be carried, it has always been the usage of the House, and always will be unless the present occupant of the chair shall be ordered differently by the House, to ask leave of absence for Members. If an adjournment had been carried by a yea-and-nay vote and the gentleman from Pennsylvania desired leave of absence from the House for any length of time, the Chair would recognize his right to submit that question; but it is, of course, the right of every Member to object to the leave of absence.

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[1] First session Fifty-seventh Congress, Record, p. 7113.

[2] David B. Henderson, of Iowa, Speaker.

[3] First session Forty-third Congress, Record, p. 2338.

[4] James G. Blaine, of Maine, Speaker.

Mr. Randall made the further point that a number of enrolled bills were also presented.

The Chair denied that he had presented enrolled bills on the occasion in question, but maintained his right to do so, saying:

If enrolled bills were lying before the Chair, and were signed, and a motion to adjourn had been made and agreed to on a yea-and-nay vote, and the Chair held the record in his hand of that fact, before declaring the result of the vote the Chair would consider himself justified, not only by convenience, but also by immemorial usage of the House, to lay enrolled bills before the House.[1]

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[1] On December 19, 1882 (second session Forty-seventh Congress, Record, p. 438), a question was raised as to the status of leaves of absence with reference to a privileged nature. Mr. Speaker Keifer ruled only so far as to express the opinion that a motion to adjourn would take precedence of them.

Chapter LXXXVIII.

SPECIAL ORDERS.

1. **Present methods of making. Sections 3152–3154.**[1]
2. **Early methods of making. Sections 3155–3159.**
3. **Transition from old to new method. Sections 3160–3162.**
4. **May not be made on motion from the floor except by unanimous consent. Sections 3163–3168.**
5. **Agreed to by majority vote when reported by Committee on Rules. Section 3169.**[2]
6. **Effect and precedence of a special order. Sections 3170–3176.**[3]
7. **In relation to the motion to postpone. Sections 3177–3182.**[4]
8. **Special orders unexecuted, conflicting, etc. Sections 3183–3196.**
9. **Orders giving time to committees for presenting bills. Sections 3197–3200.**
10. **In relation to general procedure. Sections 3201–3213.**
11. **In relation to the Committee of the Whole. Sections 3214–3230.**
12. **Form of special orders. Sections 3231–3265.**[5]

3152. Special orders are made either by vote of the House on a report from the Committee on Rules, by suspension of the rules, or by unanimous consent.

History of the evolution of the special order as made on a report from the Committee on Rules.

Special orders have been in use in the House from the early days, but the method of making them has not always been the same. Often they were made by unanimous consent, and sometimes this method is used at the present time. If there was objection they were made by a suspension of the rules, which was in order more frequently in the earlier years than at present. This method was cumbersome, since on any question which involved party differences the attempt was very likely to fail.[6] In 1882,[7] in the first session of the Forty-seventh Congress, it was the usage, and apparently the only method in a case where there was opposition, to offer under motion to suspend the rules a resolution providing for consideration of a bill at a given time. This required a two-thirds vote, and a minority would sometimes refuse consent to the order until they had exacted terms as to kinds of amend-

[1] Before adoption of rules may be offered from floor by Member. Sections 4971, 5450 of Vol. V.

[2] See also functions of Committee on Rules. Sections 6769–6781 of Vol. V.

[3] May be superseded by a question of privilege. Section 2554 of Vol. III.

In relation to the question of consideration. Sections 4953–4960 of Vol. V.

In relation to conference reports. Sections 6454, 6455 of Vol. V.

[4] See also section 4958 of Vol. V.

[5] Special order for considering impeachment of President Johnson. Section 2414 of Vol. III.

Special order discharging managers of a conference and acting on Senate amendments in gross. Section 6526 of Vol. V.

[6] See an instance in 1879. (Third session Forty-fifth Congress, Record, pp. 1166, 1167.)

[7] First session Forty-seventh Congress, Record, pp. 2534, 2956, 3473–3475.

ments that should be permitted, etc. Thus, on April 3, 1882, a resolution was offered to fix a time for consideration of the bill (H. R. 4167) to enable national banking associations to extend their corporate existence, but failed to command a two-thirds vote, there being yeas 122, nays 78. Again, April 17, it was tried and failed. Finally on May 1 the resolution was offered with provisions for amendment to placate some of the minority and was agreed to, yeas 150, nays 65.

On June 5, 1882,[1] Mr. John H. Reagan, of Texas, proposed a special order providing for consideration of the interstate-commerce bill. It was offered under suspension of rules, no other way being known at that time, and was defeated, yeas 121, nays 78.

In the same way, on July 17, 1882,[2] the House, by a vote of yeas 102, nays 76, failed to agree to a special order offered from the floor by direction of the Committee on Territories, providing a time for consideration of a bill for the admission of Dakota as a State.

It was in the second session of the Forty-seventh Congress, in 1883,[3] that the method of adopting a special order by majority vote after a report from the Committee on Rules was first used. This method was not in great favor in the next three Congresses,[4] but in the Fifty-first Congress it was used frequently, and since 1890 has been in favor as an efficient means of bringing up for consideration bills difficult to reach in the regular order and especially as a means for confining within specified limits the consideration of bills involving important policies for which the majority party[5] in the House may be responsible.

Sometimes special orders are made yet by unanimous consent or under suspension of the rules, but only as to matters to which the opposition is not extensive.

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[1] First session Forty-seventh Congress, Record, p. 4541.

[2] First session Forty-seventh Congress, Record, pp. 6156, 6157.

[3] See instance wherein the tariff bill was disposed of under a special order made in this way. (Section 3160 of this chapter.)

[4] In 1887 it was still regarded as a proceeding of doubtful validity (Second session Forty-ninth Congress, Record, p. 1781); but in the next two or three years grew in favor. See summary of special orders reported by the Committee on Rules in the Forty-ninth and Fiftieth Congresses made in debate by Mr. Joseph G. Cannon, of Illinois, when the process was questioned in 1890. (First session Fifty-first Congress, Record, p. 8349.)

[5] On June 25, 1879 (First session Forty-sixth Congress, Record, p. 2329), Mr. Speaker Randall, from the chair, said: "The present Committee on Rules have never, so far as the Chair recollects, been divided politically on any subject, and almost every report made by them, except in two instances (the report on the liquor traffic and that on the woman's rights question), has been unanimous." This, however, was before the system of special orders for consideration of particular bills.

In the present practice of the House the Committee on Rules officiates as to the consideration of bills only when, for some reason, the ordinary method prescribed by the rules for the order of business is not satisfactory or produces delay. The number of bills in relation to which it officiates by reporting special orders is relatively few.

During the Fifty-ninth Congress a total number of 7,423 bills passed the House, of which 799 were bills on public matters and 6,624 were private bills; that is, bills for the relief of individuals or corporations and largely pension bills. The Committee on Rules reported special orders as to 26 public bills, providing special or extraordinary methods for their consideration. It also reported two orders—one at each session—providing a time for the consideration of a few private bills which had been crowded out in the order of business by the great multitude of measures from the Committee on War Claims. These bills were few, relating largely to the correction of military records, and such subjects, and were not over 100 in number; that is, 100 out of 6,624 private bills which passed in regular order.

3153. On July 24, 1850,[1] Mr. Speaker Cobb, in a case where the Committee on the Post-Office and Post-Roads had reported a resolution making a certain bill a special order, ruled that the House could not, except by a suspension of the rules, make a special order, whether by a report of a standing committee or otherwise.

3154. A special order may be made under suspension of the rules.—On February 19,[2] 1906, Mr. John Dalzell, of Pennsylvania, moved to suspend the rules and make the bill (H. R. 14396) "to incorporate the Lake Erie and Ohio Ship Canal" in order for consideration at any time.

Mr. David A. De Armond, of Missouri, made the point of order that this proposition ought to go to the Committee on Rules, because it provided for precisely the same condition of things that existed when a measure was reported from the Committee on Rules. Suspension day was to dispose of things, not to provide for their disposal at some other time, and this was really in effect a special rule without having been referred to the Committee on Rules.

The Speaker[3] overruled the point of order, saying:

> The Chair will state to the gentleman from Missouri that his point of order, in the opinion of the Chair, is not well taken. This is one of the Mondays in the month when it is in order to move to suspend the rules and do anything where a Member is recognized, provided two-thirds of the Members vote for the motion. Now, then, upon that motion, if a second is waived there is twenty minutes' debate, but upon this particular motion it is not to pass a bill, but it is to fix any time after the army appropriation bill is passed for its consideration. In other words, under the rules, the gentleman, at any time after the consideration of the army appropriation bill has been completed could call up this matter, and would be entitled to call it up, and then it would be for a majority of the House to determine whether they would consider it or whether they would consider something else.

3155. The first special orders were made by unanimous consent or suspension of the rules.

In 1832 the pressure of business began to bring into use the request for unanimous consent and the special order.

On June 8, 1832,[4] Mr. Charles A. Wicliffe, of Kentucky, presented by unanimous consent,[5] and the House agreed to, this resolution:

> *Resolved,* That so soon as the morning business is over on each day, the House will proceed to the consideration of the bills from the Senate, and engrossed bills, and such as have passed through committees of the Whole House, and at the hour of 12 o'clock the House will proceed to the consideration of the bill to regulate the duties on imports, until otherwise ordered.

3156. On March 12, 1834,[6] the rules were suspended to enable Mr. James K. Polk, of Tennessee, to move the following resolution:

> *Resolved,* That the report of the Committee on Ways and Means on the removal of the public deposits from the bank of the United States, made on the 4th of March, 1834, and the resolutions thereto appended, be the standing order of the day for Tuesday next, at 1 o'clock, and on each succeeding

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[1] First session Thirty-first Congress, Globe, p. 1442.

[2] First session Fifty-ninth Congress, Record, pp. 2693, 2694.

[3] Joseph G. Cannon, of Illinois, Speaker.

[4] First session Twenty-second Congress, Journal, p. 860.

[5] This is not only one of the first, if not the very first, instance of a special order; but it is one of the first instances where the Journal of the House indicates that the pressure of business had begun to force out all propositions not in the order of business, and cause them to be presented by "unanimous consent."

[6] First session Twenty-third Congress, Journal, pp. 399, 400; Debates, p. 2978.

day in every week, Saturdays excepted, at the same hour, until disposed of; and that until the hour of 1 o'clock p. m. on each day, the business of the House shall proceed in the order prescribed by the rules of the House; but it shall be in order to present petitions and memorials on Mondays.

Objection was made that this resolution, if agreed to, would take from the majority the power of self-government. Mr. Polk replied that such an order had been found necessary when the tariff was under discussion.

The order was agreed to.

3157. On June 6, 1836,[1] Mr. Ambrose H. Sevier, Delegate from Arkansas, moved that the rules be suspended to enable him to offer the following resolution:

Resolved, That this House will, on Wednesday next at 11 o'clock and on each day thereafter, Fridays and Saturdays excepted, until the same shall be disposed of, consider and dispose of the bill to establish the northern boundary of Ohio, and the bills for the admission of Arkansas and Michigan into the Union.

Two-thirds having voted therefor, the rules were suspended, and the resolution was considered and agreed to by the House.

3158. Special orders for disposing of particular matters of legislation, such as appropriation bills and other important measures, began to be used quite frequently in the first session of the Twenty-fourth Congress (1836), and the index of the Journal[2] shows a considerable number of them proposed and adopted.

3159. On February 25, 1868,[3] on motion of Mr. Elihu B. Washburne, of Illinois, and under suspension of the rules, the House, by a vote of yeas 111, nays 44, agreed to the following:

When the committee to prepare articles of impeachment of the President of the United States report the said articles the House shall immediately resolve itself into the Committee of the Whole thereon; that speeches in committee shall be limited to fifteen minutes each, which debate shall continue until the next legislative day after the report, to the exclusion of all other business except the reading of the Journal; that at 3 o'clock on the afternoon of said second day the fifteen-minute debate shall cease, and the committee shall then proceed to consider and vote upon amendments that may be offered under the five-minute rule of debate, but no merely pro forma amendment shall be entertained; that at 4 o'clock on the afternoon of said second day the committee shall rise and report their action to the House, which shall immediately, and without dilatory motions, vote thereon; and if the articles of impeachment are agreed on, the House shall then immediately, and without dilatory motions, elect by ballot seven managers to conduct said impeachment on the part of the House, and that during the pendency of resolutions in the House relative to said impeachment thereafter no dilatory motions shall be received except one motion on each day that the House do now adjourn.

3160. In 1883 the House first began the practice of making a special order by majority vote on a report from the Committee on Rules.

A special order providing for the consideration of a particular bill is properly reported from the Committee on Rules.

On February 26, 1883,[4] Mr. Thomas B. Reed, of Maine, as a privileged question, called up the following resolution reported by him on the Saturday preceding from the Committee on Rules:

Resolved, That during the remainder of this session it shall be in order at any time to move to suspend the rules, which motion shall be decided by a majority vote, to take from the Speaker's table

[1] First session Twenty-fourth Congress, Journal, pp. 952, 953.

[2] See Journal, p. 1347.

[3] Second session Fortieth Congress, Journal, p. 407; Globe, p. 1425.

[4] Second session Forty-seventh Congress, Journal, pp. 497, 500, 603; Record, p. 3308.

House bill No. 5538, with the Senate amendment thereto, entitled "A bill to reduce internal-revenue taxation," and to declare a disagreement with the Senate amendment to the same, and to ask for a committee of conference thereon, to be composed of five Members on the part of the House. If such motion shall fail, the bill shall remain upon the Speaker's table unaffected by the decision of the House upon said motion.

Mr. Joseph C. S. Blackburn, of Kentucky, made the point of order that the resolution was not a rule or an amendment to the rules of the House.

After debate, the Speaker [1] said:

The gentleman from Kentucky makes the point of order and rests his point solely upon the claim that this resolution, if adopted, would not be a rule of the House. It would be rather early for the Chair to undertake to decide on that which is not before the House. It is reported as a rule from the Committee on Rules.

But passing that, it is perfectly competent, as the Chair thinks, for this House, when the subject is properly brought before it, to change every rule of the House and all of the rules that have been adopted by the House. And early in this session a resolution of the House was adopted authorizing the Committee on Rules to report at any time any change or modification of the rules or any new rules. That right of the committee has been exercised perhaps in this case. But in this case the Committee on Rules has reported this rule as a substitute for various propositions of a similar character that have been introduced in the House and referred to the committee. This comes from the committee as a substitute for them all.

Its effect, if the Chair is to look to that, may be, in this exceptional case named, to put aside other rules which would prevent the motion that the rule proposes to allow. But the greater certainly includes the less. It was in the power of the committee to report a rule to suspend the whole of Rule XX,[2] which would require an amendment of the Senate, on the point of order being made, to go to the Committee of the Whole House on the state of the Union. It is in the power of the committee to report to the House a proposition to suspend the rule that authorizes the suspension of the rules by a two-thirds vote. In other words, a rule might have been reported from the committee, and properly, which would suspend or repeal or annul or set aside every rule of this House, standing or special; and if the House so decided to affirm that report by a majority vote it could do so. In this case, though it may apply to a single great and important measure now pending before Congress, it seems perfectly clear to the Chair that it would be a rule to the extent that it goes; and perhaps gentlemen, on consideration, may see that in this particular case it goes far enough. The Chair overrules the point of order.

Mr. Blackburn having appealed, the appeal was laid on the table, yeas 116, nays 97.

3161. A special order, being in effect a change of the rules establishing the regular order of business, may be made only in the manner prescribed for making a change of the rules.

In the earlier years of the House special orders were made by a two-thirds vote on a motion to suspend the rules.

On June 20, 1834,[3] Mr. James K. Polk, of Tennessee, moved the following resolution:

Resolved, That the Committee of the Whole on the state of the Union be discharged from the further consideration of the bill (No. 443) regulating the deposit of the money of the United States in certain local banks, and the said bill be made the special order of the day for this day at 12 o'clock.

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[1] J. Warren Keifer, of Ohio, Speaker.

[2] See section 4796 of this work.

[3] First session Twenty-third Congress, Journal, p. 785.

The resolution being read the Speaker[1] decided that as it went to change the order of business according to the rules[2] of the House it would require a vote of two-thirds to adopt it.

Mr. Polk then moved that the rules prescribing the order of business be suspended, and that the House do proceed to the consideration of the resolution.

And the question being put, it passed in the affirmative, 114 to 53.

3162. On July 24, 1850,[3] Mr. Emery D. Potter, of Ohio, from the Committee on the Post-Office and Post-Roads, reported the following resolution, which was read:

Resolved, That the House bill to reduce and modify the rates of postage be made the special order for the first Tuesday in August next, and from day to day until the same is disposed of.

Objection being made to entertaining the said resolution at this time,

The Speaker[4] decided that under the one hundred and thirty-sixth rule[5] the House could not, except by a suspension of the rules, make a special order, whether by a report from a committee or by a resolution offered by an individual Member. He therefore ruled the resolution to be out of order.

From this decision of the Chair Mr. Potter appealed, and the decision of the Chair was sustained.

3163. It is not in order to move in the House that a subject be made a special order for a given date.—On January 18, 1899,[6] Mr. William P. Hepburn, of Iowa, moved that the bill (H. R. 8961), known as the Pacific Cable bill which had been under consideration in Committee of the Whole House on the state of the Union and was still in that committee, be taken up on Tuesday of the next week.

Mr. Joseph W. Bailey, of Texas, made the point of order that such a motion was not in order.

The Speaker[7] said:

That would be making a special order of it, and the Chair thinks that would not be in order.

3164. A bill called up in the morning hour may not be made a special order by a motion to postpone to a day certain.—On March 1, 1900,[8] in the morning hour for the call of committees, the Committee on the Post-Office and Post-Roads was called, and Mr. Eugene F. Loud, of California, referring to the bill (H. R. 6071) to amend the postal laws relating to second-class matter, asked unanimous consent to make the bill a special order for a future date.

Objection being made, Mr. William H. Moody, of Massachusetts, rising to a parliamentary inquiry, asked whether if the gentleman from California should call

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[1] John Bell, of Tennessee, Speaker.

[2] The rule of the House at that time was Rule 106, which provided: "Nor shall the order of business, as established by the rules of the House, be postponed or changed, except by a vote of at least two-thirds of the Members present." (For present form of rule see sec. 6790 of Vol. V of this work.)

[3] First session Thirty-first Congress, Journal, p. 1176; Globe, p. 1442.

[4] Howell Cobb, of Georgia, Speaker.

[5] This was the rule relating to suspension of the rules, which at that time was in order on every Monday.

[6] Third session Fifty-fifth Congress, Record, p. 778.

[7] Thomas B. Reed, of Maine, Speaker.

[8] First session Fifty-sixth Congress, Record, p. 2454.

up the bill now under this rule would it then be in order for the House on motion to postpone its further consideration until a day certain?

The Speaker[1] said:

The Chair is of the opinion that that can not be done. The way to get back to the consideration of this bill is when the committees are again called.

3165. Special orders are sometimes made by unanimous consent without awaiting the process required for changing the rules.—On March 17, 1848,[2] on motion of Mr. James J. McKay, of North Carolina, by unanimous consent of the House,

Ordered, That the bill (No. 158) regulating the appointment of clerks in the Executive Departments, and for other purposes, be made the special order of the day for Tuesday next.

3166. On April 26, 1898,[3] Mr. Nelson Dingley, of Maine, from the Committee on Ways and Means, reported favorably the bill (H. R. 10100) to provide ways and means for war expenditures.

Thereupon Mr. Dingley asked and obtained unanimous consent that the bill be made a special order for the next day under conditions described by the Speaker when he put the request:

The gentleman from Maine, on behalf of the Committee on Ways and Means, asks unanimous consent that the House go into Committee of the Whole House on the state of the Union immediately after the reading of the Journal to-morrow; that general debate upon the bill just reported by him shall then commence and continue until the close of the session on Thursday, and that at the beginning of the session on Friday the debate under the five-minute rule shall begin, with the right to offer amendments, beginning with sections 27 and 28, and that the bill shall be reported to the House at 4 o'clock on that day with all amendments, and a vote then be taken.

3167. Although a rule may confine a certain session of the House to a specified course of business, yet if a quorum be present and no objection be made effective a special order may be made binding on the House at a future session.—On Friday, March 30, 1888,[4] the House proceeded to consider the bills (H. R. 3191) granting a pension to Mary S. Logan, and (S. 574) increasing the pension of Mrs. Apolline A. Blair, which, at the Friday evening session of March 9, had been made special orders for March 21, and came over from that day. Mr. Samuel W. T. Lanham, of Texas, made the point of order that the House might not at an evening session make such an order.

The Speaker[5] held:

The point has several times been made that the House at the Friday evening sessions could not by agreement assign a pension bill for consideration on another day assigned for the transaction of public business. But the point of order made even as against that has been overruled. That question does not arise in this instance. These are private pension bills and this day is assigned by the rules for the consideration of private bills.

Further, on last Friday, during the day, when the House was full this order was made by unanimous consent for this morning.

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[1] David B. Henderson, of Iowa, Speaker.

[2] First session Thirtieth Congress, Journal, p. 580.

[3] Second session Fifty-fifth Congress, Record, p. 4278.

[4] First session Fiftieth Congress, Record, p. 2514; Journal, pp. 1374, 1375.

[5] John G. Carlisle, of Kentucky, Speaker.

3168. On May 2, 1890,[1] at a Friday evening session, the bill (H. R. 6291) granting a pension to Delia T. S. Parnell was made a special order for Tuesday next, May 6, the previous question to be considered as ordered with the right of fifteen minutes of debate on a side.

On Wednesday, May 7, the bill came up in the House, and Mr. E. N. Morrill, of Kansas, rising to a parliamentary inquiry, asked why the bill should come up on this day, having been made a special order for the preceding day.

The Speaker[2] said:

It was a continuing special order, as the Chair understood. * * * The Chair has considerable doubt whether, under the rules, such bills can be sent over in this way, but it was the practice in the last House and has been the practice thus far in the present House. The Chair is under the impression, however, that the terms of the present rule are different, and purposes to examine into the matter.

On May 9, the bill coming up again, the Speaker said:

A point of order was pending in regard to this and several other bills occupying a similar position. The Chair, having examined the matter and found that there are many prior decisions against the point of order, overrules the point. Apart from the decisions, it is difficult to understand how on principle the action of a full House can be set aside, even when it seems to have been taken in contravention of the rules, because the proper time to make objection that the proceeding is contrary to the rules is when the proceeding is attempted, not subsequently. The Chair also finds that, when former decisions were made, the rule in regard to the assignment of particular time for pension and other special business of Friday night was even stronger in its prohibition of other action than the present rule. The Chair is therefore constrained, both by precedent and principle, to overrule the point of order. The question is on agreeing to the amendment which has been read.

3169. A special order, reported by the Committee on Rules, is agreed to by majority vote.—On April 29, 1902,[3] Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, reported a resolution providing a special order for the consideration of the bill (H. R. 14018) "to increase the limit of cost of certain public buildings, to authorize the purchase of sites for public buildings," etc.

Mr. Thomas J. Creamer, of New York, made the point of order that the resolution suspended a rule of the House, and therefore that it would require a two-thirds vote for its adoption.

The Speaker[4] said:

The question has been fought out again and again, and is well settled that the Committee on Rules can bring in a rule providing for order of business in the Home. * * * There have been many decisions that a rule from the Committee on Rules which fixes the order of business with the approval of the House does not require a two-thirds vote.

Mr. Creamer having appealed, the appeal was laid on the table by the House.

3170. A special order suspends the regular order of business for the time being, and a motion to proceed to the regular order is not in order.—On February 13, 1843,[5] the special order of the day, viz, the consideration of the

[1] First session Fifty-first Congress, Record, pp. 4168, 4246, 4382; Journal, pp. 588, 589.

[2] Thomas B. Reed, of Maine, Speaker.

[3] First session Fifty-seventh Congress, Record, p. 4820.

[4] David B. Henderson, of Iowa, Speaker.

[5] Third session Twenty-seventh Congress, Journal, p. 355; Globe, p. 276.

joint resolution of the House (No. 13) "concerning certain reciprocity treaties," was announced by the Speaker.

Mr. Almon H. Read, of Pennsylvania, moved that the House proceed to the regular order of business, as fixed by the rules of the House, viz, "the calling of the States for the presentation of resolutions." [1]

The Speaker [2] decided that inasmuch as a special order had heretofore been set by a vote of two-thirds, it was in the nature of a suspension of the rules, and during such suspension there was no regular order of business, and that the resolution of Mr. Read was not in order.

On an appeal the decision of the Chair was sustained.

3171. On July 8, 1850,[3] the Speaker announced, as the business first in order, the special order, viz, the report of the select committee appointed to investigate the conduct and relation of the Hon. George W. Crawford to the claim of the representatives of George Galphin.

Mr. Preston King, of New York, raised the question of order that, this being resolution day, it was the duty of the Speaker, under the twenty-sixth rule,[4] to call the States for resolutions.

The Speaker [5] decided that the rule referred to, like the other rules providing for the regular order of business, was suspended by the operation of the special order—a special order being made under a suspension of the rules; that a special order, thus made, took precedence of the order of business provided by the rules of the House (this rule among others).

From this decision of the Chair Mr. Preston King appealed. The appeal was laid on the table, so the decision of the Chair was sustained.

3172. On January 26, 1843,[6] Mr. John P. Kennedy, of Maryland, moved the following, which was agreed to by a two-thirds vote:

> *Ordered,* That Tuesday, the 7th day of February next, be assigned for the consideration of the resolution No. 13, and bills concerning certain reciprocity treaties; and that it be the special order for that day.

This order was continued in force, and came up on February 13, when Mr. Almon H. Read, of Pennsylvania, moved that the House proceed to the regular order of business fixed by the rules of the House.

The Speaker [2] decided that, inasmuch as a special order had heretofore been set by a vote of two-thirds, it was in the nature of a suspension of the rules, and during such suspension there was no regular order of business, and that the resolution of Mr. Read was not in order.

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

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[1] This was Monday, which, under the old twenty-third rule, was set apart for the reception of resolutions from the several States. (See secs. 3312, 3364 of this work for the present rule.)

[2] John White, of Kentucky, Speaker.

[3] First session Thirty-first Congress, Journal, p. 1096; Globe, p. 1350.

[4] Rule 26 provided that "All the States shall be called for resolutions on each alternate Monday during each session of Congress," etc.

[5] Howell Cobb, of Georgia, Speaker.

[6] Third session Twenty-seventh Congress, Journal, pp. 257, 355; Globe, p. 276.

3173. A motion to rescind a special order is not privileged under the rules regulating the order of business.—On April 12, 1884,[1] a question arose in the House on a motion to rescind an order by which the House set apart the 9th of April and afterwards from day to day until disposed of for the consideration of bills from the Committee on Public Buildings and Grounds. It was contended that this was more than a special order, and constituted a standing order, as near as such an order could exist in a House, which, unlike the Parliament and the Senate, was not a continuing body. Mr. Speaker Carlisle decided to submit to the House the question whether or not the motion to rescind should be entertained under the rules. After debate, the House decided, yeas 78, nays 101, that the motion should not be entertained as privileged.

3174. On January 9, 1850,[2] while the House was acting under a special order providing that it should proceed to the election of a Clerk and other officers, Mr. Speaker Cobb ruled out of order a proposition to rescind that order, although he admitted a motion to postpone its execution.

3175. When a bill has been made a special order its consideration has precedence over reports made privileged by the rules.

The question of consideration may be raised against a bill which has been made a special order.

On July 21, 1886,[3] Mr. John H. Reagan, of Texas, called up the bill of the Senate (S. 1532) to regulate commerce, which had been made a special order.

Mr. Barclay Henley, of California, proposed to make a privileged report from the Committee on Public Lands.[4]

The Speaker[5] said:

> The gentleman from Texas, who was recognized, calls up a special order of the House, which is also privileged, and of as high a privilege as the other; in fact higher, because it is made a special order by the House.

Mr. Henley then proposed to raise the question of consideration against the special order.

The Speaker said:

> The gentleman has a right to do that.

3176. On June 28, 1892,[6] the House agreed to a resolution reported from the Committee on Rules setting apart the day, beginning immediately after the call of committees for reports, "for the consideration of bills that have been favorably reported by the Committee on Invalid Pensions."

Mr. Thomas C. McRae, of Arkansas, submitted the question of order whether it was in order to call up for consideration the privileged report on the bill (H. R. 8390)

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[1] First session Forty-eighth Congress, Record, pp. 2902–2905.

[2] First session Thirty-first Congress, Globe, p. 125.

[3] First session Forty-ninth Congress, Record, p. 7276.

[4] This was the privilege of a bill reported from a committee having leave to report at any time. (See secs. 4621–4623 of this volume.)

[5] John G. Carlisle, of Kentucky, Speaker.

[6] First session Fifty-second Congress, Journal, p. 239; Record, pp. 5573, 5574.

to amend an act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads and other purposes, approved September 29, 1890.

The Speaker[1] held that by the order adopted to-day the day was set apart for pension business, and that the bill referred to by Mr. McRae would not be in order.

3177. A bill which comes before the House by the terms of a special order merely assigning the day for its consideration may be postponed by a majority vote.

Where a motion not in order under the rules is made without objection and agreed to by the House by majority vote, the action is binding on the House and the Speaker.

On July 29, 1846,[2] a message from the Senate announced that that body had passed the bill of the House (No. 384) entitled "An act reducing the duty on imports, and for other purposes," with an amendment, in which the concurrence of the House was asked.

The Speaker announced as the first business in order the bill from the Senate (No. 57) entitled "An act to amend an act entitled 'An act to provide revenue from imports, and to change and modify existing laws imposing duties on imports, and for other purposes,'" which on Monday last was made a special order for this day.

Mr. Linn Boyd, of Kentucky, moved that the consideration of the bill be postponed until to-morrow, and that the House proceed to the consideration of the business from the Senate on the Speaker's table.

This motion was carried by a vote of 108 to 100.

So the special order was postponed, and the House determined, by a majority, to proceed to consider business on the Speaker's table, the first bill in order being Senate bill No. 384.

Mr. Robert C. Winthrop, of Massachusetts, raised a question of order that a motion to postpone the special order and take up the business from the Senate being carried by a majority, and not by two-thirds, only that part of the motion which could be controlled by a majority, viz, the postponement of the special order, could be considered as decided; and that as it required two-thirds to change the regular order of business, the House must now proceed to the business regularly in order, and not to the business of the Senate on the Speaker's table.

The Speaker[3] decided that this question might have been raised before the question was taken on the motion of Mr. Boyd; that it is now too late to raise the question; and the House having ordered the special order to be postponed, and directed at the same time what business should be next considered, it was the duty of the Speaker to proceed to the business thus indicated by the House.

From this decision Mr. Winthrop appealed. The appeal was laid on the table by a vote of 102 to 98, and so the decision of the Chair was sustained.

3178. On June 29, 1850,[4] the special order was the report of the select committee on the relations of the Secretary of War to the Galphin claim. A motion was made to postpone the consideration of the report until Monday next.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] First session Twenty-ninth Congress, Journal, p. 1170; Globe, p. 1164.

[3] John W. Davis, of Indiana, Speaker.

[4] First session Thirty-first Congress, Globe, p. 1318.

Mr. George W. Jones, of Tennessee, raised the point that a two-thirds vote would be required to postpone a special order, since a two-thirds vote was required to make it.

The Speaker[1] decided that when once a special order was before the House its further consideration could be postponed to a day certain by a majority vote.[3]

3179. On March 9, 1904,[3] the House proceeded to the consideration of a resolution relating to the conduct of Members in relation to certain transactions in the Post-Office Department. A special order provided for the consideration of this resolution on this day.

Mr. Jesse Overstreet, of Indiana, moved to postpone the consideration of the special order until another day.

The Speaker[4] did not entertain this motion, but did entertain a motion to postpone the further consideration of the resolution itself to a day certain.

3180. On February 13, 1843,[5] the Speaker announced as the business before the House the special order fixing this day for the consideration of the joint resolution of the House "concerning certain reciprocity treaties."

Mr. John P. Kennedy, of Maryland, proposed to postpone the consideration of the resolution until a future day.

The Speaker[6] stated that it would require a vote of two-thirds to postpone the special order.

3181. On December 31, 1849,[7] the House adopted the following resolution:

Resolved, That the House will proceed to the election of Clerk and other officers on Thursday, the 3d day of January, 1850.

On January 3 no election of Clerk resulted, and on January 4 Mr. Moses Hampton, of Pennsylvania, moved that the execution of the order be postponed until the 7th.

Mr. James Thompson, of Pennsylvania, rising to a parliamentary inquiry, asked if a two-thirds vote was not required to postpone the order.

The Speaker[1] held that the vote of a majority only was required.

Thereupon the execution of the order was postponed by a vote of 98 yeas, 97 nays

3182. On February 27, 1852,[4] Mr. Speaker Boyd decided that a special order, although made by a two-thirds vote, might be postponed by a majority vote.

3183. The fact that a bill had been made a special order for a certain day and that the House on that day refused to consider it was held not to prevent it coming up in regular order with other business of its class on a

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[1] Howell Cobb, of Georgia, Speaker.

[2] At the time this decision was made special orders did little more than assign a bill a certain day for consideration. A modern special order, which limits the time and mode of consideration and often fixes a stated hour for voting, would present a different principle to govern the reception of a motion to postpone.

[3] Second session Fifty-eighth Congress, Record, p. 3047.

[4] Joseph G. Cannon, of Illinois, Speaker.

[5] Third session Twenty-seventh Congress, Journal, p. 355; Globe, p. 278.

[6] John White, of Kentucky, Speaker.

[7] First session Thirty-first Congress, Journal, pp. 190, 225; Globe, p. 101.

[8] First session Thirty-second Congress, Globe, p. 648.

later day.—On February 20, 1891,[1] at a Friday evening session, Mr. Roswell P. Flower, of New York, by unanimous consent, called up the bill of the Senate (S. 1813) granting increase of pension to Florida G. Casey, coming over from April 7 ultimo as unfinished business, on which bill the previous question was ordered, with the privilege of one hour and thirty minutes' debate on each side, and which the House refused to consider on the 17th instant.

Mr. Daniel Kerr, of Iowa, made the point of order that the bill was not in order for consideration at a Friday evening session, the same having been heretofore made a special order by the House.

The Speaker pro tempore[2] overruled the point of order.

3184. Although a special order may provide for the consideration of a bill immediately after the reading of the Journal on a given day, it does not lose its privileged position if called up at a later hour.—On September 24, 1890,[3] near the end of the day's sitting, Mr. Edmund N. Morrill, of Kansas, as a privileged question, called up the special order, which was the consideration of the bills granting pensions to Jessie Benton Fremont, Ellen M. McClellan, Mary Crook, and Frederika Jones, coming over from the last Friday evening, with the previous question ordered subject to one hour's debate and the right to offer amendments.

Mr. C. B. Kilgore, of Texas, made the point of order that the special order called for the consideration of the bills immediately after the reading of the Journal, and that hour having passed, the bills had lost their right to be now considered.

The Speaker[4] overruled the point of order.

3185. When the terms of a special order are such as in effect to order the previous question, business unfinished with the day set apart by the order does not fall, but is in order the next day after the reading of the Journal.—On July 17, 1894,[4] the Speaker pro tempore stated the regular order of business to be the further consideration of the bill (H. R. 4609) to establish a uniform system of bankruptcy, pending at the adjournment on the preceding day.

Mr. Julius C. Burrows, of Michigan, made the point that under the resolution adopted on the preceding day, to wit—

> That immediately upon the adoption of this resolution the House shall proceed to consider House bill 4609, "A bill to establish a uniform system of bankruptcy," in the House as in Committee of the Whole on the state of the Union. That after an hour of general debate there shall be two hours' debate under the five-minute rule. The previous question shall be considered as ordered on the amendments, if any, and, without intervening motion, the vote shall then be taken, etc.

the consideration of said bill (H. R. 4609) was limited to that day and was not now in order.

The Speaker pro tempore[6] overruled the point of order, holding that the resolution was in effect equivalent to an order of the previous question, and brought the House to a direct vote on the questions to which it applied; and that by analogy to

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[1] Second session Fifty-first Congress, Journal, p. 280; Record, p. 3043.

[2] William W. Morrow, of California, Speaker pro tempore.

[3] First session Fifty-first Congress, Journal, p. 1078; Record, p. 10392.

[4] Thomas B. Reed, of Maine, Speaker.

[5] Second session Fifty-third Congress, Journal, p. 448; Record, pp. 7596, 7597.

[6] James D. Richardson, of Tennessee, Speaker pro tempore.

the practice when, the previous question having been ordered on the passage of a bill the vote is interrupted by an adjournment, the question would recur immediately after the approval of the Journal on the succeeding day.

Mr. George W. Ray, of New York, stated that he appealed from the decision of the Chair. The Chair declined to entertain the appeal for the reason that the same was precluded by the special order.

3186. When a special order applies to one day only, a bill taken up but left undisposed of on that day loses its privileged position thereafter.—On February 13, 1850,[1] Mr. Robert M. McLane, of Maryland, from the Committee on Commerce, reported a bill (No. 97) to continue in force the act therein mentioned relating to the port of Baltimore. Then, on motion of Mr. McLane,

Ordered, That the said bill (No. 97) be made the special order of the day for the first Monday in March next.

On March 4, 1850, the House proceeded to the consideration of the bill, and it was ordered to be engrossed and read the third time; and being engrossed, the bill was accordingly read the third time.

Pending the question on the passage of the bill, the House adjourned. The bill was on its passage when an adjourment was moved by Mr. Harvey Putnam, of New York, who thought the bill should have more consideration.

The bill, having been mislaid, was on the Speaker's table until May 9, 1850, when, the House having proceeded to consideration of business on the Speaker's table, it came up in regular order.[2]

3187. On January 13, 1885,[3] Mr. John Randolph Tucker, of Virginia, as a privileged question, called up and the House proceeded to the consideration of business under the following special order, adopted on the 7th instant:

Resolved, That Tuesday, January 13, be assigned to the Committee on the Judiciary for the consideration of such business as may be presented by said committee; this order not to interfere with the consideration of general appropriation and revenue bills and the special order adopted January 21 last, relating to reports from the Committee on the Public Lands; and in case this order shall be interfered with on that day, it shall be continued in force until one day thereafter has been occupied by the Committee on the Judiciary.

Mr. William H. Hatch, of Missouri, made the point of order that the first business in order under the special order was the further consideration of the bill of the House to amend the act relating to the judicial districts of Missouri, reported from the Committee on the Judiciary on the 23d of January last and referred to the House Calendar, and considered by the House on the 17th of May last, the pending question being on the amendment of Mr. McCoid to section 2, on which amendment the demand for the previous question was pending when the House adjourned on that day.

The Speaker[4] overruled the point of order, on the ground that the bill was brought before the House on that day under the terms of a special order, similar to

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[1] First session Thirty-first Congress, Journal, pp. 522, 631, 897; Globe, pp. 448, 960.

[2] At that time the order of business was different from the present order, unfinished business not having precedence to the extent it does now. (See sec. 3056 of this volume.)

[3] Second session Forty-eighth Congress, Journal, p. 248; Record, pp. 667, 668.

[4] John G. Carlisle, of Kentucky, Speaker.

the pending special order, authorizing the consideration of such business "as may be presented by the Committee on Judiciary," and that, in accordance with the practice of the House, all business undisposed of on such assignment fell with the day's adjournment.

3188. On May 3, 1890,[1] a motion having been made to go into Committee of the Whole House on the state of the Union to consider general appropriation bills, Mr. Albert J. Hopkins, of Illinois, made the point of order that the first business in order was the motion to lay on the table the motion to reconsider the vote by which the House refused to order the bill of the House, H. R. 6941, "A bill to amend Title LX, chapter 3, of the Revised Statutes of the United States, relating to copyrights," as amended, to be engrossed and read a third time, pending when the House, at 5 o'clock p. m. preceding day, took a recess under clause 2, Rule XXVI,[2] for the consideration of business named therein.

The Speaker[3] overruled the point of order, and held that under former rulings and practice of the House all business pending and undisposed of under a special order fell when the time allotted thereto expired, and that until another day was assigned the Committee on the Judiciary, or for the consideration of the bill, it could not be further acted on.[4]

3189. On February 8, 1899,[5] the House was acting under a special order[6] which devoted two days—the 7th and 8th of February—to the consideration of bills reported from the Committee on Public Buildings and Grounds. As the House on this the last day of the special order was about to resolve itself into Committee of the Whole House on the state of the Union for consideration of such bills, Mr. David B. Henderson, of Iowa, rising to a parliamentary inquiry, asked whether, if the House should continue in Committee of the Whole until time of adjournment, the bills reported from the Committee of the Whole and unacted on by the House would be privileged as unfinished business afterwards in the House.

The Speaker[3] replied that such had not been the practice of the House.

3190. On December 21, 1839,[7] the House

Resolved, That this House will now proceed, forthwith, to the election of a Clerk, Sergeant-at-Arms, Doorkeeper, Assistant Doorkeeper, and Public Printer, for the present Congress.

On January 30, 1840,[8] the orders of the day were announced, and the Speaker[9] decided that the first subject which came before the House was the execution of that portion of the order of the House of the 21st of December which remained unexecuted, viz, the election of a printer. The execution of this portion of said

[1] First session Fifty-first Congress, Journal, p. 567; Record, p. 4191.

[2] The rule providing for a session Friday evenings for consideration of pension bills.

[3] Thomas B. Reed, of Maine, Speaker.

[4] There was involved in this case another condition, the previous question having been ordered on the bill, which is referred to in sections 5510–5520 of Volume V of this work.

[5] Third session Fifty-fifth Congress, Record, p. 1614.

[6] For form of this special order, see Record, February 6, 1899, p. 1503.

[7] First session Twenty-sixth Congress, Journal, p. 95.

[8] Journal, p. 253.

[9] Robert M. T. Hunter, of Virginia, Speaker.

order having been postponed on the 27th ultimo to the 10th of January instant, and then prevented from being carried into effect by another special order, it was now the first subject for the action of the House.

From this decision Mr. Rice Garland, of Louisiana, appealed, on the ground that if an order be adopted by the House that it will forthwith, or on a particular day, proceed to elect a printer, or other officer; but if, from accident or design, the House omits, or fails, to execute the order at the time, or on the day specified in the order, the matter drops until the order is renewed.

The decision of the Chair was sustained, yeas 135, nays 64.

3191. On February 16, 1843,[1] Mr. John P. Kennedy, of Maryland, called up the special order for the day, the consideration of joint resolution (No. 13) concerning certain reciprocity treaties.

Mr. Francis W. Pickens, of South Carolina, objected to the consideration of the resolution, and submitted as a question of order that a special order not having been taken up and considered on the day for which it was set the order thereby became virtually dissolved and the subject lost its specialty.

The Speaker[2] decided against the point of order.

Thereupon Mr. Pickens appealed. On the appeal the decision of the Chair was sustained.[3]

3192. A session of the House extending, by failure to adjourn, through the succeeding calendar day, a special order for the legislative day expected to be held on that calendar day falls, as the session is of the legislative day.

In the contemplation of the rules and special orders of the House a day is the legislative day and not the calendar day, and the two are not always the same.

Where a special order requires a recess at a certain hour of a certain day, the recess is not taken if the encroachment of a prior legislative day prevents the existence of the said certain day as a legislative day.

On the legislative day of Tuesday, April 3, 1888,[4] but in reality on the calendar day of Thursday, April 5, the House began proceedings under a special order which provided:

On Wednesday, April 4, while considering bills from the Judiciary Committee,

Resolved, That Tuesday and Wednesday, April 3 and 4, immediately after the reading of the Journal, be set apart for the consideration of Senate bill No. 139, etc., * * * and that the remainder of said time be set apart for the consideration of any other bill or bills designated by the Committee on the Judiciary; that Thursday and Saturday, April 5 and 7, immediately after the reading of the Journal, be set apart for the consideration of bills reported from the Committee on Commerce in such order as said committee may designate, etc., and that at 5 o'clock Thursday the House should take a recess, etc.

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[1] Third session Twenty-seventh Congress, Journal, p. 386; Globe, p. 298.

[2] John White, of Kentucky, Speaker.

[3] The Globe shows that Mr. Pickens argued that if a special order was to continue until disposed of the House would find, when it set days for District of Columbia and Territorial business, that business of those classes would drag on for a long time after the days set. The Speaker in his ruling drew a distinction between the special orders setting aside a day for a class of bills, and an order giving a time for the consideration of a specified bill or bills.

[4] First session Fiftieth Congress, Record, pp. 2749, 2755; Journal, pp. 1491, 1505, 1506.

the House did not adjourn as usual, but continued in session or in recess all night, and was still in session after noon on the calendar day of April 5.

At that time Mr. Samuel W.T. Lanham, of Texas, made the point of order that the time for the consideration of bills reported from the Judiciary Committee had expired.

After debate the Speaker[1] held:

The Chair does not understand the gentleman from Texas to contend that ordinarily the legislative day does not continue until an adjournment; but he contends that under the peculiar phraseology of the order adopted the other day by the House it is the duty of the Chair, after a calendar day has expired, to declare that the business set specially for that day is terminated. And the gentleman contends for this proposition upon the ground that it was evidently the intention of the House when it made that order that the Committee on the Judiciary should have only two calendar days. Conceding that such was the intention of the House when it made the order, still it is very evident that the intention of the House has been changed, because it has declined to adjourn so as to permit that order to take effect; it has remained continuously in session, thus preventing the legislative day from terminating.

The strongest case, perhaps, that could be presented in support of the idea that the legislative day must terminate with the calendar day, is when the hour of 12 o'clock p. m. on the 3d of March arrives, at the expiration of a Congress; and more than once that question has been raised—once in this House, if the present occupant of the chair correctly remembers, by Mr. Benton, then a Representative from the State of Missouri, and once in the Senate by Mr. Cass, then a Senator from the State of Michigan. Those distinguished gentlemen contended that when the hour of 12 o'clock p. m. on the 3d of March arrived, the official terms of Members themselves expired under the Constitution; that the presiding officer was no longer such; that the gentlemen sitting upon the floor were no longer Members—in short, that there was no organized Congress in existence. Those gentlemen did not even ask that the House should be formally adjourned by order of the Speaker, but contended that it was the duty of the presiding officer to vacate his chair, because there was no Congress. Yet it has been invariably held that so long as the legislative day continued the terms of Members continued. The Chair thinks there could not be a stronger case than that. It has been the universal practice of the House and the Senate since that time—and the Chair thinks before that time also—to remain in session on the legislative day of March 3 until 12 o'clock m. of March 4. * * * And as suggested by the gentleman from Wisconsin [Mr. Caswell], in February, 1877, during the pendency of the counting of the electoral vote, Congress remained continuously in session from February 1 to March 2, and this period constituted legally but one legislative day.

In the case cited by the gentleman from Texas, which was decided in the Thirty-third Congress, it was evidently the intention of the House, in ordering that the debate should be closed "at 12 o'clock to-morrow," that it should cease at 12 o'clock on the next calendar day; but the House afterwards determined otherwise, and by remaining continuously in session preserved the legislative day and defeated the purpose which it had intended in the first place to carry out.

Now, the Chair can not adjourn the House; that is conceded. The Chair can not cause the Journal of the House to be read until there has been an adjournment; that is conceded. And under the order which the gentleman from Texas has read the business of the Committee on Commerce will not come up until after the reading of the Journal; so that, if the Chair were to sustain the gentleman's point, the Committee on Commerce would not now be able to call up its business, but the House would remain in session as of Wednesday until an adjournment should take place. * * * The Chair overrules the point of order. * * * And the House now by its action defeats that part of the order which assigns Thursday to the business of the Committee on Commerce, just as the House, if it had on last Monday adjourned over till Thursday, as it might have done, would have defeated the whole order giving two days to the Committee on the Judiciary, notwithstanding its original intention to give those two days.

The legislative day of Wednesday having continued until 5 o'clock p. m. Thursday, Mr. J. B. Weaver, of Iowa, made the point of order that under the special order the House should at that hour take a recess.

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[1] John G. Carlisle, of Kentucky, Speaker.

The, Speaker said:

The Chair has decided that the continuation of the legislative day which began yesterday at 12 o'clock defeated the execution of the special order, so far as it related to the business reported from the Committee on Commerce set for Thursday. Of course, if that be correct, it defeats the execution of the whole order. It could not defeat the execution of a part of the order without defeating the execution of the whole of it. One part related to the business of the Committee on Commerce. The remaining part was that at 5 o'clock the House should take a recess until 8 o'clock on Thursday evening, the evening session to be devoted exclusively to business reported by the Committee on Military Affairs. And if the continuation of the session of Wednesday defeats one part of the order it defeats the whole of it.

3193. When two special orders provide for the consideration of two bills at one time, the order first made has priority, but by raising the question of consideration against either bill the House may determine the order.—On April 14, 1840,[1] the Chair announced that the business first in order was the report of the Select Committee on Printing, which had been made the special order for this day.

Mr. John W. Jones, of Virginia, said he wished to offer a resolution for the postponement of the special order; which was read for the information of the House, as follows:

Resolved, That the execution of the special order on the report of the Committee on Printing be postponed until the House shall have finally disposed of the bill No. 8, making appropriations for the civil and diplomatic expenses of the Government, and that the said special order be then taken up and considered as though no postponement thereof had been made.

Mr. George C. Dromgoole, of Virginia, inquired of the Chair (there being two special orders) which took precedence, and whether the civil and diplomatic bill did not, as a matter of course, override and postpone the special order relating to printing.

The Speaker[2] replied that Mr. Speaker Stevenson had decided[3] that the special order first made took priority. The subject of printing was the first special order, and would therefore take precedence.

3194. On May 15, 1886,[4] Mr. Albert S. Willis, of Kentucky, called up for consideration the bill (H. R. 902) establishing a subtreasury at Louisville, Ky.

Mr. William S. Holman, of Indiana, made the point of order that the prior order of the day was the bill (H. R. 6973) to provide for the appointment of a commission to inspect and report on the conditions of Indians, Indian affairs, etc.

The Speaker[5] said:

These two bills—the bill reported by the gentleman from Indiana from the Committee on Expenditures for Indians and Yellowstone Park and the bill which the gentleman from Kentucky desires to call up—were both postponed until to-day. They are both special orders; and in the opinion of the Chair neither has priority over the other; but the question of consideration can be raised against either of them.

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[1] First session Twenty-sixth Congress, Globe, p. 325.

[2] Robert M. Hunter, of Virginia, Speaker.

[3] This does not appear among the decisions of questions of order in the Journals during Mr. Speaker Stevenson's terms.

[4] First session Forty-ninth Congress, Record, p. 4543; Journal, p. 1616.

[5] John G. Carlisle, of Kentucky, Speaker.

3195. On January 20, 1903,[1] Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, presented a resolution providing for the consideration of the bill (H. R. 15520) providing a coinage system for the Philippine Islands.

A question having been raised as to the effect of this order on an order previously agreed to, the Speaker[2] said:

The general rule governing such matters is that the order first made shall be the order that will govern the action of the House.

3196. On August 4, 1852,[3] Mr. Speaker Boyd decided that when two special orders were in conflict, the last order had precedence.

3197. A special order setting apart a day for the consideration of a particular bill or of business from a particular committee has precedence over a continuing order for the consideration of a bill or of business from a committee.—On May 14,1886,[4] Mr. John H. Reagan, of Texas, as a privileged question, under the order of the House of March 16 last, called up the bill (H. R. 6657) to regulate interstate commerce and prevent unjust discrimination by common carriers.

Mr. William H. Hatch, of Missouri, made the point of order that the regular order of business was the consideration, under the special order of the 30th of April last, of such business as might be presented by the Committee on Agriculture, the said order setting apart this day, after the second call of committees, for the consideration of such business.

The Speaker sustained the point of order, and held that the special order of the 30th of April took precedence of that of the 16th of March, for the reason that it assigned and set apart this day for the consideration of business presented by the Committee on Agriculture.

The Speaker[5] said:

The order which the gentleman cites was made by the House on April 30; but on the 16th of March the House, by a suspension of the rules, set the 13th day of April for the consideration of House bill No. 6657, and provided that its consideration should continue from day to day until disposed of. * * * But upon examination of the two orders the Chair finds that in one case the bill referred to is simply made a special order, and in the other case a day is "set apart"—dedicated for the consideration of certain business. * * * There is a very considerable difference. When a day is "set apart" for the consideration of certain measures that day must be appropriated for that purpose and the business can not be interfered with except by raising the question of consideration against each measure as it is called up or by revoking the order, a motion to do which can only be entertained by unanimous consent. The Chair was at first under the impression that the two orders were alike in their terms, in which case the special order which the gentleman from Texas desires to call up would have had priority over that of the gentleman from Missouri, because first adopted. But upon examination the Chair finds that the two orders are not in the same language.

3198. On February 12, 1887,[6] the House had before it a special order providing "that Saturday, February 12, immediately after the reading of the Journal, be set apart for the consideration" of the bill (S. 199) for the retirement and recoinage

[1] Second session Fifty-seventh Congress, Record, p. 1019.

[2] David B. Henderson, of Iowa, Speaker.

[3] First session Thirty-second Congress, Globe, p. 2065.

[4] First session Forty-ninth Congress, Journal, p. 1598; Record, p. 4483.

[5] John G. Carlisle, of Kentucky, Speaker.

[6] Second session Forty-ninth Congress, Record, p. 1684.

of the trade dollar, "in the House, no other business to be transacted until the consideration of said bill is concluded."

Mr. John J. O'Neill, of Missouri, made the point of order that there had been made by the House a continuing order in favor of "such business as may be presented by the Committee on Labor." That order, after excepting "general appropriation or revenue bills, bills reported from the Committee on the Public Lands, and other prior orders," existing at that time, provided that the order in favor of business of the Committee on Labor should continue "until the bills presented by said committee shall be disposed of." This being a general order, applicable under the rules to the business of a committee, should take precedence of a special order with reference to a particular bill.

The Speaker[1] said:

The House made the special order referred to by the gentleman from Missouri on the 17th day of last May. During the present session the House made the special order now called up by the gentleman from Pennsylvania [Mr. Scott]. The special order to which the gentleman from Missouri refers was a continuing order until the Committee on Labor had one day for the consideration of bills reported by it. * * * After that time, and during the present session, the House, by a direct vote—not the Committee on Rules, but the House itself, by a vote—set apart a particular day for the consideration of this trade-dollar bill, to the exclusion of all other business.

That was undoubtedly a declaration on the part of the majority of the House that on this day the special order, and all special orders heretofore made, should be superseded for the time being by the consideration of this bill.

The Chair overrules the point of order.

3199. A special order having assigned a certain day for such business as a certain committee may present, the committee may call up its own bills wherever they may be, whether in the committee or on the Calendars.

A special order providing for consideration of a bill, the requirement that it be considered in Committee of the Whole is waived.

On June 26, 1882,[2] the regular order was the consideration of business under this special order:

Resolved, That the second and fourth Mondays of each calendar month hereafter during the continuance of the Forty-seventh Congress, after the call of States and Territories for bills and joint resolutions, be, and the same are hereby, set apart for the consideration of such business as may be presented by the Committee on the District of Columbia.

On motion of Mr. John B. Hoge, of West Virginia, the Senate bill to authorize the supreme court of the District of Columbia to appoint two additional criers was taken from the Speaker's table and read twice.

Mr. Joseph G. Cannon, of Illinois, made the point of order that under the terms of the special order it was not in order for the Committee for the District of Columbia to take business from the Speaker's table for present consideration.

The Speaker[3] overruled the point of order on the ground that the special order in terms set aside this day "for the consideration of such business as may be presented by the Committee on the District of Columbia," and that committee having

[1] John G. Carlisle, of Kentucky, Speaker.

[2] First session Forty-seventh Congress, Journal, p. 1540; Record, p. 5349.

[3] J. Warren Keifer, of Ohio, Speaker.

asked the consideration of the bill, it was in order to proceed thereto. The Speaker said:

The Chair will state that the uniform practice in this Congress and also in other Congresses, under such orders or resolutions, has been to allow the committee that has the control of the business to call up for consideration such business as it may see fit, whether from its own committee, from the calendars of the House, or from the Speaker's table, wherever it may be. * * * It allows the consideration of everything in the House, even though under other circumstances it might be subject to the point of order that its first consideration must be in the Committee of the Whole. That has been frequently decided, not only during this session of Congress but in former Congresses.

3200. Two days having been assigned a committee generally for consideration of its business in the House, it was held that they should be days on which public business would be in order.—On Friday, March 7, 1890,[1] Mr. Seth L. Milliken, of Maine, rising for a parliamentary inquiry, stated that two days had been set apart for the consideration of business coming from the Committee on Public Buildings and Grounds. This was private-bill day, and he asked the ruling of the Speaker as to whether the Committee on Public Buildings and Grounds were entitled to occupy the day.

After debate, during which this extract from the Record was read to give the exact terms of the order:

The SPEAKER. Then the gentleman from Tennessee [Mr. Houk] asks unanimous consent that, at the close of the election case now pending before the House, the Committee on Public Buildings and Grounds shall have two days. Is there objection? [After a pause.] The Chair hears none.

The Speaker[2] said:

The Chair, after an examination of all the proceedings of the House on the subject, is of opinion that the two days to which this committee would be entitled would be days on which public business should be transacted. The Chair makes this decision with the less reserve because the matter is entirely within the control of the House.

3201. A special order which provides for the consideration of a bill from day to day until disposed of includes, unless exception be made, a day such as Friday, set apart by the rules for a class of business.—On Friday, February 27, 1852,[3] the Speaker announced as the business first in order the special order (H. R. 208), "A bill explanatory of the act approved September 28, 1850, granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States."

Mr. Edson B. Olds, of Ohio, moved that the House resolve itself into a Committee of the Whole House for the consideration of bills on the Private Calendar.

The Speaker[4] decided that the motion was not in order, on the ground that the order of the House by which the pending special order was made, had, in effect, suspended the operation of the rule by which Fridays and Saturdays[5] were set apart for the consideration of private bills, until the special order was disposed of.

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[1] First session Fifty-first Congress, Record, p. 2012; Journal, p. 315.

[2] Thomas B. Reed, of Maine, Speaker.

[3] First session Thirty-second Congress, Journal, pp. 401, 433.

[4] Linn Boyd, of Kentucky, Speaker.

[5] Formerly both Friday and Saturday were given to private bills. (See secs. 3266–3267 of this volume.)

On an appeal by Mr. Olds, the decision was sustained.

On the following Friday, March 5, the same point of order was made, the bill (H. R. No. 7), "A bill to encourage agriculture, commerce, manufactures, and all other branches of industry, by granting to every man who is the head of a family, and a citizen of the United States, a homestead of 160 acres of land," etc., having been made a special order for the 2d instant, and from day to day until disposed of.

Mr. John R. J. Daniel, of North Carolina, made the point of order, and, on appeal, the decision of the Chair was sustained.[1]

3202. On December 19, 1884,[2] Mr. John H. Reagan, of Texas, as a privileged question, under the special order of March 1 last, called up the interstate commerce bill (H. R. 5461).

Mr. Thomas B. Reed, of Maine, made the point of order that consideration of the bill was not in order, this being Friday, and set apart, under Rule XXVI, exclusively to the consideration of private business.

The Speaker[3] overruled the said point of order, on the ground that, by the terms of the order of March 1 last, making the pending bill a "special order," it was made "to continue from day to day until finally acted on" without excepting Friday, while an exception was made in favor of general appropriation and revenue bills.

3203. Where a special order for the consideration of a bill prohibited "intervening motions" between the vote on an amendment and a final vote, it was held to exclude a motion to reconsider.—On April 3, 1894,[4] the House was considering the Missouri contested-election case of O'Neill *v.* Joy under a special order, which provided:

> That after two hours' debate thereon the previous question be considered as ordered on the resolution reported from the Committee on Elections and on any substitute that may be pending therefor; that then, without intervening motion, the vote be taken first on the substitute and then on the resolution reported from the committee.

The vote having been taken on a proposed substitute, it was decided in the negative, yeas 23, nays 160.

Mr. John M. Wever, of New York, moved to reconsider the vote last taken.

Mr. Joseph H. Outhwaite, of Ohio, made the point of order that the motion to reconsider, being an intervening motion, was not in order pending the operation of the special order under which the House was proceeding.

The Speaker[5] sustained the point of order.

3204. A special order may provide that certain enumerated and described amendments shall be offered to a bill and thereby exclude amendments to these amendments or other amendments.

An example of a special order which provided for fixing a ratio num-

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[1] On April 21, 1882, (First session Forty-seventh Congress, Journal, p. 1090; Record, p. 3146), Mr. Speaker Keifer reaffirmed the principle involved in this ruling.

[2] Second session Forty-eighth Congress, Journal, p. 136; Record, pp. 364, 365.

[3] John G. Carlisle, of Kentucky, Speaker.

[4] Second session Fifty-third Congress, Journal, pp. 304, 305; Record, pp. 3421, 3422.

[5] Charles F. Crisp, of Georgia, Speaker.

ber by specifying a series of numbers which might be offered successively as amendments.

On August 28, 1893,[1] the House was considering the bill (H. R. 1) to repeal a part of an act approved July 14, 1890, entitled "An act directing the purchase of silver bullion and the issue of Treasury notes thereon, and for other purposes."

The Speaker announced that amendments were in order as provided in the special order heretofore adopted, to wit:

The vote shall be taken first on an amendment providing for the free coinage of silver at the present ratio. If that fail, then a separate vote to be had on a similar amendment proposing a ratio of 17 to 1; if that fail, on one proposing a ratio of 18 to 1; if that fail, on one proposing a ratio of 19 to 1; if that fail, on one proposing a ratio of 20 to 1. If the above amendments fail, it shall be in order to offer an amendment reviving the act of the 28th of February, 1878, restoring the standard silver dollar, commonly known as the Bland-Allison Act; the vote then to be taken on the engrossment and third reading of the bill as amended, or on the bill itself if all amendments shall have been voted down, and on the final passage of the bill without other intervening motions.

Whereupon Mr. Richard P. Bland, of Missouri, submitted the following amendment:

Provided, That all holders of silver bullion of the value of $50 or more, and not too base for the operations of the mints, shall be entitled to deposit the same for coinage at the mints of the United States, and to have the same coined into legal-tender standard silver dollars of 412½ grains standard silver to the dollar, on same terms and conditions on which gold bullion is now deposited and coined.

That silver certificates shall be issued on such dollars in the manner now provided by law for the issuing of certificates on standard silver dollars.

It being the first amendment mentioned in the special order, Mr. Benton McMillin, of Tennessee, proposed an amendment to the amendment offered by Mr. Bland.

Mr. Bland objected to the consideration of the amendment proposed by Mr. McMillin.

The Speaker[2] sustained the objection, holding that the special order of the House excluded amendments to the amendments specified in the order.

3205. On August 28, 1893,[3] the House having under consideration under the terms of the special order[4] the bill for the repeal of the act directing the purchase of silver bullion, etc., the votes had been taken on all the amendments provided for in the special order, and the Speaker announced that the question was on the engrossment and third reading of the bill.

Pending this Mr. Joseph W. Bailey, of Texas, proposed an amendment striking out these words from the bill:

And the faith and credit of the United States are hereby pledged to maintain the parity of the standard gold and silver coins of the United States at the present legal ratio or such other ratio as may be established by law.

Mr. W. Bourke Cockran, of New York, made the point of order that no amendment to the bill was in order, save such as were specified in the special order.

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[1] First session Fifty-third Congress, Journal, p. 18.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] First session Fifty-third Congress, Journal, pp. 21 and 22.

[4] See preceding section for terms of order.

The Speaker[1] sustained the point of order, holding as follows:

The order adopted by the House seems to the Chair to be very plain upon this question. It first provides for general debate, then for debate under the five-minute rule, then names specifically certain amendments which may be offered and upon which a vote shall be taken, and then makes this provision, which is applicable to the point in the consideration of the bill at which we have arrived. After disposing of the amendment providing for the reenactment of the Bland-Allison Act, the order says: "The vote then to be taken on the engrossment and the third reading of the bill as amended, or on the bill itself, if all amendments shall have been voted down, and on the final passage of the bill without other intervening motions." We have arrived at the stage now where the vote is to be taken, according to this order, on the engrossment and third reading of the bill. If the previous question had been ordered on the reading and engrossment of the bill it would not be maintained that a separate vote could then be taken on different propositions contained in the bill. Here is the direction of the House as to what shall be done when we reach this stage—that the vote shall be taken. Therefore the Chair is constrained to sustain the point made by the gentleman from New York, and to hold that under the special order an amendment is not in order.

3206. An instance of the difficulties arising from the terms of a special order which permitted two substitute amendments to a bill to be pending at once.—On February 7, 1895,[2] the House was considering under a special order[3] the bill (H. R. 8705) to authorize the Secretary of the Treasury to issue bonds to maintain a sufficient gold reserve, etc.

The question then being presented which of the two pending substitutes for the bill should first be considered, the Speaker held that by analogy to the practice in respect to ordinary amendments the substitute which had been first presented in the Committee of the Whole should be first considered in the House.

It appearing that the substitute proposed by Mr. Thomas B. Reed, of Maine, had been thus first presented, the same was read.

Mr. Benton McMillin, of Tennessee, submitted the question of order: In the event the foregoing substitute should be agreed to, what would be the status of the second proposed substitute?

The Speaker[1] held that under the peculiar provision of the special order, which provided that the two substitutes might be reported and pending at the same time, if the first of said substitutes should be adopted, the vote would still have to be taken on the second as a substitute for the bill as amended by the first substitute.

3207. Where a special order declares that at a certain time the previous question shall be considered as ordered on a bill to the final passage, it has usually but not always been held that the motion to commit is precluded.—On February 1, 1889,[4] the House had passed to be engrossed and read a third time the bill to organize the Territory of Oklahoma under a special order which provided that at a certain hour the votes on amendments, on ordering the third reading, and on the passage "shall then be taken in the House."[5]

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] Third session Fifty-third Congress, Journal, pp. 105, 110, 111, 114.

[3] For terms of this special order see section 3229 of this chapter.

[4] Second session Fiftieth Congress, Record, pp. 1062, 1401.

[5] See section 3210 of this work for this special order. The language was "and the previous question shall be considered as ordered upon all such amendments, and upon ordering the said bill to be read a third time, and upon the passage of the same, and the votes thereon shall then be taken in the House."

Mr. Charles E. Hooker, of Mississippi, rising to a parliamentary inquiry, asked, "Is it now in order to move to recommit this bill?" [1]

The Speaker [2] said:

It is not. The Chair ruled, in the case of the direct tax bill, that where the House had made an order similar in its terms to that made in this case, it was not in order to move to recommit the bill, because the effect of that motion, if adopted, would be to prevent the House from voting on the passage of the bill.

3208. On February 2, 1895,[3] the question was on the passage of the bill (H. R. 7798) relating to the Pacific railroads, when Mr. Charles J. Boatner, of Louisiana, moved to recommit the bill to the Committee on Pacific Railroads.

Mr. William P. Hepburn, of Iowa, made the point that, pursuant to the special order under which the bill was being considered, to wit—

The committee shall rise and report the bill to the House with the pending amendments, if any; the previous question shall then be considered ordered on the amendments, if any, and the bill to its final passage; the vote shall then be taken without intervening motion or motions until the matter is fully disposed of—

the motion to recommit was not in order, and that the vote should be taken immediately on the passage of the bill.

The Speaker [4] overruled the point of order, holding as follows:

The rules of the House have expressly provided that before or after ordering the previous question on the final passage of the bill one motion to recommit may be made. The Chair does not see that there is anything in the special rule under which the House is operating to expressly forbid that motion in this case. If such a motion as that made by the gentleman from Louisiana should obtain—that is, to recommit the bill—the bill is as fully disposed of, so far as its consideration before the House is concerned, as if it had been disposed of in any other way. It would only come back to the House by a report made by the committee having it in charge, and would go upon the Calendar precisely as if it were a bill which had just been referred to the committee for its consideration. The Chair is inclined to hold, and does hold, that this motion is in order.

3209. On March 31, 1897,[5] the House passed to be engrossed and read a third time the bill (H. R. 379) to provide revenue for the Government, and to encourage the industries of the United States, under the terms of a special order which provided:

That not later than Wednesday, the 31st day of March, at 3 o'clock p. m., the said bill, with all amendments that shall have been recommended by the Committee of the Whole House on the state of the Union, shall be reported to the House, and the previous question shall then be considered as ordered on said amendments and said bill to its engrossment, third reading, and final passage, and on a motion to reconsider and lay on the table.

Mr. Joseph W. Bailey, of Texas, as a parliamentary inquiry, asked if it would be in order to submit a motion to recommit the bill.

The Speaker [6] decided that it would be in order.

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[1] This motion to recommit is that provided in Rule X VII relating to the previous question. (See sec. 5443 of Vol. V of this work.)

[2] John G. Carlisle, of Kentucky, Speaker.

[3] Third session Fifty-third Congress, Journal, p. 102.

[4] Charles F. Crisp, of Georgia, Speaker.

[5] First session Fifty-fifth Congress, Record, pp. 71, 556.

[6] Thomas B. Reed, of Maine, Speaker.

3210. Special orders are often used to further the consideration of business by preventing dilatory motions, and in such cases the Chair has exercised discretion as to entertaining motions to adjourn, for a recess and appeals.—On January 21, 1889,[1] the House had adopted the following special order:

Ordered, That Thursday, January 24, 1889, immediately after the reading of the Journal, be, and is hereby, set apart for the consideration of House bill 10614, entitled "A bill to organize the Territory of Oklahoma, and for other purposes," now in Committee of the Whole on the state of the Union; and at 4 o'clock on said day the said bill shall be reported to the House with such amendments as may have been agreed upon in the committee, and the previous question shall then be considered as ordered upon all such amendments, and upon ordering said bill to be read a third time and upon the passage of the same, and the votes thereon shall then be taken in the House; and in case said bill shall not be taken up on said day, then this shall be a continuing order until one day shall be occupied as herein specified, and provided that a yea and nay vote shall be taken in the House on the pending amendment relating to Union soldiers' homesteads and an amendment to be offered by Mr. Payson to the town-site section of said bill.

Upon February 1, the bill being under consideration according to the terms of the special order, it was ordered to be engrossed and read a third time.

A motion to adjourn having been decided in the negative, Mr. Charles E. Hooker, of Mississippi, moved that the House take a recess until 10 a. m. Monday.

Mr. William H. Hatch, of Missouri, made a point of order against this motion.

The Speaker[2] said:

The gentleman from Missouri [Mr. Hatch] makes a point of order against this motion under the special order of the House. The opinion of the Chair is that the spirit of that special order was to prevent dilatory motions, but the Chair is not prepared to say that one motion for an adjournment and one motion to take a recess should be construed as a dilatory proceeding. * * * A literal construction of the terms of the special order would prevent the House from adjourning at all until the final vote was taken on the bill, and would also prevent it from taking a recess. Therefore the Chair has not placed upon the order such a strict construction; but the Chair thinks that it is his duty to carry out the spirit and purpose of the order, and whenever it becomes clear that motions are made for dilatory purposes alone the Chair will interpose. * * * The Chair has decided that this proceeding has not yet reached the point where the Chair would feel it his duty to declare the motion dilatory in its nature.

3211. On March 30, 1894,[3] after the approval of the Journal, and after a motion to reconsider the vote whereby the Journal was approved had been made, and also a motion to lay the latter motion on the table, Mr. Thomas B. Reed, of Maine, moved that the House adjourn.

Mr. Thomas Lynch, of Wisconsin, made the point of order that this motion was not in order, since by the special order adopted on the 28th instant, and which by its terms continued "from day to day until both cases therein mentioned are disposed of," the contested election cases of O'Neill *v.* Joy, from Missouri, and English *v.* Hilborn, from California, were each to be considered under these conditions prescribed in the order:

That after two hours' debate thereon the previous question be considered as ordered on the resolution reported from the Committee on Elections and on any substitute that may be pending therefor; that then, without intervening motion, the vote be taken first on the substitute and then on the resolution reported from the committee.

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[1] Second session Fiftieth Congress, Record, pp. 1062, 1400; Journal, pp. 321, 394.

[2] John G. Carlisle, of Kentucky, Speaker.

[3] Second session Fifty-third Congress, Journal, pp. 292, 293, 295; Record, p. 3349.

After debate, the Speaker[1] sustained the point of order, holding as follows:

This order providing for the consideration of the two contested election cases itself nominates what motions are in order, and expressly excludes any motions not mentioned in the order. The motions mentioned in the first case are—a vote on the substitute and then a vote on the resolution reported from the Committee on Elections. There is a similar provision as to the California case, and then a provision that this order shall continue to operate from day to day until the cases are fully and finally disposed of.

Yesterday there was a failure of a quorum; a call of the House was ordered, and the House adopted a resolution to send for absentees. In that resolution was a provision that the adjournment of the House should not affect or destroy the force of that order. Everything relating to the call of the House, except so far as preserved by the terms of that resolution, fell by reason of the adjournment. If there had not been an express provision in the resolution to prevent the order of arrest from falling, that, too, would have fallen by the adjournment of the House with the other proceedings under the call. The House then adjourned. This morning when the House met the Chair directed the reading of the Journal. The contested election cases were not called up; the Chair does not say whether they might have been, but they were not.

Under the direction of the Chair, the Journal was read. The question was then upon the approval of the Journal. No point was made against that or against the motion to amend. The House has voted that the Journal be approved. The gentleman from Maine has entered a motion to reconsider the vote by which the House approved the Journal, and pending that motion moves that the House adjourn. Now, the gentleman from Wisconsin makes the point that the motion to adjourn is not in order, because of the terms of the order which has been adopted; and the Chair is inclined to sustain the view of the gentleman from Wisconsin.

Mr. Sereno E. Payne, of New York, stated that he appealed from the decision of the Chair.

The Speaker declined to entertain the appeal.

The Speaker stated that the question was on the reconsideration of the vote by which the Journal was approved; whereupon,

Mr. William M. Springer, of Illinois, made the point of order that the motion to reconsider the vote by which the Journal was approved, being a part of the ordinary business of the House, was, pursuant to special order above referred to not now in order, and that the pending election case took precedence over such motion to reconsider.

The Speaker overruled the point of order, holding that, inasmuch as no point had been made against the motion to reconsider at the time it was made, and, further, the question of approval of the Journal being incomplete while the motion to reconsider was pending, such motion should be first disposed of.

3212. On June 27, 1894[2] the House was considering the bill (H. R. 353) for the admission of the Territory of New Mexico under a special order, which provided:

That after three hours' consideration thereof, if so much be necessary, the previous question shall be considered as ordered on pending amendments and the engrossment and third reading and final passage of the bill; and then, without intervening motion, the vote shall be taken upon the third reading thereof, and upon the final passage of the bill, and, should a motion to reconsider be made, upon a motion to lay the latter motion on the table.

While the bill was being considered, Mr. Albert J. Hopkins, of Illinois, moved that the House adjourn.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] Second session Fifty-third Congress, Journal, p. 454; Record, pp. 6906, 6919, 6920.

The Speaker pro tempore[1] held that, pursuant to the order under which the House was acting, the motion of Mr. Hopkins was not in order and could not be entertained.

Later, after further consideration, Mr. Joseph G. Cannon, of Illinois, moved that the House adjourn.

The Speaker pro tempore declined to entertain the motion, for the reason that by the order under which the House was acting no motion not relating to the bill was permitted until the pending bill was disposed of.

3213. On February 4, 1895,[2] the House had under consideration the bill (H. R. 8705) to authorize the Secretary of the Treasury to issue bonds to maintain a sufficient gold reserve, etc., and refused to order the said bill to a third reading.

Mr. William M. Springer, of Illinois, moved to reconsider the vote last taken, pending which he submitted a motion that the House take a recess until to-morrow morning at 11 o'clock.

The Speaker held that under the terms of the special order, to wit—

> The previous question shall be considered as ordered on said amendments and on the bill to its passage, whereupon, without intervening motion, votes shall be taken on said bill until the same shall have been fully disposed of—

the motion for a recess was not in order.[3]

Whereupon Mr. Springer moved that the House adjourn.

The Speaker[4] held that, under the special order, that motion was not in order until the bill was disposed of.

3214. Under the requirements of a special order the Speaker declares the House resolved into Committee of the Whole without action of the House itself at the time.—On January 19, 1897,[5] a special order was operative which provided:

> That on Tuesday, the 19th day of January, immediately after the reading of the Journal, the House shall resolve itself into Committee of the Whole House for the consideration of such bills as are in order on the sessions of Friday evenings, etc.

In accordance with this order, immediately after the reading of the Journal the Speaker declared that the House would resolve itself into Committee of the Whole House in accordance with the terms of the special order, which was read at the Clerk's desk.

The Speaker[6] having left the chair and the Chairman having called the Committee of the Whole to order, Mr. C. J. Erdman, of Pennsylvania, raised the question of order as to whether or not the Speaker might resolve the House into Committee of the Whole without action of the House itself.

The Chairman[7] stated that it had been done by the Speaker in pursuance of the special order, in the usual way.

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[1] Joseph H. Outhwaite, of Ohio, Speaker pro tempore.

[2] Third session Fifty-third Congress, Journal, pp. 105, 110, 114.

[3] The motion for a recess was at this time highly privileged under the rules. (See see. 5301 of Vol. V of this work.)

[4] Charles F. Crisp, of Georgia, Speaker.

[5] Second session Fifty-fourth Congress, Record, p. 934.

[6] Thomas B. Reed, of Maine, Speaker.

[7] David B. Henderson, of Iowa, Chairman.

3215. A special order providing that a bill should be open to amendments in Committee of the Whole was held to prevent a motion to strike out the enacting clause.—On March 26, 1897,[1] the House was in Committee of the Whole House on the state of the Union considering the bill (H. R. 379) to provide revenue for the Government and to encourage the industries of the United States, under the terms of a special order, which provided:

* * * That general debate shall continue on said bill during each day until 5 o'clock p.m., and at evening sessions, to which a recess shall be taken, to be held from 8 o'clock till 11 o'clock p. m., until and including Thursday, the 25th day of March, unless sooner concluded; that from the conclusion of general debate until, the 31st day of March there shall be debate upon the said bill by paragraphs, and during this time the bill shall be open to amendment as each paragraph is read, but committee amendments to any part of the bill shall be in order at any time.

Before the Clerk began the reading of the bill Mr. Samuel W. T. Lanham, of Texas, proposed to make the motion to strike out the enacting words of the bill, as provided in Rule XXIII,[2] section 7.

After debate the Chairman[3] held:

The Chair would like to call the attention of the gentleman from Texas to the reading of the special order under which we are operating. * * * The Chair win hold that under the provisions of the special rule under which the committee is now operating the motion of the gentleman is not now in order.

3216. When a bill in Committee of the Whole is made a special order for a certain date without specifying as to consideration in Committee of the Whole the effect of the order is to discharge the committee and bring the bill into the House for consideration.—On December 8, 1886,[4] during the call of committees, the Committee on Naval Affairs being called, Mr. Hilary A. Herbert, of Alabama, on behalf of that committee, called up a resolution making the bill (H. R. 7635) to consolidate certain bureaus of the Navy Department a special order for a given date.

Mr. Thomas B. Reed, of Maine, having raised a question as to whether the bill, which was in the Committee of the Whole House on the state of the Union, would still under the special order be considered in that committee, the Speaker[5] said:

Upon an inspection of the resolution the Chair discovers that it makes no provision whatever concerning the question as to whether or not it shall be considered in the Committee of the Whole or in the House; and it has been held heretofore by the predecessors of the present occupant of the chair that when a bill which is in the Cornmittee of the Whole House on the state of the Union has been made a special order by the House it takes it out of the Committee of the Whole.

3217. A bill being made a special order, the requirement that it shall be considered in Committee of the Whole is waived.—On March 26, 1890,[6] the House adopted this special order:

Resolved, That to-day, immediately after the passage of this resolution, the House enter upon the consideration of the bill for the admission of Wyoming, and at 6 o'clock and 30 minutes take a recess until 11 o'clock Thursday next; and at 1 o'clock of that day the previous question be considered as ordered on the three amendments proposed by the minority and on the bill to its passage.

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[1] First session Fifty-fifth Congress, Record, p. 352.

[2] See section 5326 of this work.

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

[4] Second session Forty-ninth Congress, Record, p. 42.

[5] John G. Carlisle, of Kentucky, Speaker.

[6] First session Fifty-first Congress, Journal, p. 388; Record, pp. 2663, 2664.

The bill having been taken up, Mr. John H. Rogers, of Arkansas, raised the point of order that the bill should receive its first consideration in Committeee of the Whole, as it carried an appropriation.

The Speaker[1] overruled the point of order.

3218. On January 21, 1879,[2] Mr. Clarkson N. Potter, of New York, called up for consideration a resolution which, on the preceding day, had been made a special order for this day, and which provided for an appropriation to enable the Committee upon the Investigation of Electoral Frauds to examine certain alleged cipher telegrams connected with allegations of the use of corrupt influences on electors or canvassing boards in the States of Florida, South Carolina, and Oregon.

Mr. Omar D. Conger, of Michigan, made the point of order that under the rules the resolution should be considered in Committee of the Whole.

The Speaker[3] held:

By unanimous consent the resolution was made a special order immediately after the reading of the Journal. * * * A special order, where the understanding is by unanimous consent that a matter shall be considered in the House, waives all rules that would prevent its consideration in the House. Besides, the resolution does not appropriate money, but directs its payment out of the contingent fund of the House, already or to be hereafter appropriated.

3219. On January 4, 1883,[4] Mr. John A. Kasson, of Iowa, from the Select Committee on Reform in the Civil Service, reported back a bill in accordance with the terms of this special order:

On motion of Mr. Kasson, by unanimous consent, Senate bill No. 133, to regulate and improve the civil service of the United States, and Senate bill No. 2288, to prevent officers or employees of the United States from collecting moneys, etc., were taken from the Speaker's table, read three times, ordered to be printed, and referred to the Committee on Reform in the Civil Service, with leave to report thereon at any time.

Mr. Richard P. Bland, of Missouri, made the point of order that the bill, as it created new offices and provided for new salaries, should be considered in Committee of the Whole.

The Speaker[5] said:

The Chair has stated that the House by unanimous consent gave the Committee on Reform in the Civil Service the right to report this bill back at any time. Under the uniform practice of the House that gives the right for immediate consideration of the bill when reported back; makes it, in fact, a special order in the House. Within the last three days several bills reported by the Committee of Ways and Means, which were made a special order, were considered in the House and not in Committee of the Whole.

3220. On January 6, 1883,[6] the House took up the bill (H. R. 7061) to remove certain burdens on the American merchant marine, etc., under a special order which made the bill a continuing order.

Mr. John H. Reagan, of Texas, made the point of order that the bill must have its first consideration in Committee of the Whole.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Third session Forty-fifth Congress, Record, p. 608; Journal, pp. 241, 242.

[3] Samuel J. Randall, of Pennsylvania, Speaker.

[4] Second session Forty-seventh Congress, Record, pp. 859, 860; Journal, pp. 162, 163.

[5] J. Warren Keifer, of Ohio, Speaker.

[6] Second session Forty-seventh Congress, Record, pp. 925, 926; Journal, p. 181.

After debate the Speaker[1] pro tempore said:

Following the uniform rulings of the present Speaker of the House, as well as the ruling of his immediate predecessor, the gentleman from Pennsylvania [Mr. Randall], the Chair has no difficulty in overruling the point of order.

3221. On February 20, 1890,[2] the Speaker announced as a special order of business the bills of the House (H. R. 6883) to provide for celebrating the four hundredth anniversary of the discovery of America by Christopher Columbus, by holding an international exhibition of arts, industries, manufactures, and the products of the soil, mine, and sea, in the city of ———, in the year 1892, and (H. R. 6884) to provide for celebrating the four hundredth anniversary of the discovery of America by Christopher Columbus, by holding an international exhibition of arts, industries, manufactures, and the products of the soil, mine, and sea at the national capital in the year 1892, under the terms of the following resolution:

Resolved, That Thursday and Friday, February 20 and 21, after the approval of the Journal, be set aside for general debate on bills H. R. 6883 and 6884, and that the vote be taken on Monday, February 24, in the manner prescribed by the resolution submitted with the committee's report, unless the House shall have determined by vote that a world's fair shall not be held.

Mr. Benton McMillin, of Tennessee, made the point of order that the bills, under clause 3 of Rule XXIII must be considered in a Committee of the Whole.

The Speaker[3] overruled the point of order on the ground that under the uniform practice of the House the effect of a special order for the consideration of a bill on a particular day exempted it from the provision of the rule quoted; and also on the further ground that under the terms of the resolution fixing the consideration of the bills named, to-day and to-morrow were assigned for general debate, no vote to be taken thereon.

3222. On April 28, 1896,[4] the House took up the bill (H. R. 6739) for the relief of John N. Quackenbush.

Mr. Nelson Dingley, of Maine, raised a question of order as to whether or not the bill should receive its first consideration in Committee of the Whole.

It having been stated that the bill had on a former day been postponed and made a special order for this day, the Speaker[3] decided that the bill should be considered in the House.

3223. On April 6, 1898,[5] Mr. John A. T. Hull, of Iowa, called up the special order provided for in this entry in the Journal:

On motion of Mr. Hull, by unanimous consent, it was ordered that on Wednesday, April 6, immediately after the reading of the Journal, the bill (H. R. 9253) for the better organization of the line of the Army of the United States shall be considered in the House.

Mr. Joseph W. Bailey, of Texas, in making inquiry as to whether or not the bill should be considered in Committee of the Whole, referred to the entry in the Congressional Record as not showing that consideration in the House was required.

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[1] Joseph G. Cannon, of Illinois, Speaker pro tempore.

[2] First session Fifty-first Congress, Journal, p. 260; Record, p. 1551.

[3] Thomas B. Reed, of Maine, Speaker.

[4] First session Fifty-fourth Congress, Record, p. 4530.

[5] Second session Fifty-fifth Congress, Record, p. 3620.

After debate the Speaker[1] said:

The Chair desires to add that not only does the Journal control, but even if the language used was that which was contended for, as against the Journal of the House, nevertheless, under the ruling of Mr. Carlisle, it would be considered in the House.

3224. On June 17 1902[2] the House was acting under a special order which devoted the day to business presented by the Committee on the Judiciary, when Mr. George W. Ray, of New York, called up the bill (H. R. 14923) for the appointment of five additional United States commissioners and five additional constables in Indian Territory.

A question being raised as to the consideration of the bill in Committee of the Whole, the Speaker[3] said:

The Chair thinks that the special order allows the gentleman to bring it up in the House.

3225. A Committee of the Whole ordinarily reports only such amendments as it has agreed to; but sometimes by direction of a special order it reports also amendments pending and undisposed of when it rises.—On Friday, August 5, 1892[4] the House was considering the bill (H. R. 9710) amendatory of the act providing for the Columbian Exposition, under the terms of a special order which provided:

That at the hour of 1 o'clock on Friday next, unless said bill shall have been sooner disposed of, the Committee of the Whole shall report said bill and pending amendments to the House, and the previous question shall then be considered as ordered on the amendments, on the bill to its engrossment and third reading, and to its final passage; and the vote shall then be taken on said amendments, on the engrossment and third reading, and should the latter motion prevail, on the passage of the bill.

In accordance with this order the committee rose and the Chairman reported the bill to the House without recommendation, and also reported that when the committee rose there was pending therein and undisposed of an amendment in the nature of a substitute for the first section, the provisions of which were therewith given.

Mr. Albert J. Hopkins, of Illinois, made the point of order that the amendment proposed in committee, not having been reported from the Committee of the Whole, the same was not pending; that the previous question applied to the bill and such amendments as might be reported from the Committee of the Whole, and that therefore the only vote to be taken was upon the bill itself.

The Speaker[5] overruled the point of order, holding that the resolution must be construed as permitting a vote on the amendments pending and undisposed of in committee and so reported to the House, although without recommendation by the committee.

3226. On February 1, 1894,[6] at 12 m., pursuant to the terms of a special order, the Committee of the Whole House on the state of the Union rose and the Chairman reported that the committee having had under consideration the bill (H. R. 4864) to reduce taxation, to provide revenue for the Government, and for other purposes, had

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[1] Thomas B. Reed, of Maine, Speaker.

[2] First session Fifty-seventh Congress, Record, p. 6961.

[3] David B. Henderson, of Iowa, Speaker.

[4] First session Fifty-second Congress, Journal, p. 355; Record, p. 7100.

[5] Charles F. Crisp, of Georgia, Speaker.

[6] Second session Fifty-third Congress, Journal, p. 128; Record, p. 1792.

agreed to sundry amendments thereto; also that when the committee arose there was pending in the Committee of the Whole an amendment, as follows:

On page 29, lines 23 and 24, amend by striking out the word "twenty," in line 23, and inserting the word "twenty-five," and striking out the word "thirty,' in line 24, and inserting the word "thirty-five."

For which amendment a substitute was pending, as follows:

Amend by striking out in line 23 the words "twenty per cent ad valorem" and inserting the words "twenty-two cents per bushel;" and by striking out in line 24 the words "thirty per cent ad valorem" and inserting the words "thirty-two cents per bushel."

After three hours' debate, the previous question having, by the special order of January 9,[1] been ordered on the pending amendments and on the bill to its passage, the Speaker stated that the question would first be taken on the substitute for the pending amendment undisposed of by the Committee of the Whole, which had been reported to the House.

Mr. Daniel Lockwood, of New York, submitted the point of order that the amendment not having been agreed to by the Committee of the Whole was not before the House.

The Speaker[2] overruled the point of order, holding that under the clause of the special order, to wit,

That at the hour of 12 o'clock m. said bill, with all amendments recommended by or that may be pending in Committee of the Whole, shall be reported to the House,

amendments pending and undisposed of in Committee of the Whole and so reported to the House were also pending in the House and were to be acted upon.

3227. On June 22, 1894,[3] the House was considering the bill (H. R. 7007) regulating the sale of certain agricultural products, defining "options" and "futures," etc., under a special order adopted on the preceding day and providing—

* * * to permit amendments and debate in Committee of the Whole under the five-minute rule for two hours immediately after the morning hour on to-morrow, the bill to be then reported to the House, the previous question to be then ordered on the bill to its passage.

This order was amendatory of a prior one which had provided for a vote on "pending amendments."

At the hour fixed the Committee of the Whole arose and the Chairman reported that the committee had had the bill under consideration and had directed him to report the same with amendments, and with the recommendation that as so amended it do pass.

Mr. Benjamin F. Funk, of Illinois, made the point of order that under the order of yesterday and of the preceding day, by which the previous question was ordered on the bill and amendments, an amendment which he had proposed in Committee of the Whole, and which had not been disposed of, should be voted on by the House, although not reported from the committee.

The Speaker pro tempore[4] overruled the point of order submitted by Mr. Funk, holding that the order for the previous question only included amendments favorably reported from the Committee of the Whole.

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[1] For full terms of this special order see section 3258 of this chapter.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] Second session Fifty-third Congress, Journal, pp. 441, 443, 445; Record, pp. 6732, 6736.

[4] Joseph W. Bailey, of Texas, Speaker pro tempore.

3228. On January 29, 1895,[1] the House was considering the bill (H. R. 8310) to amend an act entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," under a special order, which provided that after a certain time given to debate:

* * * The committee shall then rise and report the bill with pending amendments, if any, to the House; when the previous question shall be considered ordered on the pending amendments, if any, and the bill to its final passage. The vote shall then be taken without intervening motion or motions until the matter is fully disposed of.

The committee having risen according to the order, the Chairman reported that the committee had had under consideration the said bill H. R. 8310, and that when the committee arose there was pending in committee the following amendment, to wit:

But this repeal shall not be held to imply that the United States surrenders or waives its right, under international law and treaties containing the favored-nation clause, to offset export bounties with equivalent differential duties whenever Congress deems the exercise of this right expedient.

The Speaker pro tempore[2] stated that the question would be on agreeing to the amendment reported as pending in committee.

Mr. W. C. P. Breckinridge, of Kentucky, made the point that the amendment not having been acted on by the Committee of the Whole it was not now pending in the House.

The Speaker pro tempore[2] overruled the point, holding that pursuant to the resolution under which the bill was now being considered an amendment pending in committee and undisposed of at the time the committee arose was before the House to be voted on.

3229. When a special order directs a Committee of the Whole to report "pending amendments," this does not include an amendment only partially read when the Committee of the Whole rises.

Form of special order limiting the time of consideration of a bill in Committee of the Whole and in the House.

On February 7, 1895,[3] the House was considering the bill (H. R. 8705) to authorize the Secretary of the Treasury to issue bonds to maintain a sufficient gold reserve, etc., under a special order, which provided:

It shall be in order, immediately after general debate is closed, to offer an amendment to any section of the bill, and two substitutes for the whole bill (provided that no more amendments shall be pending at one time than are permitted by the rules of the House), and no more than thirty minutes' debate (fifteen minutes on a side) shall be permitted on any amendment before the vote shall be taken thereon; that on Thursday, the 7th instant, after the call of committees for reports, the House shall again go into Committee of the Whole for the consideration of said bill under the five-minute rule, with the modification mentioned herein, and consideration thereof shall continue until 3.30 p. m. of said day, when the committee shall rise and report said bill to the House, together with any amendments that may have been agreed to, or may be pending, in the committee, when the previous question shall be considered as ordered on said amendments and on the bill to its passage, whereupon, without intervening motion, votes shall be taken on said bill until the same shall have been fully disposed of.

The committee having risen pursuant to this order, the Chairman reported the bill with amendments recommended by the Committee of the Whole; also that when

[1] Third session Fifty-third Congress, Journal, pp. 91, 92; Record, p. 1517.

[2] James D. Richardson, of Tennessee, Speaker pro tempore.

[3] Third session Fifty-third Congress, Journal, pp. 105, 110, 111, 114; Record, p. 1921.

the committee arose there were pending in said committee (as authorized by the special order) two proposed substitutes for the bill, one submitted by Mr. Cox, of Tennessee, to which substitutes there were pending an amendment proposed by Mr. Cobb, of Alabama; the other, a substitute submitted by Mr. Reed, to which latter substitute there was pending an amendment submitted by Mr. Bryan.

Mr. William L. Terry, of Arkansas, made the point that there was also pending and undisposed of an amendment, submitted by himself, to the original text of the bill which should also be voted on in the House.

It appearing that the amendment proposed by Mr. Terry had not been completely read, and not having been reported to the House, the Speaker[1] held that it was not now before the House, and that the Chairman of the Committee of the Whole had properly omitted the same from his report.

3230. Construction of a special order limiting time for making motions to suspend the rules.—On June 5, 1906,[2] a motion had been made to suspend the rules and pass the bill (H. R. 15442) to establish a Bureau of Immigration and Naturalization, and to provide for a uniform rule for the naturalization of aliens throughout the United States.

At the conclusion of the reading of the bill, Mr. W. Bourke Cockran, of New York, raised the question of order that, as the two hours of this day set apart for motions to suspend the rules had expired, it was not in order to proceed further with the bill.

The Speaker[3] held:

The Chair will state (reading from the Record):

"ORDER OF BUSINESS.

"Mr. PAYNE. Mr. Speaker, the House is about to adjourn, and I ask unanimous consent that for two hours to-morrow, immediately after the reading of the Journal, it shall be in order to make motions to suspend the rules and pass bills the same as in order to-day."

The gentleman will notice that it is not that it shall be in order to make a motion to consider for two hours, but to make motions the same as to-day. Now, under the construction of the order made by unanimous consent, it seems to the Chair the usual construction would be the motion might be made within the two hours, and it would remain in the nature of unfinished business; but it would not be in order to recognize anybody or at any time after 2 o'clock to move to suspend the rules. Recognition having been given, and the motion made prior to 2 o'clock, in the opinion of the Chair the point of order is not well taken, and is therefore overruled.

Mr. Cockran having appealed, the appeal was laid on the table, ayes 155, noes 37.

3231. Forms of special orders for limiting the time of consideration of a bill and restricting amendments.—On December 26, 1895,[4] this special order was reported from the Committee on Rules and agreed to by the House for the consideration of an emergency revenue bill:

Resolved, That immediately after the adoption of this resolution it shall be in order in the House to call up for debate, the previous question being considered as ordered, a bill reported by the Committee on Ways and Means entitled "A bill to temporarily increase revenue to meet the expenses of Government and provide against a deficiency;" that at 5 o'clock, without delay or other motion, the vote shall be taken. General leave to print is hereby granted for ten days.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] First session Fifty-ninth Congress, Record, p. 7873.

[3] Joseph G. Cannon, of Illinois, Speaker.

[4] First session Fifty-fourth Congress, Record, p. 305.

3232. On December 27, 1895,[1] the House adopted this order:

Resolved, That immediately upon the adoption of this rule it shall be in order in the House to call up for debate a bill reported by the Committee on Ways and Means entitled "A bill to maintain and protect the coin-reserve fund, and to authorize the issue of certificates of indebtedness to meet temporary deficiencies of revenue," the previous question being considered as ordered; that at 5 p. m. this day a recess be taken until 7 p. m., when the session shall continue until 10 p. m.; that debate shall be resumed immediately after reading the Journal Saturday, December 28, and that the vote shall be taken at 3 p. m. on the bill without delay or other motion, separate votes being taken on each section, if demanded, and that leave to print be granted for ten days.

3233. On February 13, 1903,[2] the following special order was reported from the Committee on Rules and agreed to by the House:

Resolved, That immediately upon the adoption of this resolution the House shall proceed to debate for a period not exceeding one hour the bill (S. 7053) to further regulate commerce with foreign nations and among the States, with the amendments thereto recommended by the Committee on Interstate and Foreign Commerce, as set forth in their report (No. 3765) on the said bill; and at the end of the debate a vote shall be taken on the said amendments and on the bill to its final passage, without intervening motion.

3234. On November 16, 1903,[3] Mr. John Dalzell, from the Committee on Rules, submitted the following resolution, which was agreed to after debate, yeas 183, nays 160:

Resolved, That immediately on the adoption of this rule, and immediately after the reading of the Journal on each day thereafter until the bill hereinafter mentioned shall have been disposed of, the House shall resolve itself into Committee of the Whole House on the state of the Union for consideration of the bill H. R. 1921, a bill to carry into effect a convention between the United States and the Republic of Cuba, signed on the 11th day of December, 1902; that not later than 4 o'clock on November 19 general debate shall be closed in Committee of the Whole, and whenever general debate is closed the committee shall rise and report the bill to the House; and immediately the House shall vote without debate or intervening motion on the engrossment and third reading and on the passage of the bill.

3235. On April 19, 1904,[4] Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, reported the following resolution, which was agreed to by the House:

Resolved, That immediately after the adoption of this resolution the bill (H. R. 14749) entitled "A bill to enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of New Mexico and of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States," shall be taken up for consideration in the House as in Committee of the Whole, and general debate may be had on said bill until 4.30 o'clock p. m., at which hour, or earlier if said general debate shall cease earlier, a vote shall at once be taken upon the following amendments to said bill, which shall be considered as pending—that is to say, on page 5, in line 2, after the word "marriages," and on page 22, in line 25, before the word "are," insert in each case the words "and the sale, barter, or giving of intoxicating liquors to Indians," so that the closing sentence of the paragraph in each case as amended shall read: "and that polygamous or plural marriages and the sale, barter, or giving of intoxicating liquors to Indians are forever prohibited"—and on the bill to its final passage, without intervening motion or appeal.

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[1] First session Fifty-fourth Congress, Record, p. 343.

[2] Second session Fifty-seventh Congress, Record, pp. 2151–2155; Journal, p. 240.

[3] First session Fifty-eighth Congress, Journal, pp. 53, 54; Record, pp. 254–259.

[4] Second session Fifty-eighth Congress, Record, p. 5094, Journal, p. 628.

3236. On January 24, 1906,[1] Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, reported the following resolution, which was agreed to by the House, yeas 188, nays 158:

Resolved, That immediately upon the adoption of this order, and daily hereafter, immediately on the approval of the Journal, so long as the bill hereinafter referred to shall be pending in Committee of the Whole House on the state of the Union, the House shall resolve itself into Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 12707) to enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of New Mexico and of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States; that after the said bill shall have been read general debate shall continue until Thursday next at 3 p. m.; and at that hour, or, if general debate shall be concluded before that hour, immediately upon the conclusion of said general debate, the Committee of the Whole House on the state of the Union shall rise and report the bill to the House; whereupon immediately, without debate, intervening motion, or appeal, a vote shall be taken on the bill to a final passage: *Provided further,* That general leave to print remarks on the bill is hereby granted for six legislative days after Thursday, the 25th day of January next.

3237. Form of special order for considering a class of bills in Committee of the Whole, with a limit of debate for each bill.—On January 18, 1897,[2] the House, by the following special order, gave additional time for the consideration of private pension bills:

Resolved, That on Tuesday, the 10th day of January, immediately after the reading of the Journal, the House shall resolve itself into Committee of the Whole House for the consideration of such bills as are in order on the sessions of Friday evenings, and that in the consideration of such bills under this resolution ten minutes' debate shall be allowed on each bill, with the amendments thereto, such time to be divided equally between those favoring and those opposing the bill: *Provided, however,* That nothing in this resolution shall be construed as interfering with conference reports on general appropriation bills.

3238. Form of special order for considering a bill in Committee of the Whole with provision for a report and action in the House at a certain time.—On February 25, 1907,[3] Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, reported the following resolution, which was agreed to, yeas 161, nays 109:

Resolved, That immediately upon the adoption of this order and on each day hereafter until and including Friday of this week, at such time as the House shall not be considering general appropriation bills, conference reports, or motions to suspend the rules, the House shall resolve itself into Committee of the Whole House on the state of the Union for the consideration of the bill (S. 529) to promote the national defense, to create a naval reserve, to establish American ocean mail lines to foreign markets, and to promote commerce; and after five hours of general debate, which shall be confined to the bill, the substitute amendment reported by the Committee on Merchant Marine and Fisheries shall be read for amendment under the five-minute rule; and on Friday, March 1, at 3 o'clock, unless consideration shall have been sooner concluded, the Committee of the Whole shall rise and report the bill, whereupon the previous question shall be considered as ordered on the amendment in the nature of a substitute and on any pending amendment thereto and on the bill to a final passage: *Provided,* That at any time, by direction of the chairman of the Committee of the Whole, the committee shall rise to consider in the House general appropriation bills, conference reports, and motions to suspend the rules: *And provided further,*

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[1] First session Fifty-ninth Congress, Record, pp. 1499–1507.

[2] Second session Fifty-fourth Congress, Record, p. 903.

[3] Second session Fifty-ninth Congress, Record, p. 3944.

That at the conclusion of the consideration of the aforesaid matters the Committee of the Whole shall resume its sitting on direction of the Speaker.

General leave to print shall be granted for ten days on the bill, said ten days to run from the adoption of this order.

3239. On June 20, 1906,[1] Mr. John Dalzell, from the Committee on Rules, submitted the following order, which was agreed to by the House, yeas 143, nays 72:

Resolved, That immediately upon the adoption of this order, and daily thereafter after the disposal of business on the Speaker's table, if there be any, and consideration of such conference reports as may be called up, the House shall resolve itself into Committee of the Whole House on the state of the Union for the consideration of the bill S. 88, "An act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," and after general debate, which shall continue not over six hours and which shall be confined to a discussion of the bill, the amendment in the nature of a substitute, reported by the Committee on Interstate and Foreign Commerce, shall be considered under the five-minute rule; and after the consideration of the said amendment in the nature of a substitute, both in general debate and for amendment, shall have continued not more than twelve hours, the committee shall rise and report the bill to the House with the substitute amendment and with such amendments to the said substitute as may have been agreed to; and thereupon the vote shall be taken on the substitute, the amendments thereto, and on the bill to the final passage without intervening motion or appeal: *Provided,* That at any time the committee may rise informally to enable conference reports, Senate amendments to general appropriation bills, or business on the Speaker's table to be considered in the House.

3240. On June 16, 1902,[2] Mr. Henry A. Cooper, of Wisconsin, presented, by unanimous consent, and the House agreed to, the following:

That immediately after the reading of the Journal on Thursday, June 19, and each day thereafter until and including Thursday, June 26, the House shall resolve itself into the Committee of the Whole House on the state of the Union for the consideration of Senate bill 2295.

That general debate on said bill shall continue for five days.

That after Thursday, June 19, and during the continuance of this order, the House shall meet each day at 11 o'clock, and 5 o'clock on each day a recess shall be taken until 8 o'clock for evening sessions, which evening sessions shall continue not later than 10.30 p. m. and be devoted to debate only on said bill.

That on Wednesday, June 25, the House, in Committee of the Whole, shall immediately proceed with the consideration of the said bill under the five-minute rule; that consideration of the text of the Senate bill for amendment shall be waived and the Committee of the Whole shall proceed to consider, for discussion and amendment by sections, the substitute amendment proposed by the Committee on Insular Affairs: *Provided, however,* That at any time amendments may be offered on behalf of said committee to any part of said substitute amendment.

That at 4 o'clock on Thursday, June 26, the Committee of the Whole shall rise and report said bill and all pending amendments to the House, and thereupon the previous question shall be considered as ordered upon the bill and all pending amendments thereto, including one amendment in the nature of a substitute to be offered by the minority of the Committee on Insular Affairs, to final disposition without intervening motions.

That leave is hereby granted to all Members speaking on said bill to extend their remarks in the Record.

Provided, That this order of the House shall not interfere with the consideration of appropriation or revenue bills, conference reports, or Senate amendments to House bills. If, however, the consideration of any such bills or reports consumes an hour or more of the time of the House on any day during the continuance of this order then the time for the consideration of the bill S. 2295 and the time for reporting the same to the House by the Committee of the Whole shall be correspondingly extended. Such extension of time to apply to the debate under the five-minute rule.

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[1] First session Fifty-ninth Congress, Record, p. 8836.

[2] First session Fifty-seventh Congress, Journal, p. 811; Record, p. 6866.

3241. On April 3, 1906,[1] Mr. John S. Williams, of Mississippi, from the Committee On Rules,[2] reported the following, which was agreed to by the House:

Resolved, That immediately upon the adoption of this resolution it shall be in order to consider the bill (H. R. 14316) entitled "A bill to further enlarge the powers and authority of the Public Health and Marine-Hospital Service, and to impose further duties thereon," with the amendment in the nature of a substitute as proposed by the Committee on Interstate and Foreign Commerce and printed on pages 4669 and 4670 of the Record of March 31, 1906; and the said amendment in the nature of a substitute shall be read by sections for consideration in the House as in Committee of the Whole.

General debate shall continue until 4 o'clock p. m. and thereafter debate under the five-minute rule until 5 o'clock p. m., at which time the previous question shall be considered as ordered upon the bill and all pending amendments to the final passage. Amendments shall be in order at any time during the consideration of the bill under the five-minute rule to any paragraph thereof, whether the same shall have been reached or not.

3242. Form of special order for amending a Senate bill and asking a conference with the Senate thereon.—On February 23, 1907,[3] Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, reported the following resolution, which was agreed to by the House:

Resolved, That the bill (S. 5133) entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon" be, and the same is hereby, taken up for consideration; that the amendment recommended by the Committee on Interstate and Foreign Commerce be, and hereby is, agreed to, with the following amendments thereto, to wit:

1. In line 3, on page 4, and in line 6, on page 5, strike out the word "knowingly."
2. Beginning with the word "unless," in line 13, on page 4, strike out the language to and including the word "duty," in line 17 of said page.
3. In lines 13 and 14, on page 5, strike out the words "under direction of the Attorney-General."
4. In line 14, on page 5, strike out the word "duty" and insert the word "satisfactory."
5. In line 3, on page 6, strike out the word "ordinary" and insert the word "reasonable."
6. In line 22 and in line 24, on page 4, strike out the word "consecutive."

That the bill as amended be, and hereby is, passed; that a conference be, and hereby is, asked with the Senate, and that the Speaker be, and he hereby is, directed to appoint, without intervening motion or appeal, the managers of the conference on the part of the House.

3243. Form of special order for considering numerous Senate amendments to a House bill without permitting debate and a vote on each separate amendment, and for asking a conference at the same time.—The consideration of the Senate amendments to a tariff bill sometimes takes place under a special order like that adopted July 8, 1897:[4]

Resolved, That upon the adoption of this resolution it shall be in order to move to nonconcur in gross in the Senate amendments to House bill No. 379 and agree to a committee of conference, asked for by the Senate, on the disagreeing votes of the two Houses; and the House shall, without further delay, proceed to vote upon said motion; and if the said motion prevail, a committee of conference shall be appointed without instructions; and said committee shall have authority to join with the Senate committee in renumbering the paragraphs and sections of said bill when finally agreed upon.

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[1] First session Fifty-ninth Congress, Record, p. 4661.

[2] Mr. Williams was a member of the minority party in the House.

[3] Second session Fifty-ninth Congress, Record, p. 3755.

[4] First session Fifty-fifth Congress, Record, p. 2478.

3244. On June 6, 1898,[1] the Senate amendments to the war-revenue bill were nonconcurred in under this order:

Resolved, That upon the adoption of this resolution it shall be in order to move to nonconcur in gross in the Senate amendments to House bill No. 10100 entitled "An act to provide ways and means to meet war expenditures," and agree to a committee of conference asked for by the Senate on the disagreeing votes of the two Houses; and the House shall, without further delay, proceed to vote upon said motion; and if the said motion prevail a committee of conference shall be appointed without instructions.

3245. On April 11, 1900,[2] Mr. John Dalzell, of Pennsylvania, as a privileged report from the Committee on Rules, presented the following resolution, which was agreed to by the House:

Resolved, That immediately upon the adoption of this resolution the Committee of the Whole House on the state of the Union shall be discharged from the consideration of the bill (H. R. 8245) entitled "An act temporarily to provide revenues for the relief of the island of Porto Rico, and for other purposes," and the Senate amendments thereto; that the same shall be considered in the House until the hour of 5 o'clock p. m. on Wednesday, April 11, 1900, when, without delay or other motion, a vote shall be taken on the motion to concur in the said Senate amendments in gross; and all Members shall have leave to print on the subject of said bill and amendments for ten days from the adoption of this rule.

3246. On February 17, 1905,[3] Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, presented this resolution, which was agreed to by a vote of yeas 161, nays 127:

Resolved, That the Committee on the Territories be, and hereby is, discharged from the consideration of the bill (H. R. 14749) to enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of New Mexico and of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States, with the Senate amendments thereto; that the said Senate amendments be, and hereby are, disagreed to by the House, and a conference asked of the Senate on the disagreeing votes of the two Houses on the said bill.

3247. On May 25, 1906,[4] Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, submitted the following resolution, which was agreed to, yeas 144, nays 105:

Resolved, That the bill (H. R. 12987) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission, be, and hereby is, taken from the Speaker's table with Senate amendments thereto, to the end that the said amendments be, and hereby are, disagreed to, and a conference be, and hereby is, asked with the Senate on the disagreeing votes upon the said amendments; and the Speaker shall immediately appoint the conferees without intervening motion.

3248. On May 31, 1906,[5] Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, reported the following resolution, which was agreed to, yeas 154, nays 69:

Resolved, That the bill (H. R. 16953), entitled "An act making appropriations for the service of the Post-Office Department," etc., is hereby taken from the Speaker's table, to the end that the Senate amendments be, and hereby are, disagreed to in gross, and a conference be, and hereby is, asked with the Senate on the disagreeing votes of the two Houses; and the Speaker be, and hereby is, directed to appoint the managers of the conference without intervening motion.

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[1] Second session Fifty-fifth Congress, Record, p. 5566.

[2] First session Fifty-sixth Congress, Record, p. 4028; Journal, p. 459.

[3] Third session Fifty-eighth Congress; Record, pp. 2785–2789.

[4] First session Fifty-ninth Congress, Record, p. 7428.

[5] First session Fifty-ninth Congress, Record, p. 7674.

3249. On June 12, 1906,[1] Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, submitted the following resolution, which was agreed to, yeas 184, nays 100:

Resolved, That the bill (H. R. 12987) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission, with the Senate amendments thereto, be, and hereby is, taken from the Speaker's table; that the House further insists on its disagreement to the Senate amendments thereto in gross, and that the conference asked by the Senate is hereby agreed to; whereupon immediately, without intervening motion, the managers of the conference shall be appointed.

3250. Example of special order for disposition of Senate amendments. By special order the motion for a recess has been given temporary privilege.

On the calendar day of February 27, 1903[2] (legislative day of February 26), the Committee on Rules reported, and the House agreed to, the following:

Resolved, That immediately upon the adoption of this rule, and at any time thereafter during the remainder of this session, it shall be in order to take from the Speaker's table any general appropriation bill returned with Senate amendments, and such amendments having been read, the question shall be at once taken without debate or intervening motion on the following question: "Will the House disagree to said amendments en bloc and ask a conference with the Senate?" And if this motion shall be decided in the affirmative, the Speaker shall at once appoint the conferees, without the intervention of any motion. If the House shall decide said motion in the negative, the effect of said vote shall be to agree to the said amendments.

And further, For the remainder of this session the motion to take a recess shall be a privileged motion and take precedence of the motion to adjourn.

On March 2[3] (legislative day of February 26) the Committee on Rules reported, and the House agreed to, the following:

Resolved, That immediately upon the adoption of this order, or at any time thereafter, the Speaker may lay before the House the bill (H. R. 12199) to regulate the immigration of aliens into the United States, now on the Speaker's table, and, the Senate amendments thereto having been read, the question shall be at once taken without debate or intervening motion on the following question: "Will the House disagree to said amendments en bloc and ask a conference with the Senate?" And if this motion shall be decided in the affirmative, the Speaker shall at once appoint the conferees, without the intervention of any motion. If the House shall decide said motion in the negative, the effect of said vote shall be to agree to the said amendments.

And further, That for the remainder of this session whenever a conference report shall have been presented and read, there shall be ten minutes of debate, and at the end of that time the previous question shall be considered as ordered on agreeing to said report.

3251. Form of special order for consideration of an omnibus claims bill in the House and in Committee of the Whole, with arrangement for purging the bill of unauthorized items.—On February 4, 1895,[4] this special order was adopted, specifying the method as well as time of consideration:

Resolved, That immediately upon the adoption of this resolution the House shall resolve itself into Committee of the Whole for the consideration of House bill 8445; that should there be in said bill any item or claim which is not for stores and supplies, and which has not been examined, investigated, and reported favorably by the Court of Claims under the act of 1883 known as the Bowman Act, and

[1] First session Fifty-ninth Congress, Record, p. 8340.

[2] Second session Fifty-seventh Congress, Journal, p. 299; Record, pp. 2760–2763.

[3] Journal, p. 329; Record, p. 2913–2916.

[4] Third session Fifty-third Congress, Journal, p. 104.

reported favorably by the Committee on War Claims of the House, the same shall be stricken out on point of order made thereon; and no claim shall be in order as an amendment to said bill which is not of the same class and been so reported by the Court of Claims and the Committee on War Claims; that at the hour of 4 o'clock p. m. the same day the committee shall rise and report the bill and amendments to the House, when the previous question shall be considered as ordered on amendments and on the bill to its passage, whereupon, without intervening motion, votes shall be taken upon said bill until the same shall have been fully disposed of.

3252. Form of special orders for assigning a day for consideration in the House of bills reported from a certain committee.—On July 10, 1886,[1] the House gave special time to a certain committee by adopting this resolution, reported from the Committee on Rules:

Resolved, That Tuesday, the 13th day of July, immediately after the reading of the Journal, be, and is hereby, set apart for the consideration of such business as may be presented by the Committee on Ways and Means, not to include any bill raising revenue; and if any bill shall be under consideration and not disposed of when the House adjourns on that day the consideration of such bill shall continue from day to day, immediately after the reading of the Journal, until disposed of.

3253. On May 18, 1896:[2]

Resolved, That immediately after the adoption of this rule, and until 4 o'clock Wednesday, May 20, the time of the House shall be given to the consideration of such bills on the House Calendar as have been reported by the Committee on Immigration and Naturalization, and that at 4 o'clock May 20 the previous question shall be considered as ordered on the pending bill and pending amendments to the passage: *Provided, however,* That nothing in this resolution shall be construed as interfering with general appropriation bills and conference reports.

3254. Form of special order providing for the consideration of two distinct bills successively, either in the House alone or in Committee of the Whole.—On May 20, 1896:[3]

Resolved, That Thursday and Friday next shall be allotted to bills from the Committee on Labor, as follows:

Thursday, May 21, 1896, the House shall, immediately after the reading of the Journal, resolve itself into Committee of the Whole on the state of the Union for the consideration of House bill 6119, entitled "A bill authorizing the appointment of a nonpartisan commission to collate information and to consider and recommend legislation to meet the problems presented by labor, agriculture, and capital," and that at 4 o'clock p. m. on the same day the committee shall rise and report the bill, with such amendments as may have been adopted, to the House, whereupon the previous question shall be considered as ordered upon the amendments to the bill to its passage.

And, further, that on Friday, May 22, after the disposal of unfinished business, the House shall resolve itself into Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 268) entitled "A bill concerning carriers engaged in interstate commerce and their employees," and at 4 o'clock p. m. on that day the committee shall rise and report the bill to the House with such amendments as shall have been adopted, and thereupon the previous question shall be considered as ordered upon the amendments and bill to the passage: Provided, however, That nothing in this resolution shall be construed as interfering with general appropriation bills and conference reports.

3255. On February 2, 1894:[4]

Resolved, That immediately upon the adoption of this order the House proceed to the consideration of House resolution printed as Miscellaneous Document No. 75, reported from the Committee on

[1] First session Forty-ninth Congress, Record, pp. 6759, 6760; Journal, pp. 2171, 2172.

[2] First session Fifty-fourth Congress, Record, p. 5381.

[3] First session Fifty-fourth Congress, Record, p. 5466.

[4] Second session Fifty-third Congress, Journal, p. 132.

Foreign Affairs January 29, 1894, expressive of the sense of the House of Representatives relative to Hawaiian affairs; that the consideration thereof be resumed immediately after the first morning hour on the two legislative days following next after that day on which this order is adopted; that at the hour of 4 o'clock p. m. on the last of said legislative days the previous question be considered as ordered on said resolution and pending amendments, and then, without intervening motion, the vote be taken thereon; that immediately after said resolution shall have been disposed of, and not before, the House shall proceed to the consideration of House resolution printed as Miscellaneous Document No. 43, reported adversely from the Committee on Foreign Affairs on December 21, 1893, relating to policy respecting intervention of the United States Government in affairs of foreign friendly governments; and the consideration thereof shall continue from day to day, after the second morning hour, until disposed of.

3256. On May 31, 1900,[1] Mr. John Dalzell, of Pennsylvania, reported the following resolution from the Committee on Rules, which was agreed to by the House:

Resolved, That House Joint Resolution 138, proposing an amendment to the Constitution of the United States, be made the special order in the House and taken up immediately on the adoption of this order; that general debate shall continue during the day and during a night session from 8 to 10.30 o'clock and until 5 p. m. Friday, June 1, when the previous question on the resolution and amendments thereto reported from the committee to its final passage shall be considered as ordered, and the vote taken thereon without delay or intervening motion.

That the bill (H. R. 10539) to amend an act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, be made the special order in the House and taken up immediately after the disposition of said House joint resolution 138; that general debate thereon be limited to one hour, thirty minutes on each side, and that the same be then considered under the five minute rule as in the Committee of the Whole until 4 o'clock p. m., of Saturday, June 2, when the previous question on the bill and pending amendments shall be considered as ordered and the final vote taken; that at the opening of the general debate on House joint resolution 138 the amendments to H. R. 10539, proposed on the part of the minority in their views as filed, shall be read from the Clerk's desk, and considered as pending when the vote is taken on said bill H. R. 10539, the time occupied in such reading not to be taken from the time of any Member; that all Members have leave to print upon such measure, or either of them within five days after final vote taken.

This rule shall not interfere with the consideration of conference reports.

3257. On February 5, 1903,[2] Mr. Charles H. Grosvenor, of Ohio, from the Committee on Rules, presented a resolution, which was amended and agreed to in the following form:

Resolved, That immediately upon the adoption of this rule it shall be in order to consider in the House the bill (H. R. 16458) to expedite the hearing of suits in equity pending or hereafter brought under the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies;" and after one hour of consideration, or so much thereof as may be necessary, the previous question shall be considered as ordered on said bill and pending amendments: *Provided,* That if before the consideration of the above-mentioned bill shall have been concluded the bill S. 6773, relating to the same subject-matter, shall have been received from the Senate, it shall be taken from the Speaker's table and substituted for consideration in lieu of the said bill H. R. 16458, and shall be considered in all respects as the bill H. R. 16458 would have been considered under the terms of this order; and that so soon as the said bill H. R. 16458, or the bill S. 6773, shall have been disposed of, the House shall resolve itself into Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 17) requiring all corporations engaged in interstate commerce to file returns with the Secretary of the Treasury, disclosing their true financial condition and of their capital stock, and imposing a tax upon such as have outstanding capital stock unpaid in whole or in part; and general debate on said bill shall continue for ten hours, when the amendment in the nature of a substitute recommended by the Committee on

[1] First session Fifty-sixth Congress, Record, p. 6300; Journal, p. 647.

[2] Second session Fifty-seventh Congress, Journal, p. 208; Record, pp. 1743–1746.

the Judiciary shall be read for amendment under the five-minute rule, and after three hours, unless said consideration under the five-minute rule shall be sooner concluded, the Committee of the Whole shall rise and report the bill with the substitute amendment as perfected by the Committee of the Whole; whereupon, without debate or intervening motion, the vote shall be taken on said amendment and the bill to final passage: *And provided further,* That on the legislative day succeeding the one on which this order shall begin to operate, the House shall meet at 10 a. m.; and that all Members have leave for five days to print on the subjects of either of the bills referred to in this order.

3258. Forms of special order for considering in the Committee of the Whole and the House, within certain limits of time, a general tariff bill.—On January 5, 1894,[1] the Committee on Rules reported and the House adopted this special order for the consideration of the general (called the Wilson) tariff bill:

Resolved, That after the passage of this resolution the House shall meet each legislative day at 11 o' clock a. m.; that, beginning to-day, without intervening motion, except conference reports and reports from the Committee on Rules, the Journal shall be read, business under clause 1, Rule XXIV, shall be disposed of, the Speaker shall call the committees for reports, and then the House shall resolve itself into Committee of the Whole House on the state of the Union for the consideration of H. R. 4864, "A bill to reduce taxation, to provide revenue for the Government, and for other purposes;" that general debate on said bill shall be limited to the hour of adjournment on Wednesday, the 10th of January; that on Thursday, the 11th of January, present, said bill shall be read through, and shall from day to day be open to amendment in any part thereof; that on Thursday, the 25th of January, at the hour of 12 o'clock m., said bill, with all amendments recommended by or that may be pending in Committee of the Whole, shall be reported to the House; that the previous question shall then be considered ordered upon pending amendments and the bill to its passage. That, without other motion, the vote shall then be taken on the pending amendments, on the engrossment and third reading, on a motion to recommit with or without instructions, should such motion be made, on the final passage of the bill, and on a motion to reconsider and lay on the table. That, beginning on Monday next, at the hour of 5.30 o'clock each day, the House shall take a recess until 8 o'clock, the evening session to be devoted to general debate on said bill only. General leave to print remarks on said bill is hereby granted.

3259. The form of special order adopted March 19, 1897,[2] for consideration of the general (called the Dingley) tariff bill was:

Resolved, That on and after Monday, March 22, 1897, and until the final vote on the bill hereinafter mentioned shall have been taken, the House shall meet on each legislative day at 10 o'clock a. m.; that on each of said days immediately after the reading of the Journal the House shall resolve itself into Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 379) to provide revenue for the Government and to encourage the industries of the United States; that general debate shall continue on said bill during each day until 5 o'clock p. m., and at evening sessions, to which a recess shall be taken, to be held from 8 o'clock till 11 o'clock p. m., until and including Thursday, the 25th day of March, unless sooner concluded; that from the conclusion of general debate until the 31st day of March there shall be debate upon the said bill by paragraphs, and during this time the bill shall be open to amendment as each paragraph is read, but committee amendments to any part of the bill shall be in order at any time; that not later than Wednesday, the 31st day of March, at 3 o'clock p. m. the said bill, with all amendments that shall have been recommended by the Committee of the Whole House on the state of the Union, shall be reported to the House, and the previous question shall then be considered as ordered on said amendments and said bill to its engrossment, third reading, and final passage, and on a motion to reconsider and lay on the table.

General leave to print remarks on said bill is hereby granted, to continue for twenty days after the final vote of the House thereon.

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[1] Second session Fifty-third Congress, Journal, p. 61.

[2] First session Fifty-fifth Congress, Record, p. 72; Journal, p. 24.

3260. Forms of special orders authorizing legislative provisions on general appropriation bills.—On March 25, 1904,[1] Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, submitted the following:

The Committee on Rules, to whom was referred House resolution No. 269:

"Resolved, That it shall be in order for the House in Committee of the Whole to consider so much of H. R. 13521 as is embraced between the word 'substation,' in line 25 of page 25, and the word 'For,' in line 13 on page 26, as if the same were not subject to a point of order"—

have had the same under consideration, and beg leave to report the same with the recommendation that it be agreed to by the House.

Mr. Dalzell explained as follows the purpose of the rule:

The rule provides that the text of the post-office appropriation bill contained between the word "substations," page 25, and the word "for," in line 13, page 26, shall be in order for consideration. I will read to the House what the text of the post-office bill is as described in the rule:

"On and after July 1, 1904, letter carriers of the rural free-delivery service shall receive a salary not exceeding $720 per annum, and no other or further allowance or salary shall be made to said carriers; and on and after said date said carriers shall not solicit business or receive orders of any kind for any person, firm, or corporation, and shall not, during their hours of employment, carry any merchandise for hire: *Provided,* That said carriers may carry merchandise for hire for and upon the request of patrons residing upon their respective routes whenever the same shall not interfere with the proper discharge of their official duties, and under such regulations as the Postmaster General may prescribe."

In other words, the effect of the rule is to put back again into the bill that which was taken out of it yesterday upon points of order, and to afford the Committee of the Whole a chance to consider that portion of the post-office appropriation bill as if the points of order had not been made.

The resolution was agreed to by the House.

Thereupon Mr. Charles H. Grosvenor, of Ohio, submitted another resolution from the Committee on Rules for a similar purpose, and it was agreed to.

3261. On February 17, 1903,[2] Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, presented the following resolution, which was considered and agreed to:

Resolved, That it shall be in order to consider, in the bill (H. R. 17288) making appropriations for the naval service for the fiscal year ending June 30, 1904, and for other purposes, legislation providing for increase of midshipmen, officers, and men in the line, staff corps, and Marine Corps of the Navy, and increase of limit of cost in reconstruction of Naval Academy; and it shall be in order to have a separate vote in the House, if the same be demanded, upon each of the foregoing subjects.

3262. On March 28, 1906,[3] Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, reported this resolution:

Resolved, That hereafter, in consideration of the bill (H. R. 16472) making appropriations for the legislative, executive, and judicial expenses of the Government, and for other purposes, in Committee of the Whole House on the state of the Union, it shall be in order to consider without intervention of a point of order, any section of the bill as reported, except section 8; and upon motion authorized by the Committee on Appropriations it shall be in order to insert in any part of the bill any provision reported as part of the bill and heretofore ruled out on a point of order.

After debate this resolution was agreed to, yeas 169, nays 9.

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[1] Second session Fifty-eighth Congress, Record, pp. 3705–3710.

[2] Second session Fifty-seventh Congress, Journal, p. 257; Record, pp. 2312, 2313.

[3] First session Fifty-ninth Congress, Record, p. 4398.

3263. On June 27, 1906,[1] Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, reported the following resolution, which was agreed to by the House:

Resolved, That during the consideration of the general deficiency appropriation bill, now pending in Committee of the Whole House on the state of the Union, it shall be in order to consider points of order, notwithstanding the paragraph relating to the ratification of the Philippine tariff, page 4, lines 17 to 26, and page 5, lines 1 and 2, as follows, viz:

"That the tariff duties, both import and export, imposed by the authorities of the United States or of the provisional military government thereof in the Philippine Islands prior to March 8, 1902, at all ports and places in said islands upon all goods, wares, and merchandise imported into said islands from the United States or from foreign countries, or exported from said islands, are hereby legalized and ratified, and the collection of all such duties prior to March 8, 1902, is hereby legalized and ratified and confirmed as fully to all intents and purposes as if the same had by prior act of Congress been specifically authorized and directed."

3264. Form of special order conferring a privileged status on a bill.—On June 28, 1902,[2] the Committee on Rules reported, through Air. John Dalzell, of Pennsylvania, the following resolution, which was agreed to:

Resolved, That for the remainder of this session the bill (H. R. 11654) to promote the efficiency of the militia, and for other purposes, shall have the same privilege for consideration that is enjoyed by bills reported from committees under the power to report at any time; and said bill shall be considered in the House as in Committee of the Whole.

3265. Forms of special orders providing a series of rules to regulate the consideration of a bill and fix its relations to other business.

Discussion of the purpose of using special orders by the majority side of the House. (Footnote.)

Form of report from Committee of the Whole on a bill considered under a restrictive special order.

On February 6, 1905,[3] Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, reported the following resolution:[4]

The Committee on Rules, to whom was referred House resolution No. 484, have had the same under consideration and respectfully report the following in lieu thereof:

Resolved, That immediately on the adoption of this order and daily hereafter, immediately on the approval of the Journal, so long as the bill hereinafter referred to shall be pending in Committee of the Whole House on the state of the Union, the House shall resolve itself into Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 18588) to supplement and amend the act entitled "An act to regulate commerce," approved February 4, 1887;

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[1] First session Fifty-ninth Congress, Record, p. 9391.

[2] First session Fifty-seventh Congress, Journal, p. 874; Record, p. 7608.

[3] Third session Fifty-eighth Congress, Record, pp. 1947, 1950, 1952.

[4] In the course of the debate the minority leader, Mr. John Sharp Williams, of Mississippi, said: "The real object of this rule is not to cut us off from the power to extend and enlarge the provisions of the bill which we propose to offer as a substitute. * * * What you are really trying to do by this rule is to prevent this side * * * and enough men on that side added to them from doing that thing—from enacting into legislation in full those principles, our principles. * * *

"This rule is brought here for the purpose of preventing a majority of this House—composed of this side solidly, with enough of that side to make a majority—from formulating and bringing forth a bill which would accomplish this purpose. Your object in this rule is to prevent your own men from amending your own bill with our assistance." In other words, the special order is sometimes used, apparently, as a substitute for caucus restraint on the Members of the majority party.

That after the said bill shall have been read, the Clerk shall read also the amendment in the nature of a substitute offered by the minority of the Committee on Interstate and Foreign Commerce, and printed on pages 13 and 14 of report No. 4093, which amendment shall thereupon be considered as pending;

That general debate shall continue on said bill and pending amendment until Thursday next at 3 p. m.: *Provided,* That on Wednesday next, at 12.55 p. m., the Committee of the Whole House on the state of the Union shall rise: And *provided further,* That so soon as the counting of the electoral vote shall have been completed, the Committee of the Whole House on the state of the Union shall immediately resume its sitting for further general debate on the said bill H. R. 18588;

That so soon as general debate on the said bill shall have been completed at 3 p. m. on Thursday next, the Committee of the Whole House on the state of the Union shall immediately rise and report the bill H. R. 18588, with the pending amendment in the nature of a substitute, to the House, whereupon, immediately, without debate, intervening motion, or appeal, a vote shall be taken on the amendment in the nature of a substitute heretofore described and on the bill to the final passage;

That general leave to print remarks on the bill H. R. 18588 and the substitute therefor is hereby granted for six legislative days after Thursday next;

That time of general debate, as herein provided, shall be equally divided, one half to be controlled by Mr. Hepburn, of Iowa, and the other half by Mr. Davey, of Louisiana;

And that on Tuesday, Wednesday, and Thursday the House shall meet at 11 a. m.

At the conclusion of the debate the resolution was agreed to, yeas 166, nays 139.

On February 9,[1] when the consideration of the bill in Committee of the Whole had been concluded, the committee rose and the chairman[2] reported that the committee had had under consideration the bill H. R. 18588, the railroad rate bill, under a special rule of the House, and in accordance with that rule reported the same and the pending substitute back to the House.

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[1] Record, p. 2205.

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

Chapter LXXXIX.

PRIVATE AND DISTRICT OF COLUMBIA BUSINESS.

1. **Rules for considering private business Friday. Sections 3266–3267.**
2. **Motions in relation to private business. Sections 3268–3275.**
3. **Unfinished private business. Sections 3276–3280.**
4. **Former and present rules for considering pension bills. Sections 3281–3284.**
5. **Distinction between private and public bills. Sections 3285–3294.[1]**
6. **Private bills not to be made general. Sections 3295–3297.**
7. **Reports from the Court of Claims. Sections 3298–3303.**
8. **Rules and practice as to District of Columbia. Sections 3304–3311.**

3266. Friday of each week is set apart for private business, unless otherwise determined by the House.

Present form and history of section 1 of Rule XXVI.

By a standing order long in force private business from the Committees on Claims and War Claims alternates on all Fridays devoted to private business, except the second and fourth of each month.

Section 1 of Rule XXVI provides—

> Friday in every week shall be set apart for the consideration of private business, unless otherwise determined by the House.

On January 19, 1810, as related in the Annals of Congress, Mr. Richard M. Johnson, of Kentucky, arose, and, "after some remarks on the present desultory mode of doing business," proposed the following rule:

> That Friday, in each week, be set apart for the consideration of reports and bills originating from petitions.

On January 22, 1810, the rule was agreed to,[2] yeas 88, nays 15.

On January 26, 1826,[3] on motion of Mr. William L. Brent, of Louisiana, this form of rule was adopted, giving an additional day for private business:

> That Friday and Saturday, in every week, be set apart for the consideration of private bills and private business, in preference to any other, unless otherwise determined by a majority of the House.

On February 9, 1826,[4] Mr. Speaker Taylor decided that this rule gave private bills preference on Fridays and Saturdays, but that they did not lose their place on the general docket and might be considered on other days.

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[1] A public bill applies to a class and not individuals as such. Section 2614 of Vol. III.

[2] Second session Eleventh Congress, Journal, p. 189; Annals, Part I, pp. 1247, 1253.

[3] First session Nineteenth Congress, Journal, p. 197.

[4] First session Nineteenth Congress, Journal, p. 795.

On April 26, 1828,[1] on motion of Mr. Ichabod Bartlett, of New Hampshire, a rule was adopted providing that the order of business as established by the rules should not be postponed or changed except by a two-thirds vote; and under this rule it was held and repeatedly sustained that a two-thirds vote was required to dispense with private business on Friday.[2]

On May 8, 1874,[3] Mr. Samuel J. Randall, of Pennsylvania, presented a unanimous report from the Committee on Rules, setting apart Friday alone, instead of both Friday and Saturday, for private business. It was urged in support of this change that one-fifth of the time of the House was occupied with private business. The House agreed to the proposal, and since that time the rule has been unchanged in this respect.

When the rules were revised in 1880,[4] the Committee on Rules reported this form of rule, adapted directly and with little change from the old rule:

> Friday in every week shall be set apart for the consideration of private business, unless otherwise determined by a majority of the House.

When the report was considered, however, Mr. Mark H. Dunnell, of Minnesota, offered an amendment, which was adopted, striking out the word "majority" and inserting "two-thirds," the object being to protect Friday as private-bill day. In 1885, however, the words "two-thirds" were stricken out, and in their place were inserted the present phrase, "unless otherwise determined by the House."[5]

On March 14, 1900,[6] the House adopted this order:

> *Resolved,* That on all Fridays for the remainder of this Congress, except the second and fourth of each month, it shall be the order, the House having proceeded to the consideration of private business according to the provisions of section 6 of Rule XXIV[7] and section 1 of Rule XXVI, to take up, in the Committee of the Whole House, bills on the Private Calendar under the following conditions: On the next Friday which the House may devote to prirate business, and on every alternate Friday thereafter which may be devoted to private business, bills reported from the Committee on Claims shall have priority over those reported from the Committee on War Claims; and on the remaining alternate Fridays devoted to private bills, those reported from the Committee on War Claims shall have priority over those from the Committee on Claims.

This standing order has been adopted by each succeeding Congress.

3267. Each Friday, after the unfinished business is disposed of, the motion to go into Committee of the Whole House to consider business on the Private Calendar is in order.

If the House on a Friday votes down a motion to go into Committee of

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[1] First session Twentieth Congress, Journal, pp. 621, 634.

[2] See footnote to Rule 29, Barclay's Digest, edition of 1859, p. 165. Also Journals, Twenty-first Congress, second session, p. 367, and Twenty-sixth Congress, first session, p. 425. But on January 18, 1833 (second session, Twenty-second Congress), Mr. Speaker Stevenson held that the House might "otherwise determine" by a majority vote.

[3] First session Forty-third Congress, Record, p. 3691.

[4] Second session Forty-sixth Congress, Record, pp. 207, 1092.

[5] First session Forty-ninth Congress, Record, pp. 171, 338. The other form had conflicted with what is now section 6 of Rule XXIV (see sec. 3267 of this work), and the Committee on Rules thought the question should be settled by allowing the majority to decide what business should be taken up.

[6] First session Fifty-sixth Congress, Journal, p. 351.

[7] See section 3267 of this work for the rule.

the Whole House to consider the Private Calendar, public business is then in order as on other days.

Present form and history of section 6 of Rule XXIV.

Section 6 of Rule XXIV provides:

On Friday of each week, after the unfinished business has been disposed of, it shall be in order to entertain a motion that the House resolve itself into the Committee of the Whole House to consider business on the Private Calendar; and if this motion fails, then public business shall be in order as on other days.

This rule dates from the revision of 1880,[1] and as framed at that time provided that the motion should be in order after the morning hour for committee reports. The revision of 1890, which abolished the hour for committee reports, placed this motion after the unfinished business.[2] Former Rule 129, of the system as it existed prior to 1880, made provision for the order of procedure after going into Committee of the Whole House.

3268. The motion to go into Committee of the Whole House to consider business on the Private Calendar may not include a designation of the bills to be considered by the committee.—On March 5, 1900,[3] a Monday devoted to business reported from the Committee on the District of Columbia, Mr. Joseph W. Babcock, of Wisconsin, moved that the House resolve itself into Committee of the Whole House to consider certain specified bills on the Private Calendar reported from the Committee on the District of Columbia.

Mr. Joseph W. Bailey, of Texas, made points of order that the motion was not in order.

The Speaker[4] sustained the points of order as to the specification of the particular bills, and also as to that portion of the motion included in the words "reported from the Committee on the District of Columbia."

Mr. Babcock having made the simple motion to go into Committee of the Whole House to consider business on the Private Calendar, the motion was entertained and decided in the affirmative. In the Committee of the Whole House Mr. Babcock called up the bills reported from the Committee on the District of Columbia, and they were considered.

3269. On January 26, 1900,[5] a Friday, Mr. Thaddeus M. Mahon, of Pennsylvania, moved that the House resolve itself into Committee of the Whole House for the consideration of the bill (H. R. 6909) to pay the claim of the Eastern Extension, Australasia and China Telegraph Company (Limited).

The Speaker[4] said:

The Chair will state to the gentleman from Pennsylvania [Mr. Mahon] that the motion should be to go into the Committee of the Whole House to consider business on the Private Calendar. * * * He made a motion that the House go into the Committee of the Whole to consider a particular bill on the Private Calendar. The Chair holds that his motion must be that the House resolve itself into the Committee of the Whole to consider bills on the Private Calendar. * * * The Chair will remind the gentleman from Pennsylvania that when in Committee of the Whole House, the committee has the right to take up any particular bill. Does the gentleman renew his motion?

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[1] Second session Forty-sixth Congress, Record, p. 207.

[2] House Report No. 23, First session Fifty-first Congress.

[3] First session Fifty-sixth Congress, Record, p. 2355; Journal, p. 311.

[4] David B. Henderson, of Iowa, Speaker.

[5] First session Fifty-sixth Congress, Record, pp. 1223, 1224.

3270. A motion to lay aside private business is in order on Friday, and may be agreed to by majority vote.—On Friday, January 25, 1878,[1] the regular order of business being demanded, the Speaker stated the regular order to be the call of committees for reports of a private nature.[2]

Mr. John Randolph Tucker, of Virginia, moved that the consideration of private business be for the present postponed.

It was so voted—146 yeas to 104 nays.

3271. On February 28, 1890,[3] Mr. David B. Henderson, of Iowa, moved that the House lay aside private business in order to go into Committee of the Whole House on the state of the Union to consider general appropriation bills.

The motion was agreed to.[4]

3272. On Friday, June 10, 1898,[5] Mr. George W. Ray, of New York, called for the regular order, which was the consideration of private business.

Mr. Charles H. Grosvenor, of Ohio, moved that the House proceed to the consideration of public business.

Mr. James D. Richardson, of Tennessee, made the point of order that the motion was not in order.

After debate, the Speaker[6] decided:

The Chair wants to call the attention of the House to the actual situation. There is not only the rule which declares that after a failure to go into Committee of the Whole for the consideration of private business public business shall then be considered in order, but there is also another provision which has been kept in all the revisions, which might seem superfluous except in the light of what the Chair is about to remark:

"Friday in each week shall be set apart for the consideration of private business unless otherwise determined by the House."

Now, it so happens that in the matter of transacting business until quite recently the first clause of the rule covered the whole subject in actual practice—that is, there was no business transacted by the House prior to going into Committee of the Whole House. There was no business. It was not the practice of the House to do as it does now. The House always come out of Committee of the Whole in time to finish up the business which had been done in it. But owing to pressure of pension cases the House committee have adopted the plan of running the full time and then turning over to the House, to be disposed of on the next Friday, a long list of cases. Of course those cases were first in order on private-bill day and were so ruled to be by the Chair. That created a situation which obliged the Chair to say that until that business was disposed of it was not in order to move to go into Committee of the whole.

That leaves apparently a large portion of the day beyond the disposal of the House, and the rule of the House evidently contemplated that the House should have control of Friday; that it should be private-bill day unless otherwise determined, but if otherwise determined it should be given up to public business. Now, then, how shall it be determined? It seems in no other way except by motion, and the House has the same control over it that it has in the other case—in this case by direct motion, because it cannot be reached by the motion to go into Committee of the Whole. The one set of rulings seems necessarily to lead to the other. Therefore the Chair will put the question to the House, and it is for the House to dispose of entirely. The gentleman moves that we lay aside private business for the day.

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[1] Second session Forty-fifth Congress, Journal, p. 286; Record, p. 570.

[2] Reports of a private nature, as well as most public reports, are now presented by laying them on the Clerk's table, so this call no longer exists.

[3] First session Fifty-first Congress, Record, p. 1807; Journal, p. 288.

[4] For other instances, see Journal, first session Forty-ninth Congress, pp. 372, 1129, 1437, 1538.

[5] Second session Fifty-fifth Congress, Record, pp. 5761, 5762.

[6] Thomas B. Reed, of Maine, Speaker.

3273. The motion to go into Committee of the Whole House on the state of the Union to consider a bill other than a revenue or general appropriation bill is not privileged on Friday as against private business.—On Friday, July 11, 1890,[1] while business on the Speaker's table was being considered, Mr. Lewis E. Payson, of Illinois, moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of 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.[2]

Mr. Payson cited in support of his motion the fact that the motion to go into Committee of the Whole House to consider the Private Calendar, which was privileged on this day by section 6 of Rule XXIV,[3] had not been made, and therefore that his motion was in order as against the business on the Speaker's table.

The Speaker[4] held that the motion of Mr. Payson was not then in order.

3274. On Friday, February 20, 1903,[5] Mr. Charles N. Fowler, of New Jersey, moved that the House resolve itself into Committee of the Whole House on the state of the Union to consider the bill (H. R. 16228) relating to the currency, the said motion deriving privilege from the following special order adopted at a prior date:

Resolved, That the bill (H. R. 16228) "A bill providing for the issue and circulation of national bank notes "shall have, for the remainder of this session, the same privilege that the rules give to bills reported by committees under the privilege giving leave to report at any time.

Thereupon Mr. Lemuel P. Padgett, of Tennessee, moved that the House resolve itself into Committee of the Whole House for the consideration of business on the Private Calendar.

Mr. Sereno E. Payne, of New York, made a point of order that the first motion had precedence.

The Speaker pro tempore[6] said:

The Chair would state to the gentleman from New York that the precedents are all in favor of the motion made by the gentleman from Tennessee, as being of a higher character on this day, under the rule. * * * The two motions being pending, the Chair is bound to put that which is of the higher privilege. The Chair will state to the gentleman from New York that it has been so ruled many times. The question is on the motion of the gentleman from Tennessee [Mr. Padgett] that the House resolve itself into the Committee of the Whole House for the consideration of business on the Private Calendar.

3275. The motion to go into Committee of the Whole House to consider business on the Private Calendar being decided in the negative may not be repeated on the same day.—On December 9, 1892,[7] Mr. Charles E. Hooker, of Mississippi, moved that the House resolve itself into Committee of the Whole House for the purpose of considering bills on the Private Calendar.

The question being put, it was decided in the negative.

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[1] First session Fifty-first Congress, Journal, pp. 849, 850; Record, p. 7160.

[2] This bill was privileged under section 57 [now 61] of Rule XI, but had not the privilege of revenue and appropriation bills on this day.

[3] See section 3267 of this chapter.

[4] Thomas B. Reed, of Maine, Speaker.

[5] Second session Fifty-seventh Congress; Record, p. 2425.

[6] John Dalzell, of Pennsylvania, Speaker pro tempore.

[7] Second session Fifty-second Congress, Journal, p. 17; Record, p. 72.

The House then resumed consideration of the unfinished business pending when the House adjourned on the preceding day, the bill (S. 1549) providing for the public printing and binding and the distribution of public documents.

Later Mr. B. H. Bunn, of North Carolina, moved that the House resolve itself into Committee of the Whole House to consider bills on the Private Calendar.

The Speaker[1] declined to entertain the motion, holding that a similar motion having been heretofore voted down, that action of the House was equivalent to dispensing with private business.

3276. On a Friday devoted to private business the unfinished private business must be considered before a motion to go into Committee of the Whole House is in order.—On Friday, March 14, 1890,[2] the regular order being demanded, the Speaker stated the same to be the bill of the House (H. R. 3538) for the relief of Albert H. Emery, coming over as unfinished business from Friday last, the pending question being on concurring in the recommendation of the Committee of the Whole House to strike out the enacting clause of the bill.

Mr. William M. Springer, of Illinois, having, as a question of order, suggested that the bill did not come up until after the sitting of the Committee of the Whole to-day,

The Speaker[3] held that under the amended rule relating to the order of business the bills reported from the Committee of the Whole House must be disposed of before a motion that the House resolve itself into the Committee of the Whole House could be entertained.

3277. On January 6, 1893,[4] Mr. F. E. Beltzhoover, of Pennsylvania, moved that the House resolve itself into Committee of the Whole House for the purpose of considering bills on the Private Calendar.

Mr. Augustus N. Martin, of Indiana, made the point of order that the consideration of bills heretofore reported from the Committee of the Whole House at the Friday evening session of July 2, 1892, on the third reading and passage of which the previous question had been ordered, took precedence of the motion of Mr. Beltzhoover to go into Committee of the Whole House.

The Speaker sustained the point of order, holding that the consideration of such bills previously reported from the Committee of the Whole House took precedence over the motion to resolve into the Committee of the Whole House, and that, in strictness, the previous question having been ordered on the passage of the bills so reported, their consideration would be the regular order immediately after the reading of the Journal, and that, had the attention of the Chair been called to the status thereof, they would have been then considered.

Mr. James D. Richardson, of Tennessee, then made the point of order against the consideration of the bills called up by Mr. Maxtin, on the passage of which the previous question had been ordered, that not having been called up immediately after the Journal was read, and other business having since intervened, the right of precedence of such bills was waived.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] First session Fifty-first Congress, Journal, p. 344; Record, p. 2237.

[3] Thomas B. Reed, of Maine, Speaker.

[4] Second session Fifty-second Congress, Journal, p. 33; Record, p. 381.

The Speaker[1] overruled the point of order, holding that the consideration of the bills was in order, and was the regular order whenever the attention of the Chair was called to their situation and status notwithstanding the intervention of other business.

3278. On the day of Friday, April 3, 1896,[2] Mr. John A. Pickler, of South Dakota, calling for the regular order, asked the consideration of certain bills that had been considered in Committee of the Whole House on the evening of the previous Friday and came over as unfinished business, the previous question not having been ordered on them.

Mr. Benton McMillin, of Tennessee, as a parliamentary inquiry, asked whether these bills would not be considered after coming out of Committee of the Whole.

The Speaker[3] said:

The Chair had occasion to rule on this subject in the Fifty-first Congress. The ruling was that the bills which have come out of the Committee of the Whole were unfinished business and therefore would have to be taken up before the House would go into Committee of the Whole again.

The particular case on which the ruling was given was not a pension case; but an examination of the authorities as to the origin of the pension evening makes it clear, in the opinion of the Chair, that the pension bills would be within the purview of that ruling.

3279. On Monday, February 21, 1898,[4] a day set apart by special order for business usually in order on Friday, the House was considering the unfinished business coming over from the previous private bill day, and had reached the bill (H. R. 820) to remove the charge of desertion from the record of Charles Winters.

Mr. James D. Richardson, of Tennessee, made a point of order, as follows:

This bill and a number that follow it on the Private Calendar have been reported from the Committee of the Whole at a Friday night session, but the previous question has not been ordered. I therefore make the point of order that this bill is not in order to be considered at the day session of Friday, but that it should be considered at the night session.

After debate the Speaker[3] ruled:

The Chair desires to say that this question which has been discussed to-day, although it has been twice decided by the Chair, is of recent origin, simply because the evil that it was intended to correct was of recent origin also. It has been the custom for many years for the House to completely dispose of pension business upon Friday evenings, but by and by there arose a system of obstruction which was met by having the bills reported from the committee and then not acted upon by the House itself.

Now, if it be true, as contended by the gentleman from Tennessee, Mr. Richardson, and the gentleman from Texas, Mr. Bailey, that the privilege given on Friday night excludes a similar privilege during Friday in the daytime, then there would be some ground for their contention—perhaps sufficient ground for it—but it has never been the custom so to consider it. On the contrary, the Friday night session is an additional advantage which is given to pension claims over other claims, and the Chair is not aware that when a pension claim has been reached on Friday that it has ever been refused consideration on the ground that it had no right to be considered during the daytime.

It is probably true that that matter has seldom come up, because the Friday evening sessions have generally cleared the way upon the Calendar, so that a pension bill would not naturally be reached on the Calendar on Friday in the daytime.

Now, what is the principle which is endeavored to be carried out throughout these rules? There is one which distinguishes these, in one respect at least, from other rules of the House which have existed

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] First session Fifty-fourth Congress, Record, p. 3536; Journal, p. 365.

[3] Thomas B. Reed, of Maine, Speaker.

[4] Second session Fifty-fifth Congress, Record, p. 1982.

before the Fifty-first Congress. That principle is that business once undertaken is to be disposed of by the House in some way or other. Now, if we were to confine this pension business entirely to Friday evening and were not to regard it as the proper business of the whole day on Friday, you can see at once that practically the whole business of Friday evening might be brought to a close. It was brought to a close, and therefore and by that means the question came up before the House, on which the Chair ruled, saying, as the gentleman has said, that he would hear argument at any time. That ruling was repeated in the Fifty-fourth Congress, and will be found somewhat at length in the proceedings of the 3d of April, 1896.

The ruling was that a bill ordered by the House to be considered by the Committee of the Whole House, and reported by that committee, was unfinished business. Now, any unfinished business is always in order at the time when that class of business is in order, and surely that class of business is in order upon Friday; and being in order, it is the first thing to be disposed of before the committee considers any other business. Any other ruling would oblige business which has already been passed upon by the committee to give way to business in a prior stage which had not been submitted to the committee. In other words, the less advanced business would be given priority instead of the more advanced.

3280. On March 11, 1898,[1] at a Friday evening session, the House having reassembled after the recess, Mr. George W. Ray, of New York, moved that the House resolve itself into Committee of the Whole House for the consideration of business on the Private Calendar, under section 2 of Rule XXVI.[2]

Mr. Samuel W. T. Lanham, of Texas, made the point of order that the bills which had come over from the previous Friday evening as unfinished business were first in order.

The Speaker pro tempore[3] held that the bills coming over from the evening session of Friday, not those coming over from the day session of Friday, were the first business in order.

3281. A standing order of the House superseding the existing rule as to Friday evening sessions provides that the second and fourth Fridays of each month shall be devoted to pension bills and bills removing charges of desertion and political disabilities.

Present form and history of section 2 Rule XXVI.

Section 2 of Rule XXVI provides:

The House shall on each Friday at 5 o'clock p.m. take a recess until 8 o'clock, at which evening session private pension bills, bills for the removal of political disabilities,[4] and bills removing charges of desertion only shall be considered; said evening session not to extend beyond 10 o'clock and 30 minutes.

This rule dates from the revision of 1890,[5] although before that such evening sessions had been instituted temporarily.[6] The rule was retained with verbal

[1] Second session Fifty-fifth Congress, Record, p. 2737.

[2] See section 3281 of this chapter.

[3] John F. Lacey, of Iowa, Speaker pro tempore.

[4] Political disabilities arising from the civil war have been removed by general statute. (30 Stat. L., p. 432.)

[5] House Report No. 23, first session Fifty-first Congress.

[6] First session Fiftieth Congress, Congressional Record, p. 2514; also, on February 16, 1831 (Second session Twenty-first Congress, Journal, p. 308; Debates, p. 717), an order of the House devoted the day to the consideration of pension bills. This seems to have been the first instance wherein they were distinguished from other private bills.

modifications in the Fifty-second and Fifty-third Congresses, and restored to its original form in the Fifty-fourth.

On March 8, 1900,[1] the House adopted this order:

Resolved, That during the remainder of this Congress the second and fourth Fridays in each month, after the disposal of such business on the Speaker's table as requires reference only, shall be set apart for the consideration of private pension bills, bills for the removal of political disabilities, and bills removing charges of desertion. The provision herein made shall be in lieu of the evening session[2] provided for by section 2 of Rule XXVI, and section 6 of Rule XXIV and section 1 of Rule XXVI[3] are hereby modified to conform herewith.

This order has been readopted by each succeeding Congress; and the evening sessions to consider pension bills are no longer held.

3282. When the House by special order devotes Friday entirely to business other than private business, the special rules governing the use of the day are thereby suspended.

Instance wherein the Speaker submitted the decision of a question of order to the House.

On Friday, July 8, 1892,[4] Mr. Joseph E. Washington, of Tennessee, moved to suspend the rules and pass the bill (H. R. 7690) with certain amendments.

Pending the motion, Mr. J. D. Taylor, of Ohio, made the point that the hour of 5 p.m. having arrived it was the duty of the Chair to declare the House in recess, and that the motion of Mr. Washington could, therefore, not be entertained.

The Speaker[5] expressed doubts as to the effect of the order adopted by the House on the previous day:

Resolved, That Friday, July 8, be substituted for Monday, July 4, for suspension of the rules as provided in Rule XXVIII, the latter date being a legal holiday.

And accordingly submitted the question to the House: Is it the duty of the Chair to declare the House in recess?

It was decided in the negative.

The point of order made by Mr. J. D. Taylor was accordingly overruled by the House, and the motion of Mr. Washington was entertained.

3283. In practice an adjournment before 5 p.m. on a Friday was held to vacate the evening session formerly provided for by the rule.—On Friday, June 5, 1896,[6] before the hour of 5 p.m. had arrived, Mr. Nelson Dingley, of Maine, moved that the House adjourn.

The motion was agreed to, and at 4 o'clock and 55 minutes p.m. the House stood adjourned until Saturday.

3284. If the terms of a special order seem to abrogate a rule for a recess and an evening session for special business, the question of order should be raised before the House goes into recess and not after the House has met in evening session.—On Friday, January 8, 1897,[2] the House

[1] First session Fifty-sixth Congress, Journal, p. 329.

[2] See section 3267 of this work.

[3] See section 3266 of this work.

[4] First session Fifty-second Congress, Journal, pp. 274–277; Record, p. 5919.

[5] Charles F. Crisp, of Georgia, Speaker.

[6] First session Fifty-fourth Congress, Record, p. 6174.

[7] Second session Fifty-fourth Congress, Record, p. 603.

met at 8 p.m. after the recess, and Mr. Henry F. Thomas, of Michigan, moved that the House resolve itself into Committee of the Whole House for consideration of business on the Private Calendar under section 2 of Rule XXVI.[1]

Mr. C. J. Erdman, of Pennsylvania, made the point of order that the order of business prescribed by the rule was abrogated by the special order which was in operation in the House, and provided—

That the said bill—the Pacific Railroad funding bill—shall be considered under the rules governing general debate during the said day and the day following until the hour of 5 o'clock p.m., at which time general debate shall close, and then said bill shall be open to amendment and consideration under the five-minute rule until 5 p.m. the following day, at which time the committee shall rise, etc.

After debate, the Speaker pro tempore [2] held:

Whether the special order adopted by the House is in conflict with clause 2 of Rule XXVI may be a question; but in the opinion of the Chair the point of order, if good, should have been raised at 5 o'clock. The House could not be declared in recess by the Speaker from 5 o'clock until 8 except under clause 2 of Rule XXVI. When that announcement was made by the Speaker, it was in the power of any Member to raise the point of order, and it should have been raised then, if ever; because, had not the House been declared in recess until this time by the Speaker under the rule, it would have continued in session until a motion to adjourn or to take a recess had been made. The Speaker having determined at that time that clause 2 of Rule XXVI was in operation with respect to this evening's business, a point of order now comes too late. The Chair therefore overrules the point of order made by the gentleman from Pennsylvania.

An appeal being taken, there were, on the question of sustaining the Chair, ayes 56, noes 1. The point of no quorum being made, a call of the House was ordered; but the session ended without the appearance of a quorum.

3285. A private bill is a bill for the relief of one or several specified persons, corporations, institutions, etc., and is distinguished from a public bill, which relates to public matters and deals with individuals only by classes.—The statutes of the United States provide [3]

The term private bill shall be construed to mean all bills for the relief of private parties, bills granting pensions, and bills removing political disabilities.

The Manual and Digest used by the House for a long time contained this definition of public and private bills:

The line of distinction between public and private bills is so difficult to be defined in many cases that it must rest on the opinion of the Speaker and the details of the bill. It has been the practice in Parliament, and also in Congress, to consider as private such as are "for the interest of individuals, public companies or corporations, a parish, city, or county, or other locality." To be a private bill it must not be general in its enactments, but for the particular interest or benefit of a person or persons. A pension bill for the relief of a soldier's widow is a private bill, but a bill granting pensions to such persons as a class, instead of as individuals, is a public bill. Bills for the incorporation of companies whose operations are confined within the District of Columbia have been treated as private, but where such companies are authorized to have agencies and transact business outside of the limits of the District they are treated as public. Bills granting lands for railroads have always been held to be public, while a bill authorizing the extension of a railroad into the District of Columbia or conferring certain privileges upon such a corporation has been held to be private.

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[1] See section 3281.

[2] Sereno E. Payne, of New York, Speaker pro tempore.

[3] 28 Stat. L., p. 609, section 55. This statute is part of a general law governing the Government printing and was intended as a rule of classification of bills for printing merely. Each House having the constitutional power to make its own rules, would feel free to disregard this definition if it should prefer to make another.

Bills frequently contain provisions of a public character which at the same time are designed to benefit or promote private enterprises. It is difficult in such cases to determine with uniformity in which category these bills should be classed.

Bills authorizing the construction of bridges and bills granting the right of way to railroads through Indian, military, or other reservations have frequently been treated as private, while similar bills have at other times been considered to be public bills. These bills partake of both a public and a private character and it is perhaps an open question whether they should be placed on the Public or the Private Calendar.

Bills for the payment of money to counties or cities are held to be private, while similar bills for the benefit of States or Territories are held to be public.

The practice of the House has been generally in accordance with these distinctions, although bills for the incorporation of companies, bills authorizing the construction of bridges, and bills allowing rights of way through Indian or Government reservations are now generally treated as public. Bills granting American registers to foreign vessels have quite often been treated as public, although generally now are treated as private,[1] while bills allowing American officers to accept gifts from foreign governments have been placed on the Private Calendar.

Questions have arisen in cases where a single bill has contained provisions relating to a number of persons. An "omnibus claim bill," containing provisions for the payment of many different claimants, but all having claims of the same class and each claimant being specified by name, has been treated as a private bill.[2] So also a bill to pension a battalion of soldiers has been held to be private, although the point was much disputed.[3] The practice in regard to such bills is somewhat varying,[4] because of the difficulty of establishing a definite rule.

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[1] See bill H. R. 4936, Index Congressional Record, second session Fifty-fifth Congress.

[2] See section 3293 of this work.

[3] See section 3292 of this work.

[4] Thus, bills of the following kinds are found on the private calendars in recent years: Resolutions referring to Court of Claims lists of bills, specified by number and title (Cal. Nos. 16, 312, 360 in Fifty-third Congress; 660, 780., 781, 782, 789 in Fifty-second Congress; 1095, 1285, 1509, 1510 in Fifty-first Congress); bill for the payment of Fourth of July claims (Cal. No. 158, Fifty-third Congress); bill for the allowance of certain claims for stores and supplies (Cal. No. 148, in Fifty-third Congress) taken and used by the United States Army, as reported by the Court of Claims under the Bowman Act (Cal. No. 297 in Fifty-first Congress and Court of Claims Calendar in Fiftieth Congress); bills for allowance of certain claims reported by the accounting officers of the United States (Cal. No. 737, Fifty-third Congress; No. 27 and No. 1343 of Fifty-second Congress); bill for payment of certain awards to parties therein named (Cal. No. 218, Fifty-third Congress); bill to pension Gray's battalion, Arkansas Volunteers (Cal. No. 614, Fifty-third Congress); joint resolution for the relief of certain settlers in Oklahoma (Cal. No. 703, Fifty-third Congress); a bill in lieu of [12] House bills for the payment of sundry claims for streets and other improvements adjacent to the property of the United States (Cal. No. 798, Fifty-third Congress); bill to reimburse certain persons who expended moneys and furnished services and supplies in repelling invasion and suppressing Indian hostilities within the territorial limits of Nevada (Cal. No. 106, Fifty-second Congress); a bill for the payment of certain claims of the Delaware Indians of Indian Territory, and for other purposes (Cal. No. 111, Fifty-second Congress); bill directing Secretary of War to examine and settle accounts of certain States and city of Baltimore growing out of the war of 1812 (Cal. No. 166, Fifty-second Congress); bills for relief of certain army and naval men, custom-house employees (Cal. Nos. 180, 271, and 1372 in Fifty-second Congress; Nos. 34, 35, 48, 332, and 1962 in Fifty-first Congress); bill to refund to West Virginia certain money paid officers of a militia regiment (Cal. No. 338, Fifty-second Congress); bill to reimburse Kansas for adjustment of claims of citizens for property destroyed by Confederates (Cal. No. 417, Fifty-second Congress); bill for relief of Logan and Simpson counties, Ky., city of Louisville, and Sumner and Davidson counties, Tenn. (Cal. No. 467, Fifty-second Congress); bill for allowances of claims for rent.

3286. A bill for the benefit of individuals, but which includes also provisions of general legislation, is classed as a public bill.—On February 16, 1877,[1] Mr. Thomas L. Jones, of Kentucky, from the Committee on Railways and Canals, to which was referred the bill of the House (H. R. 4456) to authorize William A. Downer and others to construct a ship canal at the head of Lake George, Florida, reported the same with amendments.

Mr. John R. Eden, of Illinois, made the point of order that the bill, being one of a public nature, was not in order under this call.

The Speaker[2] sustained the point of order, saying:

The Digest states that such bills are to be considered private as are "for the interest of individuals, public companies or corporations, a parish, city or county, or other locality. To be a private bill it must not be general in its enactments, but for the particular interest or benefit of a person or persons." The Chair finds that this bill provides for the collection of tolls generally from the public, and that it also provides for the punishment of individuals in the courts of the United States. These provisions, in the opinion of the Chair, bring the bill within the objection that a private bill must not be general in its enactments.

3287. A bill containing among provisions for the relief of private persons one item to pay a claim of a foreign nation was classed as a public bill.—On June 5, 1906,[1] the House was considering a motion to suspend the rule and pass the bill (H. R. 19606) to pay certain claims of citizens of foreign countries against the United States, and to satisfy certain conventional obligations of the United States.

The bill was read, as follows:

Be it enacted, etc., That the following amounts be, and the same are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, to pay the following claims against the United States, hereinafter stated, the same being in full for and the receipt of the same to be taken and accepted in each case as full and final release of the respective claims, namely:

First. To pay the Canadian Electric Light Company, for damages to its cable by the U. S. gunboat *Essex,* by fouling her anchor with the company's cable, between Levis and the city of Quebec, July 17, 1904, the sum of $7,307.30.

Second. To pay the Great Northwestern Telegraph Company of Canada, for damages to their telegraph cable by the U. S. gunboat *Essex,* between the city of Quebec and Levis, by fouling her anchor with the company's cable, July 17, 1904, the sum of $939.58.

Third. To pay Messrs. Sive-Wright, Bacon & Co., of Manchester, England, for damages to their vessel, the British steamship Eastry, by collision, 1901, at Manila, with certain coal hulks of the United States, the sum of $4,313.50.

Fourth. To pay William Radcliffe, British subject, for damages caused by destruction of his fish hatchery and property in Delta, Colo., by a mob in 1901, the sum of $25,000.

Fifth. To pay to the Empire of Germany, in full settlement of the obligation of the United States of property taken, as reported by the Court of Claims (Cal. No. 1647, Fifty-first Congress); bill for payment of certain creditors of the Pottawatomies (Cal. No. 97, Fiftieth Congress); bill for the allowance of certain awards made by a board of claims to certain citizens of Jefferson County, KY. (Cal. No. 188, Fiftieth Congress); bill authorizing Court of Claims to judge Old Settlers or Western Cherokee claims (Cal. No. 204, Fiftieth Congress); bills for allowance of certain claims reported by the accounting officers (Cal. Nos. 274, 380, 559, 703, 858, 1099, 1024, Fiftieth Congress); bill for the relief of several specified insurance companies (Cal. No. 377, Fiftieth Congress); a bill for the relief of certain settlers in Wind River Valley, Wyoming (Cal. No. 444, Fiftieth Congress).

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[1] Second session Forty-fourth Congress, Journal, p. 460; Record, p. 1641.

[2] Samuel J. Randall, of Pennsylvania, Speaker.

[3] First session Fifty-ninth Congress, Record, p. 7857.

Government to Germany under the convention between the United States, Germany, and Great Britain for the settlement of Samoan claims, signed at Washington, November 7, 1899, the slim of $20,000.

Sixth. To pay the British owners of the British steamship Lindisfarne, for demurrage to that vessel while undergoing repairs necessitated through collision with the U. S. army transport Cook in New York Harbor, May 23, 1900, the sum of $158.11.

Mr. Charles L. Bartlett, of Georgia, raised a question of order, as follows:

The rules of the House set apart certain special days—Fridays—for the consideration of claims. This appears to be a bill reported from the Committee on Claims, and I want to make a point of order. By what authority or right, under the rules of the House, is a bill called up for passage under suspension of the rules, which bill contains a claim or any number of claims, when bills of this character have by the rules of the House been assigned for consideration to a particular day, or certain named days, of each month?

The Speaker[1] said:

The Chair will answer the gentleman. This is a motion to suspend all rules and pass the bill. The gentleman is correct as to the rule. It has not been the practice of the present occupant of the chair to submit bills upon the Private Calendar for passage on suspension day, but this is a bill upon the Union Calendar, which is alleged to cover several claims between the United States and foreign peoples. * * * One claim in favor of the Empire of Germany, growing out of relations in Samoa. It seems to the Chair, without expressing any opinion as to the merits of the various propositions, after reading the report and the letter from the Secretary of State, that this is a bill properly on the Union Calendar, and not on the Private Calendar, of a claw that the House ought to be able to consider under a motion to suspend the rules.

3288. A private bill of the House, returned from the Senate with a substitute amendment of a public nature, was held to be a private bill still.—On January 14, 1859,[2] Mr. Thomas S. Bocock, of Virginia, from the Committee on Naval Affairs, to whom was referred the bill of the House (H. R. 336) for the relief of B. W. Palmer and others, with the amendments of the Senate thereto, reported the same recommending concurrence in the said amendments.

Mr. George S. Houston, of Alabama, made the point of order that inasmuch as the amendment of the Senate to the body of the bill proposed to substitute a general provision of a public nature for the original bill, it was not in order on this day to report the bill to the House, this day being Friday, devoted to private business.

After debate the Speaker[3] said:

The Chair is of opinion that this House must receive and consider this bill as a private bill. The original bill is that which must give character, in the judgment of the Chair, to the proceeding. Were it otherwise, it would enable the Senate to determine in what light and character our bills should be considered when they send them back.

For instance, we send a private bill to the Senate. They desire to defeat it. They put on a public bill as an amendment to it. Under the rule contended for by the gentleman from Alabama, when they send it back here the House is compelled to consider it in a different way from that which the original bill required.

Again, to consider this amendment of the Senate to a private bill as a public bill, the Chair is required to assume that the House will adopt the amendment. To illustrate this, suppose this bill is sent to a committee according to the view of the gentleman from Alabama, it must go to the Committee of the Whole on the state of the Union; a vote is taken upon the amendment, and it is rejected, and then the bill is left in an improper committee.

Mr. Houston having appealed, the appeal was laid on the table.

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] Second session Thirty-fifth Congress, Journal, p. 193; Globe, pp. 386, 387.

[3] James L. Orr, of South Carolina, Speaker.

3289. A bill for the advantage of private individuals, even in connection with a public object, has been trate bill.—On April 5, 1878[2] Mr. Charles 1858,[1] Mr. Speaker Orr decided that a bill reported from the Committee on the Library, to whom had been referred a memorial of Messrs. Gales and Seaton, and providing for the collection and publication of certain public documents, was a private bill. It was objected that the bill was in no sense a claim bill, but that the publication was for a public purpose, but the Speaker maintained his decision, and was sustained on appeal.

3290. A bill authorizing one tribe of Indians to sue another in the Court of Claims was held to be a private bill.—On April 5, 1878,[1] Mr. Charles H. Morgan, of Missouri, from the Committee on Indian Affairs, reported a bill (H. R. 228) to authorize and enable the Eastern band of the Cherokee Indians to institute and prosecute a suit in the Court of Claims against the Cherokee Nation.

Mr. Benjamin F. Butler, of Massachusetts, made the point of order that, as the bill proposed to allow one nation with whom a treaty might be made to sue another nation with whom a treaty might be made, it was a public bill, and not in order in the class of business then before the House.

The Speaker[3] overruled the point of order, on the ground that the bill proposed only to allow one band of an Indian nation to sue the said nation. It was a private bill and in order.

3291. A bill prescribing the form of oath to be taken by a Member-elect of the House was held to be a private bill.—On February 4, 1870,[4] a Friday, when under the rule the Private Calendar was in order, Mr. John A. Bingham, of Ohio, from the Committee on the Judiciary, presented the following bill (H. R. No. 627):

> That Francis E. Shober, claiming to be a Member of Congress-elect from the Sixth Congressional district of North Carolina, upon admission to his seat in the House of Representatives as a Member of the Forty-first Congress, shall be released from taking the oath of office prescribed by the act of July 2, 1862, and instead thereof shall take and prescribe the oath prescribed for persons relieved from disabilities by the act of July 11, 1868.

Mr. Halbert E. Paine, of Wisconsin, made the point of order that this was not a private bill.

The Speaker,[5] after reading from the digest the distinction between public and private bills,[6] said:

> This is clearly a private bill. * * * The Chair will state that it has been the practice of the House to regard measures like this as merely affecting the right of the individual.

Mr. Paine appealed on the ground that the bill affected the organization of the House, and was therefore a public bill.

The appeal was laid on the table.

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[1] First session Thirty-fifth Congress, Journal, pp. 968, 969; Globe, p. 2518.

[2] Second session Forty-fifth Congress, Journal, p. 803; Record, p. 2317.

[3] Samuel J. Randall, of Pennsylvania, Speaker.

[4] Second session Forty-first Congress, Journal, pp. 265, 266; Globe, p. 1044.

[5] James G. Blaine, of Maine, Speaker.

[6] See section 3285 of this chapter.

3292. A bill granting an American register to a foreign-built vessel is classed as a private bill.

It is not in order to amend a private bill by adding provisions general and public in character.

On July 20, 1892,[1] the House was considering a bill (H. R. 8818) to grant an American register to the steamship *China*.

Mr. George W. Fithian, of Illinois, submitted as a substitute a provision to grant American register generally to foreign built vessels owned by citizens of the United States.

Mr. Louis E. Atkinson, of Pennsylvania, made the point of order that the substitute was not in order, for the reason that its effect was to amend a private bill by inserting a provision of a general bill. Also, that the substitute was not germane to the bill.

The Speaker[2] sustained the first-mentioned point of order, holding that while the pending bill was on the House Calendar it was in effect a private bill, its object being to grant an American registry to the steamship *China*. The Speaker said:

In the Thirty-ninth Congress a decision was made, and since then, so far as the Chair is advised, has been uniformly adhered to, that an amendment proposing to engraft a general provision of law upon a private bill is against order. The proposition of the gentleman from Illinois [Mr. Fithian], is to make the provision general, and grant American registry to any steamship of a certain class or burden. Therefore the Chair thinks it is general in character, and is not in order.

3293. The Committee of the Whole has decided that a bill to pension a battalion of soldiers should be treated as a private bill.—On May 22, 1896,[3] at a Friday evening session, Mr. Robert Neill, of Arkansas, moved the consideration of the bill directing the Secretary of the Interior "to place on the pension roll the names of all the honorably discharged surviving officers and enlisted men of Gray's battalion of Arkansas volunteers."

Mr. Sereno E. Payne, of New York, raised the point that this was a general pension bill.

The Chairman[4] sustained the point, and ruled that the bill could not be considered.

Again, on Friday evening, December 18, 1896,[5] the bill came up and Mr. George W. Ray, of New York, raised the point of order.

Mr. Neill cited the bill to pension Powell's Missouri battalion, which passed as a private bill on March 1, 1891, and was included among the private laws.

The Chairman[6] said:

The Chair finds that on the 22d of last May this identical bill was brought before the committee. At that time the gentleman from Iowa [Mr. Hepburn] was in the Chair. A point of order was made upon the bill by the gentleman from New York [Mr. Payne], and the point of order was sustained.

Now, the Chair is inclined to think that if this question had not been already adjudicated this should be held to be a private bill because it applies to a specific battalion or regiment—not to a class,

[1] First session Fifty-second Congress, Journal, pp. 311, 312; Record, p. 6474.

[2] Charles F. Crisp, of Georgia, Speaker.

[2] First session Fifty-fourth Congress, Record, p. 5598.

[4] William P. Hepburn, of Iowa, Chairman.

[5] Second session Fifty-fourth Congress, Record, pp. 287–292.

[6] John F. Lacey, of Iowa, Chairman.

but to the individuals in a certain military organization. * * * The Chair, being inclined to take a view different from the former ruling, will take the sense of the committee upon the question—will submit the question to the decision of the Committee of the Whole.

The committee thereupon overruled the point of order, and decided that the bill was private.

3294. A bill to create a corporation in the District of Columbia was held to be a public bill.—On June 6, 1862,[1] the House was proceeding to the consideration of the bill (S. 265) to incorporate the Mount Olivet Cemetery Company in the District of Columbia, when Mr. Ellihu B. Washburne, of Illinois, made the point of order that the bill was a private bill, and not a public bill.

The Speaker[2] overruled the point of order, saying that such bills had always been treated as public.

Mr. Washburne having appealed, the decision of the Chair was sustained, yeas 108, nays 5.

3295. It is not in order to move to commit a private bill with instructions that the committee report a general bill relating to subjects of the same class.—On February 1, 1886,[3] the House was considering a bill for the relief of George S. Hunt & Co., when Mr. Lewis Beach, of New York, moved to recommit the bill to the Committee on Ways and Means with instructions to report a general bill covering all cases of a similar character.

Mr. Thomas B. Reed, of Maine, made the point of order that the motion of Mr. Beach was not in order, for the reason that the rules excluded amendments having the effect of changing bills of a private into bills of a public nature.

The Speaker[4] sustained the point upon the ground stated, and the amendment was not received.

3296. A private bill for the relief of one individual may not be amended so as to extend its provisions to another individual, even indirectly through a motion to recommit with instructions.—On February 18, 1886,[5] while the House was considering the bill for the relief of Fitz John Porter, Mr. William Warner, of Missouri, moved to recommit the bill with instructions to add to it sections placing Andrew J. Smith upon the retired list of the Army.

Mr. Edward S. Bragg, of Wisconsin, made a point of order against this motion.

The Speaker[4] sustained the same, on the ground that it was the well-established practice of the House that a bill for the relief of one private individual could not be amended so as to extend its provisions to another individual, and also on the further ground that it was not in order to do indirectly, by way of commitment with instructions, that which could not be done directly by amendment when the bill was under consideration.

3297. The right of a Claims Committee to report with the status of a private bill a resolution providing for sending a series of specified claims to the Court of Claims has been affirmed.—On Friday, May 25, 1894,[6]

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[1] Second session Thirty-seventh Congress, Journal, pp. 813, 814; Globe, p. 2614.

[2] Galusha A. Grow, of Pennsylvania, Speaker.

[3] First session Forty-ninth Congress, Journal, p. 571, Record, p. 1188.

[4] John G. Carlisle, of Kentucky, Speaker.

[5] First session Forty-ninth Congress, Journal, pp. 702, 703.

[6] Second session Fifty-third Congress, Record, pp. 5279, 5286.

the House was in Committee of the Whole House, and the business in regular order was the consideration of a resolution referring to the Court of Claims 37 bills, each for the relief of an individual or individuals, and each designated in the resolution by number and title.

Mr. Julius C. Burrows, of Michigan, made the point of order that these were referred to the Committee on War Claims as separate bills and that that committee might not report such a resolution combining them.

After debate, the Chairman [1] ruled:

These bills, while of the same general character, do not in every instance relate to the same species of property; and when the gentleman from Michigan, Mr. Burrows, made the point of order that the committee had no authority under the rules to report, in a single resolution, this large number of bills, with the recommendation that they be referred to the Court of Claims under the existing law, the Chair was very strongly inclined to the opinion that the point of order was not well taken, but the Chair had no recollection of ever having seen a report considered by the House reported from the committee of exactly this character.

But the Chair finds on investigation that in the Fifty-second Congress, in reports 648 and 649, Mr. Stone, from the Committee on War Claims, reported two resolutions embodying quite a number of bills to be referred to the Court of Claims, in almost similar terms to the resolution now before the committee. Neither of the reports was acted upon by the Committee of the Whole or the House of Representatives, but on June 3, 1892, in the House itself, on motion of Mr. Charles J. Boatner, of Louisiana, that the Committee of the Whole be discharged from the further consideration of a similar resolution reported from that committee, it was, without objection, considered and passed by the House. * * * The Chair feels constrained to follow the precedent set by the House itself, and the Chair overrules the point of order.

3298. Reports from the Court of Claims do not remain on the Calendar from Congress to Congress, even when a law seems so to provide.

The question as to whether or not the House, in its procedure, is bound by a law passed by a former Congress.

On January 5, 1858,[2] a question arose under the following section of the act of 1855 constituting the Court of Claims:

That said reports and the bills (from the Court of Claims to Congress) reported as aforesaid shall, if not finally acted upon during the session of Congress to which the said reports are made, be continued from session to session and from Congress to Congress until they shall be finally acted upon, and the consideration of said reports and bills shall, at the subsequent session of Congress, be resumed, and the said reports and bills be proceeded with in the same manner as though finally acted upon at the session when presented.

Debate arose as to the disposition of bills before the last Congress under this law. Mr. George W. Jones, of Tennessee, held that no Congress could pass a law binding a succeeding; and Mr. Alexander H. Stephens, of Georgia, held that the bills must begin de novo.

The Speaker [3] said:

The Chair desires to call the attention of the House to the condition of the bills from the Court of Claims which were not finally disposed of at the last session of Congress. The law passed in 1855 requires that the reports from the Court of Claims shall be taken up and disposed of the same as if there had been no adjournment. In construing that law the Chair has felt himself constrained to hold that where a bill had received its first and second reading at a preceding Congress it would be incompetent

[1] William H. Hatch, of Missouri, Chairman.

[2] First session Thirty-fifth Congress, Journal, pp. 134, 135.

[3] James L. Orr, of South Carolina, Speaker.

to resume the consideration of that bill at the point where it had been left off. He has, therefore, held that it is necessary that these bills shall be resumed and the proceedings commenced de novo. He had given instructions to the Clerk in making up the Calendar not to place any of these bills upon it, and if the House concurs with the Chair in the views he has taken it will proceed to have all the bills undisposed of at the last Congress read a first and second time and referred to the Committee of Claims, so that they may be taken up in conformity to law.

3299. Under the present practice, reports from the Court of Claims under the Bowman Act, which are also reported by a House committee and sent to the Private Calendar, do not remain on that Calendar during a succeeding Congress.—On December 19, 1887,[1] Mr. Louis E. McComas, of Maryland, rising to a parliamentary inquiry, said:

The Bowman Act, chapter 116, volume 22, of the Statutes at Large, in section 7, provides—

"That reports of the Courts of Claims to Congress under this act, if not finally acted upon during the session at which they are reported, shall be continued from session to session and from Congress to Congress until the same shall be finally acted upon."

Now, in order to give effect and force to that continuance from Congress to Congress, my question is, Will not claims thus reported back from the Court of Claims to the last Congress and then reported by its committee to the Forty-ninth Congress with an accompanying bill standing on the Calendar the last Congress—will not those claims, under the force of the terms of the section which I have read, be placed upon the Calendar and be the first claims in priority on the Calendar for consideration during the present Congress?

The Speaker[2] said:

The Chair remembers the terms of the act. The practice in the House has been when a report is received from the Court of Claims it is referred to the committee which had original jurisdiction of the matter—the Committee on War Claims or the Committee on Claims, as the case may be. If that committee during that Congress reports the claim back again to the House, the Chair thinks that the section of the act to which the gentleman from Maryland refers requires the report to be continued on the Calendar, and the Chair has so instructed the Clerk in the present session to place on the Calendar in regular order all the reports made by committees on reports from the Court of Claims. That will be done.[3]

3300. On January 27, 1888,[4] the Committee of the Whole House rose, and the Chairman reported that they had had under consideration bills upon the Private Calendar, and had reached the bill H. R. 6336, entitled "A bill for the relief of Martha J. A. Rumbaugh," whereupon the question of consideration was raised, and the committee rose and instructed its chairman to report the fact to the House.[5]

Mr. Samuel W. T. Lanham, of Texas, who had raised the question of consideration, said:

I have objected in the Committee of the Whole House to the consideration of bill No. 6336, introduced at the first session of the Forty-ninth Congress, March 1, 1886. Accompanying this bill is a report from the Committee on War Claims of the Forty-ninth Congress, first session, April 6, 1886. This bill, as I am advised, has never been introduced in the Fiftieth Congress, and no report in writing has ever been made upon it by any committee of the present Congress. I maintain that we have no jurisdiction in the Fiftieth Congress to pass upon a bill of the Forty-ninth Congress and a report coming from a committee of that Congress.

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[1] First session Fiftieth Congress, Record, p. 110.

[2] John G. Carlisle, of Kentucky, Speaker.

[3] These reports from the Court of Claims, which are findings of fact, are to be distinguished from judgments reported from the Court of Claims, which are referred to the Appropriations Committee to be included in the deficiency appropriation bill.

[4] First session Fiftieth Congress, Record, p. 779; Journal, p. 572.

[5] The rule is different now as regards consideration.

The Speaker pro tempore [1] ruled:

The Chair is ready to decide the question. After hearing attentively the argument in the Committee of the Whole, the present occupant of the chair would decide that the class of bills of which the bill referred to is one were reported to the Forty-ninth Congress with accompanying reports from the Court of Claims. They were, by direction of the Speaker during the present session, ordered to be placed on the Private Calendar for consideration on Fridays. In the opinion of the Chair, it does not follow that these bills of a former Congress are here for passage by the present House without the formalities contemplated by our rules. They are on the Calendar for appropriate action. What is that appropriate action? It may be the reference of them to a committee; it may be to lay them on the table. The reference of the bills to the Calendar does not necessarily import that they are to be passed or are to be considered with a view to their final disposition. Even messages of the President are often directed to be placed on the Calendar; but no one would suppose because a President's message is placed on the Calendar of the Committee of the Whole that that committee should at once consider, for instance, the question of a tariff presented by that message without such preliminary steps as the rules contemplate.

The Chair therefore holds that these bills of the Forty-ninth Congress are before the House for appropriate action, but not for final disposition, inasmuch as under the rules certain preliminary steps are indispensable. There is nothing in the Bowman law, as the Chair conceives it, which antagonizes this view.

The present occupant of the chair, holding this place only temporarily, has some diffidence in deciding this proposition, and would be glad if some gentleman who differs from this ruling would take an appeal from the decision, so that the House may determine the question.

An appeal being taken, it was laid on the table by a vote of 115 ayes to 37 noes.

3301. On August 10, 1888,[2] the House was in Committee of the Whole House considering bills on the Private Calendar, when Mr. Barnes Compton, of Maryland, made the point of order that there was now on the Calendar a bill reported in the Forty-ninth Congress and also in this Congress, from the Committee on War Claims, there having been a favorable report also from the Court of Claims. He maintained that this bill under the provisions of the Bowman Act, and under the ruling of the Speaker, was entitled to preference.

After debate, the Chairman [3] said:

The Chair has held, when bills have been reported from the Court of Claims to this House and referred to appropriate committees and reported back, they take precedence at the head of the Calendar, and the Clerk therefore will be directed to report this bill.

3302. On March 12, 1890,[4] Mr. James D. Richardson, of Tennessee, raised the question as to the cases reported from the Court of Claims and undisposed of at the conclusion of the Fiftieth Congress.

After debate, and on March 14, the Speaker [5] held:

Upon examination the Chair is unable to find that the provisions of the Bowman Act or any rule of the House requires that the bills in question should be placed first upon the Private Calendar. Whether the House ought to make a rule to that effect or not the Chair can express no opinion. It has not made a rule, nor does the law in terms require it.

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[1] Samuel S. Cox, of New York, Speaker pro tempore.

[2] First session Fiftieth Congress, Record, pp. 7436, 7437.

[3] William. H. Hatch, of Missouri, Chairman.

[4] First session Fifty-first Congress, Record, pp. 2159, 2239.

[5] Thomas B. Reed, of Maine, Speaker.

3303. The Bowman and Tucker acts, so called, for assisting Congress in the settlement of claims.

The statutes provide that the House or any one of its committees having jurisdiction may transmit a claim to the Court of Claims for a finding of fact, which shall be transmitted to the House through the Speaker.

The act of March 3, 1883,[1] entitled "An act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government," and commonly called the Bowman Act, provides that the House or any committee of the House, whenever it has before it a claim or matter involving the investigation or determination of facts, may transmit the same to the Court of Claims.[2] The court is not empowered to enter judgment thereon, but may report its findings of fact to the House. These findings are addressed to the Speaker and under his direction referred as executive communications to the appropriate committees. The jurisdiction of the court does not extend to claims growing out of destruction wrought by the Army or Navy during the civil war, or the occupation of real estate during that time, or to claims barred by provisions of law. The reports to Congress, if not finally acted on at one session are continued from Congress to Congress.[3]

The act of March 3, 1887,[4] "to provide for the bringing of suits against the Govemment of the United States," known as the Tucker Act, also provides that in any case referred by the House under the Bowman Act wherein it appears to the satisfaction of the court that it has jurisdiction to render judgment or decree it shall do so and report its proceedings to the House.

The Tucker act further provides, in section 14:

> That whenever any bill, except for a pension, shall be pending in either House of Congress providing for the payment of a claim against the United States, legal or equitable, or for a grant, gift, or bounty to any person, the House in which such bill is pending may refer the same to the Court of Claims, who shall proceed with the same in accordance with the provisions of the act approved March 3, 1883, entitled "An act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government," and report to such House the facts in the case and the amount, where the game can be liquidated, including any facts bearing upon the question whether there has been delay or laches in presenting such claim or applying for such grant, gift, or bounty, and any facts bearing upon the question whether the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy.[5]

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[1] 22 Stat. L., p. 485.

[2] The Court of Claims was established by act of February 24, 1855. (10 Stat. L., p. 612.) The act of July 4, 1864, restricted its jurisdiction in respect to war claims. (13 Stat. L., p. 381.) The subject of claims commissions was considered and reported on in the Twenty-ninth and Thirtieth Congresses, and in 1871 the Southern Claims Commission was established. The rule of the House adopted March 16, 1860 (First session Thirty-sixth Congress, Journal, p. 533; Globe, p. 1211), provided that bills from the Court of Claims should be read twice and referred at once to the Committee of the Whole House. For present usage see section 3299 of this work. The House Committee on Claims was instituted very early. (See section 4262 of this work.) On January 23, 1822 (First session Seventeenth Congress, Annals, p. 767), the overburdened condition of the Committee on Claims led to a discussion of some measure of relief. On July 21, 1842 (Second session Twenty-seventh Congress, Report No. 937), the committee reported in favor of a rule prohibiting the rehearing of claims, the argument being made that such a rule would not abridge the right of petition.

[3] See section 3297 of this work.

[4] 24 Stat. L., p. 505.

[5] After a claim has been dismissed for want of jurisdiction in a case under the Bowman Act either of the Houses of Congress may refer it under the Tucker Act. (26 C. Cls. R., Farrar *v.* United States, p. 151.)

The Attorney-General is required to report to Congress at the beginning of each session of Congress the suits under this act in which a final judgment or decree has been rendered, giving the date of each and a statement of the costs taxed in each case.

By the act of March 3, 1891,[1] jurisdiction was conferred on the Court of Claims to adjudicate Indian depredation claims, including such cases as were authorized to be examined by the Indian appropriation act approved March 3, 1885; and all papers, records, etc., relating to such claims and in the office of the Clerk of the House, or certified copies of such papers, are to be furnished on the order of the court or at the request of the Attorney-General.

The statute also provides for the transmittal of bills and petitions with accompanying papers, by the Clerk of the House to the court in cases where the claims are founded upon any law of Congress, or upon any regulation of an Executive Department, or upon any contract expressed or implied, with the Government of the United States;[2] for the use by the court of reports of the House;[3] that Members of the House shall not practice in the Court of Claims;[4] and that on the first day of every December session of Congress the clerk of the Court of Claims shall transmit to Congress a full and complete statement of all the judgments rendered by the court during the previous year, stating the amounts thereof and the parties in whose favor they were rendered, together with a brief synopsis of the nature of the claims upon which they were rendered.[5]

3304. The second and fourth Mondays of each month are set apart for business presented by the Committee on the District of Columbia.

Present form and history of section 3 of Rule XXVI.

Section 3 of Rule XXVI provides:

> The second and fourth Mondays in each month, after the disposal of such business on the Speaker's table as requires reference only, shall, when claimed by the Committee on the District of Columbia, be set apart for the consideration of such business as may be presented by said committee.

This form of the rule dates from the revision of 1900.[6]

Previous to 1870 the District of Columbia Committee awaited[7] with other committees its turn to report in the morning hour for the call of committees.[8] On March 9, 1870, Mr. James A. Garfield, from the Committee on Rules, reported a rule, which was adopted, omitting the committee from the call and giving it the third Friday of the month.[9]

On May 8, 1874, it was found desirable to restrict the time given private bills by taking Saturday for public business, leaving Friday alone[10] for private bill day,

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[1] 26 Stat. L., p. 851.

[2] Revised Statutes, section 1060.

[3] Revised Statutes, section 1076.

[4] Revised Statutes, section 1058.

[5] Revised Statutes, section 1057.

[6] Report No. 23, first session Fifty-first Congress.

[7] There was at least one temporary exception. On April 2, 1830 (first session Twenty-first Congress, Journal, p. 492; Debates, pp. 722, 734), the House, moved by the urgent Deed of legislation for the District, set apart every second Thursday for the remainder of the session for the consideration of District business.

[8] This call has now been abolished.

[9] Second session Forty-first Congress, Journal p. 446.

[10] See section 3266 of this work.

and so District of Columbia business was transferred from the third Friday to the third Monday.[1] By the rule all of the third Monday from 2 p. m. until adjournment was given to this order of business.

In the revision of 1880 District day was abolished and the committee was placed on the same footing with other committees which reported under the call.[2] The old arrangement was practically restored in the following session, however.

In 1885[3] a rule was adopted giving to the District business the second Monday of each month after the call of States and Territories. Later the fourth Monday was added, the two days each month being enjoyed during the Fiftieth Congress.

3305. Under a former condition of rule it was held that a motion to go into Committee of the Whole to consider a general appropriation bill was not privileged as against business in order on District of Columbia day.—On February 13, 1893,[4] Mr. William Mutchler, of Pennsylvania, moved that the House resolve itself into Committee of the Whole House on the state of the Union to consider general appropriation bills.

Thereupon Mr. John J. Hemphill, of South Carolina, in behalf of the Committee on the District of Columbia, this being the second Monday of the month, demanded that the House proceed under the rule to the consideration of business reported by the Committee on the District of Columbia, and made the point that the motion of Mr. Mutchler was, therefore, not in order.[5]

The Speaker[6] sustained the point of order, saying:

> The practice has been, so far as the Chair is advised and believes, to permit the Committee on the District of Columbia, on the second and fourth Mondays of the month, when they claim the day, to call up such business as they desire to have considered, and the only way to defeat the purpose of the committee to occupy the day is to raise the question of consideration on the bill which they call up. Such has been the practice.[7]

3306. Unfinished business on a day assigned to a committee goes over to the next day had by the committee.—On April 25, 1876,[8] Mr. George W. Hendee, of Vermont, made the point of order that the regular order for that morning was the consideration, as unfinished business, of the bill of the House (H. R. 2676) from the Committee for the District of Columbia to regulate the assessment and collection of taxes for the support of the District of Columbia, and for other purposes, the consideration of which bill was begun on the previous day, the day assigned under the rules for the Committee for the District of Columbia to report its measures to the House for consideration. Mr. Hendee based his point

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[1] First session Forty-third Congress, Record, p. 3692.

[2] Second session Forty-sixth Congress, Record, p. 200.

[3] First session Forty-ninth Congress, Record, pp. 3126, 3156.

[4] Second session Fifty-second Congress, Journal, p. 89; Record, p. 1534.

[5] Under the old rule, which provided that the day should be "devoted exclusively" after 2 p. m., it was held that a roll call might be interrupted in order to proceed to District business. (Second session Forty-sixth Congress, Journal, p. 262; Record, p. 395.)

[6] Charles F. Crisp, of Georgia, Speaker.

[7] The rule relating to the motion to go into Committee of the Whole to consider general appropriation bills has been changed somewhat since this decision was made, and the motion to go into Committee of the Whole to consider revenue or general appropriation bills is much more highly privileged than then. See section 3072 of this volume.

[8] First session Forty-fourth Congress, Journal, p. 860; Record, p. 2737.

of order on the further fact that at the adjournment on the preceding day the question on engrossment and third reading of the bill was pending, and the previous question had been demanded and seconded.[1]

The Speaker[2] overruled the point of order on the ground that the unfinished business of the committee at the adjournment on the preceding day must go over and be disposed of as unfinished business of the committee on the next day assigned to it under the rules for the transaction of its business; and further because the rule assigning to the committee the exclusive use of certain days for the transaction of its business should be construed to be reciprocal in its relations to the other committees of the House, so that the other committees of the House are as much entitled to protection in the enjoyment of the time allotted to them under the rules for the transaction of their business as the Committee for the District of Columbia is entitled to be protected in the exclusive enjoyment of the time assigned to it under the rules.

3307. Business unfinished on a District of Columbia day does not come up on the next District day unless called up.—On May 28, 1906,[3] a District of Columbia day, Mr. Joseph W. Babcock, of Wisconsin, chairman of the Committee on the District of Columbia, proposed to call up the bill (S. 5561) to amend an act entitled "An act to amend an act entitled 'An act to incorporate the Masonic Mutual Relief Association of the District of Columbia,'" approved February 5, 1901.

Mr. John S. Williams, of Mississippi, raised the question of order that the first business in order would be a bill which was pending and unfinished on the last District day.

After debate the Speaker[4] held:

It occurs to the Chair that the Committee on the District of Columbia has two certain days, Mondays, in the month. It also occurs to the Chair that in the orderly transaction of business the bill which had been considered in the Committee of the Whole House would have precedence.

However, the Clerk calls my attention to a ruling upon this subject in the Manual, as follows:

"Business unfinished on a District of Columbia day does not come up on the next District day unless called up."[5]

And further, on page 759 of Parliamentary Precedents, is the following:

"The Speaker held that, pursuant to Rule XXVI, it was in order for the committee to present such business as they desired, and that the unfinished business did not recur unless presented by the committee."

That was the decision of Mr. Speaker Crisp. In light of this precedent the Chair would hold, while the Chair would have been inclined to hold that the question was open, according to the contention of the gentleman from Mississippi [Mr. Williams], as the Chair finds the precedent, and in the absence of further authority, the Chair will follow the ruling of Mr. Speaker Crisp and hold that it rests with the committee to call at this stage the bill referred to by the gentleman from Mississippi, and it is left to the Committee on the District of Columbia to call up such business as it sees proper. It rests not upon general parliamentary usage, but upon the special rule that gives certain Mondays in each month to the committee, as follows:

"The second and fourth Mondays of each month are set apart for business presented by the Committee on the District of Columbia."

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[1] The previous question does not now have to be seconded. (See section 5443 of Vol. V.) When the previous question is ordered in such a case, the bill is in order the next day. (See sections 5510–5520 of Vol. V of this work.)

[2] Michael C. Kerr, of Indiana, Speaker.

[3] First session Fifty-ninth Congress, Record, p. 7567.

[4] Joseph G. Cannon, of Illinois, Speaker.

[5] See Section 3308.

3308. The question of consideration may not be demanded against District of Columbia business generally, but may be demanded against each bill as it is presented.—On June 11, 1894,[1] this being the second Monday in the month, Mr. John T. Heard, of Missouri, in behalf of the Committee on the District of Columbia, presented for consideration the bill (H. R. 7238) making permanent provision for the police fund of the District of Columbia.

Mr. William S. Holman, of Indiana, submitted the question whether the question of consideration could be demanded against business presented by the Committee on the District of Columbia.

The Speaker[2] held that the question of consideration could be demanded only against each bill as it was presented.

Mr. William P. Hepburn, of Iowa, made the point that the regular order should be the unfinished business pending when the House adjourned on the fourth Monday in May.

The Speaker held that pursuant to Rule XXVI[3] it was in order for the committee to present such business as they desired, and that the unfinished business did not recur unless presented by the committee.

3309. On April 23, 1894,[4] the committees were called for reports; when, none being presented, Mr. John T. Heard, of Missouri, chairman of the Committee on the District of Columbia, proceeded to present for consideration business reported by that committee.

Mr. Thomas C. McRae, of Arkansas, made the point that such business was not in order until after the consideration hour provided in clause 4 of Rule XXIV.[5]

After debate, the Speaker[2] overruled the point of order, holding that District of Columbia business, pursuant to clause 2 of Rule XXVI,[6] and the practice of the House thereof, was in order immediately after the call of committees for reports,[7] and that the consideration of such District business could only be dispensed with by demanding the question of consideration against each bill which might be presented by the committee.

3310. On District of Columbia day a motion is in order to go into Committee of the Whole House to consider a private bill reported by the Committee on the District of Columbia.—On January 28, 1907,[8] a District of Columbia day, Mr. Joseph W. Babcock, of Wisconsin, asked unanimous consent to discharge the Committee of the Whole House from the consideration of the bill (S. 7028) for the relief of the Allis-Chalmers Company, of Milwaukee, Wis.

Mr. Martin B. Madden, of Illinois, having reserved a right to object, the Speaker[9] said:

The Chair will state that on Mondays, notwithstanding this bill (S. 7028) is on the Private Calendar, under the rule and practice, as the Chair is advised, the gentleman may call up the bill for

[1] Second session Fifty-third Congress, Journal, p. 425; Record, p. 6121.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] See section 3304 of this chapter.

[4] Second session Fifty-third Congress, Journal, pp. 350, 351; Record, p. 3997.

[5] This was the morning hour. (See see. 3118.)

[6] See section 3281.

[7] The morning hour for reports has been abolished.

[8] Second session Fifty-ninth Congress, Record, p. 1848.

[9] Joseph G. Cannon, of Illinois, Speaker.

consideration. He might move to go into Committee of the Whole House for the purpose of considering the bill; but now the gentleman asks unanimous consent that the Committee of the Whole House may be discharged from consideration of the bill, and that the same may be considered in the House as in Committee of the Whole.

3311. The Committee for the District of Columbia may not, on a District day, call up a bill reported from another committee.—On January 18, 1897,[1] a day devoted to business from the District of Columbia Committee, Mr. Joseph W. Babcock, of Wisconsin, chairman of that committee, stated that he was prepared to present a bill (H. R. 10023) setting apart a plot of public ground in the city of Washington, in the District of Columbia, for memorial purposes under the auspices of the National Society of the Daughters of the American Revolution, which was reported by the Committee on Public Buildings and Grounds, but by an error was placed upon the Calendar as having been reported by the Committee on the District of Columbia.

Mr. Alexander H. Dockery, of Missouri, made the point of order that the bill was not in order.

The Speaker[2] held that the rule applied exclusively to business reported by the Committee on the District of Columbia.

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[1] Second session Fifty-fourth Congress, Record, p. 913.

[2] Thomas B. Reed, of Maine, Speaker.

Chapter XC.

PETITIONS AND MEMORIALS.

1. **Rule for introduction of. Sections 3312–3314.**
2. **Presentation by Members and Speaker. Sections 3315–3320.**[1]
3. **Forms of petitions and memorials. Sections 3321–3342.**
5. **Power of House to refuse to receive. Sections 3343–3358.**
6. **Consideration of petitions. Sections 3359–3363.**

3312. History of the rule for the introduction of petitions and memorials, Rule XXII, sections 1, 2, and 3.

Petitions, memorials, and other papers addressed to the House may be presented by the Speaker as well as by a Member.

Joint resolutions of State legislatures, intended as communications to Congress, are treated as memorials.

The first rule[2] of the House in relation to the introduction of petitions, memorials, etc., was adopted April 7, 1789,[3] and was as follows:

> Petitions, memorials, and other papers addressed to the House shall be presented through the Speaker, or by a Member in his place, and shall not be debated or decided on the day of their being first read, unless where the House shall direct otherwise; but shall lie on the table to be taken up in the order they were read.

In the draft of January 7, 1802,[4] the words "a brief statement of the contents thereof shall verbally be made by the introducer" appear before the provision relating to debate.

The Speakers under this rule exercised and still exercise, although the rule long ago disappeared, the right to present in their capacity as Speaker petitions and memorials sent to them or to the House. On January 5, 1826, a rule was proposed forbidding the Speaker to present memorials except on his responsibility as a Member. The presentation of a memorial relating to slavery was the occasion of the proposition. Mr. Speaker Taylor explained that he did not present all memorials, for some, while respectful, were trivial. But the rule seemed to make it his duty to present such as were proper. After debate the proposed rule was withdrawn.[5] Manifestly there are certain petitions which Members might decline

[1] See also section 2030 of Vol. III.

[2] First session First Congress, Journal, p. 10.

[3] First session Seventh Congress, Journal, p. 38. (Gales and Seaton ed.)

[4] See section 3364 of next chapter for present form of this rule.

[5] First session Nineteenth Congress, Journal, pp. 119, 120; Debates, pp. 880–883.

to present, but which, nevertheless, might be proper for the House to consider. Thus, on March 17, 1834,[1] Mr. Speaker Stevenson laid before the House a letter from eight citizens of Maine complaining of misrepresentation of themselves by the Congressman from their district. The resolutions were read, and the Congressman replied to them.

The reading of memorials and petitions caused great draft on the time of the House as early as 1803.[2] This difficulty increased, and finally, on March 29, 1842,[3] Mr. John Quincy Adams, of Massachusetts, who had been unable for a long time to get an opportunity to present petitions, and had 150 in his desk, moved the following rule,[4] which was adopted under suspension of the rules:

> That Members having petitions and memorials to present be permitted to hand them to the Clerk, indorsing the same with their names, and the reference or disposition to be made thereof, and that such petitions and memorials be entered on the Journal, subject to the control and direction of the Speaker, and if any petition or memorial be so handed in which, in the judgment of the Speaker, is excluded by the rules, that the same be returned to the Member from whom it was received.

This was at about the time of Mr. Adams's contest over petitions relating to slavery, and the "twenty-first" rule was then in force:[5]

> No petition, memorial, or resolution, or other paper praying the abolition of slavery in the District of Columbia, or any State or Territory, etc., * * * shall be received by this House or entertained in any way whatever.

As soon as Mr. Adams's rule was adopted a flood of petitions was presented, the titles of which occupy twenty-three pages of the Journal. Petitions relating to slavery were questioned by the Speaker and laid on the table. Thus was solved the problem of presenting petitions without consuming the time of the House.

On January 15, 1874,[6] Mr. Samuel J. Randall, of Pennsylvania, from the Committee on Rules, reported a rule providing that the reporters of debates should furnish for publication a list of the memorials, petitions, and other papers, with their reference, each day presented under the rule. This rule was agreed to. There arose on this occasion an interesting debate as to whether or not the practice of receiving petitions by filing instead of by presenting them in open House was a violation of the constitutional right of petition.

In 1880 and 1890, when important consolidations and revisions of the rules were made, the rule as to petitions was consolidated with the rules as to bills.[7]

Under the present rules all petitions and memorials are introduced by laying them on the Clerk's table, whether presented by the Members or by the Speaker.

A class of papers not strictly in the form of petitions, yet classed as such,

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[1] First session Twenty-third Congress, Debates, p. 3014.

[2] Second session Seventh Congress, Annals, pp. 293–295.

[3] Second session Twenty-seventh Congress, Globe, pp. 367, 621.

[4] On July 2, 1838, and April 20, 1840, the House adopted similar rules temporarily to relieve congestion existing at the time. (Second session Twenty-fifth Congress, Journal, p. 1201; Globe, p. 408; first session Twenty-sixth Congress, Journal, p. 809.)

[5] See sections 3343–3358 of this work for discussion of the power of the House to reject petitions.

[6] First session Forty-third Congress, Journal, p. 242; Record, pp. 678–681.

[7] See sections 3364, 3365 for present form of rule.

has from the earliest, days of the House been presented as of that class. They were described on April 16, 1879,[1] by Mr. Speaker Randall:

State legislatures have a constant habit of asking by joint resolution (which is the ordinary mode of communication between State legislatures and Congress) for the construction of public buildings, light-houses, improvements of rivers and harbors, etc., and the committees of this House having charge, respectively, of those subjects have uniformly introduced legislation based upon such communications from State legislatures.[2]

3313. Origin of the order for the former call of States for petitions.—The order in which the States should be called for petitions in the morning hour was a subject of considerable debate, and the order beginning with Maine, established March 13, 1822, was not established without considerable debate. Mr. John Randolph, of Virginia, preferred to begin with the extreme southern States; but it was shown to him that the northern colonies signed the Declaration of Independence first.[3]

This order has long since been abandoned, the States no longer being called for petitions. The States now are called only at the beginning of a session, when Members respond by States. The order of this call is alphabetical.

3314. The rule requiring petitions to be sent to the Clerk's desk is no invasion of the constitutional right of petition.—On May 13, 1880,[4] Mr. Richard W. Townshend, of Illinois, rising in his place, proposed to present a petition of sundry citizens praying for the repeal of the duty on salt.

Mr. Thomas B. Reed, of Maine, objected that the petition should go to the petition box under the rule.

Mr. Townshend claimed that, notwithstanding the rule, under the Constitution the people could not be deprived of the right to petition the Government for a redress of their grievances.

The Speaker[5] said:

The people are not deprived of their right of petition. On the contrary, there is a clause in the Constitution which provides that each House shall determine the rules of its proceedings, and one of the rules of this House is in regard to the manner of presenting petitions. * * * The House, in the opinion of the Chair, has not attempted to abridge that right. On the contrary, it has adopted a rule by which the presentation of petitions may be facilitated.

3315. A Member may present a petition from the people of a State other than his own.—On January 25, 1836,[6] Mr. John Quincy Adams, of Massachusetts, offered to present a petition from citizens of western Pennsylvania,

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[1] First session Forty-sixth Congress, Record, p. 486.

[2] For examples of memorials of States see memorial of Massachusetts legislature, offered June 29, 1813, relative to the existing war; also another from Maryland on the same subject. (First session Thirteenth Congress, Annals, pp. 334, 1204.) Also resolutions of Maryland legislature relative to the title of President Hayes, presented April 15, 1878 (second session Forty-fifth Congress, Journal, pp. 844, 845; Record, pp. 2522–2524), and admitted by Mr. Speaker Randall as a memorial from a State. Such memorials are treated as public in their nature.

[3] First session Seventeenth Congress, Journal, p. 350; Annals, p. 952.

[4] Second session Forty-sixth Congress, Record, pp. 3322, 3323.

[5] Samuel J. Randall, of Pennsylvania, Speaker.

[6] First session Twenty-fourth Congress, Journal, p. 235.

which, he stated, prayed the abolition of slavery and the slave trade within the District of Columbia, and moved that the said petition be received.

Mr. Benjamin Hardin, of Kentucky, rose and inquired of the Chair whether it was in order for a Member from one State to present petitions from citizens of another State.

The Speaker[1] decided that it was in order.[2]

3316. On February 6, 1836,[3] Mr. John Quincy Adams, of Massachusetts, presented the petitions of a number of women in various towns in New Hampshire praying for the abolition of slavery and the slave trade in the District of Columbia.

Mr. Ratliff Boon, of Indiana, raised this question of order:

> Is it in order for the Member from Massachusetts [Mr. Adams], when the Members from Massachusetts are called, under the sixteenth rule[4] of the House, "for petitions," to present petitions from citizens of any State or Territory except the State of Massachusetts?

The Speaker[1] said that it had been the uniform practice of the House that a Member might present petitions from any State in the Union, provided those petitions were bona fide, sent to him for presentation by the citizens interested in them. If one Member were to transfer his petitions to another for presentation, the question would then come up in a different form.

An appeal having been taken, after debate the decision of the Speaker was sustained, yeas 139, nays 29.

3317. The Speaker explained to the House that he declined to present a paper in the nature of a memorial disrespectful to his office.—On February 6, 1840,[5] the Speaker[6] explained why he declined to present to the House resolutions passed by the council and general assembly of the State of New Jersey and transmitted to him by the governor of that State with the request that he would lay them before the Representatives of the Twenty-sixth Congress.

The Speaker had read to the House the letter which he had addressed to the governor. In this letter he calls attention to the fact that the legislature had ordered the copy of the resolutions to be transmitted to "the Hon. R. M. T. Hunter, a Representative from the State of Virginia, with the request that he will lay the same before the other Representatives from the several States now assembled at Washington."

(The resolutions related to the exclusion of five New Jersey Representatives from their seats at the organization of the House, and implied that the organization could not, therefore, be legal.)

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[1] James K. Polk, of Tennessee, Speaker.

[2] On the next day Mr. Hardin had entered on the Journal (p. 237) a correction to the effect that his real point of order was as to whether a Member had a right to present a petition from a State before that State was called, the method at that time being to call the States for petitions. But the Journal being made up under direction of the Speaker, the entry as originally made is expressive of Mr. Speaker Polk's opinion as to the right of a Member to present petitions from other States than his own.

[3] Second session Twenty-fourth Congress, Journal, p. 348; Debates, p. 1586.

[4] Petitions are no longer presented in open House.

[5] First session Twenty-sixth Congress, Journal, p. 311; Globe, p. 166.

[6] R. M. T. Hunter, of Virginia, Speaker.

The Speaker says that as there was already a sitting Member from New Jersey, and therefore no reason why that State should apply to a Virginia Member, he concluded that the resolutions were transmitted to him by virtue of the position which he held. "Under these circumstances," he says, "I beg leave most respectfully to decline to lay these resolutions before the House over which I have the honor to preside, as virtually they seem to deny my title to the office of Speaker and the right of those who have invested me with that trust."

Therefore he declines to present the resolutions, and inform the governor that he holds them until further advised as to what disposition he would have him make of them.

3318. The Speaker presents petitions from the country at large in the method prescribed by the rule.—On June 8, 1868,[1] Mr. Speaker Colfax said with regard to the presentation of petitions and papers by the Speaker:

> The uniform usage of the Speakers has been, when petitions were sent to them, either to ask unanimous consent to present them, if they are of that character that they think the House would desire to to have them presented, or to present them under the rule, as is the right of a Speaker as a Member from a Congressional district. The Chair has repeatedly presented petitions under the rule. * * * He has received hundreds of petitions from the States of the South, and has always submitted them under the rule to the Journal Clerk.

3319. The Speaker has considered it his duty to present the proper communication of a citizen, addressed through him to the House, on a public matter.—On December 27, 1822,[2] the Speaker presented to the House a letter addressed to himself from E. Lewis, of Mobile, Ala., and containing charges against Judge Tait.

A motion having been made to refer the letter to the Committee on the Judiciary, objection was made to the reference on the grounds that the author of the letter was not responsible, and that an investigation had been had heretofore at his instance. On the other hand, it was urged that it was the right of every citizen to petition the House, and that complaints against every department of the Government should be investigated.

The House refused to lay the motion to refer on the table, ayes 61, noes 62. Then the motion to refer was agreed to.

The Speaker[3] then rose and said that, in regard to these papers, whatever might be his personal feelings, he did not think that he had a right to forbear laying them before the House.[4] He had sometimes felt hesitation in laying before this House papers forwarded to him as Speaker; and in cases where the matter contained in them was obviously libelous, he had forborne. But a charge of the nature of this, though it might, as he trusted it would, turn out to be utterly libelous, might be otherwise, and the Speaker thought he had not the right to withhold the papers from the House.

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[1] Second session Fortieth Congress, Globe, p. 2939.

[2] Second session Seventeenth Congress, Annals, pp. 463–469; Journal, p. 80.

[3] Philip P. Barbour, of Virginia, Speaker.

[4] Such papers are now laid on the Clerk's table by the Speaker under the rule and are referred by the Clerk.

On February 19 a paper, signed by members of the bar of the district court of the Alabama district, was presented by Mr. Romulus Sanders, of North Carolina, who moved that it lie on the table, the report of the Judiciary Committee on Judge Tait's case having been made to the House. The paper certified that Edwin Lewis was a man of bad character, unworthy to be admitted to the bar.

Objection was made to the presentation of such a paper, it being urged that the records should not be made a repository for statements so harmful to the individual. But Mr. Sanders said he presented it by direction of the Committee on the Judiciary, as bearing on the question relating to Judge Tait.

So the motion to lay on the table was agreed to.

3320. Discussion of the duty of a Presiding Officer in relation to the presentation of communications.—On March 17, 1834,[1] the Vice-President[2] thus outlined to the Senate what he considered his duty in relation to the presentation of communications addressed to the Senate:

> It [the Chair] has * * * considered it to be a portion of that duty to withhold such communications as, in the exercise of its best discretion, it considered to be so framed as to render their presentation inconsistent with the respect due to the Senate, as well as such as were, from other considerations, justly subject to the operation of the same rule. Scarcely a week passes in which communications are not received by the Chair, with a request to have them laid before the Senate, in respect to which it is apparent that their authors are suffering under mental aberrations. Communications of this sort, of which many are constantly in possession of the Chair, would, on the supposition referred to, be entitled to the disposition which is claimed for the paper under consideration. But the exercise of the discretion referred to has not been confined by the Chair to papers of this description, which might justly be regarded as extreme cases. It has, on the contrary, felt it to be within the line of its duty to withhold from the Senate communications which, however high and sound the source from which they emanated, contained reflections upon the Senate, plainly derogatory to its honor. It is but a few weeks since that the Chair received, with the request to lay them before the Senate, the proceedings of a public meeting held in the city of Philadelphia, which, it was obvious, had been a very large one, and which the Chair does not doubt to have been also very respectable, in which the severest censure was denounced against this body for an act in which the present incumbent of the Chair happened to have had a particular interest. Under the influence of the sense of duty which has been expressed, the Chair did not hesitate to deliver the paper to one of the Senators from that State, with a request that it should be respectfully returned to the source from which it had come, with the information that the Chair felt it to be inconsistent with his duty to lay a paper containing such matter before the Senate.

In the case to which the Vice-President referred, the Senate later refused to receive the paper, by a vote of 20 yeas to 24 nays.

3321. Papers in the nature of petitions or memorials should be addressed to the House, but may be received if addressed to the Representative when the subject is already before the House.—On February 16, 1827,[3] Mr. James Clarke, of Kentucky, presented a resolution of the general assembly of the State of Kentucky, approbatory of "the American Colonization Society" and requesting the Representatives of that State in Congress to use their best efforts to facilitate the society's purposes.

Mr. George W. Owen, of Alabama, objected to the reception of these resolutions on the ground that they were not addressed to Congress, but to the Representatives

[1] First session Twenty-third Congress, Debates, pp. 970–978.

[2] Martin Van Buren, of New York, Vice-President.

[3] Second session Nineteenth Congress, Debates, pp. 1214, 1215.

from the State of Kentucky. They were, in this respect, private papers, with which Congress had nothing to do.

The Speaker[1] said that had these resolutions referred to a subject not previously under the consideration of Congress the gentleman from Kentucky must have introduced them by a resolution of his own, but the subject was already before the House and had been referred to a committee. When this was the case it had been the settled practice of the House to admit such resolutions from public bodies to be received, and to submit them to committees.

The resolution was then referred.

3322. On July 16, 1850,[1] the Presiding Officer[2] of the Senate held that a Senator could not present resolutions or memorials addressed to himself or his colleague. They must be addressed to the Senate or to the Congress.

3323. The rule relating to the signing of petitions was formerly enforced strictly by the Senate.—On February 7, 1827,[3] in the Senate, Mr. Ezekiel F. Chambers, of Maryland, presented a memorial of the Colonization society.

Mr. William R. King, of Alabama, raised the question that a Member must present a memorial or petition as his own, or it must be signed by the petitioner or memorialist.

The Chair[4] decided that no petition could be acted upon unless signed or written in the presence of the Member, or unless the handwriting was owned by the Member presenting it. Such was the rule in Jefferson's Manual.

Mr. Chambers not taking it upon himself to aver the memorial, it was withdrawn.

3324. An early requirement of the House was that a claimant should present a petition signed by himself as the foundation for his claim.—On December 16, 1828,[5] Mr. George McDuffie, of South Carolina, from the Committee on Ways and Means, made a report on the claim of James Scull, which contained the following statement of what was then the requirement of the House in regard to the presentation of claims:

> They (the committee) believe that there is no one of the rules that have been established in relation to private claims founded on more obvious grounds of policy than that which forbids Congress to act on any private claim without an application in writing, signed by the petitioner or his authorized agent. However much, therefore, they feel disposed to show deference to the memorial of the legislative council of Arkansas, they can not consider it as dispensing with the necessity of a formal application by the individual in whose behalf the interposition of Congress is solicited.

3325. Papers general or descriptive in form may not be presented to the House as memorials.—On Monday, April 7, 1834,[6] during the presentation of petitions and memorials, as provided by the rules,[7] Mr. John Ewing, of Indiana,

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[1] John W. Taylor, of New York, Speaker.

[2] First session Thirty-first Congress, Globe, p. 1390.

[3] Second session Nineteenth Congress, Debates, p. 296.

[4] John C. Calhoun, Vice-President.

[5] Second session Twentieth Congress, H. Report No. 5.

[6] First session Twenty-third Congress, Debates, p. 3538.

[7] Rule 16 at that time provided that after the first thirty days of the session petitions showed be presented only on the first day of each week.

sent to the Clerk's table certain papers containing "programmes, drafts, and outlines for the establishment of a national currency."

The Speaker[1] having ascertained that these papers were not memorials, declared that they could not be presented except by unanimous consent.

3326. Resolutions of primary assemblies of the people and of State legislatures are received as memorials.—On April 22, 1842,[2] the Journal of the preceding day was read, when Mr. John M. Botts, of Virginia, moved to strike therefrom an entry stating that certain proceedings of citizens of Ashtabula County, in the State of Ohio, had been laid on the Clerk's table, under the order of the House which permitted Members to lay petitions on the Clerk's table.

The paper which was referred to embodied the proceedings of a meeting which had sustained the course of the Hon. Joshua R. Giddings, who had resigned his seat in the House after he had been censured. The point was made that the rule permitted the laying of petitions on the Clerk's table, but did not include resolutions of assemblies. Also it was urged that the paper in question was defamatory of the House.

The Speaker[3] said that it had been the uniform practice of the House to receive, under the call for petitions, not only petitions but resolutions of legislatures and of primary assemblies of the people.

Under the operation of the previous question the motion of Mr. Botts was agreed to, yeas 98, nays 75.

So the entry was striken from the Journal and does not appear therein, except in so far as it is described by the terms of the motion made by Mr. Botts.

3327. On January 24, 1822,[4] Mr. Gabriel Moore, of Alabama, presented certain resolutions of the legislature of that State, instructing their Senators and Representatives in Congress to use their exertions to obtain the annexation of certain parts of West Florida to the State of Alabama, and moved their reference to a committee.

Mr. Samuel Smith, of Maryland, raised a question that it was improper to refer resolutions or other documents not directed to the House.

The Speaker expressed an opinion that the gentleman from Alabama was in order, and that the reference proposed was sanctioned by the practice of the House. He referred to various cases in which papers not directed either to the House or its officers had been referred as documents. Such were the resolutions passed by the legislature of Kentucky on the subject of the public lands; resolutions passed by the legislature of Ohio in respect to the United States Bank and internal improvements; and even private letters had been received and referred, as in the case of M. Franchlieu on the subject of a military establishment, and of M. Cazen on the cultivation of the vine.

Mr. Smith appealed, but after debate withdrew the appeal.

3328. A question has arisen in the Senate as to whether or not a telegraphic dispatch may be received as a memorial.

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[1] Andrew Stevenson, of Virginia, Speaker.

[2] Second session Twenty-seventh Congress, Journal, p. 740; Globe, p. 439.

[3] John White, of Kentucky, Speaker.

[4] First session Seventeenth Congress, Journal, pp. 182, 183; Annals, pp. 790, 791.

Reference to Senate rule that no alien may offer a petition directly to the Senate.

On February 25, 1879,[1] the Vice-President[2] laid before the Senate a telegram directed to the Senate and House of Representatives, and signed "E. F. Smith, secretary constitutional convention" of the State of California, and transmitting the thanks of the convention for the passage of the bill restricting immigration of the Chinese.

Mr. George F. Hoar, of Massachusetts, objected to the reception of the paper.

This led to a discussion as to the treatment of a telegraphic dispatch as a petition within the meaning of the rule of the Senate:

> Before any petition or memorial shall be received or read at the table it shall be signed by the petitioner or memorialist, and a brief statement of its contents shall be made by the Senator or Presiding Officer presenting it; but no petition or memorial or other paper signed by citizens or subjects of a foreign power, unless the same be transmitted to the Senate by the President, shall be received.

Mr. James G. Blaine, of Maine, argued that if a Senator or the presiding officer stood sponsor for it as an authentic memorial a telegraphic dispatch should be received, as it might be the only means by which a distant community could exercise the right of petition.

The Vice-President, who apparently did not undertake to vouch for the dispatch (although a Senator from California announced that he would vouch for it), held that the point of order was well taken.

3329. A Member may himself be a petitioner.—On September 21, 1868,[3] Mr. Benjamin F. Butler, of Massachusetts, under the rule, presented his own memorial, submitting to the judgment of the House the matter of the service of process upon him in Baltimore while returning to his home in Massachusetts; which was referred to the Committee on the Judiciary.

3330. The House has usually refused to receive the petitions of the subjects of a foreign power not residing in the United States.—On March 11, 1818,[4] the Speaker laid before the House[5] the memorial of Vincente Pazos, representing himself as the "deputed agent of the authorities acting in the name of the Republics of Venezuela, New Grenada, and Mexico," representing the views with which the said authorities took possession of and occupied Amelia Island, in East Florida, complaining of the investment and capture thereof by the arms of the United States, the loss of property and other injuries sustained in consequence of the occupation of the island by the United States, and his application to the President of the United States for redress in the premises and his failure to obtain it, and praying relief from Congress.

Mr. John Forsyth, of Georgia, moved that the petition be not received. He stated that the petitioner was the agent of a foreign power, and applied to Congress as an appellate power over the Executive.

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[1] Third session Forty-fifth Congress, Record, pp. 1878–1880.

[2] William A. Wheeler, of New York, Vice-President.

[3] Second session Fortieth Congress, Journal, p. 1221.

[4] First session Fifteenth Congress, Journal, pp. 320, 321; Annals, pp. 1251–1268.

[5] Under the present system petitions are referred by the Clerk and not by the House.

Mr. Burwell Bassett, of Virginia, raised a question of order as to Mr. Forsyth's motion.

The Speaker believed that the motion might be entertained, although he did not think there was any precedent for it.

In favor of considering the petition it was urged that the right of petition was sacred, and that in this case, after all, it seemed to be a claim for damages suffered by individuals in territory under the jurisdiction of the United States. On the other hand, it was urged that the right of petition was for citizens only, although instances were cited where foreign immigrants had proffered prayers to Congress.

But the weight of opinion seemed to be that the petition was really from the representative of a foreign power, although the Republics mentioned had not yet been recognized by this Government. And in dealing with foreign powers the nation should always act as one power, through the Executive, and not allow one Department of the Government to be arrayed against the other by the intervention of a foreign agent.

The motion that the petition be not received was agreed to, yeas 127, nays 128.

3331. On May 17, 1824,[1] the Speaker presented, without question from the House, a memorial purporting to be from Louis Charles, Duc de Navarre, Dauphin of France, etc., representing himself to be the legitimate heir to the French throne, and praying the friendly interference of the Government of the United States in his behalf. The memorial was laid on the table.

3332. On April 2, 1832,[2] Mr. Charles F. Mercer, of Virginia, presented the memorial of sundry subjects of Great Britain, residing in England, praying Congress to aid the American Colonization Society, as an effectual means of ultimately suppressing the African slave trade, etc.

In regular course the memorial had been referred to the select committee to whom the general subject had been committed, when Mr. James K. Polk, of Tennessee, moved to reconsider the vote of reference, on the ground that the memorial came from citizens of a foreign country residing abroad, and was an uncalled for and impertinent interference in a great subject which the House was scrupulous about acting on, even upon the memorials of American citizens presented by their own citizens.

After debate, the vote of reference was reconsidered, and Mr. Mercer withdrew the memorial.

3333. On July 7, 1842,[3] Mr. Edward D. White, of Louisiana, laid on the Clerk's table, under the order of the House of March 29, the memorial of Edmund J. Forstall, in behalf of Messrs. Hope & Co., of Amsterdam, and other bondholders of the Bank of Pensacola, in the Territory of Florida, representing that, on the 18th of November, 1841, he laid before the Hon. Daniel Webster, Secretary of State, a statement of facts, together with a correspondence with Governor R. K. Call, in relation to the claim of said bondholders; that the object of the memorialists in thus addressing the Secretary of State was to bring before Congress the claims of

[1] First session Eighteenth Congress, Journal, p. 526; Annals, p. 2629.

[2] First session Twenty-second Congress, Journal, pp. 557, 558; Debates, pp. 2332–2350.

[3] Second session Twenty-seventh Congress, Journal, p. 1062.

the bondholders of the Bank of Pensacola upon the Federal Government, resulting from the failure of the Bank of Pensacola and of the Territory of Florida, to comply with the conditions of said bonds, etc.; that the Secretary of State in reply wrote that the matter was one with which the State Department had no concern, and that the bondholders had the power of applying directly to Congress; and that the memorialists were now following that course in asking for the examination of the case by the appropriate committee.

The memorial was referred to the Committee on Foreign Affairs.

3334. On February 17, 1847,[1] in the Senate, the Vice-President stated that he had in his possession a petition from a British subject asking certain legislation relating to the jurisdiction of the Supreme Court of the United States. The Vice-President said that he had not presented it because as to a doubt about the propriety of receiving a petition from an alien. Mr. Daniel Webster, of Massachusetts, said that there could not be the slightest doubt about the propriety of receiving it. On a former occasion it had been suggested that the British Parliament did not receive petitions from foreigners, and this precedent had been of weight in the decision. But that was an erroneous conclusion, as a study of Hatsell showed. An alien friend might present a petition to Parliament for any matter that a subject might present one for. Mr. John C. Calhoun, of South Carolina, contended that the proper channel of communication for a foreign subject was through the Executive. It seemed to him that the proper course was for the petitioner to present the matter first to his own government, and then it might be forwarded to this Government. In the case of an alien resident in this country, however, he thought the privilege of direct petition to Congress should be allowed. On February 23 a motion to receive the petition was laid on the table.

3335. In the Senate, on January 15, 1872,[2] a petition was presented from Chinese merchants of San Francisco in regard to the duty on rice. The Vice-President[3] said:

> The Chair desires to state that this may not be considered as a precedent; that by the usage of the Senate, repeatedly affirmed, it has been decided that petitions of foreigners can not be received, except through the State Department, the only medium by which we communicate with foreigners.

Further debate showed that there were American signatures on the petition, and also brought out from the Vice-President the statement that in the debate where the rule of the Senate was fixed Messrs. Webster, Calhoun, and others did make the distinction that foreigners, denizens of this country, might have the right to petition concerning their own personal privileges, as to whether they were suffering outrages or wrongs. The Senate decided to receive the petition.

3336. Petitions from foreigners are properly transmitted through the Executive.—Claims of foreign subjects against the United States Government—such, for instance, as the claim of the heirs of Baron de Beaumarchais—are trans-

[1] Second session Twenty-ninth Congress, Journal, pp. 434, 435, 480.

[2] Second session Forty-second Congress, Globe, pp. 378, 379.

[3] Ex-Speaker Colfax.

mitted by the Secretary of State to the President, who sends a message to the House of Representatives.[1]

3337. On May 26, 1834,[2] President Jackson transmitted to Congress a petition from the heirs of Baron de Kalb, praying remuneration for the services rendered by him during the war of the Revolution.

3338. On February 25, 1833,[3] President Jackson, by message, transmitted a letter from General Lafayette, with petitions of the granddaughters of Marshal Count Rochambeau, praying compensation for services rendered by their grandfather in the Revolutionary war. The message and documents were referred to the Committee on Revolutionary Claims.

3339. On February 17, 1835,[4] President Jackson, in a message transmitted to the House a petition from one of the surviving daughters of the Count de Grasse, and this petition was referred to the Committee on Revolutionary Claims.

3340. On February 27, 1901,[5] the following message from the President of the United States was laid before the House:

To the Congress:

I transmit herewith, for the consideration of Congress, in connection with my message of January 29, 1901, relative to the lynching of certain Italian subjects at Tallulah, La., a report by the Secretary of State touching a claim for $5,000 presented by the Italian ambassador at Washington on behalf of Guiseppe Defina on account of his being obliged to abandon his home and business.

WILLIAM MCKINLEY.

EXECUTIVE MANSION,
Washington, February 26, 1901.

3341. Petitions from Indians within the limits of the United States have been received.—On March 9, 1880,[6] the Senate, after some discussion but without dissent, received a petition from the delegates of certain Indian tribes in Indian Territory, the petitioners not being citizens of the United States.

3342. While slavery existed the House declared that slaves did not possess the right of petition.

A proposition to censure a Member for presenting a petition purporting to come from slaves failed after long discussion.

On February 6, 1837,[7] Mr. John Quincy Adams, of Massachusetts, rising in his place during the presentation of petitions to the House,[8] announced that he held in his hand a paper purporting to be a petition from slaves, signed by twenty-two persons, declaring themselves to be slaves, and addressed to the Speaker an inquiry as to the disposition of the petition under the rules.

At once a resolution was offered to censure Mr. Adams for his "gross disrespect" of the House in offering such a petition, and the subject was considered for several

[1] See case April 2, 1822, when President Monroe transmitted papers in the Beaumarchais claim? (first session Seventeenth Congress, Journal, p. 421.)

[2] First session Twenty-third Congress, Journal, p. 658.

[3] Second session Twenty-second Congress, Journal, p. 406; Debates, p. 1763.

[4] Second session Twenty-third Congress, Journal, p. 403.

[5] Second session Fifty-sixth Congress.

[6] Second session Forty-sixth Congress, Record, pp. 1399, 1340.

[7] Second session Twenty-fourth Congress, Journal, pp. 350, 364, 365, 373, 374–377; Debates, pp. 1587–1685, 1707–1734.

[8] Petitions are no longer presented in this way.

days. Various modifications and amendments of the original proposition of censure were proposed, and on February 9 the question came to an issue by a vote on these resolutions:

Resolved, That any Member who shall hereafter present any petition from the slaves of this Union, ought to be considered as regardless of the feelings of the House, the rights of the Southern States, and unfriendly to the Union.

Resolved, That the Hon. John Q. Adams, having solemnly disclaimed all design of doing anything disrespectful to the House in the inquiry he made of the Speaker as to the petition purporting to be from slaves, and having avowed his intention not to offer to present the petition if the House was of opinion that it ought not to be presented; therefore all further proceedings in regard to his conduct do now cease.

Both resolutions were disagreed to, the first by 92 yeas, 105 nays; the second by 21 yeas, 137 nays.

On February 18 Mr. Amos Lane, of Indiana, moved to reconsider the vote whereby the former resolution had been disagreed to, and on this motion there were yeas 158, nays 45. So the vote was reconsidered, and the resolution was again before the House.

The reconsideration seems to have been prompted by a desire to obtain a less equivocal declaration of the House on the subject of the right of slaves to petition than was contained in the negative action on the former of the resolutions. After quite an extended debate on the right of petition, in the course of which it was argued that the slave might not petition, as he had no civil status, and might not appeal to the courts, the House substituted for the pending resolution the following resolutions:

Resolved, That an inquiry having been made by an honorable gentleman from Massachusetts, whether a paper which he held in his hand, purporting to be a petition from certain slaves, and declaring themselves to be slaves, came within the order of the House of the 18th of January; and the said paper not having been received by the Speaker, he stated that, in a case so extraordinary and novel, he would take the advice and counsel of the House. This House can not receive the said petition without disregarding its own dignity, the rights of a large class of citizens of the South and West, and the Constitution of the United States.

Resolved, That slaves do not possess the right of petition secured to the people of the United States by the Constitution.[1]

The House agreed to the former resolution, yeas 160, nays 35; and to the second resolution, yeas 162, nays 18.

3343. References to discussion of the right of petition.—On December 12, 1838,[2] the House accompanied its order in relation to laying on the table petitions relating to slavery by a declaration of the character of the Government under the Constitution, the rights of Congress in relation to slavery, etc.

The right of petition was discussed in 1844[3] by Henry A. Wise in a minority report from the Committee on Rules, on the subject of the rule excluding abolition petitions.

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[1] The first amendment of the Constitution, proposed to the States for ratification in 1789, provides "Congress shall make no law * * * abridging * * * the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

[2] Third session Twenty-fifth Congress, Journal, p. 71.

[3] House Report, No. 3, pp. 16, 17, of Mr. Wise's views, first session Twenty-eighth Congress.

On April 26, 1894,[1] the right of petition was discussed at some length in the Senate.

3344. For a series of years the House adopted orders that all petitions on a certain subject should be at once laid on the table without being read or debated.—On January 4, 1836,[3] Mr. John Quincy Adams, of Massachusetts, presented a memorial from sundry inhabitants of the State of Massachusetts praying the abolition of slavery and the slave trade in the District of Columbia.

Mr. Thomas Glascock, of Georgia, made a motion that the petition be not received. He contended that this motion was a proper one which did not conflict with the right of petition. On January 25,[3] the proceedings on the subject of this and similar petitions being prolonged, Mr. Glascock quoted Jefferson's Manual:

> That regularly a motion for receiving a petition must be made and seconded, and a question put whether it shall be received.

He understood that this was the practice in both the House and Senate. Had Mr. Jefferson considered that a refusal to receive a petition was a denial of the right of petition intended to be guaranteed by the Constitution he would never have given his sanction to the rule given in his Manual.

On January 25, also, Mr. Adams declared "the foundation principle that the House had no right to take away or abridge the constitutional right of petition." The same day Mr. Caleb Cushing, of Massachusetts, spoke at length on the general subject, holding that the right of presenting a petition to the House and having it received was part of the great right of petition so jealously guarded in the Constitution of the nation and the several States. Precedents had been cited to show that the House had in the past refused to receive petitions. It was said that in 1790 a petition relating to the slave trade had been rejected by the House. Mr. Cushing showed by reference to the Journal that the petition in question had actually been referred to a committee. The report of the debates did, indeed, speak of it as rejected, but this was an error. The other case, that of the petition of Vincente Pazos, which the House refused to receive in 1818, did not involve the present question at all, since the petitioner was a foreign subject who presumed to apply to Congress as an appellate power over the Executive. "Upon the Constitution," continued Mr. Cushing, "upon the preexisting legal rights of the people, as understood in this country and in England, I have argued that this House is bound to receive the petition under debate. It is impossible, in my mind, to distinguish between the refusal to receive a petition or its summary rejection by some general order and the denial of the right of petition."

The continued presentation of petitions and the debates arising over each led to various propositions for the suppression of them. Finally, on February 4,[4] Mr. Henry L. Pinckney, of South Carolina, proposed that the whole subject of petitions, methods of dealing with them, and the slave trade and slavery in the District of Columbia, be referred to a select committee. On February 8 this proposition was

[1] Second session Fifty-third Congress, Record, pp. 4107–4110.

[2] First session Twenty-fourth Congress, Journal, p. 128; Debates, p. 2128.

[3] Debates, pp. 2318, 2321, 2329.

[4] Journal, pp. 289–316; Debates, pp. 2482, 2491.

adopted by the House, and the following were appointed of the committee: Messrs. Pinckney, of South Carolina, Thomas L. Hamer, of Ohio; Franklin Pierce, of New Hampshire; Benjamin Hardin, of Kentucky; Leonard Jarvis, of Maine; George W. Owens, of Georgia; Henry A. Muhlenberg, of Pennsylvania; George C. Dromgoole, of Virginia, and Joel Turrill, of New York.

This committee reported [1] on May 18, and after a long debate involving largely the question of slavery, the House came to a vote on May 25,[2] on the following resolutions appended to the report:

Resolved, That Congress possesses no constitutional authority to interfere in any way with the institution of slavery in any of the States of this Confederacy.

Resolved, That Congress ought not to interfere, in any way, with slavery in the District of Columbia.

And whereas, it is extremely important and desirable that the agitation of this subject should be finally arrested, for the purpose of restoring tranquility to the public mind, your committee respectfully recommend the adoption of the following additional resolution:

Resolved, That all petitions, memorials, resolutions, propositions, or papers, relating in any way or to any extent whatever to the subject of slavery, or the abolition of slavery, shall, without being either printed or referred, be laid upon the table, and that no further action whatever shall be had thereon.

The first resolution was agreed to, yeas 182, nays 9; the second, yeas 132, nays 45; the third, yeas 117, nays 68.[3]

3345. On January 18, 1837,[4] Mr. Albert G. Hawes, of Kentucky, in order to put an end to the discussions of the abolition of slavery, which were taking much of the time of the House, moved the following resolution:

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[1] See Report No. 691, House Reports, first session Twenty-fourth Congress.

[2] Journal, pp. 876–885; Debates, pp. 4009–4054.

[3] The action of the House in relation to resolutions of this character was in unfortunate assertion of a right which had been asserted in previous years both by the House and Senate. As early as November 28, 1792, a memorial on the subject of slavery had been returned by the Clerk on the order of the House. (Second session Second Congress, Annals, p. 730.) Again, on January 30, 1797, the House, after debate, refused to receive the memorial of certain manumitted slaves. (Second session Fourth Congress, Journal, p. 666; Annals, pp. 2015–2024.) On December 21, 1801, the petition of Peter Lee, a free negro, for consideration on account of wounds received in the Revolution, was denied reference to a committee. (First session Seventh Congress, Journal, p. 23.) By declining to refer petitions to a committee, the House expressed its intention not to entertain them. Thus in case of petitions of certain aliens in 1803. (Annals, second session Seventh Congress, pp. 465, 474.)

Thus, in 1813, the memorial of the Massachusetts legislature on the war was received, but not referred—simply postponed to the next session. (First session Thirteenth Congress, Annals, pp. 334, 404.) At the next session the memorial of Maryland house of delegates on the same subject was laid on the table, and the House refused to print it after an animated debate as to its contents. (Second session Thirteenth Congress, Annals, pp. 1204–1228.)

On April 18, 1826, the Committee on Claims reported back a petition not in the English language, and the House discharged the committee and tabled the resolution, so that the Delegate presenting the petition might have it translated. (First session Nineteenth Congress, Journal, p. 446.)

In the Senate, February 4, 1828 (first session Twentieth Congress, Debates, p. 234), the Chair (Vice-President John C. Calhoun) stated that the receiving of a memorial was a matter of course, but it was always in the power of the Senate not to receive one. In this case the Senate declined to receive the memorial.

[4] Second session Twenty-fourth Congress, Journal, pp. 234–236; Debates, p. 1411.

Resolved, That all petitions, memorials, resolutions, propositions, or papers, relating in any way or to any extent whatever to the subject of slavery, or to the abolition of slavery, shall, without being printed or referred, be laid upon the table, and that no further action be had thereon.[1]

Under the operation of the previous question, this resolution was agreed to, yeas 129, nays 69.

3346. On December 21, 1837,[2] the House agreed again to a resolution adopted in the previous Congress providing that petitions on the subject of the abolition of slavery be laid on the table without being debated, printed, read, or referred.

3347. For a time a rule was in force providing that no petition on a certain subject should "be received by this House or entertained in any way whatever."—On January 28, 1840[3] after a long debate, the House, by a vote of 114 ayes to 108 noes, agreed to the following rule:

No petition, memorial, resolution, or other paper praying the abolition of slavery in the District of Columbia, or any State or Territory, or the slave trade between the States or Territories of the United States in which it now exists, shall be received by this House, or entertained in anyway whatever.

Special orders for the same purpose had been adopted from session to session before this, but this is the first rule.

3348. On December 3, 1844,[7] the House, by a vote of 108 yeas to 80 nays, rescinded the rule providing that petitions for the abolition of slavery should not be "received by the House or entertained in anyway whatever."

3349. Am instance wherein a memorial was returned to the memorialists.—On April 21, 1806,[5] Mr. Josiah Quincy, of Massachusetts, presented to the House memorials of Samuel G. Ogden and William S. Smith stating that they were the subjects of unjust prosecution on account of an alleged offense against the laws of the United States, into which, if in error, they had been led by the conduct of officers of the Government.

The memorial was read, and

After debate the House adopted a resolution declaring the allegations of the memorial unsupported by evidence, and directing the Clerk to return it to those from whom it came.[6]

3350. When petitions were presented in open House it was held that the question of reception was at once pending.—On January 13, 1840,[7] Mr. Levi Lincoln, of Massachusetts, presented certain petitions praying that slavery be abolished in the District of Columbia. Mr. George C. Dromgoole, of Virginia, demanded that the question on the reception of the petitions[8] be put. It was

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[1] A similar resolution had been agreed to at the first session of this Congress; but, on December 26, 1936 (Debates, p. 1156), the Speaker said that, after referring to such authorities as he could find, he had come to the decision that the operation of that resolution ceased with the last session of Congress.

[2] Second session Twenty-fifth Congress, Journal, p. 127.

[3] First session Twenty-sixth Congress, Journal, p. 244; Globe, p. 151.

[4] Second session Twenty-eighth Congress, Journal, pp. 10, 11; Globe, p. 7.

[5] First session Ninth Congress, Journal, pp. 414–418 (Gales and Seaton ed.); Annals, pp. 1085–1094.

[6] On January 14, 1832 (Second session Twenty-second Congress, Debates, p. 98), Mr. Henry Clay, of Kentucky, in the Senate, presented petitions from persons who professed to have discovered the secret of endless life, and asked a grant of land.

[7] First session Twenty-sixth Congress, Journal, p. 203; Globe, p. 119.

[8] Petitions are no longer presented in open House.

objected that, as the Member who had presented them had not moved that they be received, the question of their reception was not before the House. Mr. Speaker Hunter decided that the presentation of the petition was, of itself, a motion that it should be received. On appeal this decision was sustained, yeas 145, nays 51.

3351. The question on reception being put, the House has frequently declined to receive petitions which did not meet its approval.—On January 22, 1844,[1] Mr. Joshua R. Giddings, of Ohio, offered to present a petition of citizens of Massachusetts, praying for the passage of an act making it an offense highly penal for any officer of or person employed by the United States to capture or detain or to aid or assist in capturing or detaining any person on the ground that such person was a slave.

The question, "Shall the petition be received?" being demanded, was put, and there were yeas 85, nays 86.

And so the petition was not received.

3352. On January 7, 1839,[2] Mr. John Quincy Adams, of Massachusetts, presented to the House a memorial asking the appointment of a "committee on color," to whom should be referred all officeholders and Members of Congress for the examination of their respective pedigrees in order that all persons having the least degree of colored blood in their veins might be expelled from office, etc.

Mr. George C. Dromgoole, of Virginia, said he considered the memorial an evident attempt to cast ridicule on the House, and objected to its reception.

The question being taken "Shall the petition be received?" it was decided in the negative, yeas 25, nays 115.

3353. On January 30, 1833,[3] Mr. John Quincy Adams, of Massachusetts, presented a protest of the legislature of Massachusetts against the pending tariff bill. This was referred and ordered printed. Later a Member raised a question as to this protest or memorial on the ground that it contained terms not respectful to the Committee on Ways and Means who framed the bill. The matter was debated at length, but on February 2 the subject was dropped without action.

3354. On February 28, 1842,[4] Mr. Joshua R. Giddings, of Ohio, offered to present a petition from eighty-two inhabitants of the town of Austinburg, in the county of Ashtabula, in the State of Ohio, praying Congress "to take measures immediately to bring about an amicable division of these States by a line running between the free and the slave States," for three reasons, which were set forth in the petition.

It was objected that the petition was not respectful to the House, and the question being taken "Shall the petition be received?" there were yeas 24, nays 117. So the House refused to receive the petition.

3355. On February 11, 1850,[5] the Senate, at the conclusion of a long debate on the subject, refused, by a vote of yeas 3, nays 51, to receive a petition praying for the dissolution of the Union.

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[1] First session Twenty-eighth Congress, Journal, pp. 268–270; Globe, p. 178.

[2] Third session Twenty-fifth Congress, Journal, p. 238; Globe, p. 99.

[3] Second session Twenty-second Congress, Journal, pp. 254, 256, 262; Debates, pp. 1478, 1522, 1564.

[4] Second session Twenty-seventh Congress, Journal, p. 461; Globe, p. 268.

[5] First session Thirty-first Congress, Globe, p. 333.

3356. On February 25, 1850,[1] Mr. Joshua R. Giddings, of Ohio, presented the petition of Isaac Jefferis and others, citizens of Pennsylvania, and the petition of John J. Woodward and others, citizens of Pennsylvania and Delaware, asking Congress to adopt measures for the immediate and peaceful dissolution of the American Union.

Mr. Giddings moved that the petitions be referred to a select committee with instructions to inquire as to the extent of this dissatisfaction with the Union and the means of restoring satisfaction.

The reception of the petition being objected to, the question was put "Shall the petitions be received?" and decided in the negative, yeas 8, nays 162.

3357. If a portion of a petition be excluded by a rule, the entire paper must be excluded if the context be such as to be incapable of division.—On December 26, 1843,[2] Mr. John Quincy Adams, of Massachusetts, proposed to present a petition, a portion of which fell within the rule excluding petitions for the abolition of slavery, and a portion of which did not fall within the said rule. The Speakers[3] decided that inasmuch as a large portion of the petition was excluded by the rule, and that the portion proposed to be referred was so connected with that which could not be received as to render it necessary to send the entire petition to the committee if any part should be received and referred, it was not in order to receive any part of it.

On appeal this decision was sustained, yeas 104, nays 41.

3358. A portion of a petition, being in contravention of a rule, was laid on the table, while the remainder was referred.—On February 4, 1839,[4] the House had before it a memorial from the legislature of the State of Vermont protesting against the annexation of Texas, and also referring to the abolition of slavery within the United States. Under a standing order of the House petitions on the latter subject were to be at once laid on the table, without being debated, printed, or referred.

Therefore the portion of the resolution relating to the abolition of slavery within the United States was laid on the table by direction of the Speaker, while the remainder came before the House to be disposed of by vote, either to be referred or laid on the table, or otherwise disposed of.

3359. A portion of a petition may be referred to one committee and the remainder to another.—On November 25, 1811,[5] on motion of Mr. George Poindexter, of Mississippi Territory:

Resolved, That so much of the petition of the inhabitants of West Florida as relates to the annexation of that province to the Mississippi Territory be referred to the committee appointed on the memorial of the legislative council and house of representatives of said Territory praying admission into the Union on an equal footing with the original States; and that so much of the said petition as relates to land claims be referred to the Committee on the Public Lands.[6]

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[1] First session Thirty-first Congress, Journal, p. 605; Globe, p. 414.

[2] First session Twenty-eighth Congress, Journal, p. 119.

[3] John W. Jones, of Virginia, Speaker.

[4] Third session Twenty-fifth Congress, Journal, p. 447; Globe, p. 159.

[5] First session Twelfth Congress, Journal, p. 38 (Gales and Seaton ed.); Annals, p. 366.

[6] Petitions are no longer referred by the House, but the rule as to distribution would seem to hold good.

3360. On June 18, 1838,[1] the House referred a portion of the memorial of Francis P. Blair relating to his connection with the Government in the capacity of Public Printer to a select committee, and another portion of the memorial to the Committee on Post-Offices and Post-Roads.

3361. In the earlier practice the House endeavored to pass either favorably or unfavorably on all petitions presented.—It was a frequent practice in the earlier days, when a committee had before it a memorial on which action was not expedient, for the House to discharge the committee and give the memorialist leave to withdraw.[2]

3362. On December 11, 1837,[3] the House

Ordered, That the several memorials and petitions presented to the House of Representatives at the last Congress, and upon which favorable reports were made, and on which the House did not act finally, be again referred to the committees to which the said memorials and petitions were heretofore severally referred.[4]

3363. A Member having presented a memorial for reference under a rule, and a ruling and appeal having been made as to that reference, it was held that the memorial might not be withdrawn.—On February 29, 1836,[5] Mr. John M. Patton, of Virginia, presented to the House certain resolutions of the legislature of Virginia, and moved their reference to the Committee on the District of Columbia with certain instructions.

The Speaker[6] decided that under the resolution of the House of the 8th of February instant, which declared "That all memorials which have been offered, or may hereafter be presented to this House, praying for the abolition of slavery in the District of Columbia, * * * together with every other paper or proposition that may be submitted in relation to this subject, be referred to a select committee," the paper now presented would go, by virtue of the said resolution, to the select committee.

An appeal was taken from this decision of the Chair, and the Chair was sustained by a vote of the House.

Thereupon, the resolutions of the legislature of Virginia were referred, in accordance with the requirements of the resolution, to the select committee.

Then Mr. Patton proposed to withdraw the resolutions.

The Speaker decided that, as a matter of right, the resolutions could not be withdrawn, unless on leave granted by a vote of the House.

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[1] Second session Twenty-fifth Congress, Journal, pp. 1114–1116.

[2] See instance February 23, 1829. (Second session Twentieth Congress, Journal, p. 324.)

[3] Second session Twenty-fifth Congress, Journal, p. 36.

[4] In the great pressure of business now, no action is taken as to petitions or bills not acted on when a session ends.

[5] First session Twenty-fourth Congress, Journal, p. 420; Debates, pp. 2656–2660.

[6] James K. Folk, of Tennessee, Speaker.

Chapter XCI.

BILLS, RESOLUTIONS, AND ORDERS.

1. **Rules for introduction and reference of bills, petitions, etc. Sections 3364–3366.**
2. **Forms and practice in relation to bills and resolutions. Sections 3367–3382.**
3. **Practice as to consideration of. Sections 3383–3390.**
4. **Reading, amendment, and passage. Sections 3391–3428.**
5. **Enrolling and signing of. Sections 3429–3459.**
6. **Recall of bills from other House for correction of errors. Sections 3460–3481.**

3364. Petitions, memorials, and bills are introduced by the Member delivering them to the Clerk.

The reference of a private bill is indorsed on it by the Member introducing it, while the reference of a public bill is made by the Speaker.

Any petition or memorial of an obscene or insulting nature may be returned by the Speaker to the Member presenting it for reference.

Rules for correction of erroneous reference of private and public bills.

Petitions, memorials, and bills referred by delivery to the Clerk are entered on the Journal and Record.

The erroneous reference of a petition or private bill referred by the Member under the rule does not confer jurisdiction on the committee receiving it.

Sections 1, 2, and 3 of Rule XXII provide for the introduction, reference to committees, and change of reference of petitions, memorials, bills, and resolutions:

1. Members having petitions or memorials or bills of a private nature to present may deliver them to the Clerk, indorsing their names and the reference or disposition to be made thereof; and said petitions and memorials and bills of a private nature, except such as, in the judgment of the Speaker, are of an obscene or insulting character, shall be entered on the Journal with the names of the Members presenting them, and the Clerk shall furnish a transcript of such entry to the official reporters of debates, for publication in the Record.

2. Any petition or memorial or private bill excluded under this rule shall be returned to the Member from whom it was received; and petitions and private bills which have been inappropriately referred may, by direction of the committee having possession of the same, be properly referred in the manner originally presented; and an erroneous reference of a petition or private bill under this clause shall not confer jurisdiction upon the committee to consider or report the same.

3. All other bills, memorials, and resolutions may, in like manner, be delivered, indorsed with the names of Members introducing them, to the Speaker, to be by him referred, and the titles and references thereof and of all bills, resolutions, and documents referred under the rules shall be entered on

the Journal and printed in the Record of the next day; and correction in case of error of reference may be made by the House without debate, in accordance with Rule XI,[1] on any day immediately after the reading of the Journal, by unanimous consent, or on motion of a committee claiming jurisdiction, or on the report of the committee to which the bill has been erroneously referred.

These rules are the result of a long, evolutionary process, compelled by the pressure of business, in the course of which the old parliamentary method of presenting bills, petitions, etc., has fallen into disuse, while a new system peculiar to the House has arisen.

The evolution of the new system will be understood best by considering it (1) in relation to petitions and memorials,[2] and (2) in relation to bills.

3365. Form and history of the rule for the introduction of bills, Rule XXII, sections 1, 2, and 3.

Early practice of introducing bills on leave and the gradual evolution of the present system.

A bill may be originated by a committee having jurisdiction of the subject by reference of a petition or by order of the House.

Number of bills introduced in various Congresses from 1863 to 1907. (Footnote.)

Proportion of bills reported by committees and passed by the House. (Footnote.)

The method of the introduction of bills as established by the present rules is the result of a gradual evolution, which in some of its features is not wholly easy to trace. The First Congress[3] made this rule:

Every bill shall be introduced by motion for leave or by an order of the House on the report of the committee; and in either case a committee to prepare the same shall be appointed. In cases of a general nature, one day's notice at least shall be given of the motion to bring in a bill; and every such motion may be committed.

At first motions for leave to introduce a bill were not very common, the habits of the House inclining rather to let the committees draft the bill on jurisdiction conferred by the reference of a petition or by a resolution of the House instructing them so to do.[4] Later, from 1835 to 1850, it was a more frequent practice for bills to be introduced on leave. Motions for leave were sometimes debated several days, as occurred in February, 1837.[5] Previous to 1822,[6] so strict was the House as to the introduction of bills that Rule 71 was adopted, which provided that "the several standing committees of the House shall have leave to report by bill or otherwise."

[1] The rule relating to jurisdiction of committees. See section 4019 of this volume and succeeding sections.

[2] See section 3312 for history of this evolution in relation to petitions and memorials.

[3] First session First Congress, Journal, p. 10.

[4] For discussion of the usage see debates in 1827 and statement of Mr. Speaker Polk in 1837. (First session Twentieth Congress, Journal, p. 67; Debates, pp. 823–827; second session Twenty-fourth Congress, Debates, pp. 1340–1345; also second session Nineteenth Congress, Debates, pp. 775, 776.)

[5] Second session Twenty-fourth Congress, Journal, p. 326; Globe, pp. 144–146.

[6] First session Seventeenth Congress, Journal, p. 727; see also speech of Mr. Burchard, second session Forty-fourth Congress, Record, p. 19810. For interesting Senate discussion of the method of introducing bills in that body see first session Forty-fourth Congress, Record, p. 335.

On September 15, 1837,[1] the introduction of bills was confined to one of the morning-hour calls by the adoption of this rule:

Every bill shall be introduced on the report of a committee or by motion for leave. In the latter case, at least one day's notice shall be given of the motion, and the motion shall be made and the bill introduced, if leave is given, when resolutions are called for; such motion or the bill when introduced may be committed.

On March 16, 1860,[2] the rule providing for a call of the States each alternate Monday for resolutions was amended to include also bills on leave, which, by a further provision, were to be referred without debate, and might not be brought back into the House on a motion to reconsider.[3] This amendment was adopted because of the inconvenience and delay caused by many Members rising and asking leave to introduce bills for reference to committees.

On April 14, 1879,[4] a discussion arose in the House on the subject of the introduction of bills under the rules at that time, which were:

115. Every bill shall be introduced on the report of a committee or by motion for leave. In the latter case, at least one day's notice shall be given of the motion in the House, or by filing a memorandum thereof with the Clerk, and having it entered on the Journal; and the motion shall be made and the bill introduced, if leave is given, when resolutions are called for; such motion, or the bill when introduced, may be committed. (Apr. 7, 1789; Sept. 15, 1837; Mar. 2, 1838.)

130. All the States and Territories shall be called for bills on leave and resolutions every Monday during each session of Congress; and, if necessary to secure the object on said days, all resolutions which shall give rise to debate shall lie over for discussion. * * * (Feb. 6, 1838.) [The rule further, by amendments of March 16, 1860, and January 11, 1872, provided that bills on leave should be referred without debate and not brought back into the House on motion to reconsider, and that the call for introduction of bills on leave should be in the hour after reading the Journal.]

The point of order was made that under these rules a notice of one day should be given by a Member proposing to introduce a bill on leave. Several old Members, including the Speaker, stated that in many years of service they had never known this point of order to be raised, and Mr. Speaker Randall overruled the point of order, and on appeal was sustained, yeas 139, nays 75.

This illustrates to what an extent the habit of the House had outgrown its rules. As late as 1876[5] the House had refused to receive a bill introduced without the notice and leave; but it seems to have been an exceptional case which escaped the memories of the Speaker and older Members in 1879.

In the revision of 1880[6] the introduction of bills was provided for in section 1 of Rule XXIV, which fixed a call of the States each Monday morning for the introduction without notice or leave of bills, joint resolutions, and memorials. This arrangement continued for ten years, until, in the revision of 1890, the present form of rule was adopted as section 3 of Rule XXII.[7]

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[1] First session Twenty-fifth Congress, Globe, p. 34. The committee who made this revision were: Charles F. Mercer, of Virginia; Thomas L. Hamer, of Ohio; George N. Briggs, of Massachusetts; Francis O. J. Smith, of Maine, and Henry A. Muhlenburg, of Pennsylvania.

[2] First session Thirty-sixth Congress, Globe, p. 1179.

[3] This is now in section 2 of Rule XVIII.

[4] First session Forty-sixth Congress, Record, pp. 425–427.

[5] First session Forty-fourth Congress, Journal, pp. 1055, 1056.

[6] Second session Forty-sixth Congress, Record, pp. 201, 206.

[7] See House Report No. 23, first session Fifty-first Congress. See section 3364 for form of rule.

There is one important exception which should be noted in the general usage as to bills as outlined above. On May 5, 1870, private bills of a certain class becoming numerous, Mr. Samuel S. Cox, of New York, reported from the Committee on Rules and the House adopted the following: [1]

But the Speaker shall not entertain a motion for leave to introduce a bill or joint resolution for the establishment or change of post routes, and all propositions relating thereto shall be referred under the rule, like petitions and other papers, to the appropriate committee.

On May 16, 1879,[2] Mr. James A. Garfield, of Ohio, from the Committee on Rules, moved that river and harbor bills be referred as were post-route bills. This was agreed to,[3] the object being largely to save printing.

In the revision of 1880 the provisions relating to river and harbor and post-route bills were included as section 5 of Rule XXI, which related to bills, and section 1 of Rule XXII was reported as at present, except that the words in the first clause, "or bills of a private nature," were not included.[4]

In the Fiftieth Congress, on December 21, 1887, Mr. Samuel J. Randall, of Pennsylvania, reported from the Committee on Rules [5] the amendment providing for the filing of private bills in the box at the desk, instead of presenting them in open House on Monday, which was then the day for presentation of bills. The effect of this change, he explained, was that private bills could be presented on any day as well as on Monday. The committee also added the clause that the improper reference of a private bill should not confer jurisdiction, Mr. Randall stating that this was in conformity with the decisions of the House heretofore.[6]

In the following Congress, by the revision of 1890, the principle was extended also to public bills and reports of committees.[7]

Thus the privilege of the Member in the introduction of bills has been broadened gradually, until now there is no check whatever upon it, and the number of bills presented each Congress is far beyond the ability of the House to consider.[8]

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[1] Second session Forty-first Congress, Globe, p. 3262.

[2] First session Forty-sixth Congress, Record, p. 1394.

[3] On January 5, 1874 (first session Forty-third Congress, Record, p. 374), Mr. Garfield had proposed that all bills for the relief of private citizens by name should be filed with the Clerk, but this was not adopted.

[4] Second session Forty-sixth Congress, Record, p. 206.

[5] First session Fiftieth Congress, Record, p. 147.

[6] This may have been the later practice, but earlier the erroneous reference of the private bill did give jurisdiction. See instance on July 22, 1852, when Mr. Speaker Boyd permitted a private-claim bill to be reported from the Committee on Printing. (First session Thirty-second Congress, Globe, p. 1885.)

[7] First session Fifty-first Congress, House Report No. 23.

[8] The following table indicates the number of bills and joint resolutions introduced by Members of the House in the Congresses from 1863 to 1907:

Congress.	Bills.	Congress.	Bills.
Thirty-eighth	813	Forty-ninth	11,260
Thirty-ninth	1,234	Fiftieth	12,664
Fortieth	2,023	Fifty-first	14,033
Forty-first	3,091	Fifty-second	10,623
Forty-second	4,073	Fifty-third	8,987
Forty-third	4,891	Fifty-fourth	10,378
Forty-fourth	4,708	Fifty-fifth	12,223
Forty-fifth	6,549	Fifty-sixth	14,339
Forty-sixth	7,257	Fifty-seventh	17,560
Forty-seventh	7,685	Fifty-eighth	20,074
Forty-eighth	8,290	Fifty-ninth	26,154

The following summaries show the proportion of bills reported by committees and passed by the House in the Fifty-eighth and Fifty-ninth Congresses:

HOUSE OF REPRESENTATIVES.

In the Fifty-eighth Congress the totals were as follows:		
Number of bills introduced		19,209
Number of reports		4,904
Number of bills enacted into laws:		
Public	574	
Private	3,467	
		4,041
Number of resolutions:		
Public	72	
Private	2	
		74
In the Fifty-ninth Congress the totals were as follows:		
Number of bills introduced		26,154
Number of joint resolutions		257
Number of concurrent resolutions		62
Number of simple resolutions		898
Number of reports		8,174
Number of bills enacted into laws:		
Public—		
First session	416	
Second session	276	
		692
Private—		
First session	3,573	
Second session	2,675	
		6,248
		6,940
Number of resolutions agreed to:		
Public—		
First session	54	
Second session	29	
		83
Private, second session		1

3366. A Member may have a bill, resolution, or memorial recorded as introduced "by request."

Form and history of Rule XXII, section 4.

Section 4 of Rule XXII is:

When a bill, resolution, or memorial is introduced "by request," these words shall be entered upon the Journal and printed in the Record.

In the revision of 1890[1] this rule was brought into Rule XXII. In the Fiftieth Congress it was Rule XLVII, and provided only for the entry of the words upon the Journal. The rule dates from February 14, 1888.[2]

3367. The statutes prescribe the form of enacting and resolving clauses of bills and joint resolutions.

The statutes prescribe the style of title of all appropriation bills.

As to the division of bills into sections and the numbering thereof.

Forms of bills and joint resolutions.

The statutes provide[3] that the style of title of all acts making appropriations for the support of the Government shall be as follows:

"AN ACT Making appropriations [here insert the object] for the year ending June 30 [here insert the calendar year]."

The enacting clause of all acts of Congress hereafter enacted shall be in the following form:[4]

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.*"[5]

The resolving clause of all joint resolutions shall be in the following form:

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled.*"[6]

No enacting or resolving words shall be used in any section of an act or resolution of Congress except in the first.[7]

And each section shall be numbered, and shall contain, as nearly as may be, a single proposition of enactment.[8]

The term private bill shall be construed to mean all bills for the relief of private parties, bills granting pensions, and bills removing political disabilities.[9]

The form of a bill, with title, number, etc., is as follows, after it is printed, at the time of its introduction:

59TH CONGRESS, 1ST SESSION. } H. R. 7058.

IN THE HOUSE OF REPRESENTATIVES.

December 13, 1905.

Mr. FLOYD introduced the following bill; which was referred to the Committee on Military Affairs and ordered to be printed.

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[1] See House Report No. 23, first session Fifty-first Congress.

[2] First session Fiftieth Congress, Congressional Record, p. 1188.

[3] Revised Statutes, section 11.

[4] Instance of a bill with a declaratory enacting clause. (Sec. 1506 of Vol. II of this work.)

[5] Revised Statutes, section 7.

[6] Revised Statutes, section 8.

[7] Revised Statutes, section 9.

[8] Revised Statutes, section 10.

[9] Supplement to Revised Statutes, volume 2, p. 349; 28 Statutes at Large, section 55, p. 609.

A BILL

For the erection of a national sanitarium for disabled volunteer soldiers at Eureka Springs, Arkansas.

1 *Be it enacted by the Senate and House of Representatives of the United States of*
2 *America in Congress assembled,* That two hundred thousand dollars be, and the same
3 is hereby, appropriated for the erection of a national sanitarium for disabled volunteer
4 soldiers at Eureka Springs, Arkansas, etc.

The form of a joint resolution, with title, number, etc., is as follows:

59TH CONGRESS, 2D SESSION. } H. J. RES. 211.

IN THE HOUSE OF REPRESENTATIVES.

January 4, 1907.

Mr. MCCLEARY introduced the following joint resolution; which was referred to the Committee on the Library and ordered to be printed.

JOINT RESOLUTION

Authorizing the transfer of the files, books, and pamphlets of the Industrial Commission.

1 *Resolved by the Senate and House of Representatives of the United States of*
2 *America in Congress assembled,* That all official minutes and files of correspondence of the
3 Industrial Commission deposited with the Librarian of Congress, etc.

On the backs of the bill and joint resolution, respectively, the following endorsements appear:

59TH CONGRESS, 1ST SESSION. } H. R. 7058.

A BILL

For the erection of a national sanitarium for disabled volunteer soldiers at Eureka Springs, Arkansas.

By Mr. FLOYD.

December 13, 1905.—Referred to the Committee on Military Affairs and ordered to be printed.

59TH CONGRESS, 2D SESSION. } H. J. RES. 211.

JOINT RESOLUTION.

Authorizing the transfer of the files, books, and pamphlets of the Industrial Commission.

By Mr. MCCLEARY.

January 4, 1907.—Referred to the Committee on the Library and ordered to be printed.

In the first rules of the House the enacting style of bills was prescribed as follows:

Be it enacted by the Senators and Representatives of the United States in Congress assembled.

This was adopted April 7, 1789.[1]
On April 24 this was rescinded.[2]

[1] First session First Congress, Journal, p. 10 (Gales and Seaton ed.).
[2] Journal, p. 20; Annals, p. 200.

Where a two-thirds vote is required, as in proposing an amendment to the Constitution, it is usual to add to the resolving clause the words "two-thirds of both Houses concurring." [1]

3368. Forms and conditions of bills making declarations of war.—On April 25, 1898,[2] Mr. Robert Adams, jr., of Pennsylvania, from the Committee on Foreign Affairs, by unanimous consent, presented the following bill, which was passed without debate or division:

"A bill (H. R. 10086) declaring that war exists between the United States of America and the Kingdom of Spain."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, First. That war be, and the same is hereby, declared to exist, and that war has existed since the 21st day of April, A. D. 1898, including said day, between the United States of America and the Kingdom of Spain.

Second. That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry this act into effect.

The act declaring war between the United States and Great Britain was approved June 8, 1812.[3] The bill, on "motion made and leave given," was reported from the House Committee on Foreign Relations [4] by Mr. John C. Calhoun, of South Carolina, on June 3, 1812.[5]

The bill was debated in Committee of the Whole House and reported without amendment on June 4, and on the same day passed the House by a vote of 79 yeas to 49 nays.

The act providing for the prosecution of the existing war between the United States and the Republic of Mexico was approved May 13, 1846. The bill was first reported from the Committee on Military Affairs on January 27, 1846, and was (No. 145) an act to authorize the President, under certain circumstances, to accept the services of volunteers, and for other purposes.[6] In the House on May 11 a motion was made and carried to strike out the first section of the bill and insert a preamble reciting that war existed by the act of Mexico, and a section 1 providing means to enable the "Government of the United States to prosecute said war." On the same day the bill passed, 174 yeas to 14 nays. The title was then amended so as to read "An act providing for the prosecution of the existing war between the United States and the Republic of Mexico." By this title it is to be found in the laws.[7]

3369. The examination of bills for verbal and technical alterations has been proposed but never adopted by the House as a system.—On March 20, 1816, Mr. Asahel Stearns, of Massachusetts, proposed a standing committee, whose duty it should be—

carefully to examine all bills which may be reported before they are introduced into the House, to make verbal or technical alterations, or take the same into a new draft if they shall think proper. But

[1] Third session Eleventh Congress, Journal, pp. 210, 215. (Feb. 4, 1811.)

[2] Second session Fifty-fifth Congress, Record, p. 4252.

[3] U. S. Stat. L., first session Twelfth Congress, chap. 102. (2 Stat. L., p. 755.)

[4] Now Foreign Affairs.

[5] First session Twelfth Congress, Journal, pp. 461, 469.

[6] First session Twenty-ninth Congress, Journal, pp. 307, 792, 796.

[7] U. S. Stat. L., first session Twenty-ninth Congress, chap. 16. (9 Stat. L., p. 9.)

they shall not change the principles or provisions of the bill without the consent of the committee who shall have reported the same.

This was to be called the "Committee on the Revision of Bills." The motion was not acted on, and the House has never adopted such a system.

3370. The relative uses of bills and joint resolutions discussed.—On May 28,1846,[1] while the House was discussing a joint resolution giving the thanks of Congress to General Taylor and his soldiers for their achievements on the Rio Grande River, Mr. George Ashmun, of Massachusetts, raised the question of order that the resolution proposed an appropriation. This he did not consider constitutional, appropriations being properly made by a bill. Mr. Jacob Brinkerhoff, of Ohio, cited a precedent in the joint resolution thanking Commodore Perry and his squadron and at the same time giving three months' pay to the privates. The chairman of the Committee of the Whole[2] said that the books were full of precedents where money had been appropriated by joint resolution; but he had always believed that money should not be appropriated except by act or bill. Mr. John Quincy Adams, of Massachusetts, took the same view. The resolution as it passed did not contain the appropriation.

3371. On January 27, 1871,[3] in the course of a debate in the Senate, ex-Vice President Hannibal Hamlin, of Maine, said:

When I was a Member of the other House there was no such thing known in legislation as a joint resolution. It is a modern invention. It has the force and effect of law. Why, then, shall not all your laws have the same enacting clause? Why have a joint resolution at all? * * * This thing of a joint resolution requires just as many readings, it has to go through all the stages and processes of legislation that a bill does, and then has the same force of law. Now, why should we have our statutes encumbered with legislation headed by different modes of enactment?

At the same time Mr. Charles Sumner, of Massachusetts, said:

I must say that I agree with the Senator from Maine. The system of joint resolutions, as he says, is a modern innovation, and I think the sooner it is dispensed with the better. The Senator did not refer, however, in his statement to one difficulty or incongruity which that causes. It is in the statute book. You have acts of Congress under two different heads, of "acts" and then of "joint resolutions." And I ask Senators if we do not almost daily experience some difficulty in finding what we want simply from that double arrangement.

Mr. Lyman Trumbull, of Illinois, called attention to the fact that the Constitution provided for resolutions, and in the debate it was concluded that although Congress might by law prohibit resolutions, yet if one House should pass one and the other concur and the President sign it, it would have all the force of law.

3372. On March 15, 1871,[4] this matter came up again in the Senate, when the joint resolution of the House (H. Res. 29) to authorize the commissioners to revise the statutes to print their reports was, on motion of Mr. Trumbull, amended by the Senate by changing it to an act. The Senate discussed the subject considerably, and decided that it was time to cease legislating so extensively in two forms.[5]

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[1] First session Twenty-ninth Congress, Globe, pp. 878–880.

[2] Linn Boyd, of Kentucky, Chairman.

[3] Third session Forty-first Congress, Globe, pp. 775, 776.

[4] First session Forty-second Congress, Globe, pp. 118, 172.

[5] First session Forty-second Congress, Globe, p. 112.

On March 20, in the House, Speaker Blaine said:

In a conference with the Vice-President, the presiding officer of the Senate, he requested the Chair to announce that the Senate had suggested the exclusion of all joint resolutions, except for special purposes, requiring that all enactments having the force of law shall be in the form of an act. It is proposed that joint resolutions shall be confined to inferior style of legislation as well as to the highest style of legislation, proposing amendments to the Constitution of the United States. * * * The complaint against the present practice comes principally from the legal profession throughout the country. It comes from them more than from any other source. They protest against important legislation under the form of joint resolutions.

Mr. James A. Garfield, of Ohio, added that those searching for legislation were often misled by looking in the acts and not finding what had been enacted in form of joint resolutions.[1]

The House on this day, March 20, concurred in the action of the Senate changing joint resolution No. 29 to an act.

On March 16, 1871, the Senate also changed to an act the House joint resolution (H. Res. 31) granting the right to erect a monument to Professor Morse on a Government reservation; but the Senate afterwards recalled the resolution and receded from the amendment. There was no debate, but it seems evident that the resolution form was appropriate for such legislation.

Again, on March 30, the House concurred in the action of the Senate changing to a bill the joint resolution (H. Res. 28) for the relief of Robert Moir & Co.[2]

3373. On January 31, 1876,[3] Mr. Henry B. Anthony, of Rhode Island, called attention to the fact that the Congress was again falling into the habit of legislating too much by joint resolutions, and the matter was discussed somewhat, without action, but with a concurrence of opinion, that the joint resolution should be less used for ordinary matters of legislation.

3374. A joint resolution may be changed to a bill by amendment.—On July 9, 1838,[4] the House resolved itself into Committee of the Whole House on the state of the Union to consider the joint resolution of the Senate (No. 2) "authorizing the printing of the Madison Papers."

In the committee Mr. John Quincy Adams, of Massachusetts, moved an amendment changing the joint resolution into a bill. This amendment was agreed to, and the committee rose and reported the resolution with the amendment.

The amendment was concurred in by the House, and the resolution as amended was passed by the House, and the Clerk was ordered to "acquaint the Senate therewith."

The same day a message from the Senate announced that it had concurred in the amendment changing the joint resolution into an act.

3375. A joint resolution is a bill within the meaning of the rules.—On March 2, 1843,[5] Mr. Cuthbert Powell, of Virginia, from the Committee for the District of Columbia, reported a joint resolution to continue the charter of certain banks in the District of Columbia. The same having been read, Mr. Francis W. Pickens,

[1] Globe, p. 182.

[2] Globe, p. 351.

[3] First session Forty-fourth Congress, Record, p. 756.

[4] Second session Twenty-fifth Congress, Journal, pp. 1310, 1311; Globe, pp. 505, 506.

[5] Third session Twenty-seventh Congress, Globe, p. 384.

of South Carolina, inquired whether this was an original bill of the House or a bill from the Senate. The Speaker having replied that it was an original joint resolution reported from a committee, Mr. Pickens observed that a joint resolution was in the nature of a bill and could not without a suspension of the sixteenth joint rule [1] be sent to the Senate.

The Speaker [2] said that the joint resolution was in fact a bill and, if passed, could not be sent to the Senate without a suspension of the rule.

3376. Under rules of the House which have now disappeared it was held that a resolution of the House might not by amendment be changed to a joint resolution or a bill.—On April 30, 1852,[3] Mr. Willis A. Gorman, of Indiana, from the Committee on Printing, to whom was referred the mechanical part of the Patent Office report, with instructions to inquire into the propriety of printing extra copies of the same, reported the following resolution:

Resolved, That there be printed for the use of the House of Representatives, 50,000 copies of the mechanical part of the Patent Office report and 3,000 additional copies for the use of the Commissioner of Patents.

After considerable discussion, on May 6, the question was put on a motion which was proposed by Mr. Thomas L. Clingman, of North Carolina, that the resolution be committed to the Committee on Printing, and that they be instructed to report as to general arrangements for the public printing, etc.

Mr. Thomas H. Bayly, of Virginia, moved to amend this by inserting before the same the following:

Resolved by the Senate and House of Representatives of the United States in Congress assembled.

The Speaker [4] ruled that this proposition was out of order. Under the rule "every bill" (and joint resolutions were governed by the same rule as bills) "shall be introduced on the report of a committee or by motion for leave," and the effect of an affirmative vote on the motion of the gentleman from Virginia would be to introduce a joint resolution in a different way.[5]

On an appeal the decision was sustained.

3377. On February 14, 1855.[6] the House was considering a resolution providing for the printing of the report of Commodore Perry's expedition to Japan, when Mr. Solomon G. Haven, of New York, asked if it would not be in order to strike out the body of the resolution and engraft on a bill to accomplish the purpose more effectually.

The Speaker [4] said:

It would not. This is a simple resolution for the House only, and it can not be converted into a bill. Bills are introduced by leave or by reports from committees.

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[1] Joint Rule 16 was: "No bill that shall have passed one House shall be sent for concurrence to the other on either of the last three days of the session." The joint rules no longer exist.

[2] John White, of Kentucky, Speaker.

[3] First session Thirty-second Congress, Journal, p. 679; Globe, p. 1275.

[4] Linn Boyd, of Kentucky, Speaker.

[5] Since this precedent was made the rules and practice of the House have changed so as to remove entirely the reasons on which the decision was founded. Resolutions and joint resolutions are not introduced in the same way.

[6] Second session Thirty-third Congress, Globe, p. 733.

3378. Forms of resolving clauses of concurrent resolutions.—The resolving clause of concurrent resolutions has for many years been in form as follows when the resolutions have originated in the House:

Resolved by the House of Representatives (the Senate concurring), That, etc.[1]

Concurrent resolutions originating in the Senate have a resolving clause as follows:

Resolved by the Senate (the House of Representatives concurring), That, etc.[2]

These forms are the result of a gradual evolution in the practice.

On February 25, 1828,[3] the Senate sent a resolution to the House with the resolving clause in this form:

Resolved, That, if the House of Representatives concur, the Senate will, in conjunction with the House of Representatives, attend the funeral of Major-General Brown, etc.

On December 7, 1843,[4] this form of concurrent resolution was used:

Resolved (the Senate concurring), That two chaplains, etc., be elected, etc.

3379. A concurrent resolution is binding upon neither House until agreed to by both.—On December 12, 1865,[5] Mr. Speaker Colfax held that a concurrent resolution was binding upon neither House until it had been agreed to by both, for the reason that until both had agreed to it there could be no certainty as to what its exact provisions would be. This was decided in relation to the resolution creating the joint committee on reconstruction.

3380. The commands of the House should be expressed by an "order." Form of ordering word of an order.

The House expresses facts, principles, and opinions by "resolutions."

Mr. Jefferson, in Section XXI of his Manual, draws a distinction between orders and resolutions.

When the House commands, it is by an "order." But fact, principles, and their own opinions and purposes are expressed in the form of resolutions.

The form of an order is as follows:

Ordered, That the Clerk notify the Senate,[6] etc.

3381. Decisions as to the effect of the title in controlling the body of an act of Congress.—In the case of Patterson *v.* Bark Eudora (190 U. S., 169), Mr. Justice Brewer says:

It has been held that the title is no part of the statute and can not be used to set at naught its obvious meaning. The extent to which it can be used is thus stated by Chief Justice Marshall in United States *v.* Fisher. (2 Cranch, 358, 386.)

Neither party contends that the title of an act can control plain words in the body of the statute; and neither denies that, taken with other parts, it may assist in removing ambiguities. Where the

[1] First session Fifty-ninth Congress, Journal, p. 1289.

[2] Journal of House, p. 1280.

[3] First session Twentieth Congress, Journal, p. 349.

[4] First session Twenty-eighth Congress, Journal, p. 41.

[5] First session Thirty-ninth Congress, Globe, p. 32.

[6] First session Fifty-ninth Congress, Journal, p. 1262.

intent is plain, nothing is left to construction. Where the mind labors to discover the design of the legislature, it seizes everything from which aid can be derived; and in such case the title claims a degree of notice and will have its due share of consideration.

In Cornell *v.* Coyne (192 U. S., 430), Mr. Justice Brewer says:

The title of an act is referred to only in cues of doubt or ambiguity.[1]

3382. A bill reported from a committee in a new draft takes a new number.—Sometimes a committee to whom a bill has been referred reports it in a new draft. In that case it received a new number. Thus, on February 12, 1841,[2] Mr. Millard Fillmore, of New York, from the Committee on Elections, reported a bill (H. R. 675) regulating the taking of testimony in cases of contested elections. A bill of the same title, but numbered 581, had been introduced by Mr. Fillmore and referred to the Committee on Elections. The title of the new draft was the same, but the number was different.

3383. The fact that a bill has passed the House does not preclude that body from passing another, not identical bill, on the same subject.

The House having been misled in regard to the nature of a bill which it passed, a report on the subject was received as privileged.

On June 27, 1882,[3] Mr. Horace F. Page, of California, from the Committee on Commerce, submitted the following:

The Committee on Commerce, after careful consideration and investigation, desire to submit the following statement and request to the House:

On Monday, the 19th instant, by unanimous consent, Mr. Reagan, of Texas, representing the Committee on Commerce, moved to suspend the rules and pass House bill (H. R. No. 5669) to regulate immigration. The bill which he offered was handed to him by Mr. Van Voorhis, of New York, and purported to be the bill agreed to by the Committee on Commerce. Mr. Reagan and the members of the Committee on Commerce present were misled in regard to the bill which had passed, they supposing it to be a true copy of the bill agreed to by the committee. The committee recommend and ask that the House, by unanimous consent, do substitute the true bill, now in possession of the committee, for the one passed.

The Journal indicates that this report was presented as a privileged question, and the Speaker[4] in his ruling indicated that he considered it privileged to the extent that it might be presented. But when Mr. Page moved, the bill having been brought back from the Senate, that the action of the House in passing the bill be rescinded, the Speaker held that the motion to rescind could be entertained only by unanimous consent.

The Chair thinks there is no difficulty about this. In the opinion of the Chair, to rescind the action of the House in passing this bill would require unanimous consent. But the Chair agrees with the gentleman from Kentucky, that the fact this bill has passed does not cut off the House from passing any other bill on the same subject; and the Chair thinks, without further action of the House, this bill would remain here and not go back to the Senate. It has gone once there, and having been once recalled, the officers of the House, without the action of the House, would never send it back again.

Thereupon, by unanimous consent, a new bill was presented from the Committee on Commerce.

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[1] And he cites United States *v.* Fisher (2 Cranch, 358, 386), Yazoo and Mississippi R. R. *v.* Thomas (132 U. S., 174, 188), United States *v.* Ogden, etc., R. R. (164 U. S., 526, 541), and Price *v.* Forrest (173 U. S., 410, 427).

[2] Second session Twenty-sixth Congress, Journal, p. 279.

[3] First session Forty-seventh Congress, Journal, p. 1547; Record, p. 5404.

[4] J. Warren Keifer, of Ohio, Speaker.

3384. A bill having been rejected by the House, a similar but not identical bill on the same subject was afterwards held to be in order.—On August 17, 1856,[1] Mr. John Wheeler, of New York, presented a resolution instructing the Committee on Ways and Means[2] to report a bill for the support of the Army in accordance with the text accompanying the resolution. This new bill was drawn up the same as the army bill, which had already failed because of differences between the House and Senate concerning a provision relating to the use of troops in Kansas, with the exception that the proviso relating to Kansas was stricken out, and three appropriations were changed as to amounts.

Mr. Benjamin Stanton, of Ohio, made the point of order that two army appropriation bills had been disposed of this session, one coming over from last session and failing by difference between the Houses, and the other being defeated in the House. The Manual provided that—

> In Parliament, a question once carried can not be questioned again at the same session, but must stand as the judgment of the House; and a bill once rejected, another of the same substance can not be brought in again the same session.

The Speaker[3] said:

> But one bill for the support of the Army has been introduced at this session of Congress. The second bill came over from the last session. It was not introduced at this session of Congress. One bill introduced at this session of Congress has been defeated, but the bill embraced by the resolution before the House differs from that bill in the very material manner of wanting the proviso, which is the subject matter of controversy between the two Houses. The language of the Manual read by the gentleman—that a bill once rejected, another of the same substance can not be brought in—refers to the provisions of a bill, and not to bills on the same subject. The Chair is of opinion that the resolution is in order.

On August 30 a bill for the support of the Army was reported and passed the House.

It was the old bill, with an amended proviso.

3385. A resolution laid on the table by the House may be presented again in similar but not identical form.—On December 19, 1864,[4] Mr. Speaker Colfax held that a resolution which the House had laid on the table might not be presented again, unless one or two words were changed, to make it in fact a different resolution. This was on the occasion of Mr. Henry Winter Davis, of Maryland, presenting a resolution relating to the power of Congress over foreign affairs. The Speaker did not make a formal ruling, but expressed his opinion.

3386. Where the two Houses pass similar but distinct bills on the same subject it is necessary that one or the other House act again on the subject.—On April 18, 1906[5] (legislative day of April 17), the House passed the bill (S. 4250) relating to quarantine, with an amendment in the nature of a substitute. The substitute was the text of a bill (H. R. 14316) which the House had passed on April 3 and sent to the Senate. As the Senate had already passed S. 4250 on the same subject and sent it to the House, it was evident that one House or the other would have to take up the subject anew, and as the House had acted

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[1] Second session Thirty-fourth Congress, Journal, pp. 1596, 1597, 1617, 1619; Globe, pp. 55, 81.

[2] The Ways and Means Committee then reported the appropriation bills.

[3] Nathaniel P. Banks, of Massachusetts, Speaker.

[4] Second session Thirty-eighth Congress, Globe, p. 66.

[5] First session Fifty-ninth Congress, Record, p. 5392.

on H. R. 14316 while it had S. 4250 in its possession, it seemed proper that the House should take the subject up.

In the second session of the Forty-third Congress, however, on February 3, 1875,[1] the House took up and passed its own civil rights bill (H. R. 796), although the Senate civil rights bill (S. 1) was on the Speaker's table, having come to the House in the preceding session of the Congress.[2] The House civil rights bill passed the House and then was taken up and passed by the Senate.[3] (See also the bills S. 22 and H. R. 2315 in the first session Forty-seventh Congress.)

3387. A Member who has by unanimous consent presented a bill may withdraw it while the House is dividing on an appeal from a decision relating to a proposed amendment.—On December 17, 1898,[4] the unanimous consent of the House was granted for the consideration of the bill (H. R. 11186) to extend the laws relating to commerce, navigation, and merchant seamen over the Hawaiian Islands, which was presented by Mr. Sereno E. Payne, of New York.

To this bill Mr. Thomas C. McRae, of Arkansas, offered an amendment to provide that the law "to prohibit the importation and migration of foreigners and aliens under contract or agreement to perform labor in the United States, its Territories," etc., should be extended to the Hawaiian Islands.

Mr. Payne having made the point of order that the amendment was not germane, the Speaker sustained the point of order.

Mr. McRae thereupon appealed, and Mr. Payne moved to lay the appeal on the table. On division there were ayes 65, noes 44.

Mr. McRae demanded the yeas and nays.

Mr. Payne proposed to withdraw the bill.

The Speaker[5] said, a question having arisen:

The previous question has not been ordered and no action has been taken by the House. The Chair thinks the gentleman may withdraw the bill.

The proceedings thereupon fell.

3388. A bill introduced in a Member's name in his absence was ordered by the House to be removed from the files.

The fraudulent introduction of a bill was held to involve a question of privilege.

On February 6, 1906,[6] Mr. Robert Adams, of Pennsylvania, as a question of privilege, called attention to a resolution of the House in the nature of a resolution of inquiry, purporting to have been introduced on January 27 by Mr. Clarence D. Van Duzer, of Nevada, and stated that Mr. Van Duzer had not been present on that date. Therefore Mr. Adams offered the following:

Ordered, That the said resolution, No. 197, be canceled as a resolution of the House, and that the copies in the document room be removed and destroyed.

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[1] Second session Forty-third Congress, Record, p. 938.

[2] First session Forty-third Congress, House Journal, p. 1272.

[3] Second session Forty-third Congress, Record, pp. 1012, 1861–1870

[4] Third session Fifty-fifth Congress, Record, pp. 270, 271.

[5] Thomas B. Reed, of Maine, Speaker.

[6] First session Fifty-ninth Congress, Record, pp. 2149, 2150.

Mr. John S. Williams, of Mississippi, having questioned the proceeding and debate arising, the Speaker[1] said:

The Chair will suggest that this is a privileged question, there having been no point of order raised against the resolution. The gentleman from Pennsylvania rises in his place to a question of privilege and suggests that what purports to be a record of the House is not a record of the House, and states that the gentleman from Nevada was not present in Washington upon that day. The gentleman from Mississippi states that on the day before—the 26th—having been caught in a railroad wreck he was not here. This seems to have been introduced on the 27th. Now, so far as the Chair is concerned, the Chair does not care, if it is for his information, to have an argument as to whether this question is privileged or not. The House can take such action as it sees proper to take. The Chair will suggest, with the permission of the gentleman from Pennsylvania and of the gentleman from Mississippi, if the House desires to do so, it seems to the Chair that unanimous consent might be given that the motion of the gentleman from Pennsylvania and the resolution purported to be offered or that was offered, as the case may be, by the gentleman from Nevada [Mr. Van Duzer] shall go over until the further action of the House, and no action be taken upon the resolution until the House has acted further as to its consideration. The Chair is of opinion that that amounts to an agreement that a motion to discharge the committee should not be privileged pending the proceedings.

It was so ordered.

On February 27,[2] Mr. Adams called up the order, whereupon Mr. Williams presented the following letter:

PHILADELPHIA, *February 7, 1906.*

MY DEAR MR. WILLIAMS: I note action yesterday regarding a resolution purporting to have been introduced by me.

I will say that I have never seen original or copy of same; that I never authorized, directed, or requested introduction of same; that it was introduced without my knowledge or consent, and am as yet unacquainted with even its purpose or language.

I was detained West by illness of my wife, who at present time is critically ill. I am suffering from effect of injury in a wreck, and have been under physician's care for ten days.

I will write to explain about resolution, so you may take action necessary, if party interests are at all involved.

Yours, very truly,

C. D. VAN DUZER.

Thereupon the order was agreed to by the House.

3389. The effect of the repeal of a repealing act is regulated by statute.—The act approved February 25, 1871,[3] provides—

Whenever an act is repealed, which repealed a former act, such former act shall not thereby be revived unless it shall be expressly so provided.

3390. The Speaker makes it his duty, ordinarily, to object to a request for unanimous consent that a bill may be acted on without being read.—On February 11, 1905,[4] Mr. Charles H. Grosvenor, of Ohio, asked unanimous consent for the consideration of the bill H. R. 18200.

The Clerk read as follows:

A bill (H. R. 18200) to amend section 4414 of the Revised Statutes of the United States.

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] Record, p. 3067.

[3] 16 Stat. L., p. 431; section 12, Revised Statutes.

[4] Third session Fifty-eighth Congress, Record, p. 2406.

Mr. Grosvenor then said:

Mr. Speaker, I would like to omit the formal reading of this bill. If gentlemen will look at it they will see that it is only an alteration of the inspection force. Instead of taking them as they are, scattered all over the country at various prices, under the law it simply proposes a uniform classification. It does not change their salary—does not change their compensation.

The Speaker [1] said:

The Chair is of the opinion that the bill ought to be read.

On February 13, 1905,[2] the House was proceeding to consider the bill (H. R. 16187) for the extension of Nineteenth street, when Mr. Joseph W. Babcock, of Wisconsin, said:

Mr. Speaker, I ask unanimous consent that the further reading of this bill be dispensed with for the reason that it is in the exact form of all the bills of this character that have passed the House, and I will yield to the gentleman from Missouri [Mr. Cowherd] to explain its provisions. It does not impose any burden on the Government.

The Speaker said:

It seems to the Chair that bills ought to be read to the House. The Chair will have to object to that request.

Presently the House proceeded to consider the bill (H. R. 16917) to provide for condemning the land necessary for joining Kalorama avenue and Prescott place.

Mr. Babcock said:

Mr. Speaker, I ask unanimous consent that the further reading of this bill be waived, as it is an exact duplicate so far as its provisions of law are concerned with the one just passed. The only difference is in one section, and that is where an appropriation of $300, made to provide for the expense of condemnation, is paid by the abutting property in the other bill, while in this case the $300, or so much of it as is necessary, is appropriated and paid by the District. That is the only difference in the two propositions.

The Speaker said:

The Chair finds, or is informed, that heretofore touching this class of bills that where one bill has been read and a statement is made that the formal language of the bill is the same as in the bill that is proposed to be acted upon that the Chair has frequently entertained a request to omit the reading. The Chair did not recollect himself of such a practice, so that the Chair will submit the request to the House. The request is to omit the further reading of the bill upon the statement of the gentleman from Wisconsin. Is there objection? [After a pause.] The Chair hears none.

3391. The rule for the reading, engrossment, and passage of bills.

The second reading of a bill is in full, the third reading by title unless a Member demand reading in full.

Form and history of section I of Rule XXI.

Section I of Rule XXI provides for the reading, engrossment, and passage of bills—

Bills and joint resolutions on their passage shall be read the first time by title and the second time in full, when, if the previous question is ordered, the Speaker shall state the question to be: Shall the bill be engrossed and read a third time? and, if decided in the affirmative, it shall be read the third time by title, unless the reading in full is demanded by a Member, and the question shall then be put on its passage.

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] Record, pp. 2486, 2487.

In the rules of the First Congress, adopted April 7, 1789,[1] it was provided that each bill should receive three several readings in the House previous to its passage, and that no bill should be read twice on the same day without special order. If, after the first reading, opposition should be made, the question was put, "Shall the bill be rejected?" If this question was negatived the bill went to its second reading without a question. By the rule of November 13, 1794,[2] it was provided that after a bill should be ordered to be engrossed the House should appoint the day for the third reading. The commitment of a bill took place after its second reading for many years; but when, in the revision of 1890, the reference of bills by filing them with the Clerk was established, the time of the first and second reading was necessarily deferred until the bills should be taken from the calendars for consideration.

In the revision of 1880 the old rules relating to the reading of bills were modified to the present form.[3]

3392. In the House amendments are offered to any part of a bill after it is read the second time.—On June 17, 1902,[4] the bill (H. R. 13679) to amend the act establishing a uniform system of bankruptcy, was taken up for consideration in the House, when Mr. David A. De Armond, of Missouri, interrupted the reading of the bill to make a parliamentary inquiry about the time of presenting amendments.

The Speaker pro tempore[5] said:

The Chair will state to the gentleman that the regular order is to read the bill through. After the bill has been read through, amendments may be offered to any part of it by any gentleman who gets the floor for that purpose. The Clerk will continue the reading.

3393. A Senate bill may not be amended in the House after it has passed to the third reading.—On February 1, 1904,[6] the House was considering the bill (S. 2795) to amend an act for the regulation of the practice of dentistry in the District of Columbia, etc.

The bill was read a third time, the previous question not being ordered.

Thereupon Mr. James M. Griggs, of Georgia, proposed an amendment.

The Speaker[7] said:

The Chair is of opinion that the bill is not amendable at this time.

3394. The amendment of the numbers of the sections of a bill is done by the Clerk.—On June 13, 1902,[8] the Committee of the Whole House on the state of the Union was considering under the five-minute rule the bill (S. 3057) for the reclamation of arid lands by irrigation, when the Clerk read section 9 of the bill, which by the insertion of a preceding section would become section 10.

Mr. Thomas H. Tongue, of Oregon, rising to a parliamentary inquiry, asked if a vote should not be taken on the committee amendment changing the number of the section.

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[1] First session First Congress, Journal, pp. 9 and 10.

[2] Third and Fourth Congress (Gales & Seaton ed.), Journal, p. 229.

[3] Second session Forty-sixth Congress, Record, p. 206.

[4] First session Fifty-seventh Congress, Record, p. 6938.

[5] John Dalzell, of Pennsylvania, Speaker pro tempore.

[6] Second session Fifty-eighth Congress, Record, p. 1470.

[7] Joseph G. Cannon, of Illinois, Speaker.

[8] First session Fifty-seventh Congress, Record, p. 6777.

The Chairman[1] said:

That is merely to change the number of the section, and under the rule of the House the Clerk is authorized to do that without the vote of the committee.

3395. A Member may demand the reading in full of the actual engrossed copy of a bill; and although the previous question be ordered the bill, on demand, is laid aside until engrossed.—On February 27, 1885,[2] the House had passed the sundry civil appropriation bill to be engrossed and read a third time, and the question recurred on the passage of the bill. On that Mr. Samuel J. Randall, of Pennsylvania, demanded the previous question.

Thereupon Mr. John D. White, of Kentucky, demanded the reading of the engrossed bill, quoting section 2[3] of Rule XXI in support of this demand.

After debate the Speaker[4] ruled:

The Chair has no doubt as to the right of a Member under the express language of the second clause of Rule XXI to demand the third reading of the bill at length before the question is taken on its passage; but the question of practice, as to which the Chair has some difficulty, is whether the Member has a right to demand that the bill shall be actually engrossed before it is read.

There was a practice prevailing at one time, according to the impression of the Chair, to take the printed or manuscript bill and simply indorse it as an engrossed bill. That practice prevailed for a long time in the House according to the present recollection of the Chair, but was afterwards discontinued and the bill was simply read in its original printed form.

Here Mr. Thomas B. Reed, of Maine, stated that in the earlier years of his service in the House the demand for the reading of an engrossed bill required that the bill should be engrossed before it was read. Mistakes were likely to occur in engrossment, and no custom of the House could do away with a principle so essential.

The Speaker said that he had no doubt that the practice in most legislative bodies was as stated by the gentleman from Maine; but, as at this point Mr. Randall moved to suspend the rules to avoid the reading of the engrossed bill, the Speaker continued—

The Chair prefers not to decide the question made by the gentleman from Kentucky [Mr. White] as to his right to have the engrossed bill read at this time; because it is not necessary to do so or to establish a precedent which shall prevail in regard to this matter hereafter. The gentleman from Pennsylvania [Mr. Randall] moves to suspend the rules so as to take the vote on the passage of the bill without having it read a third time at length.

3396. On January 26, 1887,[5] the House had ordered the river and harbor appropriation bill to be engrossed and read a third time, when Mr. William P. Hepburn, of Iowa, demanded the reading of the engrossed copy of the bill.

The Speaker[4] said:

The Chair sustains the gentleman. The gentleman has the right to have the engrossed copy of the bill read before the question is taken on its passage. Pending the demand for the previous question, or even after the previous question is ordered, the gentleman has the right to demand the reading of the engrossed bill before the vote is taken.

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[1] James A. Tawney, of Minnesota, Chairman.

[2] Second session Forty-eighth Congress, Record, p. 2251.

[3] Now section 1 of Rule XXI.

[4] John G. Carlisle, of Kentucky, Speaker.

[5] Second session Forty-ninth Congress, Record, p. 1062; Journal, p. 388.

3397. On April 3, 1896,[1] the House had passed to be engrossed the bill (H. R. 4526) granting a pension to Jonathan Scott.

Mr. C. J. Erdman, of Pennsylvania, demanded the reading of the engrossed copy of the bill.

The Speaker[2] said:

The engrossed copy of the bill, the Chair will state, is not here. * * * The bill will have to be laid aside if demand is made for the engrossed Copy.[3]

3398. On February 2, 1852,[4] the House passed to be engrossed and read a third time the bill (H. R. 193) for the relief of Hiram Moore and John Hascall.

The bill was about to be read a third time, when Mr. Alexander Evans, of Maryland, objected to the third reading on the ground that the bill had not actually been engrossed.

The Speaker[5] sustained the objection, and the bill was accordingly left on the Speaker's table.[6]

3399. On April 19, 1904,[7] the House had passed to be engrossed and to a third reading the bill H. R. 14749:

A bill to enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of New Mexico and of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States.

Thereupon the Clerk read the bill by title.

A question then arose as to the reading of the bill in full, and after some discussion, Mr. John W. Maddox, of Georgia, demanded the reading of the engrossed copy of the bill.

The Speaker[8] said:

The Chair was and still is in doubt, on the third reading of the bill, the demand for the reading of the engrossed bill not having been made until the reading had begun, whether it was not waived. Suppose that the title of the bill having been already read, the third reading had progressed in full until the last section, and then the reading of the engrossed bill should be demanded in lieu of the one read almost universally in practice.

It is not one time in a hundred that the engrossed bill is read, or that the bill has been engrossed, under the practice of the House touching these matters. The third reading of the bill is by its title; and yet it is in the power of any Member to demand the reading of the engrossed bill. That is almost universally waived.

Now, the question in the mind of the Chair is whether the Clerk having commenced to read the bill it is too late to demand the reading of the engrossed bill.

The Chair will resolve the doubt in favor of the privilege of each Member of the House.

Thereupon the Speaker sustained the demand of Mr. Maddox.

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[1] First session Fifty-fourth Congress, Record, p. 3540.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Also see Record, first session Fifty-second Congress, p. 4586, for a similar ruling.

[4] First session Thirty-second Congress, Journal, p. 302; Globe, p. 442.

[5] Linn Boyd, of Kentucky, Speaker.

[6] Again on August 16 (Journal, p. 1036, Globe, p. 2229) Mr. Speaker Boyd sustained the same objection.

[7] Second session Fifty-eighth Congress, Record, p. 5152.

[8] Joseph G. Cannon, of Illinois, Speaker.

3400. The right to demand the reading in full of the engrossed copy of a bill exists only immediately after it has passed to be engrossed, and not at later stages.—On August 10, 1876,[1] the House had under consideration the report of the committee of conference on the river and harbor appropriation bill.

Mr. Benjamin A. Willis, of New York, demanded the reading of the engrossed bill.

The Speaker pro tempore[2] ruled that the demand was not in order.

3401. A special order does not deprive the Member of his right to demand the reading of the engrossed bill.—On May 30, 1900,[3] the House proceeded to the consideration of sundry pension bills under the terms of a special order which provided as follows:

The previous question to be considered as ordered on each bill and all amendments thereto to their final passage, and each to be disposed of without intervening motion.

The bill (H. R. 11010) granting an increase of pension to James H. Eastman, having been passed to be engrossed and read a third time, Mr. W. Jasper Talbert, of South Carolina, demanded the reading of the engrossed bill.

Mr. Charles H. Grosvenor, of Ohio, made the point that this demand was not in order under the terms of the special order.

The Speaker[4] said:

The Chair understands the gentleman from South Carolina to insist on his demand. On the point of order from the gentleman from Ohio the Chair is clearly of opinion that it is the right of any Member to demand the reading of the engrossed bill. This is not a motion excluded by the rule adopted yesterday; it is simply a demand which the rules clearly give any Member the right to make. The question has been repeatedly so ruled on.

3402. A bill having been read a third time by title and the yeas and nays being ordered on the passage, it is too late to demand the reading in full of the engrossed copy.—On June 13, 1892,[5] the bill (H. R. 9172) to incorporate the Washington and Great Falls Electric Railway Company was ordered to be engrossed, was read a third time by title, and the question was put, "Shall the bill pass?"

On this question the yeas were 128, the nays 18, not voting 183. No quorum appearing, a call of the House was ordered.

A quorum having appeared and proceedings under the call having been dispensed with, the question was again put on the passage of the bill.

Mr. Louis E. Atkinson, of Pennsylvania, demanded that the engrossed bill be read in full.

Objection being made to said demand,

The Speaker pro tempore[6] decided that the bill having been read by its title the third time pursuant to the rule the right to have the engrossed bill read had been waived, and after the yeas and nays had been ordered on the passage of the bill it was too late to demand that the bill be again read at length.

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[1] First session Forty-fourth Congress, Journal, p. 1423.

[2] William M. Springer, of Illinois, Speaker pro tempore.

[3] First session Fifty-sixth Congress, Record, pp. 6251, 6252.

[4] David B. Henderson, of Iowa, Speaker.

[5] First session Fifty-second Congress, Journal, p. 225.

[6] Alexander M. Dockery, of Missouri, Speaker pro tempore.

3403. The reading in full of the engrossed copy of a bill should be demanded before it has been read a third time by title.—On December 21, 1854,[1] the House was considering the bill (H. R. 445) to reorganize the courts of the District of Columbia, and to reform and improve the laws thereof.

The bill having been ordered to be engrossed and read a third time, and having been read a third time and the previous question on the passage having been demanded, Mr. Nathaniel G. Taylor, of Tennessee, raised the question of order that the bill had not been engrossed.

The Speaker pro tempore[2] said:

The Chair will state to the gentleman from Tennessee that the point of order in reference to the engrossment of the bill, in his opinion, comes too late. By the rules of the House after a bill has been ordered to be engrossed and read a third time it must be engrossed—if the, question is raised—before it can be read a third time. But in the present instance the bill was read the third time before objection in reference to its engrossment was raised. The Chair will therefore rule that the objection comes too late, and that the bill having received its third reading may be put upon its passage without reference to its engrossment.

3404. On December 11, 1882,[3] the House had passed to be engrossed and the Clerk had read a third time the bill (H. R. 6229) to provide for the collection of taxes in the District of Columbia.

Mr. Emory Speer, of Georgia, made the point of order that the bill had not in fact been engrossed.

The Speaker[4] held that as the bill had been read a third time the point of order came too late.

3405. A bill having been ordered to be engrossed and read a third time, a privileged motion was not permitted to intervene before the third reading.—On June 23, 1852,[5] the bill (H. R. 280) making grants of land to aid in the construction of railroads, and for other purposes, having been ordered to be engrossed and read a third time, and being engrossed, the Clerk was about to read it a third time, when Mr. George W. Jones, of Tennessee, moved that the House resolve itself into Committee of the Whole House on the state of the Union.

The Speaker[6] decided that the motion was not in order, on the ground that the House had ordered the pending bill to be engrossed and read a third time, and, having been engrossed, it must now be read the third time, to the exclusion of any motion. He stated further that if a motion could be made at this time he must first entertain the motion of the gentleman from New York [Mr. Henry Bennett], who had first risen and submitted an equally privileged motion, but which had been decided to be out of order until the bill had been read a third time.

Mr. Jones having appealed, the appeal was laid on the table, on motion of Mr. Alexander H. Stevens, of Georgia.

3406. The vote on the passage of a bill was reconsidered in order to remedy the omission to read it a third time.—On June 27, 1834,[7] the House

[1] Second session Thirty-third Congress, Globe, p. 124.

[2] Thomas S. Bocock, of Virginia, Speaker pro tempore.

[3] Second session Forty-seventh Congress, Record, p. 196.

[4] J. Warren Keifer, of Ohio, Speaker.

[5] First session Thirty-second Congress, Journal, p. 832; Globe, p. 1603.

[6] Linn Boyd, of Kentucky, Speaker.

[7] First session Twenty-third Congress, Journal, p. 863.

was considering, the bill (S. 203) "for the benefit of the city of Washington," and the question "Shall the bill pass?" being put, was decided in the affirmative, yeas 97, nays 78.

At this stage of the proceedings the Speaker[1] rose and suggested to the House that doubts were entertained by many Members whether the said bill had been by a vote of the House ordered to be read a third time; that these doubts had been informally communicated to him; that, according to his recollections of the proceedings in a former part of the day, a vote of the House had been taken, whereby the bill was ordered to be read a third time, but that the Clerk, upon an examination of his minutes, did not find an entry of the fact. Under these circumstances the Speaker wished the House to decide whether the bill should be considered passed or not.

Thereupon a motion was made by Mr. John Quincy Adams, of Massachusetts, that the House do reconsider the vote on the passage of said bill. This motion being agreed to, the question "Shall the bill be read a third time?" was put and decided in the affirmative. Then the bill was passed.

3407. In the consideration of amendments on a bill pending between the two Houses it is not necessary to read the entire bill when the amendments come up for action.—On March 2, 1897,[2] Mr. David B. Henderson, of Iowa, called up the bill (S. 3538) relating to the court of appeals for the District of Columbia, which the House had amended and on which the Senate had disagreed to the amendment and asked a conference.

The Clerk having proceeded to read the bill, Mr. Joseph W. Bailey, of Texas, suggested that it was unnecessary to read the bill and asked unanimous consent to dispense with it.

The Speaker[3] said:

> The Clerk will read the amendment. Strictly speaking, the bill has not to be read, except for the information of the House.

3408. A bill or resolution must be considered and voted on by itself.—On May 8, 1900,[4] the House was considering a report from the Committee on Ways and Means on House Resolutions Nos. 226 and 229, both relating to the same subject, viz, inquiry of the Secretary of the Treasury as to certain returns made by manfacturers of oleomargarine.

The committee returned the two resolutions with a single report, which recommended that they lie on the table.

Mr. James A. Tawney, of Minnesota, raised a question as to a separate vote on each resolution.

The Speaker[5] held that the resolutions would have to be considered and voted on separately.[6]

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[1] John Bell, of Tennessee, Speaker.

[2] Second session Fifty-fourth Congress, Record, p. 2653.

[3] Thomas B. Reed, of Maine, Speaker.

[4] First session Fifty-sixth Congress, Record, p. 5286.

[5] David B. Henderson, of Iowa, Speaker.

[6] It seems evident, also, that a committee may not return two distinct resolutions to the House with a single report, if objection be made. To return a number of bills with a single report would be manifestly improper, and the rule makes no distinction between bills and resolutions.

3409. A bill which has been read in full and considered in Committee of the Whole does not require to be read in full again when taken up for action in the House.—On February 8, 1899,[1] the House proceeded to the consideration of the bill (H. R. 10969) for the erection of a public building in the city of Blair, Nebr., which had been considered in Committee of the Whole House on the state of the Union and reported therefrom with a favorable recommendation. The title having been read, the question was put on ordering the previous question.

Mr. James D. Richardson, of Tennessee, made the point of order that the bill should be read.

The Speaker[2] said that it would be read, if demanded, after being ordered to be engrossed and read a third time; but that it was not the customers to have the bill read upon being reported from the Committee of the Whole, as was shown by the usage in regard to appropriation bills.

Later on the same day the same question was raised by Mr. Alexander M. Dockery, of Missouri, on the bill (S. 1273) for a public building at Altoona, Pa.

The Speaker held:

The Chair thinks the bill has been read the proper number of times. The House is entitled to the reading of the amendments, because the House committed the bill to the committee, and it has reported it back with amendments. The bill has been technically read a first and second time.

3410. On February 28, 1899,[3] the House was considering a series of bills for the construction of public buildings, reported favorably from the Committee of the Whole House on the state of the Union on a former day. The bill (H. R. 10962) for the construction of a public building at Joliet, Ill., having been called up, Mr. Alexander M. Dockery, of Missouri, demanded as a matter of right that the bill be read.

The Speaker[2] said:

The Chair would be very glad to have any suggestion from any Member, and, without undertaking to rule upon the question generally, the Chair will give his idea about the present situation, which is that a bill, when it comes up for consideration, after being reported from the Committee of the Whole, and having been read in Committee of the Whole, has not within my recollection been again read as of right in the House.[3]

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[1] Third session Fifty-fifth Congress, Record, pp. 1614, 1634.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Third session Fifty-fifth Congress, Record, p. 2581.

[4] On April 30, 1906 (First session, Fifty-ninth Congress, Record, pp. 6129, 6130), in the Senate a discussion arose as to the practice of the Senate in relation to amending bills.

Mr. John T. Morgan, of Alabama, said: "The universal usage in the parliamentary bodies of England and the United States is that a bill, after it has been read, shall be taken up by sections for amendment, and each section passed upon, and the amendments thereto discussed, considered, and voted upon. I am perfectly willing that that rule shall be observed so far as I am concerned. That, of course, terminates general debate, as we call it, whenever we agree to take up the bill for amendment, read the sections from first to last consecutively, and call for amendments to each section as it is reached. That will terminate the general debate. Then, if Senators want a limitation upon the time for the discussion of the amendments, respectively, as they are presented, the Senate can agree upon that, of course.

"But I venture to suggest that when we have a motion to lay on the table, which cuts off debate, that it is quite easy to dispose of all amendments by that motion. If they are laid on the table, they are ended, and if they are kept up for consideration by refusal to lay on the table then we understand that that is an important matter upon which a vote by yeas and nays is going to be taken. I think there

3411. When a bill is considered for amendment the preamble is taken up after the body of the bill has been gone through.—Jefferson's Manual, in Section XXVI, says:

When a bill is taken up in committee, or on its second reading, they postpone the preamble till the other parts of the bill are gone through. The reason is that, on consideration of the body of the bill, such alterations may therein be made as may also occasion the alteration of the preamble.[1]

3412. A bill sometimes has a preamble.—A bill sometimes begins with a preamble, as for instance, the act declaring war against Mexico passed by the House on May 11, 1846.[2]

3413. On March 2, 1905,[3] the bill (H. R. 19203) to provide for celebrating the birth of the American nation—the first permanent settlement of English-speaking people on the Western Hemisphere—by the holding of an international naval, marine, and military celebration in the vicinity of Jamestown, on the waters of Hampton Roads, in the State of Virginia; to provide for a suitable and permanent

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is ample power in the Senate in the use of that motion to control the time upon the discussion of amendments, and it ought to be freely resorted to. No Senator ought to feel at all discommoded or sensitive because another Senator chooses to try to bring debate to a close by a motion to lay on the table. If we go at it in that way, the only thing, it seems to me, that is necessary to be done is to recognize that rule and to agree on a day when we will take up the bill to be considered, section by section, with the amendments thereto."

Mr. ALDRICH. Two or three suggestions have been made, one by the Senator from Georgia and another by the Senator from Iowa, that we take up the bill in proper order. The custom of the Senate is that when a bill is reported it is read for amendments. The committee amendments are acted upon first. If there are no committee amendments, as there are none in this case, amendments are offered to the bill generally. Of course you can not preclude a Senator from offering an amendment to the first section after all the sections have been read. Amendments are not only in order after that time, but they are in order in the Senate. That has been the parliamentary rule.

So I see no particular value in the suggestion that we agree to follow that course—that is, that after the bill has been read through, section by section, any amendment shall be in order to any section of the bill, and that when one is offered to the first section and is disposed of, we will, in like manner, go through the whole twenty sections, or whatever number of sections there are, and after the twentieth section has been disposed of any Senator may offer an amendment to the first section. I can see no particular good in getting an agreement of that kind because that is the course which we would necessarily follow.

Mr. ALLISON. The Senator will see that there being sixty or seventy amendments unless we proceed reasonably in order it will take a long time. Of course a Senator can withhold his amendment until we get through with the reading of the bill in the Senate. But my suggestion was for an orderly proceeding, not that I sought in any way to cut off anyone. That I know could not be done, and there is no disposition to do it.

Mr. ALDRICH. I have no objection to taking up the bill by sections, and disposing of as many amendments as possible from time to time, understanding all the time that any amendment is in order to the bill, as it always has been under the practice of the Senate and as it is under the rule of the Senate, until the bill is finally passed to a third reading.

Mr. FRYE. An amendment is in order now. An amendment is in order any day and at any hour.

Mr. ALDRICH. I understand that. So when we talk about parliamentary practice and the rules of the Senate, they are not very orderly and never have been in the consideration of amendments.

[1] See Journal, p. 89, January 7, 1903 (Second session Fifty-seventh Congress), for fine illustration of mode of disposing of preamble.

[2] First session Twenty-ninth Congress, Journal, p. 792; Globe, p. 795.

[3] Third session Fifty-eighth Congress, Record, pp. 3889–3896.

commemoration of said event, and to authorize an appropriation in aid thereof, and for other purposes, was passed in the House in form as follows:

Whereas it is desirable to commemorate in a fitting and appropriate manner the birth of the American nation—the first permanent settlement of English-speaking people on the American continent—made at Jamestown, Va., on the 13th day of May, 1607, in order that the great events of American history which have resulted therefrom may be accentuated to the present and future generations of American citizens; and

Whereas that section of the Commonwealth of Virginia where the first permanent settlement was made conspicuous in the history of the American nation by reason of the vital and momentous events which have there taken place in the colonial, Revolutionary, and civil war eras of the nation, including not only the first permanent settlement of English-speaking people but also the scene of the capitulation of Lord Cornwallis at Yorktown and the scene of the first naval conflict between armor-clad vessels, the *Monitor* and *Merrimac*: Therefore,

Be it enacted, etc., That there shall be inaugurated in the year 1907, on and near the waters of Hampton Roads, in the State of Virginia, as herein provided, an international naval, marine, and military celebration, beginning May 13 and ending not later than November 1, 1907, etc.

On the same day the bill passed the Senate and became a law.

3414. The preamble of a bill or joint resolution may be agreed to most conveniently after the engrossment and before the third reading.—On April 13, 1898,[1] the House was considering the joint resolution authorizing and directing the President of the United States to intervene to stop the war in Cuba.

The resolution having been passed to be engrossed, Mr. Robert Adams, jr., of Pennsylvania, asked for the previous question on the adoption of the preamble, and, the previous question having been ordered, the preamble was agreed to under the operation thereof.

Then the Speaker[2] announced that the third reading of the joint resolution would take place.

3415. The House has adjourned pending the question on the title of a bill.—On August 4, 1856,[3] when the bill (S. 68) relating to French spoilation claims was before the House, the bill was passed, and a motion to reconsider the vote on the passage was taken and decided in the negative. Thereupon, the title was read, and the question was stated: "Will the House agree thereto?"[4]

Pending the question, the House adjourned. On the next day the House resumed consideration of the title, and the motion was agreed to.

3416. Procedure for amendment of the title when the bill is considered in the House as in Committee of the Whole.—On February 19, 1906.[5] the House considered, in the House as in Committee of the Whole, the bill (H. R. 12864) to provide for the purchase of certain coal lands in the Philippine Islands, etc. After the last section of the bill had been read for amendment under the five-minute rule, the Clerk read as follows:

Amend the title so as to read: "A bill to provide for the purchase of certain coal claims in the island of Batan, in the Philippine Islands, and for the purpose of securing a local coal supply to the Government of the United States and to the government of the Philippine Islands."

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[1] Second session Fifty-fifth Congress, Record, p. 3820.

[2] Thomas B. Reed, of Maine, Speaker.

[3] First session Twenty-ninth Congress, Journal, pp. 1223, 1224; Globe, p. 1195.

[4] No question is ordinarily taken on the title unless there be an amendment thereto.

[5] First session Fifty-ninth Congress, Record, p. 2693.

Mr. Henry A. Cooper, of Wisconsin, offered as an amendment a substitute, as follows:

Amend the title so as to read: "A bill to provide for the purchase of certain coal claims in the island of Batan, in the Philippine Islands."

The substitute was agreed to, the amendment as amended by the substitute was agreed to, and then the bill was ordered engrossed, read a third time, and passed.

So, under this procedure, the title was amended before the final passage.

3417. When a bill passes the House the Clerk certifies the fact at the foot thereof.—In 1836 [1] the House had this rule:

96. When a bill shall pass, it shall be certified by the Clerk, noting the day of its passage at the foot thereof.

This rule was adopted at an earlier period, and continued until later; and the Clerk still certifies in this way on the engrossed copy. Section 3 of Rule III requires the Clerk to "certify to the passage of all bills and joint resolutions," but the present form of the rule does not specify further as to the manner of certifying. This certification should be distinguished from the certification made on the back of the enrolled bill in accordance with the provisions of a former joint rule.

3418. Senate bills are sometimes laid on the table in the House.—On May 5, 1876,[2] a Senate bill (S. 2) was reported by a House committee with an adverse recommendation and laid on the table.

3419. On February 22, 1879,[3] on motion of Mr. James A. Garfield, of Ohio, the bill (H. R. 805) to repeal the third section of the resumption act, which had been returned from the Senate with amendments, was laid on the table, by a vote of yeas 141, nays 110.

3420. The question on the engrossment and third reading being decided in the negative, the bill is rejected.—On April 21, 1838,[4] the House was considering the bill (No. 121) for the relief of the legal representatives of Dr. Philip Turner, and the question was put: "Shall the bill be engrossed and read a third time?"

There were in the affirmative yeas 75, nays 76.

"And so the said bill was rejected," is the entry in the Journal after this vote.

3421. A refusal of the House to order a bill to be engrossed is a rejection, and one of the old Journals has after an entry of a refusal to order to engrossment these words, "And so the said bill was rejected." [5]

3422. One House having rejected a bill of the other, the fact was made known by message.[6]—On July 16, 1840,[7] a message from the Senate announced that that body had rejected the bill of the House (No. 465) entitled "An act to continue the corporate existence of certain banks in the District of Columbia."

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[1] See Journal, p. 1399, first session Twenty-fourth Congress.

[2] First session Forty-fourth Congress, Record, p. 3008.

[3] Third session Forty-fifth Congress, Journal, p. 498.

[4] Second session Twenty-fifth Congress, Journal, p. 810.

[5] May 6, 1822. (First session Seventeenth Congress, Journal, p. 566.)

[6] This notification is required by one of the former joint rules. See section 3430 of this chapter.

[7] First session Twenty-sixth Congress, Journal, p. 1287.

The Senate having rejected the bill of the House (H. R. 380) for the removal of legal and political disabilities the House was notified of the fact by message on February 12, 1872.[1]

3423. Instance wherein the House, having stricken out the enacting clause of a Senate bill, informed the Senate that they had rejected the bill.—On May 22, 1830,[2] in the Senate, a message was received from the House of Representatives announcing that they had "rejected the bill from the Senate entitled 'An act for the relief of John Edgar.'"

On May 21[3] the enacting clause of this bill had been stricken out in the House.

3424. Discussion as to the cases in which an unfavorable disposition of a bill by one House is to be messaged to the House in which it originated.—In the first session of the Forty-seventh Congress the House passed the bill (H. R. 5656) to amend the laws relating to the entry of distilled spirits, etc., and it went to the Senate, where it was amended, considered, and indefinitely postponed.[4] At the next session of Congress the Senate recommitted the bill[5] and afterwards it was reported and passed. But the Record shows that at the time the motion to postpone indefinitely was carried a motion to reconsider was entered, and this motion to reconsider was voted on and decided affirmatively before the motion to recommit was made.[6]

The House Journal shows that when the Senate postponed the bill indefinitely it did not send a message to the House.

3425. The House may not consider a Senate bill unless in possession of the engrossed copy; but may at once direct that the Clerk request a, duplicate engrossed copy of the bill.—On February 28, 1907,[7] Mr. William E. Humphrey, of Washington, moved to suspend the rules, discharge the Committee on the Merchant Marine and Fisheries from further consideration of the bill (S. 1462) for the establishment of fish-cultural stations on Puget Sound, and pass the same.

A second was ordered, and, after debate, the question was about to be when the Speaker[8] said:

The Chair will state that search has been made in the files of the Committee on the Merchant Marine and Fisheries and the bill is misplaced or lost.

Thereupon Mr. Humphrey offered the following:

Ordered, That the Clerk be directed to request the Senate to send to the House a duplicate engrossed copy of the bill (S. 1462) to establish one or more fish-cultural stations on Puget Sound, State of Washington, the original having been lost.

Thereupon Mr. James R. Mann, of Illinois, rising to a parliamentary inquiry, asked:

Is it in order on the motion to suspend the rules to consider a Senate bill without the engrossed copy of the bill?

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[1] Second session Forty-second Congress, Journal, p. 333.

[2] Second session Twenty-first Congress, Senate Journal, p. 320.

[3] House Journal, p. 690.

[4] First session Forty-seventh Congress, Record, p. 4939.

[5] Second session Forty-seventh Congress, Record, p. 351.

[6] Second session Forty-seventh Congress, Record, pp. 351, 352.

[7] Second session Fifty-ninth Congress, Record, pp. 4257–4260.

[8] Joseph G. Cannon, of Illinois, Speaker.

The Speaker replied:

Certainly not. In other words, it is in order to make the motion to discharge the committee from further consideration of the bill, and the motion which has been made is in order. Debate has been in order, but at the close of the debate, after the bill has been searched for on the files of the committee, and does not materialize, the vote can not be taken; the House can not act upon a bill of which it does not have manual possession.

The order proposed by Mr. Humphrey was then agreed to.

Later, on the same day, a message from the Senate transmitted the duplicate engrossed copy of the bill, and the vote was taken on the motion pending.

3426. The House directed the return of a Senate bill not attested by the Secretary.—On January 11, 1838,[1] Mr. Ratliff Boon, of Indiana, from the Committee on the Public Lands, reported the following resolution, which was agreed to by the House:

Resolved, That a message be sent to the Senate, returning the bill (No. 5) entitled "An act to authorize the States to tax any lands within their limits sold by the United States," sent to this House by that body, and informing them that the same is without the usual attestation of their Secretary, according to the fifth of the joint rules of the two Houses.[2]

3427. The Secretary of the Senate having omitted to sign certain engrossed Senate bills before they were sent to the House, he was admitted to affix his signature.—On July 5, 1838,[3] on motion of Mr. Elisha Whittlesey, of Ohio, it was—

Ordered, That the Secretary of the Senate be admitted to affix his signature to Senate bills numbered 88, 198, 234, and 275, and Senate Resolution No. 2, which were delivered to this House by said Secretary without his signature, which is required by the fifth joint rule.

3428. The rules of the House do not require the report of a committee as to the accuracy of the engrossed copy of a bill.—On August 23, 1890,[4] Mr. William E. Mason, of Illinois, made the point of order that the engrossed copy of the bill (H. R. 11568) defining lard and imposing a tax and regulating the sale, etc., of compound lard, which was being read, had not been compared, and that no committee had reported it as correctly engrossed.

The Speaker pro tempore[5] overruled the point of order on the ground that no ruler, of the House required its comparison and report by a committee, and that, the engrossment being by the Clerk of the House, the presumption was that the bill was correctly engrossed.

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

3429. The rule and practice as to the enrolling and signing of bills and their presentation to the President.

Enrolled bills are signed first by the Speaker, then by the President of the Senate.

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[1] Second session Twenty-fifth Congress, Journal, p. 254.

[2] The joint rules are no longer in force, but the practice of attesting bills in this manner prevails still.

[3] Second session Twenty-fifth Congress, Journal, p. 1244.

[4] First session Fifty-first Congress, Journal, p. 984; Record, p. 9104.

[5] Lewis E. Payson, of Illinois, Speaker pro tempore.

[6] On November 20, 1820, the House disagreed to a proposition for a rule creating a committee on engrossed bills. (Second session Sixteenth Congress, Journal, pp. 21, 24.)

Enrolled bills are presented to the President by the committee of enrollment.

Notice of the signature of a bill by the President is sent by message to the House in which it originated, and that House informs the other.

An enrolled bill, when signed by the President, is deposited in the office of Secretary of State.

Jefferson's Manual, in Section LXVIH, provides:

When a bill has passed both Houses of Congress the House last acting on it notifies its passage to the other, and delivers the bill to the Joint Committee of Enrollment,[1] who see that it is truly enrolled in parchment. When the bill is enrolled it is not to be written in paragraphs, but solidly, and all of a piece, that the blanks between the paragraphs may not give room for forgery.[2] (9 Grey, 143.) It is then put into the hands of the Clerk[3] of the House of Representatives to have it signed by the Speaker.[4] The Clerk then brings it by way of message to the Senate[5] to be signed by their President. The Secretary of the Senate return it to the Committee of Enrollment, who presents it to the President of the United States. If he approve, he signs, and deposits it among the rolls in the office of the Secretary of State, and notifies by message the House in which it originated that he has approved and signed it; of which that House informs the other by message.

3430. The printing, enrolling, signing, and certification of bills on their passage between the two Houses are governed by usages founded on former joint rules.

The certification and presentation of enrolled bills to the President is governed by usage founded on former joint rules.

The Committee on Enrolled Bills reports, for entry on the Journal, the date of presentation of bills to the President.

History of certain of the joint rules and their abrogation in 1876.

From a very early date[6] the House and Senate had joint rules, a large portion of which related to the handling of bills; and although they have since been allowed to lapse, the usages instituted by them remain. These rules relating to bills are:

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[1] A bill passed before the appointment of the Committee on Enrolled Bills is enrolled by the Clerk and presented directly to the Speaker for his signature. (See Journal, p. 17, first session, Fifty-second Congress, December 23, 1891.)

[2] Under the law as to enrolling bills by printing this regulation as to paragraphs is not observed. Bills which originate in the House are enrolled by the enrolling clerk of the House, while those originating in the Senate are enrolled under direction of that body.

[3] The chairman of the Committee on Enrolled Bills certifies the bills as correctly enrolled. Formerly he made this report from his place on the floor (see Globe, p. 375, first session Thirty-third Congress), but now he lays the bills, each with his certificate as to its correctness, on the Speaker's table, to be placed before the House and signed by the Speaker.

[4] The signing by the Speaker of the House of Representatives and by the President of the Senate in open session of an enrolled bill is an official attestation by the two Houses of such bill as one that has passed Congress. 'When approved by the President and deposited in the State Department according to law, its authentication is completed and unimpeachable. (Field *v.* Clark, April 15, 1892, 143 United States Supreme Court Reports, p. 649.)

[5] In the early days of the House the chairman of the Committee on Enrolled Bills took the message to the Senate (see first session Twelfth Congress, Annals, p. 203); but under the present practice the Clerk, or one of his assistants, takes all enrolled bills signed by the Speaker (whether House or Senate bills) and conveys them to the Senate as a message from the House. As all enrolled bills are signed first by the Speaker, the Senate Committee on Enrolled Bills send their bills to the House Committee on Enrolled Bills, who report them to the House for signature as they report House bills. These Senate bills bear a certificate from the chairman of the Senate Committee on Enrolled Bills.

[6] The joint rules were agreed to November 13, 1794, but many of them antedated even that time. (First session Third Congress, Journal, pp. 230, 231.)

While bills are on their passage between the two Houses they shall be on paper and under the signature of the Secretary or Clerk of each House, respectively.[1]

After a bill shall have passed both Houses, it shall be duly enrolled on parchment by the Clerk of the House of Representatives or the Secretary of the Senate, as the bill may have originated in the one or the other House, before it shall be presented to the President of the United States.[1]

When bills are enrolled they shall be examined by a joint committee of two from the Senate and two from the House of Representatives, appointed as a standing committee for that purpose, who shall carefully compare the enrollment with the engrossed bills as passed in the two Houses, and, correcting any errors that may be discovered in the enrolled bills, make their report forthwith to their respective Houses.[2]

After examination and report, each bill shall be signed in the respective Houses, first by the Speaker of the House of Representatives, then by the President of the Senate.[3]

After a bill shall have been thus signed in each House it shall be presented by the said committee to the President of the United States for his approbation (it being first endorsed on the back of the roll, certifying in which House the same originated, which endorsement shall be signed by the Secretary or Clerk, as the case may be, of the House in which the same did originate), and shall be entered on the Journal of each House. The said committee shall report the day of presentation to the President, which time shall also be carefully entered on the Journal of each House.[3]

All orders, resolutions, and votes which are to be presented to the President of the United States for his approbation shall also, in the same manner, be previously enrolled, examined, and signed, and shall be presented in the same manner and by the same committee as provided in the cases of bills.[3]

When a bill or resolution which shall have passed in one House is rejected in the other notice thereof shall be given to the House in which the same shall have passed.[4]

Each House shall transmit to the other all papers on which any bill or resolution shall be founded.[5]

No bill that shall have passed one House shall be sent for concurrence to the other on either of the last three days of a session.[5]

No bill or resolution that shall have passed the House of Representatives and the Senate shall be presented to the President of the United States for his approbation on the last day of the session.[6]

The joint rules of the two Houses were allowed to lapse because of complications arising in 1876 as to the twenty-second rule, relating to the electoral count. In 1876 the Senate examined carefully the joint rules, their origin, nature, and effect[6] and on January 22 sent to the House a concurrent resolution adopting the joint rules in force in the previous Congress except the twenty-second.[7] The House referred the resolution to the Committee on Rules," and no further action was taken in relation thereto. On August 12, near the end of the session, the House as usual

[1] This rule dates from July 27, 1789. (First session First Congress, Journal, p. 67; Annals, pp. 58, 59, 698.)

[2] This rule dates also from July 27, 1789; but was amended as to the size of the Senate portion on February 1, 1826. (2d sess. 19th Cong., Journal, p. 230.) The committee has ceased to be regarded as a joint committee, each House having now its own standing committee. In the House it numbers seven and in the Senate three.

[3] Dates from July 27, 1789.

[4] Dates from June 10, 1790. (First session Second Congress, Annals, p. 1024.)

[5] Dates from January 30, 1822. (first session Seventeenth Congress, Journal, p. 203; Annals, p. 832.) These two rules were often suspended during their existence, and since they have lapsed no usage has continued from them, as in the case of the other joint rules relating to bills.

[6] For this discussion see first session Forty-fourth Congress, Record, pp. 220, 309, 517, 1020, 1024.

[7] Journal of House, p. 239; Record, pp. 552.

[8] Journal, p. 318; Record, p. 835.

sent to the Senate a concurrent resolution abrogating the joint rules making a time limit on the passage of bills and their transmittal to the President.[1] The Senate in response sent a message announcing that as the House had not notified the Senate of the adoption of joint rules, as proposed by the resolution of the Senate of January 20, there were no joint rules in force.[2] Since then no joint rules have been recognized.[3]

3431. The chairman of the Committee on Enrolled Bills reports daily the enrolled bills presented to the President of the United States for approval.—On February 14, 1902[4] Mr. Frank C. Wachter, of Maryland, from the Committee on Enrolled Bills, reported that they had this day presented certain specified enrolled bills to the President of the United States for his approval.

The Speaker[5] said:

> The Chair will state for the information of the House that a new system has been inaugurated and is now carried out by the Committee on Enrolled Bills whereby a report is made as to the time when a bill goes to the President, so that it will go on record and Members can see when the time for the return of a bill from the President has elapsed. This is an old system, but has been out of use for some time.[6]

3432. In early days a joint committee took enrolled bills to the President of the United States.—On May 19, 1789[7], a message from the Senate announced that they had appointed a committee to join a committee on the part of the House to present to the President of the United States the bill entitled "An act to regulate the time and manner of administering certain oaths" after the same should be duly engrossed, examined, and signed by the Speaker of the House and President of the Senate.

The House concurred in appointing a committee for this purpose.

3433. The rules and law for the engrossment and enrollment of bills.—On October 26, 1893,[8] Mr. James D. Richardson, of Tennessee, from the

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[1] Journal, p. 1470; Record, p. 5567.

[2] Journal of House, pp. 1477, 1478; Record, p. 5567.

[3] For joint rule relating to electoral count see section 1949 of Vol. III of this work.

[4] First session Fifty-seventh Congress, Record, p. 1778; Journal, p. 346.

[5] David B. Henderson, of Iowa, Speaker.

[6] In 1888 the House and Senate considered somewhat legislation in regard to the manner of transmitting enrolled bills to the President, but no final action was taken. (First session Fiftieth Congress, Record, pp. 8801, 8862, 8893.)

It has been the practice from the earliest days for the Senate to message to the House h6 statement of signature by the President of a bill or bills originating in the Senate. (Journal, second session Second Congress, p. 698; second session Fourth Congress, p. 668; and vice versa for the House to message to Senate, second session Sixth Congress, p. 800 (Gales and Seaton ed.).

Also the Joint Committee on Enrolled Bills, by one of its members, used to report to the House that he (the Member reporting) had waited on the President and presented for his approval certain enrolled bills. (Journal, second session Second Congress, p. 698 (Gales and Seaton ed.) I Journal, second session Sixth Congress, p. 800 (Gales and Seaton ed.).

On February 18, 1865, is found an illustration of the practice of the Committee on Enrolled Bills reporting the bills and joint resolutions that they had on the preceding day presented to the President. (Second session Thirty-eighth Congress, Journal, p. 273.)

As late as February 18, 1869, the Committee on Enrolled Bills reported to the House bills which it had presented to the President. (Journal, third session Fortieth Congress, p. 375.)

[7] First session First Congress, Journal, p. 38 (Gales and Seaton ed.).

[8] First session Fifty-third Congress, Journal, p. 164; Record, pp. 2858, 3039.

joint commission appointed to investigate the Executive Departments of the Government, reported the following:

Resolved by the House of Representatives (the Senate concurring), That, beginning with the first day of the regular session of the Fifty-third Congress, to wit, the first Monday in December, 1893, in lieu of being engrossed, every bill and joint resolution in each House of Congress at the stage of the consideration at which a bill or joint resolution is at present engrossed, shall be printed, and such printed copy shall take the place of what is now known as, and shall be called, the engrossed bill or resolution, as the case may be, and it shall be dealt with in the same manner as engrossed bills and joint resolutions are dealt with at present, and shall be sent in printed form, after passing, to the other House, and in that form shall be dealt with by that House and its officers in the same manner in which engrossed bills and joint resolutions are now dealt with.

Resolved, That when said bill or joint resolution shall have passed both Houses, it shall be printed on parchment, which print shall be in lieu of what is now known as, and shall be called, the enrolled bill or joint resolution, as the case may be, and shall be dealt with in the same manner in which enrolled bills and joint resolutions are now dealt with.

Resolved, That the Joint Committee on Printing is hereby charged with the duty of having the foregoing resolutions properly executed, and is empowered to take such steps as may be necessary to carry them into effect and provide for the speedy execution of the printing herein contemplated.

Mr. Richardson explained that the commission had studied the usages of other nations, and especially of the British Parliament, where bills had been printed at these stages since 1849. Mr. Nelson Dingley, of Maine, a member of the commission, stated that in his own State the proposed system had been in successful operation for twenty years.

The resolutions were agreed to by the House.

On November 1 the Senate acted on the resolutions, agreeing to them without amendment.[1]

3434. In 1895,[2] action in the House being taken on February 12, the House and Senate agreed to the following concurrent resolution:

Resolved by the Senate (the House of Representatives concurring), That, during the last six days of any session of Congress the engrossing and enrolling of bills and joint resolutions by printing, as provided for in the concurrent resolution adopted by the Fifty-third Congress, first session, November 1, 1893, may be suspended, and said bills and joint resolutions may be written by hand when in the judgment of the Joint Committee on Printing it is deemed necessary.

3435. The act of March 2, 1895,[3] provides:

That hereafter the engrossing and enrolling of bills and joint resolutions of either House of Congress shall be done in accordance with the concurrent resolution adopted by the Fifty-third Congress at its first session, November 1, 1893: *Provided,* That during the last six days of a session such engrossing and enrolling of bills and joint resolutions may be done otherwise than as prescribed in said concurrent resolution, upon the order of Congress by concurrent resolution.

3436. On January 27, 1871,[4] in the course of the debate on a bill relating to the enacting words of bills, Mr. Charles Sumner, of Massachusetts, said in the Senate:

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[1] In the preceding Congress there had been many errors in enrollment, ninety in the naval appropriation bill alone. (See Record, first session Fifty-third Congress, p. 22.)

[2] Third session Fifty-third Congress, Journal, pp. 124, 128; Record, pp. 2012, 2077, 2089.

[3] 29 Stat. L., p. 769.

[4] Third session Forty-first Congress, Globe, p. 775.

It is now many years since I brought forward in this Chamber a proposition to do away with parchment or enrolled bills. The legislature of Massachusetts and the Congress of the United States are, I believe, the only two legislative bodies on this side of the Atlantic where parchment is used for enrolled bills. I am not aware that it is used in any State of the Union except Massachusetts, where it has been handed down from old Colonial days; and here in Congress you may say that it was handed down from Colonial days, for when Congress began the system adopted was the old Colonial system; and indeed there was reason for it then which does not exist now, because our statutes were all deposited in the State Department, and the copies there deposited became evidence in a court of justice. But now, by act of Congress, our statute book is evidence. Therefore there seems to be no reason why we should go every day through this surplusage of labor by having our acts enrolled in parchment. It is contrary to economy, it is contrary to convenience.[1]

3437. In 1874[2] there was some consideration of the matter of enrolling bills, then done by hand. Mr. James A. Garfield, of Ohio, in the House, proposed a resolution, which was agreed to, directing the Committee on Enrolled Bills to inquire into the expediency of repealing the law requiring the statutes to be enrolled on parchment, and devise some means whereby interpolations might be avoided. Shortly after, on February 20,[3] Mr. Charles Sumner, of Massachusetts, in the Senate, stated that in England the Parliament had seen the unwisdom of trusting their laws to a written roll, and had provided that all bills should be in print for the assent of the sovereign. In France he had found the archives all on paper, and generally printed. This discussion was occasioned by the interpolation of a letter and a comma in a tariff bill, whereby large interests were affected. On February 20[4] Mr. Sumner proposed in the Senate a resolution, which was agreed to, proposing that the Committee on Enrolled Bills examine the question of enrolling on parchment, with a view to its discontinuance and to having all bills printed before submission to the President.

3438. In the last six days of a session the engrossing and enrolling of bills by hand instead of printing may be authorized by concurrent resolution.—At the latter part of a session, for convenience, it is usual to adopt a resolution like the following:[5]

Resolved by the House of Representatives (the Senate concurring), That during the last six days of the present session of Congress the engrossing and enrolling of bills and joint resolutions by printing, as provided by act of Congress approved March 2, 1895, may be suspended, and said bills and joint resolutions may be written by hand.

3439. On February 25, 1901,[6] Mr. William B. Baker, of Maryland, presented, and the Speaker[7] entertained as privileged, the following resolution, which was agreed to by the House:

Resolved by the House of Representatives (the Senate concurring), That during the remainder of the present session of Congress the engrossment and enrolling of bills and joint resolutions by printing, as provided by an act of Congress approved March 2, 1895, may be suspended, and said bills and joint resolutions may be written by hand.

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[1] Parchment continues to be used for the enrollment of all bills that have passed the two Houses, as provided by the joint rule of 1789. See section 3430 of this chapter.

[2] First session Forty-third Congress, Record, p. 1340.

[3] Record, p. 1664.

[4] Record, p. 1667.

[5] Second session Fifty-fourth Congress, Journal, p. 221.

[6] Second session Fifty-sixth Congress, Record, p. 3007; Journal, p. 274.

[7] David B. Henderson, of Iowa, Speaker.

Mr. Tawney further stated:

3440. Present practice of comparison of bills for enrollment under direction of the Committee on Enrolled Bills.—On January 14, 1907,[1] a discussion arose in the House as to the duties of the enrolling clerk and the Committee on Enrolled Bills with relation to enrollment, and the practice was stated by Mr. James A. Tawney, of Minnesota:

The Committee on Enrolled Bills has never met during this Congress and did not meet during the last Congress. The comparison which is supposed to be made in the Committee on Enrolled Bills is made by the clerks employed by that committee.

This statement was supplemented by Mr. James R. Mann, of Illinois:

The gentleman does not mean the Committee on Enrolled Bills never meets. He means they do not have a formal meeting of the committee for the purpose of comparing these bills. The chairman of the Committee on Enrolled Bills and the clerks are working on the bills, * * * comparing these bills returned there by the enrolling clerk. They are compared first at the Printing Office, then by the enrolling clerk, and afterwards compared by the Committee on Enrolled Bills, through their clerks, to find if mistakes have crept in.

What I said in regard to the Committee on Enrolled Bills not meeting had no reference whatever to the work of the chairman of that committee. I was asked who the committee were and when they met. I am informed by members of the committee that it is a fact that the committee has not met during this Congress, and did not meet during last Congress as a committee. But that does not mean that the chairman of the committee has in the least neglected his duty.

3441. The House may, by suspension of the rules, waive the usual requirements as to the examination of enrolled bills.—On March 3, 1855,[2] Mr. George S. Houston, of Alabama, reported that it was an impossibility for the Committee on Enrolled Bills to examine all the bills before it before the time should arrive for the adjournment of the Congress.

Thereupon, by a suspension of the rules, it was

Ordered, That leave be granted to the Committee on Enrolled Bills to report without examination, for the signature of the Speaker, bills of the following titles, viz:

H. R. 579. An act making appropriation for the naval service for the year ending the 30th of June, 1856.

H. R. 569. An act making appropriations for the civil and diplomatic expenses of the Government for the year ending the 30th of June, 1856, and for other purposes.

Thereupon Mr. Frederick W. Green, of Ohio, from the committee, reported the bills and the Speaker signed the same.

3442. Only in a very exceptional case has Congress waived the strict requirements as to the enrollment of bills.

Rare instance wherein, after the Senate had disagreed to a resolution of the House, the House insisted and a conference was held.

On May 29, 1874,[3] the Senate disagreed to a concurrent resolution of the House proposing to suspend the joint rule requiring bills to be enrolled in parchment and allow certain House bills providing for a revision of the statutes to be presented to the President as engrossed in the House and amended in the Senate. The reason for this proposition was the great labor of enrolling by hand. The Senate, after

[1] Second session Fifty-ninth Congress, Record, pp. 1091, 1092.

[2] Second session Thirty-third Congress, Journal, p. 585.

[3] First session Forty-third Congress, Journal, pp. 1068, 1091; Record, pp. 4380, 4465, 4483.

discussion, disagreed to the resolution, and, as the House insisted, the matter was referred to conference, where the disagreement was settled by the adoption of a provision that the bills in question should be "printed upon paper, and duly examined and certified by the Joint Committee on Enrolled Bills provided by the joint rules."

3443. The Clerk is sometimes authorized to make a merely formal amendment to a bill that has passed the House.—On February 27, 1891,[1] the Speaker laid before the House a letter from Edward McPherson, Clerk of the House, stating that in the deficiency appropriation bill passed on the preceding day the total on a certain page required to be changed to conform to the changes made by the striking out of several paragraphs by the House.

Thereupon it was

Ordered, That the Clerk be authorized to make the correction suggested in the said bill.

3444. The Committee on Enrolled Bills sometimes reports an amendment to correct a clerical error.—On July 6, 1848,[2] Mr. James G. Hampton, from the Committee on Enrolled Bills, moved that the bill of the House (No. 340) entitled "An act to incorporate the Washington Gas Light Company" be amended by changing the name of "N. P. Callan" to "M. P. Callan," which motion was unanimously agreed to by the House, and the bill was amended accordingly.

Thereupon Mr. Hampton reported that the committee had examined the bill and found it truly enrolled.

3445. A clerical error in a bill has been corrected by joint action of the Committee on Enrolled Bills of the two Houses.—On February 20, 1857,[3] Mr. Thomas G. Davidson, of Louisiana, from the Committee on Enrolled Bills, reported that the committee had examined an enrolled bill of the following title, viz:

H. R. 400. An act to divide the State of Texas into two judicial districts;

and having caused a clerical omission in the fourth line of the same to be corrected by the insertion of the word "counties," had found the same truly enrolled.

Mr. Davidson explained that this action had been taken after consultation with the Committee on Enrolled Bills on the part of the Senate. Thereupon,

Ordered, That the approval of the House be given to the said correction.

The Speaker thereupon signed the said bill.

The bill was also signed by the Vice-President.

3446. The correction of an enrolled bill is sometimes ordered by concurrent resolution of the two Houses.—On May 14, 1896,[4] the Speaker laid before the House the following concurrent resolution from the Senate, which was considered and agreed to:

Resolved by the Senate (the House of Representatives concurring), That the Committees on Enrolled Bills of the two Houses be authorized to correct the enrolled bill of the Senate (S. 2488) entitled "An act to amend an act entitled 'An act to authorize the Denison and Northern Railway Company to construct and operate a railway through the Indian Territory, and for other purposes,'" by striking out the word "nine," in line 2 of said enrolled bill, and inserting "eight."

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[1] Second session Fifty-first Congress, Journal, p. 310; Record, p. 3463.

[2] First session Thirtieth Congress, Journal, p. 991.

[3] Third session Thirty-third Congress, Journal, p. 479; Globe, pp. 785, 788.

[4] First session Fifty-fourth Congress, Record, p. 5243.

3447. On June 11, 1898,[1] Mr. Nelson Dingley, of Maine, having announced that there had been found an error in the printed copy of the conference report on the war revenue bill, submitted this resolution, which was agreed to:

Resolved by the House of Representatives (the Senate concurring), That the enrolling clerk of the House be, and he is hereby, authorized and directed to enroll the act (H. R. 10100) entitled "An act to provide ways and means to meet war expenditures, and for other purposes," in accordance with the text of said act as submitted to both Houses in connection with the report of the managers of the two Houses on the disagreeing votes.[2]

3448. On February 8, 1901,[3] Mr. William B. Baker, of Maryland, chairman of the Committee on Enrolled Bills, obtained unanimous consent for the consideration of the following resolution, which was agreed to by the House:

Resolved by the House of Representatives (the Senate concurring), That the enrolling clerk of the House be, and he is hereby, authorized and directed to correct the enrolled bill (H. R. 9928), entitled "An act granting an increase of pension to H. S. Reed, alias Daniel Hull, by inserting in the enacting clause the word "States" after the word "United."

3449. On April 16, 1906,[4] Mr. Charles Curtis, of Kansas, asked unanimous consent for the present consideration of this resolution:

Resolved by the House of Representatives (the Senate concurring), That in the enrollment of the bill H. R. 5976, "An act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes," the Clerk be directed to restore to the bill the part proposed to be stricken out in the amendment of the Senate No. 26 and to insert the following: On page 9, line 3, after the word "retaining," the words "tribal educational officers, subject to dismissal by the Secretary of the Interior," and restore to the bill the part proposed to be stricken out in the amendment of the Senate No. 27, and to insert in said amendment the following: On page 11, line 8, after the word "five," the words "and all such taxes levied and collected after the 31st day of December, 1905, shall be refunded."

After the word "shall," on page 11, line 16, insert "willfully and fraudulently," etc.

Mr. Curtis explained the object of the resolution:

In this case the resolution simply makes the bill read as it was agreed to in the conference. In the first conference report the statement was correctly made. It was printed, and in the second conference report the clerk of the Senate Committee on Indian Affairs was directed to have the language printed as in the first conference report. We agreed upon it the same as we did in the first conference report. There was no disagreement at all on this subject between the conferees of the House and the conferees of the Senate, but after the clerk had prepared the report he was informed by a clerk in the Senate that the Senate could not recede with an amendment, and that the House must recede. So he struck out the words "the Senate receded" and made it read "the House receded," presented the report, and we signed it without noticing these mistakes. It was not noticed until after the report was agreed to by the Senate, too late to go back to conference. Now, if the bill goes through as it is presented here it will simply destroy three sections agreed on in conference.

Mr. J. Warren Keifer, of Ohio, objected.

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[1] Second session Fifty-fifth Congress, Record, p. 5770.

[2] On May 12, 1820, a rule was agreed to making it the duty of the Committee on Enrolled Bills to correct any error in date in any engrossed or enrolled bill and report such correction to the House. (First session Sixteenth Congress, Journal, pp. 518, 520 (Gales and Seaton ed.); Annals, pp. 22, 31.)

On March 1, 1881 (Third session Forty-sixth Congress, Record, p. 2321), Mr. John E. Kenna, of West Virginia, submitted as a privileged report from the Committee on Enrolled Bills a concurrent resolution authorizing and directing the committee to change the enrollment of the river and harbor bill in order to correct clerical errors, and those alone.

[3] Second session Fifty-sixth Congress, Record, p. 2145.

[4] First session Fifty-ninth Congress, Record, pp. 5308–5310.

Thereupon, it being a suspension day, on motion of Mr. Curtis, the rules were suspended and the resolution was agreed to.

3450. On February 12, 1903,[1] the House agreed to the following:

Senate concurrent resolution 65.

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (S. 569) to establish the Department of Commerce and Labor the Committee on Enrolled Bills be authorized to insert, in line 12 of the third paragraph of section 6, after the word "Interstate," the word "Commerce."

3451. An error in the enacting clause of an enrolled bill was corrected by a second enrollment and a second signature by the Speaker.—On July 3, 1848,[2] the Speaker, by unanimous consent, presented to the House the following letter, which was read and ordered to lie on the table:

CLERK'S OFFICE, HOUSE OF REPRESENTATIVES,

July 3, 1848.

SIR: On a reexamination of the enrolled bill entitled "An act for the relief of Russsell Goss," it appears that a clerical error exists in the enrolled bill by omitting the words "Be it enacted," at the commencement of the bill. These words axe contained in the engrossed bill, and the Clerk, on being advised of the omission, has had the said bill truly enrolled and examined by the Committee on Enrolled Bills, so that the beneficiary of the bill may not be deprived of its benefits, if these words may be deemed essential to the efficacy of the bill. The foregoing statement will explain why the "bill" entitled "An act for the relief of Russell Goss," has been a second time reported for the signature of the presiding officers of the two Houses of Congress.

Very respectfully,

THO. J. CAMPBELL, *Clerk of the House, Etc.*

Hon. R. C. WINTHROP, *Speaker of the House, Etc.*

Thereupon Mr. James G. Hampton, of New Jersey, from the Committee on Enrolled Bills, reported that the committee had again examined the said bill and found the same truly enrolled.

Thereupon the Speaker again signed the said bill.

3452. The House may, by unanimous consent, authorize the Speaker to sign an enrolled bill that is not certified by report of the committee.—On July 3, 1852,[3] the Speaker[4] having informed the House that no member of the Committee on Enrolled Bills was present, and that it was highly important that the enrolled bill of the Senate (No. 451) to amend the act entitled "An act to carry into effect the convention between the United States and the Emperor of Brazil, of the 27th of January, in the year 1849," approved March 29, 1850, should be signed immediately,

It was then unanimously—

Ordered, That if the Speaker is satisfied that the said bill is truly enrolled he be authorized to sign the same.

The Speaker thereupon signed the said bill.

3453. An error having been discovered in an enrolled bill, the House authorized the Speaker to erase his signature, and the error was corrected

[1] Second session Fifty-seventh Congress, Journal, p. 238; Record, p. 2092.

[2] First session Thirtieth Congress, Journal, pp. 979, 980.

[3] First session Thirty-second Congress, Journal, p. 860.

[4] Linn Boyd, of Kentucky, Speaker.

by a concurrent resolution.—On March 1, 1890,[1] the Speaker laid before the House the following request of the Senate:

IN THE SENATE OF THE UNITED STATES, *February 26, 1890.*

Ordered, That the Secretary be directed to request the House of Representatives to return to the Senate Senate bill 993 "To constitute Minneapolis, Minn., a subport of entry and delivery in the collection district of Minnesota, and for other purposes."

The request of the Senate having been read, the Speaker stated that there seemed to be an error in the bill as to a date, and the Senate had requested the House to return the bill to that body. Before that request had been received by the House the Speaker had signed the bill, which had been reported to the House. The Speaker[2] suggested that if there be no objection he would erase his signature and return the bill to the Senate.

Mr. John G. Carlisle, of Kentucky, said he understood the error occurred in printing the bill at the Government Printing Office. He thought, therefore, that the Speaker should be authorized to erase his name and return the bill.

This authorization was given without objection, and the Speaker erased his signature and returned the bill.

On March 3 the House passed the following resolution, which had been passed by the Senate:

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (S. 993) to constitute Minneapolis, Minn., a subport of entry and delivery, etc., the Secretary of the Senate be authorized to insert the word "eighty-eight" in lieu of "eighty-two" where it occurs in section 2 of said enrolled bill.

3454. Bills having been prematurely enrolled and signed by the Presiding Officers, the two Houses authorized the cancellation of the signatures.—On June 9, 1858,[3] the following message was received from the Senate:

The Senate have adopted resolutions directing the return of the following enrolled bills, and requesting that the Speaker of this House may be authorized to cancel his signature upon the same, and that the engrossed bills (of the same titles) may be returned to the Senate, to enable them to correct their report thereon to the House of Representatives, viz:

H. R. 267. An act for the relief of Timothy L. O'Keefe; and

H. R. 356. An act for the relief of Roswell Minard, father of Theodore Minard, deceased.

This was a case where the first bill had passed the Senate with amendment, and was erroneously reported to the House as having passed the Senate without amendment. The second bill had been indefinitely postponed by the Senate, but had been reported to the House as having passed the Senate. So both bills had been enrolled by the House and signed by the Speaker, and then transmitted to the Senate and signed by the presiding officer there. The Senate, therefore, had adopted in relation to each bill a preamble setting forth the facts, and a resolution as follows:

Resolved, That the President of the Senate be, and hereby is, authorized to cancel his signature upon said enrolled bill, and that the same be returned to the House, and the House of Representatives be respectfully requested to authorize the Speaker of the House of Representatives to cancel his signature upon said enrolled bill, and return to the Senate the engrossed bill, to enable the Senate to correct its report to the House of Representatives.

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[1] First session Fifty-first Congress, Record, pp. 1842, 1888.

[2] Thomas B. Reed, of Maine, Speaker.

[3] First session Thirty-fifth Congress, Journal, pp. 1062, 1063; Globe, p. 2820.

The House adopted an order authorizing the Speaker to cancel his signatures and directing that the engrossed bills be returned to the Senate. The Speaker having canceled his signatures,

Ordered, That the clerk return the said enrolled and engrossed bills to the Senate.

3455. By unanimous consent the Speaker, on request of the Senate, was authorized to cancel his signature to an enrolled pension bill, the beneficiary of which was dead.—On February 29, 1904,[1] the Speaker laid before the House the following resolution from the Senate:

Resolved, That the action of the President pro tempore in signing the bill (S. 167) "granting an increase of pension to J. Hudson Kibbe" be rescinded, and that the bill be returned to the House of Representatives, with the request that similar action be taken by the House with respect to the signature of the Speaker, and that the passage of the bill be reconsidered, and that it be postponed indefinitely, the beneficiary of the same being dead.

By unanimous consent the Speaker was empowered and directed to cancel his signature to the bill.

He accordingly did so.

3456. On February 25, 1903,[2] the Speaker laid before the House the following order of the Senate:

Ordered, That the Secretary be directed to return to the House of Representatives the enrolled bill (S. 5718) providing for the sale of sites for manufacturing or individual plants in the Indian Territory, with the request that the House of Representatives vacate the action of the Speaker in signing the said enrolled bill, and return the same and the message of the Senate agreeing to the amendment of the House to said bill to the Senate.

Mr. John Dalzell, of Pennsylvania, thereupon, by unanimous consent, offered the following, which was agreed to:

Ordered, That the Speaker be, and he hereby is, empowered and directed to strike his signature from the said enrolled bill (S. 5718), and that the message of the Senate on said bill to the House be returned to the Senate, in accordance with the request of the Senate.

3457. A request of the Senate that the House vacate the signature of the Speaker to an enrolled bill, was denied by the House, unanimous consent being refused.—On June 23, 1902,[3] in the Senate, Mr. James K. Jones, of Arkansas, by unanimous consent presented and the Senate agreed to the following resolution:

Resolved, That the Secretary of the Senate be directed to return to the House of Representatives the enrolled copy of the bill (S. 5718) providing for the sale of sites for manufacturing or industrial plants in the Indian Territory, and request the House of Representatives to vacate the action of the Speaker in signing said enrolled bill, and to return said enrolled bill and the message of the Senate agreeing to the amendment of the House of Representatives to said bill to the Senate.

Mr. Jones at the same time entered a motion to reconsider the vote by which the Senate concurred in the amendment of the House to the bill.

On June 26,[4] the resolution of the Senate was read, and the Speaker[5] said:

This being a request for the erasing of name of the Speaker from a bill, and there being no allegation that the request is for the purpose of correcting an error, the Chair feels that this should be done by unanimous consent.

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[1] Second session Fifty-eighth Congress, Journal, p. 361; Record, p. 2581.

[2] Second session Fifty-seventh Congress, Journal, p. 284; Record, p. 2648.

[3] First session Fifty-seventh Congress, Record, p. 7195.

[4] Record, p. 7432.

[5] David B. Henderson, of Iowa, Speaker.

Objection having been made, the following resolution was offered by Mr. John Dalzell, of Pennsylvania, and agreed to by the House:

Ordered, That the clerk be directed to return to the Senate the enrolled bill (S. 5718) providing for the sale of sites for manufacturing or industrial plants in the Indian Territory, with the information that the House has considered the request of the Senate that the House vacate the action of the Speaker in signing said enrolled bill, and that the unanimous consent necessary to enable such action to be taken was refused.

3458. The Speaker may not sign an enrolled bill in the absence of a quorum.—On May 20, 1826,[1] Mr. Jacob Isacks, of Tennessee, from the Joint Committee for Enrolled Bills, reported that the committee had examined an enrolled bill entitled "An act making appropriations for the public buildings in Washington, and for other purposes," and had found the same to be duly enrolled.

When, a quorum not being present, objection was made by a Member to signing the said bill by the Speaker.[2]

And thereupon the House adjourned.

3459. Proceedings in correcting an error where the Speaker had signed the enrolled copy of a bill that had not passed.—On March 14, 1864,[3] the Speaker stated to the House that—

the Secretary of the Senate having inadvertently, on Friday last, announced the passage by the Senate of the Court of Claims bill No. 116, instead of the bill of the House (H. R. 116), and having since corrected said error by certifying to the bill which actually did pass, the Speaker, with the consent of the House, will cause the Journal of that day to be amended by the insertion of the title of the bill which actually passed, in lieu of the one originally announced; and when reported by the committee he will sign the proper enrolled bill, canceling his signature of H. R. C. C. 116.

The unanimous consent of the House was given to the course indicated by the Speaker.[4]

3460. It is a common occurrence for one House to ask of the other the return of a bill, for the correction of errors or otherwise.—On April 11, 1810,[5] the House proceeded to consider the amendments of the Senate to the bill entitled "An act regulating the Post-Office Establishment."

Mr. Ezekiel Bacon, of Massachusetts, moved that the following words, "Section 25, lines 2 and 3, strike out the words 'each postmaster, provided each of his letters or packets shall not exceed half an ounce in weight,'" appearing to have been an interpolation in the amendments sent from the Senate after the same were received by this House, be expunged therefrom.

Pending consideration a message was received from the Senate requesting the return of the bill and amendments,

it having been discovered that an inaccuracy had taken place in stating the amendments of the Senate.

The House ordered the bill returned, and the same day a message from the Senate returned to the House the corrected amendments.

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[1] First session Nineteenth Congress, Journal, p. 639.

[2] John W. Taylor, of New York, Speaker.

[3] First session Thirty-eighth Congress, Journal, p. 377; Globe, p. 1096.

[4] Schuyler Colfax, of Indiana, Speaker.

[5] Second session Eleventh Congress, Journal, pp. 355, 356 (Gales and Seaton ed.); Annals, pp. 650 (Vol. I) and 1769 (Vol. II).

3461. On June 28, 1834,[1] the House received from the Senate a message that they had passed this resolution:

Resolved, That the House of Representatives be requested to return the bill for the erection of light-houses, etc., to the Senate, for their further action on the same.

The resolution from the Senate being read, it was

Ordered, That the Clerk do return the said bill to the Senate.

3462. On March 27, 1838,[2] a message from the Senate requested the return to the Senate of the bill (No. 31) entitled "An act for the relief of the legal representatives of Bolitha Laws."

On the same day the House proceeded to the consideration of the message, and it was

Ordered, That the said bill be returned to the Senate.

3463. On July 31, 1886,[3] the Committee on Appropriations had reported back the fortifications appropriation bill (H. R. 9798) with the recommendation that the Senate amendments thereto be nonconcurred in. A motion having been made in the House to nonconcur, the previous question was ordered thereon. Thereupon the House adjourned.

On August 3[4] the Senate requested the return of the bill, and the House by unanimous consent ordered its return.

3464. On February 11, 1851,[5] a bill having been sent from the Senate to the House by mistake, a message was sent to the House asking its return, and the House returned the bill.

3465. There being an error in an engrossed House bill sent to the Senate, a request was made that the Clerk be permitted to make correction.—On March 2, 1843,[6] it was—

Ordered, That a message be sent to the Senate, notifying that body that an error has been made in the engrossment of the bill (No. 602), entitled "An act to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam," approved July 7, 1838, as sent from this House to the Senate, which error consists in incorporating in said engrossed bill as section as the third section thereof, that section having been stricken from the original bill by this House previous to the passage of the bill; and that the Senate be requested to permit the Clerk to correct the said error.

3466. Instance of reconsideration of a bill which had passed both Houses.—On March 2, 1904,[7] the following resolution was received from the Senate and laid before the House:

Resolved, That the Secretary be directed to request the House of Representatives to return to the Senate the bill (H. R. 5611) granting a pension to Juliette Westbrook.

The request of the Senate was granted.

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[1] First session Twenty-third Congress, Journal, pp. 892, 893.

[2] Second session Twenty-fifth Congress, Journal, pp. 675, 680.

[3] First session Forty-ninth Congress, Journal, p. 2468.

[4] Journal, pp. 2481, 2482; Record, p. 7932.

[5] Second session Thirty-first Congress, Journal, p. 254; Globe, p. 505.

[6] Third session Twenty-seventh Congress, Journal, p. 520.

[7] Second session Fifty-eighth Congress, Record, p. 2711.

On March 3,[1] in the Senate, the President pro tempore laid before the Senate the bill, whereupon Mr. John C. Spooner, of Wisconsin, said:

While the bill was pending in the Senate the beneficiary died. The bill has passed both Houses. The gentleman in the House who had charge of it desired us to bring about its recall in order that it might be disposed of in the Senate. I therefore ask unanimous consent that the vote by which it was passed here be reconsidered and that the bill be indefinitely postponed.

There being no objection, the vote on the passage of the bill was reconsidered, and the bill was thereupon postponed indefinitely.

3467. On April 21, 1904,[2] the Senate agreed to this resolution:

Resolved, That the Secretary be directed to request the House of Representatives to return to the Senate the bill (H. R. 10046) granting an increase of pension to Thomas J. Campton, the beneficiary of said bill having died.

Later, on the same day[3] in the House, this request of the Senate was agreed to.

On April 22[4] the bill was indefinitely postponed by the Senate.

This was an instance wherein the beneficiary had died after the bill had passed both Houses, but before the enrolled bill had been signed. The Senate, having acted on the bill last, recalled it in order that its reconsideration might take place in the body which had acted on it last.

3468. On May 22, 1902,[5] Mr. John F. Rixey, of Virginia, by unanimous consent, offered the following resolution, which was agreed to by the House:

Whereas the House has been informed that since the passage of the bill (H. R. 12576) granting an increase of pension to Thomas Wells the said Thomas Wells has died: Therefore,

Resolved, That the said bill (H. R. 12576) be transmitted to the Senate with the request that it reconsider the vote whereby it passed the said bill.

On the same day,[6] in the Senate, when the message was received and was laid on the table, the opinion being expressed that the House might dispose of its own bill.[7]

3469. On February 2, 1853,[8] Mr. Bernhart Henn, of Iowa, from the Committee on Enrolled Bills, reported that the bill (S. 208) for the relief of Barbara Reily could be of no effect, since the beneficiary had died.

Various propositions were made as to the disposition of the bill, but were objected to, and objection was made that the Committee on Enrolled Bills might only report as to the enrollment of the bill.

The Speaker[9] said:

The Chair decides that it is not competent for Committee on Enrolled Bills to report this bill back in this form, unless by the unanimous consent of the House; but that, by unanimous consent, it would be competent for the House to reconsider the vote by which the bill passed, and to regularly

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[1] Record, p. 2736.

[2] Second session Fifty-eighth Congress, Record, p. 5221.

[3] Record, p. 5286.

[4] Record, p. 5303.

[5] First session Fifty-seventh Congress, Journal, p. 733; Record, p. 5813.

[6] Record, p. 5800.

[7] Is a bill which has passed both Houses any longer exclusively the bill of the originating House?

[8] Second session Thirty-second Congress, Globe, p. 474.

[9] Linn Boyd, of Kentucky, Speaker.

notify the Senate of that fact. Objection has been made, and the Chair decides that the committee can not report the bill.

Later this bill was reported as truly enrolled, and was signed by the Speaker and Presiding Officer of the Senate, and approved by the President.[1]

3470. A Senate bill having been lost in the House, a resolution requesting of the Senate a duplicate copy was entertained as a matter of privilege, although the earlier practice had been otherwise.

Form of resolution requesting of the Senate a duplicate copy of one of its bills.

On February 27, 1896,[2] Mr. Warren B. Hooker, of New York, offered as a privileged resolution the following, which was presented to the House as such and adopted:

Resolved, That the Senate be requested to furnish the House of Representatives a duplicate copy of the joint resolution (S. R. 54) authorizing the National Dredging Company to proceed with the work of dredging the channel of Mobile Harbor, under the direction of the Secretary of War; the same having been lost or misplaced.

3471. On August 12, 1852,[3] on motion of Mr. John S. Millson, of Virginia, by unanimous consent,

Ordered, That the Clerk request the Senate to furnish this House with a certified copy of the bill of the Senate (No. 369) "appropriating land script in full and final satisfaction of Virginia military bounty land warrants," the engrossed bill having been mislaid since it was received from the Senate.

3472. On February 13, 1852,[4] the following, having been introduced by unanimous consent, was agreed to:

Ordered, That a message be sent to the Senate requesting that a copy be furnished the House of the resolution of the Senate (No. 9) to establish certain post routes, the said resolution having been lost or mislaid since its reference to the Committee on the Post-Office and Post-Roads of the House.[5]

3473. A House bill with Senate amendment being lost by a House committee, the House ordered a duplicate engrossed copy of the bill and requested of the Senate a copy of the amendment.—On December 22, 1896,[6] the attention of the House was called to the fact that the bill (H. R. 1261) for the relief of John Kehl, which had passed the House, been returned from the Senate with an amendment, and committed to the Committee on Invalid Pensions, had been lost by that committee. Mr. Fernando C. Layton, of Ohio, claiming the floor for a privileged resolution, submitted two resolutions, which the House agreed to, as follows:

Resolved, That H. R. 1261, a bill for the relief of John Kehl and to restore him to his former rating, is hereby ordered to be reengrossed, and that the engrossed copy be delivered to the Committee on Invalid Pensions.

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[1] See Journal, pp. 251, 257, 278.

[2] First session Fifty-fourth Congress, Record, p. 2236.

[3] First session Thirty-second Congress, Journal, p. 1026; Globe, p. 2198. The Globe indicates that Mr. Millson claimed the floor on a question of privileged nature, but the Journal indicates that Mr. Speaker Boyd did not so regard it.

[4] First session Thirty-second Congress, Journal, p. 348; Globe, p. 561.

[5] When the order was presented the suggestion was made that it might be privileged, but the manner in which it is journalized indicates that such was not the opinion of Mr. Speaker Boyd.

[6] Second session Fifty-fourth Congress, Record, p. 406.

Resolved, That the Clerk be directed to request the Senate to furnish to the House a copy of the Senate amendment to H. R. 1261, a bill for the relief of John Kehl and to restore him to his former rating, to replace the original copy of the amendment which has been lost.

3474. On February 14, 1906,[1] Mr. Sereno E. Payne, of New York, submitted as a privileged question, the following:

Ordered, That the Clerk be directed to have reengrossed and properly attested the following bills:

H. R. 7085. Authorizing the Pea River Power Company to erect a dam in Coffee County, Ala.;

H. R. 11263. To authorize the construction of a bridge across the navigable waters of St. Andrews Bay; and

H. R. 11045. To amend an act entitled "An act to authorize Washington and Westmoreland counties, in the State of Pennsylvania, to construct and maintain a bridge across the Monongahela River, in the State of Pennsylvania," approved February 21, 1903.

Ordered further, That the Clerk be directed to request the Senate to have made on the engrossed copies of each of the said bills the proper indorsement of the Senate's action thereon.

Mr. Payne explained that the bills, after passing the House and Senate, had been lost, and that it was desirable to have the duplicates from which to make the enrollment.

The order was agreed to by the House.

On February 15[2] in the Senate the request of the House was granted, and on the same day the bills with the proper indorsements were received in the House by message.

3475. The Senate having requested the return of a bill which, with amendments, had reached the stage of disagreement, a motion to discharge the House committee and return the bill was treated as privileged.—On June 4, 1896,[3] Mr. Henry C. Loudenslager, of New Jersey, presented, as a privileged report from the Committee on Pensions, the following resolution, which was received as such and agreed to by the House:

Resolved, That the Committee on Pensions be discharged from the further consideration of the bill (S. 1420) granting an increase of pension to Elizabeth W. Sutherland, and that the said bill be returned to the Senate, in accordance with their request.

This was a case wherein the Senate had disagreed to House amendments and asked a conference, and the bill on being returned to the House had been referred to the Committee on Pensions. It is an accepted principle that after the stage of disagreement has been reached a bill is privileged.

3476. Process of recalling a bill from the Senate in order to correct an error in the number.—On February 26,1906,[4] on motion of Mr. Henry C. Loudenslager, of New Jersey, the House agreed to this resolution:

House resolution 344.

Resolved, That the Senate be requested to return to the House the bill of the House (H. R. 2697) granting an increase of pension to R. G. Childress, said bill having been incorrectly reported and engrossed as H. R. 2897.

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[1] First session Fifty-ninth Congress, Record, p. 2577.

[2] Record, pp. 2589, 2623.

[3] First session Fifty-fourth Congress, Record, pp. 5339, 6110.

[4] First session Fifty-ninth Congress, Record, p. 3006.

On March 5,[1] the bill having been received from the Senate, the Speaker laid the bill before the House, and on motion of Mr. Henry C. Loudenslager, of New Jersey, the vote by which the bill was passed was reconsidered, and then the bill was recommitted to the Committee on Pensions, for amendment.

3477. The mere request for the other House to return a bill, no error or impropriety being involved, has not been regarded as a privileged matter.—On August 6, 1856,[2] an order directing the Clerk to request the Senate to return the Mississippi land bill in order that an error in engrossment might be corrected, was offered by unanimous consent, and does not seem to have been contemplated in the light of a privileged proposition.

In 1862[3] are found proceedings asking for and granting the return of bills from and to the Senate, journalized as by unanimous consent.

3478. A bill which had not in fact passed the House having been sent to the Senate by error, a resolution requesting its return was entertained as a matter of privilege.—On, February 12, 1895,[4] Mr. Augustus N. Martin, of Indiana, called up a resolution requesting the Senate to return to the House the bill (H. R. 5260) to grant an increase of pension to Thomas Corigan. Mr. Martin explained that this bill having been reported from the Committee of the Whole House with the recommendation that it do lie on the table, had been by inadvertence taken up by the House and passed among bills favorably reported.

Objection having been made that the resolution was not privileged, the Speaker[5] said:

> If the gentleman from Indiana would modify his resolution so as to allege that this bill was reported unfavorably from the Committee of the Whole, and was considered by the House under the idea that it had been favorably reported, the Chair thinks the resolution would be privileged. But a simple resolution to recall a bill can hardly be considered privileged, because in that case such a resolution might be presented with regard to any bill that is passed. To make the resolution privileged it should show that the House has acted under some misunderstanding of the report of the committee, or something of that kind.

3479. A resolution to recall from the Senate a bill alleged to have passed the House improperly was held to be privileged.—On June 18, 1878,[6] Mr. William M. Springer, of Illinois, offered as a question of privilege the following:

> *Ordered,* That the Clerk of the House be directed to request the Senate to return to the House the bill (S. 1088) to provide for the revision and correction of assessments for special improvements in the District of Columbia, and for other purposes.

Mr. George W. Hendee, of Vermont, raised the question as to whether or not the order was privileged.

Mr. Springer stated that the bill had passed the House improperly; but upon this point there was a difference of opinion among Members, and the point was made that if such orders were considered privileged every bill that passed might be called back.

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[1] Record, p. 3359.

[2] First session Thirty-fourth Congress, Journal, p. 1381; Globe, p. 1949.

[3] Second session Thirty-seventh Congress, Journal, pp. 458, 466, 496, 1013.

[4] Third session Fifty-third Congress, Record, p. 2093.

[5] Charles F. Crisp, of Georgia, Speaker.

[6] Second session Forty-fifth Congress, Record, pp. 4830–4832.

The Speaker[1] said:

The Chair is not very certain that this question presents a question of privilege; but the Chair prefers to rule in the direction of avoiding even the semblance of justification for an allegation that any wrong has been done in the passage of any bill in this House.

Therefore the Chair admitted the resolution.

3480. The Senate having requested the return of a bill which had been enrolled, signed by the Speaker, and transmitted to the Senate, a resolution was passed directing that the Senate be informed thereof.—On May 21, 1900,[2] the Speaker laid before the House the following resolution from the Senate:

Resolved, That the Secretary be directed to request the House of Representatives to return to the Senate House bill 2955, providing for the resurvey of township No. 8, of range No. 30 west, of the sixth principal meridian in Frontier County, State of Nebraska.

Mr. Sereno E. Payne, of New York, thereupon presented the following resolution, which was agreed to:

Resolved, That the Clerk be directed to inform the Senate that the bill (H. R. 2955) providing for the resurvey of township No. 8, of range No. 30 west, of the sixth principal meridian in Frontier County, State of Nebraska, of which the Senate request the return by resolution of May 19, transmitted to the House by message on this day, is no longer in the possession of the House, as prior to the receipt of the message of the Senate it had been transmitted to the Senate as an enrolled bill, duly signed by the Speaker.

3481. A request of the Senate for the return of a bill is treated as privileged in the House.—On May 12, 1896,[3] the Speaker[4] announced that he laid before the House as privileged the following resolution:

Resolved, That the Secretary be directed to request the House of Representatives to return to the Senate the bill (H. R. 7324) to authorize and empower the State of South Dakota to select the Fort Sully Military Reservation, in said State, as a part of the lands granted to the State under the provisions of an act to provide for the admission of South Dakota into the Union, approved February 22, 1889, and for indemnity school lands, and for other purposes.

But the return of the bill was ordered by unanimous consent.

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[1] Samuel J. Randall, of Pennsylvania, Speaker.

[2] First session Fifty-sixth Congress, Record, p. 5827.

[3] First session Fifty-fourth Congress, Record, p. 5126; Journal, p. 480.

[4] Thomas B. Reed, of Maine, Speaker.

Chapter XCII.

APPROVAL OF BILLS BY THE PRESIDENT.

1. Provision of the Constitution. Section 3482.
2. As to resolutions requiring approval. Sections 3483, 3484.
3. Bills approved are deposited with the Secretary of State. Section 3485.
4. Delay in presenting bills to President. Sections 3486–3488.[1]
5. Practice of the President in approving. Sections 3489–3492.
6. Approval after adjournment for a recess. Sections 3493–3496.
7. Exceptional instance of approval after final adjournment. Section 3497.
8. Error in approval. Section 3498.
9. Notification of the Houses as to approvals. Sections 3499–3504.
10. Return of bills by President for correction of errors. Sections 3505–3519.

3482. Every bill which has passed the two Houses is presented to the President for his signature if he approve.

In general, orders, resolutions, and votes in which the concurrence of the two Houses is necessary must be presented to the President on the same condition as bills.

A concurrent resolution providing for final adjournment of the two Houses is not presented to the President for approval.

The Constitution of the United States, in section 7 of Article I, provides:

> Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it, etc.
>
> Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States, and before the same shall take effect shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

3483. Although the requirement of the Constitution seems specific, the practice of Congress has been to present to the President for approval only such concurrent resolutions as are legislative in effect.—On January 27, 1897, Mr. David B. Hill, of New York, from the Committee on the Judiciary, submitted to the Senate a report[2] which that committee had been directed to make on the subject of joint and concurrent resolutions and their approval by the President. The subject involved the construction of a portion of section 7 of Article I of the

[1] Method of taking enrolled bills to the President. Section 2601 of Volume III.

[2] Senate Report No. 1335, second session Fifty-fourth Congress.

Constitution.[1] The committee found that in the first twelve Congresses there were one or two instances of simple resolutions[2] being approved by the President; and that, with one or two exceptions, all joint resolutions were approved.[3] These exceptions were in cases where Congress made requests or recommendations not involving any legislative act. In the first fifty years of the Government the whole number of joint resolutions did not exceed 200, but they gradually increased thereafter, until in the Forty-first Congress alone the number exceeded 500. The joint resolutions have been largely used since, but not to the extent reached in that Congress. Except in the few instances in the early Congresses, all joint resolutions have been presented to the President and have been acted on by him.

The committee found that the passage of concurrent resolutions began immediately upon the organization of the Government,[4] but their use has been, not for the purpose of enacting legislation, but to express the sense of Congress upon a given subject, to adjourn longer than three days, to make, amend, or suspend joint rules, and to accomplish similar purposes, in which both Houses have a common interest, but with which the President has no concern.

The report continues:

> They are frequently used in ordering the printing of documents, in paying therefor, and in incurring and paying other expenses where the moneys necessary therefor have previously been appropriated and set apart by law for the uses of the two Houses.
>
> Concurrent resolutions from their very nature require the concurrence of both Houses to make them effectual, and if the Constitution in section 7, before quoted, has reference solely to the form, and not to the substance of such resolutions, they must of course be presented to the President for his approval.
>
> For over a hundred years, however, they have never been presented. They have uniformly been regarded by all the Departments of the Government as matters peculiarly within the province of Congress alone. They have never embraced legislative provisions proper, and hence have never been deemed to require Executive approval.
>
> This practical construction of the Constitution, thus acquiesced in for a century, must be deemed the true construction, with which no court will interfere (Stuart *v.* Laird, 1 Cranch, 299). If it be

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[1] See section 3482.

[2] See 1 Stat. L., p. 96.

[3] The early usage is illustrated by reference to the laws. I15Resolutions joint in form, requesting the President to recommend a day of public humiliation and prayer, were not approved by the President. (2 Stat. L., p. 786.)

In the Eleventh Congress a joint resolution proposing amendment to Constitution was not signed by the President. (2 Stat. L., p. 613.) Nor one in the Third Congress. (1 Stat. L., p. 402.)

The joint resolution of the Eleventh Congress condemning the conduct of the British minister and pledging Congress to support the Executive and call into action the whole force of the nation to maintain the rights and honor of the country was approved by the President.

A joint resolution of the Ninth Congress requesting the President to express the recognition of Congress to the Danish consul at Tripoli for attentions to American sailors in captivity was approved by the President. (2 Stat. L., p. 410.)

Also joint resolution of the First Congress expressing recognition of Congress to National Assembly of France of tribute to Franklin, and requesting President to transmit, was approved. (1 Stat. L., p. 225.)

[4] These early concurrent resolutions were called joint resolutions often, and received the readings of a bill. Thus, see the case of the resolution condemning the conduct of the British minister in 1809, and pledging the support of Congress to the Executive. (First session Eleventh Congress, Annals, pp. 481, 747, 1151.) On the other hand, matters of procedure of the two Houses, like arrangements for the electoral count, were provided by the adoption of simple resolutions in each House, sometimes not identical in form.

contended that the exception in section 7 (whereby adjournment resolutions are excluded from those which must be presented to the President, although they require the concurrence of both Houses) somewhat corroborates the theory that all other concurrent resolutions are intended to be included, regardless of their character, it may be answered that such exception was rendered necessary because of that other provision of the Constitution (Article I, section 5, subdivision 4) which prevents adjournments for more than three days without the consent of each House. Such adjournment resolutions were therefore constitutionally required to be concurrent because the "concurrence" of both Houses was under the Constitution itself necessary thereto to make them valid, and if there had been no exception contained in said section 7 all such resolutions would have been required to be presented to the President, which would be an unprofitable and useless proceeding, as Congress itself should have the sole right to determine the question of its own adjournment, the President being sufficiently protected in such matters by his power to convene Congress whenever he deems it desirable.

In other words, the exception was necessary in order to take certain adjournment resolutions out of the category of those "to which the concurrence of the Senate and House of Representatives may be necessary," under the other provisions of the Constitution, and for that good reason all adjournment resolutions were appropriately excepted.

After referring to Revised Statutes (second edition, 1878), sections 7, 8, and 205, and the printing law (chapter 23, laws of 1895, section 59) for evidences of the views taken by legislators of the subject, the committee came to the following conclusions:

It should also be stated that it has been the uniform practice of Congress, since the organization of the Government, not to present concurrent resolutions to the President for his approval, and to avoid incorporating in such resolutions any matter of strict legislation requiring such presentation. As a matter of propriety and expediency it is believed to be wise to continue that course in the future.

We conclude this branch of the subject by deciding the general question submitted to us, to wit, "whether concurrent resolutions are required to be submitted to the President of the United States," must depend, not upon their mere form, but upon the fact whether they contain matter which is properly to be regarded as legislative in its character and effect. If they do, they must be presented for his approval; otherwise, they need not be. In other words, we hold that the clause in the Constitution which declares that every order, resolution, or vote must be presented to the President, to "which the concurrence of the Senate and House of Representatives may be necessary," refers to the necessity occasioned by the requirement of the other provisions of the Constitution, whereby every exercise of "legislative powers" involves the concurrence of the two Houses; and every resolution not so requiring such concurrent action, to wit, not involving the exercise of legislative powers, need not be presented to the President. In brief, the nature or substance of the resolution, and not its form, controls the question of its disposition.

3484. The question as to whether or not concurrent resolutions should be sent to the President for his signature.—On November 24, 1903,[1] in the Senate, the President pro tempore,[2] referring to a question which had arisen on the previous day, said:

The Chair desires to call the attention of the Senate to a matter which came up in the Senate on yesterday. A concurrent resolution was under consideration and passed. The Senator from Colorado [Mr. Teller] asked the Chair if it went to the President and required his signature. The Chair replied, No. The Chair finds this article in the Constitution of the United States:

"Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill."

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[1] First session Fifty-eighth Congress, Record, p. 438.

[2] William P. Frye, of Maine, President pro tempore.

Within the experience of the Chair in the Senate no concurrent resolution has ever been sent to the President of the United States, nor has he ever signed one. The Chair has endeavored faithfully to find out how concurrent resolutions escape the provision of the Constitution. He has not been able to succeed.

This led to debate in the course of which the report of the Judiciary Committee in a former Congress was quoted with approval.[1]

3485. A statute requires that bills signed by the President shall be received by the Secretary of State from the President.

When a bill returned without the President's approval is passed by the two Houses, the Secretary of State receives the bill from the presiding officer of the House in which it last was passed.

The act approved December 28, 1874,[2] provides:

Whenever a bill, order, resolution, or vote of the Senate and House of Representatives, having been approved by the President, or not having been returned by him with his objections, becomes a law or takes effect, it shall forthwith be received by the Secretary of State from the President; and whenever a bill, order, resolution, or vote is returned by the President with his objections, and on being reconsidered is agreed to be passed and is approved by two-thirds of both Houses of Congress, and thereby becomes a law or takes effect, it shall be received by the Secretary of State from the President of the Senate or Speaker of the House of Representatives, in whichsoever House it shall last have been so approved, and he shall carefully preserve the originals.

3486. Instance wherein a bill enrolled and signed by the presiding officers of the two Houses of one session was sent to the President and approved at the next session.—On December 8,1904,[3] Mr. Frank C. Wachter, of Maryland, chairman of the Committee on Enrolled Bills, offered the following:

Whereas the bill (H. R. 10516) for the relief of Edward J. Farrell passed both Houses at the second session of this Congress, but was enrolled too late to receive the signatures of the presiding officers of the two Houses and be presented to the President of the United States before the adjournment of the said second session; and

Whereas the bill (H. R. 11444) to grant certain lands to the State of Ohio passed both Houses and was signed by the presiding officers thereof, but failed to be presented to the President of the United States before the adjournment of the said second session: Therefore,

Resolved by the House of Representatives (the Senate concurring), That the said bills be, and are hereby, ordered to be reenrolled for the signatures of the presiding officers of the two Houses and for presentation to the President of the United States.

The resolution was agreed to by the House.

On December 12,[4] in the Senate, the resolution was referred to the Committee on Rules and was not reported therefrom.

The Senate having taken no action on the resolution, the bill (H. R. 10516) was reenrolled as of the third session, signed by the presiding officers, and transmitted to the President, who signed it.[5]

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[1] See section 3483 of this chapter.

[2] 18 Stat. L., p. 294. A law on this subject had existed from 1789 and had been amended in 1838. (See sec. 204 of Revised Statutes.)

[3] Third session Fifty-eighth Congress, Record, p. 66.

[4] Record, p. 125.

[5] See history of bill (H. R. 10516) in indexes of Journal and Record.

The bill (H. R. 11444) relating to Ohio lands, was transmitted to the President without reenrollment, appearing as a bill of the second session.[1] After receiving an opinion from the Attorney-General the President signed the bill.[2]

3487. Enrolled bills pending at the close of a session were at the next session of the same Congress ordered to be treated as if no adjournment had taken place.—On August 21, 1856,[3] Mr. James Pike, of New Hampshire, by unanimous consent, presented the following resolution:

Resolved (the Senate concurring), That such bills as passed both Houses at the last session and for want of time were either not presented to the two Houses for the signatures of their presiding officers, or, having been thus signed were not presented to the President for approval, be now reported or presented to the President as if no adjournment had taken place.

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[1] The chairman of the Committee on Enrolled Bills took this action after he had considered the following precedents furnished to him by Mr. William Tyler Page, for many years clerk of the Committee on Accounts:

"Touching the matter of the right of the chairman of the Committee on Enrolled Bills to present to the President of the United States a bill passed at the last session of Congress too late to be presented to the President before adjournment, I beg to state that I have had my memory as to a precedent for such action confirmed by the Journals of the Fiftieth Congress. In the first session of that Congress there were passed by both Houses of Congress bills of the following numbers and titles, to wit:

"H. R. 11139, an act to authorize the building of a bridge or bridges across the Mississippi River at La Crosse, Wis.

"H. R. 11262, an act to authorize the construction of bridges across the Kentucky River and its tributaries, by the Richmond, Irvine and Beattyville Railroad Company.

"H. R. 1152, an act for the relief of the legal representatives of Eliza M. Ferris.

"These several acts, as stated, were passed by both Houses and, on October 17, 1888, first session Fiftieth Congress, page 2932 of the Journal of the House, they were reported by the chairman of the Committee on Enrolled Bills as having been examined by said committee and found duly enrolled, whereupon, said bills were signed by the Speaker of the House.

"These acts were not presented to the President of the United States until the succeeding session of Congress, when, on December 7, 1888, there appears this entry in the Journal:

"'Mr. Kilgore, from the Committee on Enrolled Bills, reported that he did on yesterday present to the President of the United States bills of the House numbered H. R. 11262, H. R. 11139, H. R. 1152.' (House Journal, p. 57, second session Fiftieth Congress.)

"In the Journal of the same session, on page 115, there appears the following entry:

"'A message in writing was received from the President of the United States * * * informing the House that he did at the dates named approve bills of the House of the following titles, namely:

"'On the 10th, H. R. 11139, an act to authorize the building of a bridge or bridges across the Mississippi River at LaCrosse, Wis.

"'H. R. 11262, an act to authorize the construction of bridge or bridges across the Kentucky River and its tributaries, by the Richmond, Irvine and Beattyville Railroad Company.

"'H. R. 1152, an act for the relief of the legal representatives of Eliza M. Ferris.'"

[2] See history of bill (H. R. 11444) in the indexes.

[3] Second session Thirty-fourth Congress, Journal, p. 1352; Globe, p. 4.

In this case Congress was immediately convened to pass an army appropriation bill, which had failed at the regular session. Several bills were left enrolled but not signed at the adjournment. At that time a joint rule presented the resumption of business from a former session immediately.

Formerly the joint rules provided that no bill from one House should be sent for concurrence to the other on either of the last three days of the session, and also that no bill should be sent to the President for his approval on the last day of the session. On June 20, 1874, a proposition to suspend these rules caused some debate as to the useful purpose they were intended to serve, and upon the fact, then alleged, that they had uniformly been suspended since 1822. They were suspended on this occasion. (First session Forty-third Congress, Record, p. 5309.)

3488. The resolution offered by Mr. Pike on August 21, 1856, was agreed to by the House on the same day, slight opposition only being made on the ground that it was unconstitutional. The Senate on the same day announced by resolution that they had concurred in the resolution.

3489. At the close of the Fifty-ninth Congress the President approved bills as of the hour and minute of the calendar day instead as of the legislative day.—At the close of the last session of the Fifty-ninth Congress the calendar day of March 3, 1907, was Sunday. The House and Senate, in accordance with the usual practice, did not hold a legislative day of March 3, but by recesses continued the legislative day of March 2 until noon, March 4. It had heretofore been the practice of the President of the United States, in approving bills on the forenoon of March 4, to approve them as of the legislative day. Thus on noon, Monday, March 4, 1889[1] (but on the legislative day of March 2 in both House and Senate), the Congress adjourned sine die. Just before adjournment a message from the President of the United States informed the House that he did, "on the 2d day of March, 1889," sign certain bills, among them the sundry civil appropriation bill (H. R. 12008) and the deficiency appropriation bill (H. R. 12571). Yet the House journal shows[2] that these bills were not signed by the Speaker until the early hours of the calendar day of March 4, and the Senate Journal shows the same conclusively.[3] Therefore the President in his message referred to the legislative day and not the calendar day. And such had been the practice,[4] the President's approval being dated as of the legislative day and not the calendar day.

In 1907, at the close of the Fifty-ninth Congress, for the first time the President of the United States[5] made the late approvals of specific date on the calendar day. Thus the sundry civil appropriation bill[6] was signed "approved March 4, 1907, 11 a. m.," and the deficiency appropriation bill[7] was "approved March 4, 1907, 11 a. m.;" also the act "to promote the safety of travelers upon railroads by limiting the hours of service of employees thereon"[8] was "approved March 4, 1907, 11.50 a. m."[9]

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[1] First session Fiftieth Congress, House Journal, p. 776; Senate Journal, p. 549.

[2] House Journal, p. 767.

[3] Senate Journal, p. 539.

[4] See 28 Stat. L., and others; and also House and Senate Journals of second session Fifty-third Congress.

[5] Theodore Roosevelt.

[6] Public act No. 253, 34 Stat. L.

[7] Public act No. 254.

[8] Public act No. 274.

[9] Hon. John F. Lacey, of Iowa, who had examined the subject of the approval of bills previous to this innovation, gives the reasons which make the new method of approval desirable: "The legislative day is a fiction. By recesses it sometimes appears that the legislative day in the Senate is March 3, whilst in the House it is March 2.

"An enrolled bill reaches the President before noon, March 4, and he considers the actual end of March 3 to be at noon of March 4; so the bill bears date of approval as March 3. The presumption of the law is that a bill signed March 3 was the law of the land from the first moment of that day.

"It sometimes happens that individual rights accrue on the day of the bill's approval, and it has

3490. The approval of a bill by the President of the United States is valid only with his signature.—On February 26, 1825,[1] President Monroe sent to the House a message stating that just before the termination of the last session of Congress a bill "concerning wrecks on the coast of Florida" was presented to him with many others and approved, and, as he thought, signed. It appeared, however, after the adjournment, that the evidence of such approbation had not been attached to it. Whether the act might be considered in force under such circumstances was a point which did not belong to him to decide. To remove all doubts he submitted the propriety of passing a declaratory act.

The message was referred to the Judiciary Committee, and on February 28[2] Mr. Daniel Webster, of Massachusetts, from that committee, reported a bill to carry into effect the original object intended by the said act. The opinion of the Judiciary Committee, he said, was that the bill had no validity until signed by the President, and they therefore reported a bill in the original form, but having a prospective operation only. This bill was passed by the House and became a law, the approval of the President being messaged to the House March 3, 1825.[3]

3491. An instance where the President, in announcing his approval of a bill, gave his reasons for so doing.—On August 14, 1848,[4] President Polk sent a message to the House announcing his approval of the bill (H. R. 201) entitled "An act to establish the Territorial government of Oregon." This message "departed from the form of notice observed in other cases," and the President explaining this on the ground of the importance of the subject. He then proceeded to give at length his reasons for approving the bill.

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been recently held that evidence will be admitted by the court as to the exact moment of the Presidential approval.

"You will find the cases on the exact time of the taking effect of the tariff act of 1894 in the following references: U. S. *v.* Stoddard et al. (89 Fed., 699, affirmed on appeal in circuit court of appeals); U. S. *v.* Stoddard et al. (91 Fed., 1005; 33 Circuit Court of Appeals, 175). In Nunn *v.* William Gerst Brewing Co., the United States circuit court of appeals, Taft, Lurlin, and Day, J. J., held that the Dingley Act took effect July 24, 1897, at 4 minutes past 4 o'clock p. m., Washington time. Carriage Co. *v.* Stengel (95 Fed., 637; 37 Circuit Court of Appeals, 210); U. S. *v.* Iselin (87 Fed., 194).

"As to the hour when a new State constitution takes effect, see Louisville *v.* Bank (104 U. S., 469): 'When justice requires it, the precise hour may be ascertained;' Bank *v.* Burkhardt (100 U. S., 686), Burgess *v.* Salmon (97 U. S., 381), Lapeyre *v.* U. S. (17 Wallace, U. S. C. C.), was mere dictum so far as it discusses this question.

"The old English rule was that a statute took effect the first day of the session. This was changed by 33 Geo. III, chapter 13. The United States Supreme Court has recognized the rule in Mathews *v.* Zane (7 Wheaton, 164) that a Federal statute takes effect at the actual date of its approval.

"As the hour of approval is the moment of actual enactment, the President takes the actual calendar as his guide.

The Code Napoléon fixed the time of taking effect of a statute at one day after promulgation, with additional time of one day for every 20 leagues distance from the capital."

[1] Second session Eighteenth Congress, Journal, p. 276.

[2] Journal, p. 279; Debates, p. 697.

[3] Journal, p. 315.

[4] First session Thirtieth Congress, Globe, p. 1081; second session Thirtieth Congress, Journal, p. 54.

On January 14, 1875,[1] President Grant announced his approval of the bill (S. 1044) "to provide for the resumption of specie payments" by a message to the Senate, in which he said:

> I venture upon this unusual method of conveying the notice of approval to the House, in which the measure originated, because of its great importance to the country at large and in order to suggest further legislation which seems to me essential to make this law effective.

Then the message proceeded with recommendations.

3492. The act of President Tyler in filing with a bill an exposition of his reasons for signing it was examined and severely criticised by a committee of the House.

In 1842 a committee of the House discussed the act of President Jackson in writing above his signature of approval a memorandum of his construction of the bill.

On June 27, 1842,[2] a message was received from President John Tyler, announcing that he had approved and signed an act originating in the House of Representatives "for the apportionment of Representatives among the several States according to the Sixth Census." The message also continued as follows:

> and have caused the same to be deposited in the office of the Secretary of State, accompanied by an exposition of my reasons for giving it my sanction.

Mr. John Quincy Adams, of Massachusetts, said that this message was a novelty in the history of the country. The Constitution required the President, if he approve a bill, to sign it and not accompany his signature with reasons. After dwelling on the danger of the precedent Mr. Adams moved that the message be referred to a select committee, and that the committee have power to send for persons and papers. On June 29 this motion was agreed to, and the committee was appointed as follows: Messrs. Adams, John Pope, of Kentucky; Thomas M. T. McKennan, of Pennsylvania; Robert M. T. Hunter, of Virginia, and George H. Proffit, of Indiana.

On July 16, 1842, Mr. Adams made a report, and on August 2 and August 11 he attempted, by a suspension of the rules, to bring the report before the House, but on each occasion failed to obtain the needed two-thirds.

The report[3] reviews the constitutional provisions relating to the presentation of bills to the President, beginning with the first injunction, "that if he approve he shall sign it," and goes on to say:

> That is all his power; that is all his duty. No power is given him to alter, to amend, to comment, or to assign reasons for the performance of his duty. His signature is the exclusive evidence admitted by the Constitution of his approval, and all addition of extraneous matter can, in the opinion of the committee, be regarded in no other light than a defacement of the public records and archives.

The report then goes on to show that the Department of State was instituted for the express purpose of providing for the safe-keeping of the acts, records, and seal of the United States, and to quote the law providing for the deposit of copies of laws with the Secretary of State as soon as they are signed by the Executive or become laws without his signature. The committee do not approve the deposit

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[1] Messages and Papers of the Presidents, Vol. VII, p. 314.

[2] Second session Twenty-seventh Congress, Journal, pp. 1025, 1030, 1080, 1202, 1263; Globe, pp. 688, 689, 693, 694, 760.

[3] House report No. 909, second session Twenty-seventh Congress.

of a bill in the office of the Secretary, taking the ground that the law requires the President personally to deliver it to the proper custodian; but they waive this point in order to discuss the propriety of depositing with the act the reasons of the Executive:

The committee can find in the Constitution and laws of the United States no authority given to the President for depositing in the Department of State an exposition of his reasons for signing an act of Congress made by his signature a law, and most especially none for making the deposit in company with the law. No such power is expressly conferred by the Constitution; none such is necessary or proper for giving effect to any other power expressly granted to him. They believe it to be a power the toleration of which would be of the most dangerous and pernicious tendency; and they deem it the duty of the House to arrest and resist this first attempt to exercise it. They have reason to believe that, unless disavowed and discountenanced in this first example, its consequences may contribute to prostrate in the dust the authority of the very law which the President has approved with the accompaniment of this most extraordinary appendage, and to introduce a practice which would transfer the legislative power of Congress itself to the arbitrary will of the Executive.

The deposit in the Department of State by the President of an exposition of his reasons for signing a law to accompany the law itself has been hitherto without example. One instance has indeed occurred, on the 31st of May, 1830, when President Jackson, within an hour before the close of that session of Congress, sent to this House a message informing them that he had approved and signed a bill making appropriations for examinations and surveys, and also for certain works of internal improvements; but that, as the phraseology of the section which appropriated the sum of $8,000 for the road from Detroit to Chicago might be construed to authorize the application for the continuance of the road beyond the limits of the Territory of Michigan, he desired to be understood as having approved that bill with the understanding that the road authorized by that section was not to be extended beyond the limits of the said Territory.

This was a simple message to the House, informing them what construction he gave to one section of a law which he had approved and signed; but not informing them that he had added anything to his signature upon the bill itself. The most exceptionable part of this transaction was therefore unknown to the House, and they could take no action upon it. They laid the message on the table.

It is indeed true that the construction which the President announced to the House he had given, in approving and signing the bill, to that section which appropriated money for a road from Detroit to Chicago, was directly in the face of the letter of the law, and of the understanding with which it had been passed by both Houses of Congress. No court of justice, without violating all the rules of construction observed in judicial tribunals, could have sanctioned that construction. But that part of the act was to be executed by the President himself. By the partial and imperfect execution of it, arresting the road at the limits of the Territory instead of extending it to Chicago, he defeated the intention of the legislature; but he had a conscientious constitutional scruple to sustain him. There was no appeal from his arbitrary decision. The completion of the road, directed by the solemn act of the Legislature, was prevented by the will of the President, regulated by his construction of the law, and the internal improvement of the country by the power of the National Legislature has from that day been suppressed and nullified.

The real character of the message of President Jackson was an objection to that section of the bill which made the appropriation for the road from Detroit to Chicago; and so it was understood at the time. It was in substance an objection to one section of the bill and in form an approval of the bill.

The committee are of opinion that this form of proceeding was unwarranted by the Constitution; but the President, in that case, set an example far more dangerous and unwarrantable without giving any notice of it to the House. Immediately over his signature to the bill he made on the parchment on which the bill was engrossed an interpolation in the following words: "I approve this bill and ask a reference to my communication to Congress of this date in relation thereto." And in this condition with this extraneous matter entered upon this act, referring to another document not published with the law, and never acted upon by either House of Congress, this act was published by the Secretary of State, and with this unwarranted statement by the President upon its face forming, to all appearance, a part of the law.

The exposition of the President's reasons for signing the apportionment bill has hitherto not been published with the law. The precedent alleged in justification of the President's act on this occasion has not, in this case, been followed by him. The law has been published by authority of the Secretary of State, without the exposition of the President's reasons for signing it, which he had caused to be deposited in the office of the Secretary, with the law. And this fact leaves it open to conjecture still more painful what lawful and honorable purpose could he answered by the deposit in the archives of state of an argument for affixing his signature to an act which he approved.

An argument for the performance of an indispensible duty would seem to be, at least, a work of idle supererogation. As well might the President have caused to be deposited in the Department of State an exposition of his reasons for performing the most sacred of his obligations as a citizen or as a man, as he could for assigning reasons to record his fulfilment of the obligation which he could not, without violation of his solemn oath, have omitted to do.

A resolution of this House has at length drawn forth from the Department of State an authenticated copy of this exposition of reasons, but, the committee are constrained to say, without producing so much as a plausible reason for the deposit of those reasons in the office of the Department with the law.

After discussing the reasons of the President, the report continues:

The committee consider the act of the President notified by him to the House of Representatives in his message of the 25th ultimo, as unauthorized by the Constitution and laws of the United States, pernicious in its immediate operation, and imminently dangerous in its tendencies. They believe it to be the duty of the House to protest against it, and to place upon their Journal an earnest remonstrance against its ever being again repeated. They report, therefore, the following resolution:

"Resolved, That the House of Representatives consider the act of the President of the United States, notified to them by his message of the 25th ultimo, viz, his causing to be deposited in the office of the Secretary of State with the act of Congress entitled 'An act for an apportionment of Representatives among the several States according to the sixth census,' approved and signed by him, an exposition of his reasons for giving to the said act his sanction as unwarranted by the Constitution and laws of the United States, injurious to the public interests, and of evil example for the future; and this House do hereby solemnly protest against the said act of the President and against its ever being repeated or adduced as a precedent hereafter."

3493. President Johnson contended that he might not approve bills during a recess of Congress.—On July 8, 1867,[1] Mr. Joseph W. McClurg, of Missouri, submitted the following:

Resolved by the House of Representatives (the Senate concurring), That the Clerk of the House of Representatives be instructed and directed, and is hereby instructed and directed, to reenroll House Resolution No. 6 of this, the Fortieth Congress, that the same may be again signed by the presiding officers of the Senate and House, and be again presented to the President for his approval.

The circumstances under which this resolution was offered were as follows: The Fortieth Congress had, by concurrent resolution, taken a recess from March 30, 1867, until July 3, 1867. Previous to this recess the resolution No. 6 had passed both Houses and been signed by the presiding officers of each, but by an oversight it was not presented to the President until two days after the Congress had adjourned for the recess. The President did not sign the resolution, but filed it in the State Department with this indorsement:

The first session of the Fortieth Congress adjourned on the 30th day of March, 1867. This bill, which was passed during that session, was not presented for my approval by Hon. Edmund G. Ross, of the Senate of the United States, and a member of the Committee on Enrolled Bills, until Monday, the 1st day of April, 1867, two days after the adjournment. It is not believed that the approval of any bill after the adjournment of Congress, whether presented before or after such adjournment, is

[1] First session Fortieth Congress, Journal, p. 170; Globe, pp. 510, 512, 606.

authorized by the Constitution of the United States, that instrument expressly declaring that no bill shall become a law the return of which may have been prevented by the adjournment of Congress. To concede that, under the Constitution, the President, after the adjournment of Congress, may, without limitation in respect to time, exercise the power of approval and thus determine at his discretion whether or not bills shall become laws, might subject the legislative and executive departments of the Government to influences most pernicious to correct legislation and sound public morals, and, with a single exception, occurring during the prevalence of civil war, would be contrary to the established practice of the Government from its inauguration to the present time. This bill will therefore be filed in the office of the Secretary of State without my approval.

ANDREW JOHNSON.

WASHINGTON, D.C., *April 20, 1867.*

The Speaker,[1] after stating that the gentleman from Missouri had risen for a privileged question, said:

The opening sentence of that indorsement is this: "The first session of the Fortieth Congress adjourned on the 30th day of March, 1867." If that were true, there is no question that the President would not have the power to sign the bill, but the first session of the Fortieth Congress did not adjourn on the 30th day of March, 1867; they took a recess only until the 3d day of July, at which time, if a quorum did not appear in each House, it was provided that the first session should stand adjourned without day. If Congress had adjourned on the 30th of March last, then it could not now be in session unless it has been called together by proclamation of the President. The Constitution of the United States declares that "Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day." By law Congress has enacted that the first session of such Congress hereafter shall begin on the 4th day of March, leaving the provision in regard to the other sessions to remain as it was. If the first session of Congress had adjourned on the 30th of March it could not have met, unless at the call of the President, before the first Monday in December next. The question is whether the President has the right, according to usage, according to law, and according to the Constitution, to sign a bill during this prolonged recess. The Chair is of the opinion that there is no question as to his power to sign a bill during a recess of a session of the two Houses of Congress. This power has been exercised frequently, and as well by the present occupant of the Presidential chair as by his predecessors. Congress has been in the usage of taking a recess over the Christmas holidays for ten days or two weeks under that clause of the Constitution which allows the two Houses to take a recess for more than three days by concurrent resolution. During the last holiday recess, from the 20th of December to the 3d of January following, a bill granting land to aid in the construction of a military road from Eugene City to the eastern boundary of Oregon, which had previously passed, was signed by the President on the 26th of December, in the midst of this two weeks' recess, and has been properly published as one of the laws of the United States. If he could sign a bill during a recess of two weeks, it seems as if there could be no question that he has the power to sign a bill or to refuse to sign it where a recess may last three, four, or five weeks, or months. When Congress adjourns without day it is an entirely different question, and the Chair thinks that the President could not sign a bill presented after that adjournment. But this session has not adjourned; it is the same session which passed the bill, and under the existing state of facts the Chair thinks that the House might direct the reenrollment of the bill, so that it may again be submitted to the President. It is, however, for the House to decide.

The House, after brief debate, during which the point was made that the bill was already a law because of the lapse of ten days without the return of it with objections, agreed to the resolutions, ayes 71, noes 28.

The resolution came up in the Senate on the same day, and the consideration was deferred until July 12, when the subject was debated, both on its merits and in respect of a rule of the Senate that no general legislation should be taken up during the session. The resolution was finally declared out of order under the

[1] Schuyler Colfax, of Indiana, Speaker.

rule. Before this decision was reached the question was considered on its merits. Mr. John B. Henderson, of Missouri, recalled that on the 12th of March, 1863, after the adjournment of Congress, the President signed a bill under which thirty or forty millions of property had been collected and turned into the Treasury. The point was also made that under the joint rules the Committee on Enrolled Bills were expected to report the fact of their presentation of bills to the President, and this report should be entered on the Journals. In the present case such report had not and could not be made. The point that the bill had become a law by reason of the failure of the President to return it was also considered.

This resolution was not considered again. At the next session of Congress a new joint resolution to effect the same purpose for the Missouri troops was introduced in the House and passed there, as House Resolution 147.

3494. On January 24, 1868,[1] the Senate received from President Johnson a message responding to the inquiry of the Senate in regard to the bill (S. 141) "for the further security of equal rights in the District of Columbia." The message states the facts in regard to this bill and the object of the inquiry:

Inasmuch as the bill "for the further securing of equal rights in the District of Columbia," has not become a law in either of the modes designated in the section above quoted (law of Sept. 15, 1789), it has not been delivered to the Secretary of State for record and promulgation. The Constitution expressly declares that "if any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he has signed it unless the Congress by their adjournment prevent its return, in which case it shall not be a law." As stated in the preamble to the resolution the bill to which it refers was presented for my approval on the 11th day of December, 1867. On the 20th of the same month and before the expiration of the ten days after the presentation of the bill to the President, the two Houses, in accordance with a concurrent resolution adopted on the 3d of December, adjourned until the 6th of January, 1868. Congress by their adjournment thus prevented the return of the bill within the time prescribed by the Constitution. and it was therefore left in the precise condition in which that instrument positively declares a bill "shall not be a law."

If the adjournment in December did not cause the failure of this bill, because not such an adjournment as is contemplated by the Constitution in the clause which I have cited, it must follow that such was the nature of the adjournments during the past year, on the 30th day of March until the first Wednesday in July, and from the 20th of July until the 21st of November. Other bills will therefore be affected by the decision, which may be rendered in this case, among them one having the same title as that named in the resolution, and containing similar provisions, which, passed by both Houses in the month of July last, failed to become a law by reason of the adjournment of Congress before ten days for its consideration had been allowed the Executive.

Mr. George F. Edmunds, of Vermont, in making a motion to refer the message to the Judiciary Committee, referred to a case which arose in New Hampshire in 1863, and which was passed on by the supreme court of that State, the decision being that the construction held by President Johnson was not correct. Both Mr. Edmunds and Mr. Charles Sumner, of Massachusetts, held that the recess adjournment was not like an adjournment sine die. The motion to refer to the Judiciary Committee was agreed to.

On February 17, 1868,[2] Mr. Edmunds reported, with the unanimous approval of the Judiciary Committee a bill (S. 366) "regulating the presentation of bills to the

[1] Second session Fortieth Congress, Globe, p. 720.

[2] Second session Fortieth Congress, Globe, pp. 1204, 1371, 1404, 1406, 1834, 1840, 2078.

President and the return of the same." On February 24 this bill was taken up. It provided that the ten days mentioned in section 7 of article 1 of the Constitution, within which the President of the United States is required to return to the House in which it originated any bill not approved by him, shall be held and construed to be ten calendar days (Sundays excepted) next after the day of the presentation of any such bill to him; and the adjournment of Congress which shall prevent the return of any such bill by the President to that House in which it originated, is to be held and construed to be the final adjournment of a session, and not an adjournment of either or both Houses of Congress, acting by themselves or with the consent of each other, as provided for in the Constitution, to a particular day. And if at any time within those ten days the President shall desire to return a bill to the House in which it originated, or send a message to such House that he has signed the same, when such House is not sitting, it is to be lawful for him to return such bill or send such message to the office of the Secretary of the Senate or Clerk of the House of Representatives, as the case may be, and the Secretary or Clerk is to indorse thereon the day on which the return shall be made or the message received, and make entry of the fact of such return or the receipt of such message in his journal of the proceedings; and such return or sending of such message is to be deemed and taken to be a return of the bill to the House in which it originated, or a sending of a message to the House to all intent and purposes. Every bill which, having passed both Houses of Congress and having been presented to the President as provided in the Constitution, shall not have been returned by the President with his objections thereto to that House in which it originated within the time herein defined and declared is to be a law; and it is to be the duty of the President in such case immediately to deliver such bill so having become a law to the Secretary of State, who shall receive and proceed with the same in the same manner as may be provided by law for bills signed by the President, and to certify thereon and in the promulgation thereof that such bill has become a law for the cause stated. The time mentioned in the act is to be computed by excluding the day on which a bill may be presented to the President and including the tenth day (Sundays excepted) thereafter.

This bill, after debate, passed the Senate on March 24 by a vote of yeas 29, nays 11. It was sent to the House, but not acted on.

3495. The Supreme Court affirmed the validity of an act presented to the President while Congress was sitting, and signed by him within ten days, but after the Congress had adjourned for a recess.—In the case of La Abra Silver Mining Company *v.* United States, the Supreme Court of the United States rendered, through Mr. Justice Harlan, an opinion[1] as to the power of the President to approve a bill after the adjournment of Congress for a recess within a session.

The ground of this contention,

the opinion holds in considering this branch of the case,

is that having met in regular session at the time appointed by law, the first Monday of December, 1892, and having on the 22d day of that month (two days after the presentation of the bill to the President) by

[1] 175 U.S., p. 451.

the joint action of the two Houses taken a recess to a named day, January 4, 1893, Congress was not actually sitting when the President on the 28th day of December, 1892, by signing it formally approved the act in question. The proposition, plainly stated, is that a bill passed by Congress and duly presented to the President does not become a law if his approval be given on a day when Congress is in recess. This implies that the constitutional power of the President to approve a bill so as to make it a law is absolutely suspended while Congress is in recess for a fixed time. It would follow from this that if both Houses of Congress by their joint or separate action were in recess from some Friday until the succeeding Monday, the President could not exercise that power on the intervening Saturday. Indeed, according to the argument of counsel the President could not effectively approve a bill on any day when one of the Houses, by its own separate action, was legally in recess for that day in order that necessary repairs be made in the room in which its sessions were being held. Yet many public acts and joint resolutions of great importance together with many private acts have been treated as valid and enforceable which were approved by the President during the recesses of Congress covering the Christmas holidays.[1]

The opinion proceeds to quote the clauses of the Constitution bearing on the case, sections 4, 5, 7, and 8, of Article I, and continues:

It is said that the approval by the President of a bill passed by Congress is not strictly an executive function, but is legislative in its nature; and this view, it is argued, conclusively shows that his approval can legally occur only on a day when both Houses are actually sitting in the performance of legislative functions. Undoubtedly the President when approving bills passed by Congress may be said to participate in the enactment of laws which the Constitution requires him to execute. But that consideration does not determine the question before us. As the Constitution, while authorizing the President to perform certain functions of a limited number that are legislative in their general nature, does not restrict the exercise of those functions to the particular days on which the two Houses are actually sitting in the transaction of public business, the court cannot impose such a restriction upon the Executive. It is made his duty by the Constitution to examine and act upon every bill pawed by Congress. The time within which he must approve or disapprove a bill is prescribed. If he approve a bill, it is made his duty to sign it. The Constitution is silent as to the time of his signing, except that his approval of a bill duly presented to him—if the bill is to become a law merely by virtue of such approval—must be manifested by his signature within ten days, Sundays excepted, after the bill has been presented to him. It necessarily results that a bill when so signed becomes from that moment a law. But in order that his refusal or failure to act may not defeat the will of the people, as expressed by Congress, if a bill be not approved and be not returned to the House in which it originated within that time, it becomes a law in like manner as if it had been signed by him. We perceive nothing in these constitutional provisions making the approval of a bill by the President a nullity if such approval occurs while the two Houses of Congress are in recess for a named time. After a bill has been presented to the President, no further action is required by Congress in respect of that bill unless it be disapproved by him and within the time prescribed by the Constitution be returned for reconsideration. It has properly been the practice of the President to inform Congress by message of his approval of bills, so that the fact may be recorded. But the essential thing to be done in order that a bill may become a law by the approval of the President is that it be signed within the prescribed time after being presented to him. That being done, and as soon as done, whether Congress is informed or not by message from the President of the fact of his approval of it, the bill becomes a law, and is delivered to the Secretary of State as required by law.

Much of the argument of counsel seems to rest upon the provision in relation to the final adjournment of Congress for the session, whereby the President is prevented from returning, within the period prescribed by the Constitution, a bill that he disapproves and is unwilling to sign. But the Constitution places the approval and disapproval of bills, as to their becoming laws, upon a different basis. If the President does not approve a bill, he is required within a named time to send it back for consideration. But if by its action, after the presentation of a bill to the President during the time given him by the Constitution for an examination of its provisions and for approving it by his signature, Congress puts it out of his power to return it, not approved, within that time to the House in which it originated, then the bill fails and does not become a law.

[1] Here are quoted acts passed in the years from 1862 to 1897.

Whether the President can sign a bill after the final adjournment of Congress for the session is a question not arising in this case, and has not been considered or decided by us. We adjudge—and touching this branch of the case adjudge nothing more—that the act of 1892 having been presented to the President while Congress was sitting, and having been signed by him when Congress was in recess for a specified time, but within ten days, Sundays excepted, after it was so presented to him, was effectively approved, and immediately became a law, unless its provisions are repugnant to the Constitution.[1]

3496. The President, in the opinion of the Attorney-General, may sign a bill at any time within ten days after Congress has adjourned for a recess.—On December 28, 1892,[2] the Attorney-General of the United States (Mr. W. H. H. Miller) rendered to the President an opinion, of which the following is the syllabus:

When Congress adjourns, not sine die, for a longer period than ten days, exclusive of Sundays, and certain bills at a time less than ten days prior to such adjournment are placed in the President's hands for approval or disapproval, it is competent for him to approve any bill during the period of such adjournment. Semble, that bills not signed, coming to him under such circumstances, would not become a law at the expiration of the ten days. In view of the uncertainty it is advised that bills coming to the President during a recess of Congress, or within ten days prior thereto, be signed or vetoed as they meet his approval or disapproval, and, in case of veto, be returned to Congress when it reconvenes; any question as to their validity can then be settled by the courts.

In his opinion the Attorney-General says:

On the 22d of December, by a concurrent resolution, the two Houses of Congress adjourned until the 4th day of January next. That resolution reads as follows:

"Resolved by the House of Representatives (the Senate concurring), That when the two Houses adjourn on Thursday, December 22, they will stand adjourned until Wednesday, January 4, 1893."

The time covered by this adjournment, exclusive of Sundays, exceeds ten days. Shortly before the adjournment, certain bills passed by the two Houses of Congress having been placed in your hands for approval or disapproval, you now ask whether it is competent for you to give such approval or disapproval during the period of such adjournment.

Your right to approve is settled in the affirmative by the Supreme Court in Seven Hickory *v.* Ellery (103 U. S., 423). That was a case arising under the constitution of Illinois, but as to this question that instrument was identical with the Federal Constitution. The decision goes so far as to uphold the approval of a bill within the ten days, even though the adjournment be sine die. But the question as to a temporary adjournment on unsigned bills remains.

No formal opinion by any of my predecessors, so far as the records of this Department show, has been given upon this question. I find, however, memoranda communicated by Attorney-General Devens to President Hayes, as follows: [Here Mr. Devens states that he finds no decisions of courts of the United States in which the clause of the Constitution in question is construed. He cites three State decisions in similar cases—45 N. H., 610; 39 Cal., 206, and 33 Ill., 135, 139, 153.)

"In this conflict of authorities it is impossible conclusively to answer the question whether, if Congress should take a recess after a bill was sent to the President for his signature so long in duration that he would not have an opportunity to return the same within ten days with his objections, such bill having been presented to him at such time that the ten days would not be given to him for consideration previous to the recess, such bill would become a law in like manner as if he had signed it. At the same time, the best opinion to which I can arrive is that in the case supposed the bill would not become a law at the expiration of the ten days. There is no mode provided by which the President can during the recess communicate with the House, and one of two results must follow: Either the bill becomes a law when he has not had the time prescribed by the Constitution for consideration and reflec-

[1] On March 31, 1840, President Van Buren approved a bill of the House (No. 18) "additional to the act on the subject of Treasury notes," and omitted to send notice of this approval to the House. (First session Twenty-sixth Congress, Journal, p. 1370.)

[2] Opinions of Attorney-General, Vol. XX, p. 503.

tion upon it, or else, Congress taking a recess under such circumstances and thus preventing him from communicating with them, the bill does not become a law because by their own act of adjournment they have prevented him from having the time for consideration which is intended by the Constitution. [Here follows a brief reference to the clause of the Constitution providing for the return of a vetoed bill.] * * * All these provisions indicate that in order to enable the President to return a bill the House should be in session; and if by their own act they see fit to adjourn and deprive him of the opportunity to return the bill, with his objections, and are not present themselves to receive and record these objections and to act thereon, the bill can not become a law unless ten days shall have expired during which the President will have had the opportunity thus to return it.[1] There is no suggestion that he may return it to the Speaker, or Clerk, or any officer of the House; but the return must be made to the House as an organized body."

Hon. George F. Edmunds, President pro tempore of the Senate, in a note to President Arthur under date of December 24, 1884, expressing a like opinion, says:

"A bill * * * has passed both Houses of Congress and was presented for my signature after both Houses have adjourned until 5th of January. This is more than ten days, and, if it were now presented to you, you could not return it with your objections. I do not know what the practice has been, but it would seem to me as if the bill could not become a law constitutionally; but if you think it can I will send it to you."

This note was probably not carefully considered, but it is of value as the impression of a lawyer and legislator of great ability and experience.

The Attorney-General, after discussing the nature of the recess in question, concludes that it is not an adjournment within the meaning of the clause of the Constitution under discussion. As the approval or disapproval of a bill by the President has been sometimes held to be a legislative act, required to be done while the Congress is in session, the Attorney-General finds difficulties in giving a definite opinion, and concludes upon the whole that the course indicated in the syllabus should be pursued.

On January 4, 1893,[2] on the reassembling of Congress after the recess, the President communicated to the Senate notice that he had approved sundry bills on December 22 and December 28, during the recess, but there appears no message of disapproval of any bill.

3497. An instance where the President signed a bill after the adjournment of Congress.—On May 16, 1864,[3] the House ordered—

that the Committee on the Judiciary be instructed to inquire and report to the House by what warrant or authority the act[4] entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States" was approved on the 12th day of March, 1863, and whether said act is still in force.

On June 11, 1864, Mr. James F. Wilson, of Iowa, from the committee, made this report:[5]

On the reception of this resolution the committee caused a note to be addressed to the Secretary of State, asking to be informed whether, "as a matter of fact, it appeared on the original files in the State Department that the act referred to was approved on the 12th day of March, 1863."

In reply to this note, the Secretary of State responded that "the original act is, to all appearances, regular in every respect of form; as to the date of its approval—that of 12th of March, 1863—the words

[1] This question was subject of a decision in Connecticut about 1904.

[2] Second session Fifty-second Congress, Record, p. 301.

[3] First session Thirty-eighth Congress, Globe, p. 2290.

[4] See 12 Stat. L., p. 820.

[5] House Report No. 108, first session Thirty-eighth Congress.

[6] House Report No. 108, first session Thirty-eighth Congress.

and figures 'approved March 12, 1863,' are in the handwriting of the President, and followed by his signature."

Thus it appears, from the original files in the State Department, that said act was approved March 12, 1863, and this is true, in fact, as to the date of approval.

The section of the Constitution of the United States bearing upon this question reads as follows:

"If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law."

The committee are informed that in the great press of business immediately preceding the adjournment of Congress on the 4th of March, 1863, the act which is made the subject-matter of inquiry by the resolution of the House was passed to the Secretary of the Treasury for examination, as it related particularly to his Department. It did not reach the President again until after the adjournment of Congress, when it was approved by him under the belief that the last clause of the section of the Constitution, above quoted, was designed more especially to prevent Congress from enacting laws without the approval of the Executive, which might be done by the passage of bills by the two Houses, followed by an adjournment, before the President could examine and return them, were it not for the declaration that in such cases the bills shall not be laws; and did not relate to cases wherein the Executive should approve bills sent to him by Congress within ten days, even though an adjournment should occur before the return of the bills.

That there is force and plausibility in this position, a little reflection will discover to any mind; but the committee can not receive it as a correct interpretation of the Constitution.

The ten days' limitation contained in the section above quoted refers to the time during which Congress remains in session, and has no application after adjournment. Hence, if the Executive can hold a bill ten days after adjournment, and then approve it, he can as well hold it ten months before approval. This would render the laws of the country too uncertain, and could not have been intended by the framers of the Constitution.

The spirit of the Constitution evidently requires the performance of every act necessary to the enactment and approval of laws to be perfect before the adjournment of Congress.

The committee, therefore, conclude that the act referred to, approved March 12, 1863, is not in force; and in this conclusion the committee are unanimous.[1]

3498. A bill that had not actually passed, having been enrolled and signed by the President of the United States, was disregarded by the Executive, and Congress passed another bill.—On March 11, 1836,[2] the House considered a joint resolution (No. 2) to place the name of Benedict Alford on the pension roll. The Debates of March 18,[3] give the following explanation of the presentation of this resolution:

At the first session of the Twenty-third Congress a bill passed the House of Representatives granting pensions to Benedict Alford and Robert Brush, soldiers of the Revolutionary war. By the Journals of the Senate it appears that this bill was indefinitely postponed in that body, and the House of Representatives was so notified. And it is also so entered on the Journal of the House. The postponement of the bill in the Senate in the last hour of the session was inadvertently overlooked by the enrolling clerk, as well as by the Committee on Enrolled Bills in the House, and it was enrolled and signed by the officers of the two Houses, and presented to, and approved by, the President. A few days after the adjournment of Congress the error was discovered in the Clerk's office in the House of Representatives, and notice of the fact was immediately given to the War Department. The Secretary of War thereupon declined complying with the provisions of the bill, under the conviction that it was not a valid statute. At the last session of Congress the President communicated the fact to the Senate by message. No

[1] The act of July 2, 1864 (13 Stat. L., p. 375), was amendatory of the act "approved March 12, 1863," thereby indicating that the latter act was still considered a law. (See Globe, first session, thirty-eighth Congress, p. 2820, for debate on the bill S. 232.)

[2] First session Twenty-fourth Congress, Journal, pp. 470, 498, 525, 526; Debates, pp. 2747, 2881.

[3] Debates, p. 2881.

action in the case was, however, had in either House at the last session. At the present session Benedict Alford again presented his petition, which was referred to the Committee on Revolutionary Pensions. The committee reported that, in its opinion, the act was a valid one, and that no further legislation was necessary to give a pension to the petitioner, which, in their opinion, the Secretary of War was bound to pay him. A member of the committee, differing with the majority, after the report was made, moved the resolution directing the Secretary of War to execute the act, which had passed in the manner herein stated.

The subject was elaborately discussed on March 11 and 18, and after various methods of procedure had been proposed, the House finally—

Resolved, That the joint resolution to place the names of Benedict Alford and Robert Brush on the pension list be referred to the Committee on Revolutionary Pensions, with instruction to report a bill for the relief of Benedict Alford and Robert Brush.

Such a bill was duly reported and became a law.[1]

3499. The President sometimes, at the close of a Congress, informs the House as to both the bills he has signed and those he has allowed to fail.—In 1873, on March 3,[2] the last day of the session and the Congress, the President sent a message to the House giving notice both of the bills that he approved,[3] and also of those which did not receive his signature and failed to become laws.

3500. On December 14, 1842,[4] President Tyler sent a message to the House informing that body that he had failed to sign two bills at the close of the preceding session of Congress—the bill relating to the sale of the public lands and the granting of preemption rights, and the bill regulating the taking of testimony in contested election cases. The President abstained from expressing an opinion as to the merits of these bills which had thus failed to become laws, but stated that they were sent to him too late for him to have time to read them through and sign them. He expressed a strong opinion in favor of an adherence to the then existing joint rule of the two Houses which prohibited the presentation of a bill to the President on the last day of the session.

3501. On December 18, 1843,[5] President Tyler communicated to the House his reasons for withholding his signature from the bill "directing payment of the certificates of awards issued by the commissioners under the treaty with the Cherokee Indians." This bill had been sent to the President in the closing hours of the previous Congress, and had consequently failed to become a law.

3502. On December 6, 1832,[6] President Jackson transmitted to the House of Representatives a message stating his objections to the bill "for the improvement of certain harbors and the navigation of certain rivers," which was not received by him a sufficient length of time before the close of the last session to enable him to examine it before adjournment, and from which he had withheld his signature, so that it had not become a law.

It does not appear that any action was taken on this message.

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[1] Journal, pp. 618, 810, 823.

[2] Third session Forty-second Congress, Journal, p. 592; Globe, p. 2137.

[3] The President by message informs the House from time to time of bills which he has approved.

[4] Third session Twenty-seventh Congress, Journal, p. 57.

[5] First session Twenty-eighth Congress, Journal, p. 69.

[6] Second session Twenty-second Congress, Journal, p. 24; Debates, p. 819.

3503. The President notifies the House of bills that have become laws without his approval.—On February 22 and March 2, 1861,[1] President Buchanan notified the House of bills that had become laws without his signature through the expiration of the ten days' limit prescribed by the Constitution.

3504. An instance where the President communicated his omission to sign a bill through the committee appointed to notify him that Congress was about to adjourn.—On May 31, 1830,[2] Mr. Henry W. Dwight, of Massachusetts, from the joint committee appointed to wait on the President of the United States and inform him that, unless he might have other communications to make to Congress, the two Houses were ready to close the present session by an adjournment, reported that they had fulfilled their duties; and that they were informed by the President that he had no further communications to make to Congress at the present session; but that he had retained, for further consideration, two bills, viz, the bill (H. R. 304) making appropriations for building light-houses and light-boats, etc., and the bill (S. 74) to authorize a subscription for stock on the part of the United States in the Louisville and Portland Canal Company.

The House adjourned sine die soon after, no further communication being received from the President.

3505. An instance where the President returned a bill already signed by him in order that enrollment might be corrected.—On March 12, 1804,[3] the House unanimously resolved that the Joint Committee on Enrolled Bills be instructed to wait on the President of the United States and lay before him the engrossed bill entitled "An act for the relief of the captors of the Moorish armed ships *Meshouda* and *Mirboha*," with the several amendments, as the same was finally passed by both Houses of Congress, and to state the variance between the said engrossed bill and the enrollment thereof as approved by the President; and to request that he will cause the said enrolled bill to be returned to this House, in which it originated, for the purpose of rendering the said bill conformable with the engrossed bill and the amendments thereto as passed by the two Houses of Congress.

The Senate having concurred, and the joint committee having performed the duty and reported, a message was later received from the President transmitting the bill. The bill was then committed to the Joint Committee for Enrolled Bills, with instructions to make the corrections and report the same to the two Houses.

It appears that the President[4] had already approved the bill, and on February 24, 1804, had announced that fact by message to the House.[5]

On March 17, 1804,[6] Mr. Jacob Richards, of Pennsylvania, from the joint committee on enrolled bills, reported that the committee had corrected the variance between the engrossed bill and the enrollment thereof, as approved by the President of the United States on the 24th ultimo, and that the said enrolled bill had been

[1] Second session Thirty-sixth Congress, Journal, pp. 424, 480.

[2] First session Twenty-first Congress, Journal, p. 312.

[3] First session Eighth Congress, Journal, pp. 641, 649, 650.

[4] Thomas Jefferson, President.

[5] Journal, p. 600. See history of House bill No. 160.

[6] Journal, p. 660.

rendered conformable with the engrossed bill and the amendments thereto, as the same was finally passed by both Houses of Congress.

Thereupon the Speaker signed the said enrolled bill.

On March 19[1] a message from the President announced that he had that day approved the bill.

3506. A bill wrongly enrolled was recalled from the President, who erased his signature, and recommitted to the Committee on Enrolled Bills with instructions.—On January 4, 1901,[2] Mr. John F. Lacey, of Iowa, as a privileged resolution, offered the following:

Resolved by the House of Representatives (the Senate concurring), That the President of the United States is hereby requested to return to the House the bill (H. R. 2955) entitled "An act providing for a resurvey of township No. 8 of range No. 30 west, of the sixth meridian, in Frontier County, State of Nebraska," in order to correct an error whereby the bill has been enrolled as an act of the first instead of the second session of the Fifty-sixth Congress.

In offering the resolution Mr. Lacey explained that the bill was enrolled and signed by the Speaker of the House in the preceding session—that is, the first session of the Fifty-sixth Congress. But the President of the Senate did not sign it until the second session. When it was transmitted to the President of the United States he signed it,[3] but it was afterwards discovered that the act, while approved as of the second session, was enrolled as of the first session.[4] The President thereupon erased his name, and called the attention of the Speaker to the situation.

The resolution was considered and agreed to by the House.

On January 5,[5] the President, by message, returned the bill to the House.

Thereupon Mr. Lacey offered, as privileged, the following resolution:

Resolved, That the message and House bill 2955 be recommitted to the Committee on Enrolled Bills, with instructions that it be reenrolled as a bill of the second session of the Fifty-sixth Congress.

The resolution was agreed to.

3507. Bills sent to the President but not yet signed by him are sometimes recalled by concurrent resolution of the two Houses.

It is for the House and not the Speaker to determine whether or not a proposed action is within the constitutional power of the House.

Instance wherein an enrolled bill recalled from the President was afterwards amended. (Footnote.)

On July 7, 1890,[6] Mr. George W. E. Dorsey, of Nebraska, moved that the rules be suspended so as to pass the following concurrent resolution:

Resolved by the House of Representatives (the Senate concurring), That the President be requested to return to the House of Representatives the bill (H. R. 5974) extending the time of payment of purchasers of land to the Omaha tribe of Indians in the State of Nebraska, and for other purposes.

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[1] Journal, p. 663.

[2] Second session Fifty-sixth Congress, Journal, p. 85; Record, p. 553.

[3] The bill was actually received at the White House December 19, and was signed December 21, 1900.

[4] See Senate Joint Resolution No. 64, of first session Fifty-fifth Congress, for an instance where the Speaker did not at the subsequent session sign a resolution enrolled as of the first session.

[5] Journal, p. 90; Record, p. 606.

[6] First session Fifty-first Congress, Journal, p. 828.

Mr. W. C. P. Breckinridge, of Kentucky, made the point of order that it was out of the power of the House or the two Houses of Congress under the Constitution to recall a bill from the President.

After debate on the point of order, the Speaker[1] overruled the same, although without passing on the constitutional question raised, which was a matter for the House to consider in passing upon the question and not for the Chair to decide, ruling that the motion was a legitimate and proper parliamentary motion, in order under the rules.[2]

3508. On February 13, 1896,[3] Mr. Joseph W. Bailey, of Texas, by unanimous consent,[4] presented, and the House agreed to, the following resolution:

Resolved by the House of Representatives (the Senate concurring), That the President of the United States is hereby requested to return to the House Senate bill 79, for the correction of a verbal error.

3509. On April 3, 1902,[5] in the Senate, the following message was received:

To the Senate of the United States:

In compliance with a resolution of the Senate of the 1st instant (the House of Representatives concurring), I return herewith Senate bill No. 2291, entitled "An act for the promotion of anatomical science and to prevent the desecration of graves in the District of Columbia."

THEODORE ROOSEVELT.

WHITE HOUSE, *April 3, 1902.*

Mr. Jacob H. Gallinger, of New Hampshire, said the bill had been returned for the purpose of having it amended.

By the advice of the President pro tempore[6] the bill was referred to the Committee on the District of Columbia.

3510. The process of recalling from the President and amending an enrolled bill.—On February 13, 1906[7] in the Senate, Mr. John T. Morgan, of Alabama, offered the following resolution, which was agreed to:

Resolved by the Senate (the House of Representatives concurring), That the President is requested to return to the House of Representatives House bill 297, to authorize the construction of dams and power stations on the Tennessee River at Muscle Shoals, Alabama, for the purpose of amendment.

Mr. Morgan explained the purpose of the resolution as follows:

That bill passed both Houses and went to the President. There is a difficulty in the draft of the bill which his challenged the attention of the President and raises in his mind an objection to the bill, which difficulty can be removed by amendment exactly in accordance with the purpose for which the bill was offered.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] The Houses call only for bills which have not yet been signed by the President, or which are supposed not to have been signed.

[3] First session Fifty-fourth Congress, Record, p. 1703.

[4] This bill was taken up on February 18, and, by unanimous consent, the votes whereby it had been ordered to a third reading and passed were reconsidered, the amendment was made, and the bill was, by unanimous consent, passed. (Record, first session Fifty-fourth Congress, p. 1904.) Resolutions asking for the recall of a bill have usually been presented by unanimous consent (see Congressional Record, first session Fiftieth Congress, p. 7996), although on June 2, 1896, one was presented as privileged. (See Congressional Record, first session Fifty-fourth Congress, p. 6009.)

[5] First session Fifty-seventh Congress, Record, p. 3614.

[6] William P. Frye, of Maine, President pro tempore.

[7] First session Fifty-ninth Congress, Record, p. 2475.

On the same day the resolution was agreed to by the House,[1] and on the next day[2] the bill was returned by the President to the House.

On February 23,[3] the House agreed to the following resolution, after some debate as to the method of procedure:

Resolved by the House of Representatives (the Senate concurring), That the action of the Speaker of the House of Representatives and of the President pro tempore of the Senate in signing the enrolled bill H. R. 297—"An act to authorize the construction of dams and power stations on the Tennessee River at Muscle Shoals, Alabama"—be rescinded, and that in the reenrollment of the bill the following amendments be made:

Amend section 1 of the enrolled bill by striking out, after the word "elect," at the end of line 5, section 1, page 1, the following: "between the mouth of Malletts Creek on the east, and," in line 6 of said section and insert in lieu thereof "and the Secretary of War may approve between a point on the southern side of the river opposite to or below the head or opening of the canal constructed by the United States on the north side of the river, on the east, and." Insert after the word "river," in line 10 of said section 1, page 1, the following: "between the two points above mentioned."

Amend by adding, after the word "war," in line 13, of said section 1, page 1, of said enrolled bill, the following: "for the protection of navigation and the property and other interests of the United States;" so that said section 1 of the enrolled bill when amended will read as follows:

"Be it enacted, etc., That any person, company, or corporation having authority therefor under the laws of the State of Alabama may hereafter erect, maintain, and use a dam or dams * * * etc.

Amend section 2, page 1, of said enrolled bill, by striking out after the word "canal," in line 25, page 1, of said section, all down to and including the word "river," in line 25 of said section 2.

Amend said section 2, page 1, of the enrolled bill, by striking out after the word "canal," in line 28, page 1, all down to and including the word "river," in line 29, and insert in lieu thereof the following: "or the Tennessee River;" so that said section 2 of the enrolled bill as amended will read as follows:

"SEC. 2. That detailed plans for the construction and operation of a dam or dams and other appurtenant and necessary works shall be submitted * * *" etc.

Amend section 3, page 2, of said enrolled bill, by striking out all after the word "otherwise," in line 17, of said section 3, page 2, down to and including the word "damage" at the end of line 18 of said section and page, and insert in lieu thereof the following: "in a court of competent jurisdiction;" so that said section 3 of said enrolled bill after being so amended will read:

"SEC. 3. That the Government of the United States reserves * * *" etc.

On February 28[4] the Senate concurred in the action of the House, although a question was raised as to the propriety of the action.

3511. On March 23, 1906,[5] by unanimous consent Mr. John H. Stephens, of Texas, offered the following resolution, which was agreed to:

Be it resolved by the House of Representatives (the Senate concurring), That the President be, and hereby is, requested to return to the House the bill (H. R. 431) to open for settlement 505,000 acres of land in the Kiowa, Comanche, and Apache Indian reservations in Oklahoma Territory.

On March 29, 1906,[6] the Speaker said:

The Chair lays before the House the following message from the President of the United States, which it is proper to say was received in the legislative day of yesterday, but owing to the business of the House it was not convenient to lay it before the House at that time.

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[1] Record, p. 2506.

[2] Record, p. 2553.

[3] Record, pp. 2889–2900.

[4] Record, pp. 3050, 3102.

[5] First session Fifty-ninth Congress, Record, p. 4201.

[6] Record, pp. 4154–4156.

The Clerk read as follows:

To the House of Representatives:

In compliance with the resolution of the House of Representatives of the 26th instant (the Senate concurring), I return herewith House bill No. 431, entitled "An act to open for settlement 505,000 acres of land in the Kiowa, Comanche, and Apache Indian reservations in Oklahoma Territory."

THEODORE ROOSEVELT.

THE WHITE HOUSE, *March 28, 1906.*

Mr. Stephens, of Texas, offered the following resolution in reference to the same matter and asked unanimous consent for its present consideration:

Be it resolved by the House of Representatives (the Senate concurring), That the action of the Speaker of the House of Representatives and of the Vice-President of the United States and the President of the Senate in signing the enrolled bill H. R. No. 431, entitled "A bill to open for settlement 505,000 acres of land in the Kiowa, Comanche, and Apache Indian reservations in Oklahoma Territory," be, and hereby is, rescinded, and that in the reenrollment of the said bill (H. R. 431) the following amendments be made, viz: * * *

Mr. J. Warren Keifer, of Ohio, having objected, the message and bill were referred to the Committee on Indian Affairs.

3512. On March 3, 1904,[1] in the Senate, the President pro tempore laid before the Senate the following message from the President of the United States; which was read:

To the Senate:

In compliance with the resolution of the Senate of the 1st instant (the House of Representatives concurring), I return herewith Senate bill No. 2323, entitled "An act relating to ceded lands on the Fort Hall Indian Reservation."

THEODORE ROOSEVELT.

WHITE HOUSE, *March 2, 1904.*

Thereupon Mr. Fred T. Dubois, of Idaho, submitted the following concurrent resolution; which was considered by unanimous consent, and agreed to:

Resolved by the Senate (the House of Representatives concurring), That the action of the Speaker of the House of Representatives and of the President pro tempore of the Senate in signing the enrolled bill (S. 2323) relating to ceded lands on the Fort Hall Indian Reservation be rescinded, and that in the reenrollment of the bill the word "thirty-five," in line 16 of the enrolled bill, be stricken out and the word "thirty-four" be substituted therefor, so as to correctly describe the range, inaccurately stated in the bill.

On March 4[2] the concurrent resolution was agreed to by the House,

Thereupon the Speaker canceled his signature.

3513. On March 22, 1904,[3] the Speaker[4] laid before the House the following concurrent resolution relating to a bill returned by the President of the United States on the request of the two Houses:

Resolved by the Senate (the House of Representatives concurring), That the action of the Speaker of the House of Representatives and of the President pro tempore of the Senate in signing the enrolled bill (S. 2323) relating to ceded lands on the Fort Hall Indian Reservation be rescinded, and that in the reenrollment of the bill all after "namely," in line 13 of the enrolled bill, down to and including line 20 of said bill, be stricken out and the following inserted: "Lot 4, section 1 , township 7 south, range 34 east,

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[1] Second session Fifty-eighth Congress, Record, p. 2740.

[2] Journal, p. 386; Record, p. 2839.

[3] Second session Fifty-eighth Congress, Record, p. 3509.

[4] Joseph G. Cannon, of Illinois, Speaker.

and the southeast quarter of the northeast quarter, section 18, township 7 South, range 35 east, and the east half of the southeast quarter of section 21, township 6 south, range 34 east, and which have heretofore been appraised, shall be paid for at the said appraised value at the time of and by the person making entry of the respective tracts upon which such improvements are situated," so as to correctly describe the range, inaccurately stated in the bill.

The House, by unanimous consent, considered the resolution and agreed to it. Thereupon the Speaker canceled his signature.

3514. On March 15, 1902,[1] the following message was received:

To the House of Representatives:

In compliance with the resolution of the House of Representatives of the 14th instant (the Senate concurring), I return herewith the bill (H. R. 5224) entitled "An act for the relief of Edward Kershner."

THEODORE ROOSEVELT.

WHITE HOUSE, *March 15, 1902.*

The message having been read, Mr. Alston G. Dayton, of West Virginia, by unanimous consent, presented the following resolution, which was agreed to:

Resolved, That the message of the President and the bill (H. R. 5224) for the relief of Edward Kershner be transmitted to the Senate, with the request that the Senate reconsider its action in passing said bill, in order that an amendment may be made to the same by striking out the word "director" and inserting in lieu thereof the word "inspector."

On the same day, in the Senate,[2] the bill was, by unanimous consent, considered, the vote whereby the Senate had passed the bill was reconsidered, and the amendment suggested by the House was agreed to. The bill was then passed as amended.

On March 17,[3] the bill with the Senate amendment was taken up in the House and the amendment was concurred in.

3515. On April 15, 1902,[4] in the Senate, the President pro tempore[5] laid before the Senate the following message:

IN THE HOUSE OF REPRESENTATIVES, *April 14, 1902.*

Resolved, That the bill (H. R. 11418) entitled "A bill granting an increase of pension to Hannah T. Knowles," with the accompanying message of the President be transmitted to the Senate by the Clerk, with the request that the Senate reconsider its action in passing the bill, in order that the bill may be amended as follows:

Change the title so as to read: "A bill granting a pension to Hannah T. Knowles."

Change the initial letter in name of the deceased sailor from "T" to "M," so as to read: "William M. Knowles."

Mr. Jacob H. Gallinger, of New Hampshire, being recognized when the message was read, said:

Mr. President, a few days ago a Senate bill was recalled from the President precisely similar to this one. Understanding that after a bill had been signed by the presiding officers of the two Houses of Congress it could not be reconsidered and amended, I introduced a new bill, which was passed through the Senate and sent to the other House. I want now to ask the Chair whether, in his opinion, it is competent for this body to reconsider and amend a bill that has received the signatures of the presiding officers of the two Houses?

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[1] First session Fifty-seventh Congress, Record, p. 2876.

[2] Record, p. 2845.

[3] Record, p. 2926.

[4] Record, p. 4141.

[5] William P. Frye, of Maine, President pro tempore.

The President pro tempore said:

In the opinion of the Chair, the only remedy in such a case is the introduction of a new bill.

Thereupon, on motion of Mr. Gallinger, the resolution of the House of Representatives was laid on the table.

On April 7[1] the Senate considered a new bill (S. 5046) for the promotion of anatomical science, etc., in the District of Columbia, in place of a similar bill (S. 2291) which had been recalled from the President after it had passed the two Houses.

3516. On January 31, 1901,[2] the President of the United States, in accordance with a request of the House and Senate, returned the bill (H. R. 5048) entitled "An act to confirm in trust to the city of Albuquerque, in the Territory of New Mexico, the town of Albuquerque grant, and for other purposes."

On motion of Mr. John F. Lacey, of Iowa, by unanimous consent, the vote on the passage of the bill was reconsidered.

Thereupon Mr. Pedro Perea, of New Mexico, offered this amendment:

At the end of section 1 strike out the period and place a semicolon and add the following: "and also reserving therefrom any private land grants that may have been or may hereafter be confirmed by the Court of Private Land Claims or other authority of the United States."

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

On February 2[3] the bill, with the amendment of the House, was laid before the Senate. A question was raised as to the procedure; and the bill and amendment, after debate, were referred to the Committee on Rules.

On February 4[4] the House, on motion of Mr. Perea, passed a resolution requesting the Senate to return the bill to the House.

On February 6,[5] the bill having been returned from the Senate, Mr. Lacey, by unanimous consent, presented, and the House agreed to, this resolution:

Resolved, That the vote whereby the House agreed to the amendment to the bill (H. R. 5048) to confirm to the city of Albuquerque, in the Territory of New Mexico, the town of Albuquerque land grant, and for other purposes, be reconsidered, and that said amendment be withdrawn; and that the bill be transmitted to the Senate.

On February 7,[6] in the Senate, by unanimous consent, the votes whereby the bill was ordered to be read a third time and passed were reconsidered, and an amendment, identical with that first agreed to by the House, was adopted. The amendment was then ordered to be engrossed, and the bill was ordered to be read a third time and passed.

On February 8,[7] on motion of Mr. Perea, the House concurred in the Senate amendment.

The bill was then reenrolled, signed by Speaker and President pro tempore, and transmitted to the President of the United States for approval.

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[1] Record, p. 3754.

[2] Second session Fifty-sixth Congress, Record, p. 1762; Journal, p. 178.

[3] Record, pp. 1843–1845.

[4] Journal, p. 191; Record, p. 1920.

[5] Journal, p. 198; Record, p. 2046.

[6] Record, p. 2054.

[7] Journal, p. 211; Record, p. 2179.

3517. On February 5, 1901,[1] the Speaker laid before the House a message from the President of the United States, returning, in accordance with the request of the House and Senate, the bill (H.R. 10761) entitled "An act granting an increase of pension to Oliver H. Cram."

Thereupon, by unanimous consent, Mr. James W. Ryan, of Pennsylvania, offered the following resolution:

Resolved by the House of Representatives (the Senate concurring), That the Committee on Enrolled Bills of the two Houses be authorized and directed to correct the enrolled bill of the House (H.R. 10761) entitled "An act granting an increase of pension to Oliver H. Cram," by striking out the words "Oliver H. Cram" wherever they occur in the title and text and inserting "Orville H. Cram."

The resolution was agreed to.

3518. On August 16, 1888,[2] the enrolled bill (H. R. 10060) "prescribing the times for sales and for notice of sales of property in the District of Columbia for overdue taxes" was reported in House and Senate and signed by the Speaker and President pro tempore.

On August 27[3] the House considered by unanimous consent, and passed, a concurrent resolution requesting the President of the United States to return the bill to the House. The Senate passed this resolution in concurrence, and the same day the President returned the bill to the House by a message,[4] and both were referred to the Committee for the District of Columbia.

On September 25,[5] in the House, by unanimous consent, the votes on the passage and engrossment and third reading were reconsidered, the bill was amended, and as amended was again engrossed, read a third time, and passed.

On September 26[6] the amendments were concurred in by the Senate.

On September 28[7] the bill was reported from the Committee on Enrolled Bills as duly enrolled, and was signed by the Speaker, and on October 1[8] the President pro tempore of the Senate signed the same.

The bill subsequently became a law by the President's signature.[9]

3519. An error in a bill that has gone to the President of the United States may be corrected by a joint resolution.—A clerical error in a bill that has gone to the President may be corrected by the passage of a joint resolution. See joint resolution No. 31, reported from the Committee on Enrolled Bills on May 13, 1846, and passed by the House that day.[10]

On May 15,[11] the President approved the resolution.

Also, on June 26, another.[12]

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[1] Second session Fifty-sixth Congress, Journal, p. 194; Record, p. 1971.

[2] First session Fiftieth Congress, Record, pp. 7614, 7642.

[3] Record, pp. 7973, 7996; Journal, p. 2672.

[4] Record, p. 8012; Journal, p. 2684.

[5] Record, p. 8935; Journal, p. 2832.

[6] Record, p. 8951; Senate Journal, p. 1466. The Senate Journal shows that "the additional amendments of the House" were agreed to by the Senate, and that this was the extent of the Senate's action.

[7] Record, p. 9018.

[8] Record, p. 9052.

[9] Record, p. 9536.

[10] First session Twenty-ninth Congress, Journal, p. 809.

[11] Journal, p. 815.

[12] Journal, p. 1006.

Chapter XCIII.

BILLS RETURNED WITHOUT THE PRESIDENT'S APPROVAL.

1. **Provision of the Constitution. Section 3520.**
2. **Reception of veto message in House. Sections 3521–3523.**
3. **Bills passed over the veto. Sections 3524–3529.**
4. **Privilege of motions relating to a veto message. Sections 3530–3533.**
5. **Consideration of veto messages in the House. Sections 3534–3552.**[1]

3520. A bill which the President does not approve he returns with his objections to the House in which it originated.

The House to which a bill is returned with the objections of the President enters the objections on the Journal and proceeds to reconsider it.

If two-thirds of the House to which a bill is returned with the President's objections agree to pass it, and then two-thirds of the other House, it becomes a law.

On a vote on passing a bill returned with the objections of the President the yeas and nays are required to be entered on the Journal.

A bill not returned by the President within ten days (Sundays excepted) becomes a law as if signed, unless Congress by adjournment prevent its return.

The Constitution of the United States in Section 7 of Article 1 provides:

Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States. If he approve, he shall sign it, but if not, he shall return it with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States, and before the same shall take effect shall be approved by him, or being disapproved by him shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

[1] Question of consideration not in order as against. Sections 4969, 4970 of Vol. V.

3521. A veto message may not be returned to the President of the United States.—On August 15, 1876,[1] two messages from the President were laid before the Senate successively. Both were dated the same day. The first returned with objections the bill (S. 779) providing for the sale of certain Indian lands (Otoe and Sac and Fox); and the second stated that the President requested the return of the former message, as he was convinced that the bill should be signed.

Mr. George F. Edmunds, of Vermont, raised the question that, as the Constitution was explicit, the bill could not be returned to the President. The Senate must now act. This view was concurred in generally, and the question was taken on the passage of the bill. The bill was passed.

3522. A veto message of the President may not be read in the absence of a quorum, even though the House be about to adjourn sine die.

A vetoed bill, not acted on before adjournment sine die, because of the failure of a quorum, was acted on at the next session of the same Congress.

On August 3, 1854,[2] a message was received from the President of the United States transmitting his objections to the river and harbor appropriation bill. Before this message was read, a quorum failed, and when a demand was made for the reading of the message, the Speaker[3] overruled the demand on the ground that no quorum was present.

A quorum not appearing on the next day, a question arose as to the disposition of the message under the Constitutional requirements as to bills returned without the Executive approval. It was certain that no quorum would appear by the time fixed for adjournment sine die.

The Speaker[3] stated that the message would be spread on the Journal of the 3d. There was a quorum, according to his recollection, when the message was received. Soon afterwards the House found itself without a quorum, and no motion was made or action taken on the message. But the Chair thought that under the provision of the Constitution the message should go on the Journal.

So the message appears on the Journal.

On December 4, 1854, the first day of the next session, as soon as the House was ready for business the Speaker directed the message to be read. It was ordered printed, and on December 6 the question was taken as provided by the Constitution.

3523. A motion to adjourn was held in order, although if carried the effect would have been to prevent for the session the consideration of a veto message of the President.—On March 3, 1855,[4] in the closing hours of the session a message was received from the President transmitting his objections to the bill making appropriations for the transportation of the United States mails.

Pending consideration of this message, a motion was made by Mr. John Wheeler of New York, that the House adjourn.

Mr. Phillip Phillips, of Alabama, made the point of order that the House was

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[1] First session Forty-fourth Congress, Record, p. 5664.

[2] First session Thirty-third Congress, Journal, p. 1340; Globe, pp. 2144, 2221. Second session, Journal, pp. 8, 49; Globe, p. 2.

[3] Linn Boyd, of Kentucky, Speaker.

[4] Second session Thirty-third Congress, Globe, p. 1157.

bound under the Constitution to consider a veto message, and that therefore a motion to adjourn on the last day of the session before consideration of the message was contrary to the Constitution.

The Speaker[1] said:

The Chair decides that it is competent for this House to adjourn if it chooses to do so, and no debate can arise on the proposition that the House do now adjourn.

The motion to adjourn was decided in the negative.[2]

3524. A bill passed, notwithstanding the objections of the President, is sent by the presiding officer in the House which last acts on it to the Secretary of State for preservation.—The statutes of the United States[3] provide that—

Whenever a bill, order, resolution, or vote is returned by the President with his objections and on being reconsidered is agreed to be passed and is approved by two-thirds of both Houses of Congress and thereby becomes a law or takes effect, it shall be received by the Secretary of State from the President of the Senate or Speaker of the House of Representatives, in whichsoever House it shall last have been approved, and he shall carefully preserve the originals.

3525. Before the enactment of the statute the House directed the Clerk to take to the Secretary of State its bills passed over the President's veto.—On July 17, 1866,[4] a message from the Senate announced that they had passed over the veto of the President the bill (H. R. 613) to continue in force and amend an act to establish a bureau for the relief of freedmen and refugees, which had already been similarly passed by the House.

On July 18, by unanimous consent, Mr. Thomas D. Eliot, of Massachusetts, offered the following resolution, which was agreed to:

Resolved, That the Clerk of the House of Representatives be directed to present to the Secretary of State the act entitled "An act to continue in force and to amend an act for the relief of freedmen and refugees, and for other purposes," together with the certificates of the Clerk of the House of Representatives and Secretary of the Senate showing that the said act was passed by a vote of two-thirds of both Houses of Congress after the objections of the President thereto had been received and after the reconsideration of said act by both Houses, in accordance with the Constitution.

On the same day the Speaker laid before the House a letter from the Clerk informing the House that he did this day, in accordance with the resolution of the House, present to the Secretary of State the act, etc.

3526. On March 2, 1867,[5] a message from the Senate announced that that body had passed over the veto of the President the bill (H. R. 1143) to provide for the more efficient government of the rebel States.

Then, on motion of Mr. Thaddeus Stevens, of Pennsylvania,

Resolved, That the Clerk of the House be directed to present to the Secretary of State the bill entitled "An act to provide for the more efficient government of the rebel States," together with the

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[1] Linn Boyd, of Kentucky, Speaker.

[2] In 1876 two bills returned to the House by the President of the United States without his approval were referred to a committee and not acted on further. A new bill on the subject of one of these bills was reported by the committee. (First session Forty-fourth Congress, bills H. R. 1922 and H. R. 4085. See history of bills in Journal and Record.)

[3] Second session Forty-third Congress, Laws, 18 Stat., p. 294.

[4] First session Thirty-ninth Congress, Journal, pp. 1030, 1039, 1050; Globe, p. 3905.

[5] Second session Thirty-ninth Congress, Journal, pp. 583, 604.

certificates of the Clerk of the House of Representatives and the Secretary of the Senate showing that the said act was pawed by a vote of two-thirds of both Houses of Congress after the same had been returned to the House of Representatives by the President with his objections and after the reconsideration of said act by both Houses of Congress, in accordance with the Constitution.

On the same day the Speaker laid before the House a letter from the Clerk stating that, according to the instruction of the House, he had presented the bill to the Secretary of State.

On March 7, 1867,[1] the Clerk transmitted to the House a letter from the Secretary of State acknowledging the receipt of the act and announcing his purpose to promulgate it.

3527. On March 25, 1867,[2] the House received a message from the Senate announcing that that body had passed over the veto of the President the bill (H. R. 33) supplemental to the act for the more efficient government of the rebel States, and on the same day the House, by resolution, directed the Clerk to present the bill to the Secretary of State. On March 26[3] the Clerk presented to the House the acknowledgment of the Secretary of State.

3528. Since the enactment of the statute the House takes no special action in relation to transmitting to the Secretary of State bills passed over the President's veto.—In 1876[4] several bills were passed over the veto of the President, and it does not appear that in the case of any one of them any resolution was adopted providing for filing them with the Secretary of State:

S. 779. (First session Forty-fourth Congress, Journal, p. 1511; Record, pp. 5664, 5696.)

S. 489. (Journal, p. 1014; Record, pp. 3229, 3347.)

H. R. 1337. (Journal, pp. 1345, 1361; Record, pp. 4940, 5011.)

3529. On February 28, 1878,[5] the President returned to the House with his disapproval the bill (H. R. 1093) to authorize the coinage of the standard silver dollar and to restore its legal-tender character. Upon reconsideration the House passed the bill, yeas 196, nays 73, and the bill was taken to the Senate. On March 1 a message from the Senate announced that the Senate had passed the bill, two-thirds of the Senate agreeing to the same. It does not appear that any further action was taken with a view to transmitting the bill to the Secretary of State.

3530. Resolutions relating to the disposition of bills passed over the veto of the President have been treated as privileged.—On June 23 and 26, 1868,[6] resolutions directing the Clerk to present to the Secretary of State acts passed over the veto of the President were presented and received in the House as privileged.

3531. A bill returned with the President's objections is privileged, but the same is not true of a bill reported in lieu of it.—On August 15, 1876,[7] Mr. George Willard, of Michigan, claiming the floor for a question of privilege,

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[1] First session Fortieth Congress, Journal, p. 15.

[2] First session Fortieth Congress, Journal, pp. 106, 112.

[3] Journal, p. 119.

[4] See history of bills, Record and Journal, first session Forty-fourth Congress.

[5] Second session Forty-fifth Congress, Journal, pp. 550, 555; Record, pp. 1420, 1427.

[6] Second session Fortieth Congress, Journal, pp. 917, 933.

[7] First session Forty-fourth Congress, Record, p. 5689.

reported back the bill (H. R. 4085), which had been returned with the President's objections, from the Committee on the District of Columbia, with a new bill (H. R. 4108) in lieu thereof.

The Speaker pro tempore [1] said:

The Chair must state that this is not a privileged question. The gentleman has a right to report back the original bill so that the House may vote upon passing it over the veto of the President.

3532. A motion to discharge a committee from the consideration of a vetoed bill presents a question of constitutional privilege and is in order at any time.—On July 29, 1886,[2] Mr. Julius C. Burrows, of Michigan, moved to discharge the Committee on Invalid Pensions from the further consideration of the bill (H. R. 4058) relating to Joel D. Monroe.

Mr. William M. Springer, of Illinois, made the point of order that it was not in order to move, as a privileged matter, to discharge a committee from the consideration of a bill. Although this bill was privileged, yet it was in the hands of the committee, and it was the duty of that committee to report it.

The Speaker [3] ruled:

The Constitution of the United States provides that when the President returns a bill to the House in which it originated, with his objections, that House shall proceed to reconsider it and determine whether the bill shall be again passed, the objection of the President to the contrary notwithstanding. The Constitution of the United States provides also that each House shall judge of the election, returns, and qualification of its own Members, and may make its own rules for the government of its proceedings; and yet it has been always held that under that provision of the Constitution, which does not in terms make it imperative upon the House to proceed to consider election cases, a motion to discharge the Committee on Elections from the further consideration of a contested case and bring the same before the House was privileged. The Chair so decided only a few days ago, when the gentleman from Georgia, Mr. Turner, moved to discharge the Committee on Elections from the further consideration of a contested case from the State of Rhode Island. The Chair think that the privilege in the present case is certainly equal to that in the case of a contested election.

3533. The House has declined to give privilege to a motion to discharge a committee from the consideration of an ordinary matter of legislation.—The motion to discharge a committee from the consideration of an ordinary legislative proposition has no privileged status, and consequently may not intrude on the order of business. On February 27, 1880,[4] during the revision of the rules, Mr. John F. House, of Tennessee, proposed a rule that when for fifty days a committee should fail to report a public bill or resolution it should be in order on any Monday to move to discharge the committee and place the bill or resolution on the Calendar. In the debate it was urged that the Commerce Committee was defying the wishes of the House by declining to report the bill to regulate interstate commerce. The Committee of the Whole disagreed to the proposed rule, ayes 61, noes 75.

On February 7, 1884,[5] Mr. Oscar Turner, of Kentucky, proposed a rule that whenever a committee should have failed or refused for forty days to report back a bill either favorably or adversely it should be in order for the Member who had

[1] Milton Sayler, of Ohio, Speaker pro tempore.

[2] First session Forty-ninth Congress, Record, p. 7699; Journal, p. 2397.

[3] John G. Carlisle, of Kentucky, Speaker.

[4] Second session Forty-sixth Congress, Record, pp. 1199–1202.

[5] First session Forty-eighth Congress, Record, pp. 964–973.

introduced the bill to move on any Tuesday to discharge the committee, with the object of having the bill considered by the House. In opposition to this proposition Mr. Thomas B. Reed, of Maine, pointed out that the House could hardly act on more than 8 per cent of the bills referred; and while nonaction by a committee might be an evil, the House could not afford to put into the hands of the individual Member a privileged motion that would relate to nine-tenths of the business of the House and would result in much consumption of time. Mr. Samuel J. Randall, of Pennsylvania, following in the same line, urged that it would not be wise to provide that any bill which could not secure the recommendation of a committee should be precipitated upon the House for a final vote, yea or nay. The House disagreed to the rule, ayes 56, noes 15.

When the House desires to discharge a committee from a legislative proposition, it may be done by suspension of the rules or on a report from the Committee on Rules.

3534. It is the usual but not invariable rule that a bill returned with the objections of the President shall be read and considered at once.

Form of putting the question on the passage of a bill returned with the objections of the President. (Footnote.)

On June 29, 1842,[1] President Tyler transmitted to the House his veto of the bill of the House, "An act to extend for a limited period the present laws for laying and collecting duties on imports." The House proceeded to the reconsideration of the bill, and the question, that the House on reconsideration do agree to pass the same, the objections of the President to the contrary notwithstanding,[2] was stated. The question was debated from day to day, and on July 4 the House again resumed the reconsideration of the bill. The previous question was ordered, and the main question, "That the House on reconsideration do agree to pass the bill," was then determined in the mode prescribed by the Constitution of the United States, there being 114 yeas and 97 nays.

3535. On August 3, 1846,[3] the President returned with his objections the bill entitled "An act making appropriations for the improvement of certain harbors and rivers."

The message having been read,[4] Mr. George Ashmun, of Massachusetts, raised the point that according to the Constitution the message must be spread upon the Journal before the House could proceed to its reconsideration.

The Speaker[5] decided that by the rules of construction and the practice of the House the message was considered as already spread on the Journal.

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[1] Second session Twenty-seventh Congress, Journal, pp. 1032, 1051; Globe, pp. 695, 717.

[2] The form now in use by the Speaker in putting the question is: "Will the House on reconsideration agree to pass the bill, the objections of the President to the contrary notwithstanding?" (Record, p. 1183, second session, Fifty-fourth Congress.)

[3] First session Twenty-ninth Congress, Journal, pp. 1209, 1214, 1218; Globe, p. 1183.

[4] On June 15, 1880 (second session Forty-sixth Congress, Record, p. 4587), the Senate declined to have read a veto message just received from the President, and on the next day, June 16 (Record, p. 4612), the Senate by a vote of yeas 30, nays 17, voted to go to other business instead of having the message read. This was a message of President Hayes vetoing a bill relating to chief supervisors of elections. On June 16 the Congress adjourned sine die without hearing the message.

[5] John W. Davis, of Indiana, Speaker.

The House then proceeded to the reconsideration of the bill, and after some proposals for postponement, the previous question being ordered, the main question "Will the House, on reconsideration, agree to pass the bill" was determined in the mode prescribed by the Constitution of the United States; when it appeared, for passing, the bill 97 against it 91. And so the bill was not passed, two-thirds of the House, on reconsideration, not agreeing to pass the same.

3536. On February 17, 1855,[1] during the consideration of the bill (H. R. 595) making an appropriation for mail steamers, the main question having been ordered, and the yeas and nays having been ordered on a motion to reconsider the vote by which an amendment had been agreed to, a message was received transmitting the reasons of the President for not approving the bill for the ascertainment of certain French spoliation claims. Mr. Speaker Boyd raised a question as to whether the veto message should be laid before the House at once. After consultation, it was decided that the House should dispose of the pending bill before considering the message, and it was done in that way.

3537. A vetoed bill received in the House by way of the Senate is considered as if received directly from the President and supersedes the regular order of business.

The two-thirds vote required to pass a bill notwithstanding the objections of the President is "two-thirds of the members present."

On July 8, 1856,[2] Mr. Solomon G. Haven, of New York, as a question of privilege, asked that the House proceed to the reconsideration of the bill of the Senate (S. 1) entitled "An act making an appropriation for deepening the channel over the St. Clair flats, in the State of Michigan."

Mr. Thomas L. Clingman, of North Carolina, objected, holding that there was nothing in the Constitution which made this a question of privilege. The Constitution provided that the House should consider again a vetoed bill, but did not say when it should do it.

The Speaker[3] said:

This message having been received from the Senate, with the accompanying message from the President of the United States, the Chair thinks that it is a matter which supersedes the ordinary business of the House, and must be considered at this time, subject to the rules of the House. The Chair places his decision upon the following grounds: If the bill had originated in the House, and had been returned by the President, with his objections, the language of the Constitution would have required the House to proceed at once to the consideration of the bill, with the objections of the President. The case before us, however, differs in this: The bill having originated in the Senate, it comes to us from that body, and in a different form. The duty of the House is prescribed in the seventh section of the Constitution, in this language: "If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be considered." The Chair thinks that the proper interpretation of the word "likewise" is, "in like manner," as in the House where the bill originated.

The Speaker referred to the action of the House in 1845, on the bill S. No. 66, which came up under similar circumstances, and which the House at once considered.

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[1] Second session Thirty-third Congress, Globe, p. 797.

[2] First session Thirty-fourth Congress, Journal, pp. 1176, 1178; Globe, p. 1563.

[3] Nathaniel P. Banks, of Massachusetts, Speaker.

The question being put on reconsideration, there were yeas 139, nays 55. So it was—

Resolved, That the bill do pass, two-thirds of the Members present agreeing thereto.

In the same manner on the same day the bill of the Senate (S. 2), entitled "An act making an appropriation for deepening the channel over the flats of the St. Marys River, in the State of Michigan," was passed by a vote of 136 yeas to 54 nays, two-thirds of those present.

3538. Again, on August 11, 1856,[1] the bill of the House (H. R. 12) entitled "An act for continuing the improvement of the Des Moines Rapids, in the Mississippi River," was passed over the President's veto by 130 yeas to 54 nays, two-thirds of those present.[2]

3539. It is the practice for one House to inform the other by message of its decision that a bill returned with the President's objections shall not pass.—On February 3, 1815,[3] a message from the Senate informed the House that the Senate proceeded to the reconsideration of the bill, entitled "An act to incorporate the subscribers to the bank of the United States of America," which was returned by the President of the United States on the 30th day of January, 1815, with objections; and have resolved that the said bill do not pass, two-thirds of the Senate not agreeing thereto.

3540. On May 31, 1830,[4] a message was received from the Senate informing the House that the bill "authorizing a subscription of stock in the Washington Turnpike Road Company," which the President had that day returned to the Senate with his objections to the same, had not passed, two-thirds of the Senate not voting for the passage thereof, as required by the Constitution.

3541. On July 13, 1832,[5] a message from the Senate announced that in the Senate the bill to continue the incorporation of the bank of the United States, which had been returned with the objections of the President, had not passed, "two-thirds of the Senators present not agreeing thereto."

3542. The constitutional mandate that the House "shall proceed to reconsider" a vetoed bill has been held not to preclude a motion to postpone consideration to a day certain.—On May 27, 1830,[6] President Jackson sent to the House his message vetoing the bill authorizing a subscription to the stock of the Maysville and Washington Turnpike Road Company in Kentucky.

The message being read, a motion was made by Mr. William W. Irvin, of Ohio, that the House do now proceed to reconsider the bill.

A motion was made by Mr. Henry Daniel, of Kentucky, that the reconsideration of the bill be postponed until to-morrow.

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[1] First session Thirty-fourth Congress, Journal, p. 1420; Globe, p. 2036.

[2] The principle that two-thirds of those present are sufficient was established on March 3, 1945 (second session Twenty-eighth Congress, Journal, p. 567; Globe, p. 396), when the House passed a Senate bill over a veto by a vote of yeas 127, nays 30, a yea vote considerably less than two-thirds of the entire membership. Mr. Speaker Jones declared "that the bill was passed by the constitutional majority of two-thirds." On July 7, 1856 (first session Thirty-fourth Congress, Senate Journal, p. 419; Globe, pp. 1544–1550) President pro tempore Bright made in the Senate a formal ruling based on this House practice, and after learned debate was sustained on appeal, yeas 34, nays 7.

[3] Third session Thirteenth Congress, Journal, p. 705 (Gales and Seaton ed.); Annals, p. 1120.

[4] First session Twenty-first Congress, Journal, p. 812.

[5] First session Twenty-second Congress, Journal, p. 1162.

[6] First session Twenty-first Congress, Journal, p. 742; Debates, p. 1138.

Mr. Charles A. Wickliffe, of Kentucky, then made the following motion: That this House will at 12 o'clock meridian, to-morrow, proceed to the reconsideration of the said bill.

Mr. Daniel accepted this as a modification of his motion.

This motion as modified was agreed to after a futile effort by Mr. Philip Doddridge, of Virginia, to strike out "12 o'clock."

The record of the debates says:

When the reading was concluded there arose a hurried and anxious debate, involving no principle of the bill, but merely the question whether the bill should be reconsidered instanter or whether the reconsideration should be postponed until to-morrow. During the whole of the proceeding there was a tendency to debate the main question and an effort on the part of the Chair to confine the debate to the question of postponement. In this Messrs. Irving of Ohio, Daniel, Vance, Ingersoll, Brown, Potter, P. P. Barbour, Wickliffe, Polk, Bell, Coleman, Letcher, Burges, Yancey, and Barringer participated. Finally, as by common consent, it was agreed that the consideration could be postponed until to-morrow, by which time it was supposed the message would be printed and in the hands of every Member.

3543. On February 21, 1811,[1] the President returned to the House without his approval the bill "incorporating the Protestant Episcopal Church in the town of Alexandria, in the District of Columbia."

Discussion having arisen as to the procedure required by the Constitution, Mr. Nathaniel Macon, of North Carolina, moved that the consideration of the bill be postponed until to-morrow, justifying the motion by a precedent of April 5, 1792,[2] when the House having heard read the objections of President Washington to the bill making apportionment of Representatives came to this resolution:

Resolved, That to-morrow be assigned for the reconsideration of said bill, according to the Constitution of the United States.

Mr. Macon therefore offered his motion in the same terms, and it was agreed to by the House.

3544. On June 11, 1844,[3] President Tyler returned to the House, with his objections, the bill entitled "An act making appropriations for the improvement of certain harbors and rivers."

The message having been read, a motion was made by Mr. David L. Seymour, of New York, that it be entered on the Journal and printed, and that the message and bill be made a special order for Thursday next.

Mr. Seymour moved the previous question, which was seconded; and the main question was now ordered to be put.

The Speaker[4] decided that the motion to postpone and print had been set aside by the ordering of the previous question;[5] and the main question would be, "Will the House, on reconsideration, agree to pass the bill?"

A motion was made by Mr. Hannibal Hamlin, of Maine, that the vote by which the House had ordered the main question to be now put, be reconsidered; which was decided in the negative.

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[1] Third session Eleventh Congress, Journal, p. 567 (Gales and Seaton ed.); Annals, pp. 983, 985.

[2] First session Second Congress, Journal, pp. 563, 564 (Gales and Seaton ed.).

[3] First session Twenty-eighth Congress, Journal, pp. 1081, 1084, 1085; Globe, p, 663.

[4] John W. Jones, of Virginia, Speaker.

[5] This was formerly the operation of the previous question.

The House then proceeded to the reconsideration of the bill.

The question was then put and determined in the mode prescribed by the Constitution of the United States, when there appeared 104 yeas and 84 nays, so the bill was not passed, two-thirds of the House, on reconsideration, not agreeing thereto.

3645. On December 4, 1854,[1] the Speaker having announced, as the business first in order, the message of the President of the United States returning, with his objections, the bill of the House (No. 392) entitled "An act making appropriations for the repair, preservation, and completion of certain public works heretofore commenced under the authority of law," which was received on the eve of the adjournment of the last session.

The same was read; when, on motion of Mr. Thomas L. Clingman, of North Carolina, the further consideration of the bill, with the objections of the President thereto, was postponed until Wednesday next.

3546. On March 2, 1895,[2] Mr. Hugh A. Dinsmore, of Arkansas, moved that the Committee on Indian Affairs be discharged from the consideration of the bill (H. R. 8681) authorizing the Arkansas Northwestern Railway Company to construct and operate a railway through Indian Territory, and for other purposes, returned to the House by the President, with his objections, thereto, and that the House proceed to its reconsideration.

Mr. Albert J. Hopkins, of Illinois, moved that the further consideration of the motion of Mr. Dinsmore be postponed until 11.30 a.m. (calendar day), March 4, 1895.

Mr. Dennis T. Flynn, of Oklahoma, made the point that the consideration of the bill returned by the President, with his objections, presented a question of the highest privilege, and that a motion to postpone its consideration was therefore not in order.

The Speaker[3] overruled the point made by Mr. Flynn, holding as follows:

The Constitution provides that when the President shall return a bill without his sanction the House shall proceed to reconsider it, and it has been held that the question of consideration can not be raised against the proceeding. But it has also been held that a motion to postpone may be entertained. A motion to postpone the consideration of a measure to a given day is in itself consideration, and under the rulings heretofore made is now in order. When a veto message is received from the President, it does not follow that the House must immediately proceed to vote upon the question. It has been expressly ruled that the House may postpone the consideration of the subject to a future day. In a ruling made in the Twenty-first Congress, found in the Journal of the Twenty-first Congress on page 742, it was held that the motion to postpone a veto message, or a bill vetoed, to a future day was in order.

3547. On March 2, 1897,[4] a message was received from the President, who returned without his approval the bill (H. R. 7864) "to amend the immigration laws of the United States."

After the message had been read, Mr. Richard Bartholdt, of Missouri, moved that its consideration be postponed until 1 o'clock the following day.

A question of order being suggested as to the admissibility of the motion at the time, the Speaker[5] said:

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[1] Second-session Thirty-third Congress, Journal, p. 8; Globe, p. 2. The message was received as soon as the formalities of assembling were over.

[2] Third session Fifty-third Congress, Journal, p. 190.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] Second session Fifty-fourth Congress, Record, pp. 2667–2668.

[5] Thomas B. Reed, of Maine, Speaker.

It is quite true that a veto message is always a question of privilege. At the same time the House very often refers such a message to a committee. There does not appear to the Chair any reason why the House may not fix a time for the consideration of such a message.

3548. It is not in order to move to postpone indefinitely the consideration of a veto message of the President.—On February 21, 1811,[1] the President returned to the House without his approval the bill "incorporating the Protestant Episcopal Church in the town of Alexandria, in the District of Columbia."

The message having been read, Mr. John Randolph, of Virginia, asked if a motion to postpone indefinitely would be in order.

The article of the Constitution having been read, the Speaker[2] expressed the opinion that the motion would not be in order.

3549. A bill returned with the objections of the President may be laid on the table.—On April 9, 1866,[3] a message of the President of the United States giving his reasons for withholding his approval from the bill (S. 61) "to protect all persons in the United States in their civil rights and furnish the means of their vindication "was laid before the House.

Mr. William E. Niblack, of Indiana, proposed to make a motion to lay on the table.

Mr. Robert C. Schenck, of Ohio, raised a question of order that the motion was not in order.

The Speaker[4] said.

The Chair overrules the point of order, and will state the grounds for overruling it. As the Chair first stated to the House, the Constitution seems to indicate that the House shall immediately vote upon the passage or rejection of the bill, but upon an examination of the precedents he finds that the Congress has acted so as to enlarge this construction very considerably. In the Twenty-first Congress the vote upon a vetoed bill was postponed for a long time. In another Congress a motion was made and entertained to recommit a bill that had been vetoed by the committee from which it originated. But perhaps the decision most applicable to this case is to be found on page 10 of Barclay's Digest, which has been adopted as the parliamentary law of this House, which binds both the Members and the Speaker. It is as follows:

"A veto message and bill may be referred, or the message alone or the bill may be laid on the table."

The Chair finds in the Journal of the Twenty-seventh Congress, second session, page 1256, when Hon. John White, of Kentucky, occupied the chair, the following precedent: [Here is quoted the precedent so far as the ruling of the Chair was concerned.] The bill was then laid on the table by a vote of 97 to 73; and among those who voted to lay on the table were two gentlemen who have taken the oath under the Constitution as President of the United States, John Quincy Adams and Millard Fillmore. Mr. William Pitt Fessenden, Mr. Joshua R. Giddings, and other gentlemen of distinction at that day, whose names the Chair need not repeat, also voted to lay the bill on the table.

The Chair is now bound by this decision of a Speaker of the House, which was sustained by the House on an appeal. That decision enters into the parliamentary law of the House and has been incorporated into the Digest which we have adopted as our parliamentary law. As the House had on several occasions enlarged what the Speaker would deem to be the strict construction of this provision of the Constitution by a variety of motions apart from the question of passing or rejecting the bill, the Chair thinks the motion to lay this bill on the table is in order.

There is still an additional reason. If two-thirds of the House desire to pass the bill over the Presidential veto, it is evident that they will reject the motion to lay the bill on the table. If they

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[1] Third session Eleventh Congress, Annals, p. 983.

[2] Joseph B. Varnum, of Massachusetts, Speaker.

[3] First session Thirty-ninth Congress, Globe, p. 1860.

[4] Schuyler Colfax, of Indiana, Speaker.

desire to have the bill laid upon the table, the Chair can not, upon reflection, see why they should not have that privilege. If they wish to refer it to a committee, as was done with a veto in the last Congress, they should have the right to do it. This is a matter coming back to the House with the objections of the President, and by the precedents quoted the House can do as they see fit with it. And if two-thirds of the House are in favor of passing the bill it is certainly evident that a majority will vote against laying the bill on the table.

Mr. Schenck proposed an appeal, but withdrew it, and the House acquiesced in the decision.

3550. A motion to refer a vetoed bill, either with or without the message, has been held allowable within the constitutional mandate that the House "shall proceed to reconsider."

Not only have vetoed bills been referred to committees, but in practice those committees have often neglected to report. (Footnote.)

A vetoed bill when laid on the table is still highly privileged, and thus justifies a motion to take it from the table and action thereon by majority vote. (Footnote.)

It is the duty of the Speaker to put a motion in order under the rules and practice without passing on its constitutional effect.

On August 10, 1842,[1] the House proceeded to the reconsideration of the bill (No. 472) entitled "An act to provide revenue from imports, and to change and modify existing laws imposing duties on imports, and for other purposes," which had been presented to the President of the United States on the 6th instant and returned by him with objections.

A motion was made by Mr. John Quincy Adams, of Massachusetts, that the message of the President returning the bill, together with the bill, be referred to a select committee, to consist of thirteen Members, with instructions to report thereon.[2]

Mr. Thomas F. Foster, of Georgia, submitted the following question of order:

The motion to refer is not in order, on the ground that by the Constitution of the United States (which declares that "if the President approve a bill, he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their Journal and proceed to reconsider it") it is not in order to refer the said bill, but that the only question for the consideration of the House is, Does the House, on reconsideration, agree to pass the said bill?

In the debate, Mr. Caleb Cushing, of Massachusetts, took the ground that the message, having been entered on the Journal as the Constitution specifies, was not before the House. While the question on the passage of the bill was pending it was not in order to take up the message and refer it to a committee. The question was on the bill, the message being not in possession of the House except as a matter of history.

Mr. Joseph R. Underwood, of Kentucky, contended that a message might contain statement of facts which a committee should examine. This one contained reasons and matters of opinion. It was therefore proper to refer it.

Mr. Henry A. Wise, of Virginia, said that a majority of the committee might refuse to report, thereby indefinitely postponing consideration, a thing which the

[1] Second session Twenty-seventh Congress, Journal, pp. 1253–1257; Globe, pp. 873, 875, 905.

[2] It is a common practice in such cases now for the House to refer bill and message together. (See Congressional Record, first session Fifty-fourth Congress, pp. 5535, 5918.)

House had no power to do.[1] A committee could not reform or amend the bill in any way, but could only recommend to the House whether or not to reconsider. He did not believe that the Constitution contemplated a reference to a committee.

The Speaker[2] referred to a bill passed in 1832 which had not received the assent of the President, but was returned to the House at the commencement of the succeeding session, accompanied by the President's reasons for withholding his assent. The bill and message were referred to a committee and never came back to the House.

Mr. Wise, in reply, declared that in the spring of 1832, within less than ten days of the adjournment of Congress, a bill for the improvement of certain rivers and harbors was sent to General Jackson. He did not sign it, and it failed thereby to become a law. At the next session the President sent a message informing Congress that the bill had not become a law. This message, which was not a veto message, was referred to a committee.[3]

The Speaker stated that there was no question of order involved; that it was a matter for the House to decide, and not the Chair. It was his duty to entertain any motion not forbidden by the rules of the House and the course of parliamentary proceedings; and he conceived it to be his duty to entertain the motion to refer.

From this decision Mr. Foster appealed to the House. The appeal was laid on the table by a vote of 107 to 9, and so the decision of the Speaker was sustained.

The question recurred on the motion, made by Mr. Adams, that the message and bill be referred to a select committee; when Mr. Adams modified his motion so that the message alone should be referred to a committee, without the bill.

It was objected that it was not in order to refer the message without the bill.

The Speaker decided the motion to be in order.

From this decision Mr. Henry A. Wise, of Virginia, appealed to the House; which appeal was, on motion of Mr. Millard Fillmore, of New York, laid upon the table; and the decision of the Speaker was sustained.

The question again recurred on the motion of Mr. Adams, that the message be referred to a select committee.

This passed in the affirmative, and the committee were appointed, with Mr. Adams chairman.

The question was then propounded, that the House, on reconsideration, do agree to pass the bill to provide revenue from imports, etc., when a motion was made by Mr. James Cooper, of Pennsylvania, that the bill do lie on the table.

Mr. William Cost Johnson of Maryland, objected to this motion as not in order, because, according to the Constitution, the House must proceed to the reconsideration of the bill.

The Speaker decided that the motion to lay on the table was in order. From this decision Mr. William Cost Johnson appealed to the House; which appeal was, on motion of Mr. Fillmore, ordered to lie on the table.

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[1] In the Fiftieth Congress there were 200 or more vetoes in the first session, so that the disposal of them by yea-and-nay votes became a serious problem. In this condition of affairs some of the messages referred to the Invalid Pensions Committee were not reported back. (See Record, first session Fiftieth Congress, "Index of bills," H. R. 9106, 10563, 9372, 1233, etc.) In the Fifty-ninth Congress all the veto messages were referred to committees, and were not reported thence.

[2] John White, of Kentucky, Speaker.

[3] Second session Twenty-second Congress, Journal, p. 24.

The question was then put, that the bill do lie on the table, and it passed in the affirmative, 97 to 73.[1]

On April 5, 1882,[2] in the Senate President pro tempore David Davis, of Illinois, decided that a motion to refer a veto message and bill was in order.

3551. While the ordinary motion to refer may be applied to a vetoed bill, it is not in order to move to commit it pending the demand for the previous question or after it is ordered on the constitutional question of reconsideration.—On August 2, 1882,[3] Mr. Horace F. Page, of California, as a privileged question, called up the message of the President returning the bill of the House relating to rivers and harbors without his approval.

Mr. Page moved that the House proceed to consider the bill, on which motion he moved the previous question.

Mr. John A. Kasson, of Iowa, moved to refer the message and bill to the Committee on Commerce, with instructions; which motion he subsequently modified by withdrawing the instructions.

Mr. Page made the point of order that the motion was not now in order.

The Speaker[4] held that the motion to refer would be in order but for the pendency of the motion for the previous question on the first motion submitted by Mr. Page.

Mr. Kasson made the point of order that the motion to refer was in order under the practice of the House, and particularly under clause 1 of Rule XVII,[5] which permitted a motion to refer with or without instructions pending the demand for or after the previous question shall have been ordered.

After debate on the point of order, the Speaker overruled the same, saying:

Since the inquiry was first made whether it would be in order to move to refer, and since the motion which the gentleman from Iowa [Mr. Kasson] proposed to make was sent to the Clerk, the Chair understands the gentleman from Iowa to have withdrawn that part of his motion which included instructions to the committee. Clearly that would be out of order. The House could not instruct the committee to report the bill back with amendments, as it is a bill which the House itself could not amend when it was being considered. What the House can not do itself it can not instruct a committee to do.

This bill comes back to the House by reason of the veto message of the President of the United States, and under the Constitution, paragraph 2, section 7, article 2, the House must proceed to reconsider it. That does not necessarily mean that the House may debate it. Reconsidering may be voting on it; and perhaps that was all that was intended by the language of the Constitution. The Chair would not intimate that if the House desires, it-may not debate; but reconsideration might be had by simply voting on the bill.

It is settled, the Chair thinks, by the practice, that a motion to refer—a simple motion to refer—to a committee may be entertained. But the Chair thinks that that motion to refer must come in at the proper time. It is the first duty of the House, under the Constitution, as the Chair interprets its language, to reconsider and proceed to vote upon the vetoed bill. If the House chooses, by ordering the previous

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[1] In response to an inquiry as to whether a vote of two-thirds would be required to take the bill from the table, the Speaker replied that a majority vote would be sufficient (Globe, p. 875), thus indicating that the bill was not finally and adversely disposed of by this vote. Indeed, on August 17 (Journal, p. 1327), the House voted to proceed to reconsider the bill, 126 yeas, 76 nays. The motion was held to be privileged (Globe, p. 905).

[2] First session Forty-seventh Congress, Record, pp. 2607, 2608.

[3] First session Forty-seventh Congress, Journal, p. 1792; Record, p. 6803.

[4] J. Warren Keifer, of Ohio, Speaker.

[5] See section 6790 of Vol. V. of this work for this rule.

question, to cutoff debate upon this matter of reconsideration, that is within the power of the House. If the House does not order the previous question, the Chair would hold that a motion to refer would be in order. It is claimed that under Rule XVII of the House the motion to refer being, as the Chair holds, equivalent to a motion to commit, is in order. The Chair does not think so. Rule XVII speaks entirely of proceedings governing the ordinary passage of the bill. If the whole rule is read it will appear that a motion for the previous question is made, first, upon the engrossment and third reading of the bill. Then, that having exhausted itself upon the third reading of the bill, the second step is a motion for the previous question upon the passage of the same bill, such a bill as the House has ordered to be engrossed and read a third time. This rule refers to the passage of a bill in the ordinary sense. The bill before us is at a different stage. It is a reconsideration of a bill which the House and the Senate have already passed, and for the purpose of determining whether the House will by a two-thirds vote pass the bill, notwithstanding the President's veto, as provided by the Constitution.

The Chair feels bound to hold that the demand for the previous question having been made first, must be first submitted to the House. If that be voted down, the Chair will entertain a motion to refer the bill.

3552. A vetoed bill having been rejected by the House, the message was referred.—On May 29, 1879,[1] the House, after it had refused, on reconsideration, to pass over the President's veto the legislative appropriation bill, referred the veto message to the Committee on the Judiciary, with leave to report thereon at any time by bill or otherwise.

[1] First session Forty-sixth Congress, Journal, p. 415; Record, p. 1712.

Chapter XCIV.

GENERAL APPROPRIATION BILLS.[1]

1. **Enumeration of. Section 3553.**
2. **General appropriations and deficiencies. Sections 3554–3564.[2]**
3. **District of Columbia expenses. Section 3565.**
4. **As to what are general appropriation bills. Sections 3566–3570.**
5. **Appropriations for support of armies. Sections 3571, 3572.**
6. **Estimates from Executive Departments. Sections 3573–3577.**

3553. Enumeration of the general appropriation bills.—The general appropriation bills are not enumerated or defined by any rule of the House, but have become established in the practice, increasing in number from time to time.[3] They are fourteen in number:[4]

The legislative, executive, and judicial bill, the sundry civil bill, the District of Columbia bill, the fortifications bill, the pensions bill, the urgent deficiency bill, and the general deficiency bill, all of which are reported by the Committee on Appropriations.

The agricultural bill, which is reported by the Committee on Agriculture.

The Army bill and the Military Academy bill, which are reported by the Committee on Military Affairs.

The naval bill, which is reported by the Committee on Naval Affairs.

The diplomatic and consular bill, which is reported by the Committee on Foreign Affairs.

The Post-Office bill, which is reported by the Committee on the Post-Office and Post Roads.

The Indian bill, which is reported by the Committee on Indian Affairs.

Each of these bills is reported and passed annually.

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[1] Discussion as to right of Senate to originate. Sections 1500, 1501 of Vol. II.

[2] See sections 4032–4053 of this volume for jurisdiction of the Committee on Appropriations and general conditions as to appropriation bills.

[3] See First session Forty-ninth Congress, Record, p. 170, for a history of the development of the general appropriation bills. A rule of the House numbered 77 (see Journal, first session Forty-sixth Congress) enumerated 10 general appropriation bills; but that rule disappeared in the revision of 1880.

[4] For the scope of these bills as to the appropriations carried by them see sections 4032–4053 of this volume.

The river and harbor bill, which is reported by the Committee on Rivers and Harbors, is not one of the general appropriation bills[1] and is not necessarily reported annually.

3554. A general appropriation bill (except the general deficiency) provides for the next fiscal year, and expenditures for preceding years are not in order on any bills reported by committees other than the Appropriations Committee.—On June 18, 1890,[2] the House being in Committee of the Whole House on the state of the Union considering the Indian appropriation bill, the Clerk read a paragraph providing for the payment to the Mexican Pottawatomie Indians, of Kansas, of a sum of money "in full of all their money demands and claims arising out of any payments heretofore made under treaties with the Pottawatomide Indian Nation."

Mr. Joseph G. Cannon, of Illinois, made the point of order first, that the payment was not authorized by existing law; second, that it was not a provision for carrying on the Indian service for the coming fiscal year; third, that it was a mere claim; and, fourth, that the paragraph contained legislation.

The Chairman[3] sustained the point of order.

3555. Also on the same day Mr. Bishop W. Perkins, of Kansas, offered an amendment to the Indian appropriation bill, appropriating a sum for the Citizen and Prairie bands of Pottawatomies under these conditions:

This amount to be in full for the sum due said Indians for arrears under article 3 of treaty of October 16, 1826; article 2, treaty of September 20, 1828; article 4, treaty of October 27, 1832; for educational purposes up to and including fiscal year ending June 30, 1891; this amount to be set apart as specified in said several treaties as a school fund for said Indians, and paid out under the direction of the Secretary of the Interior.

Mr. Joseph G. Cannon, of Illinois, having made the point of order, the Chairman[4] ruled:

The Chair is of the opinion that an appropriation of $5,000 for the year ending June 30, 1891, would be in order, the treaty being as the gentleman from Arkansas states; but the amount beyond that, the deficiency, is not, in the judgment of the Chair, in order on this bill.

Mr. Samuel W. Peel, of Arkansas, having appealed, the decision of the Chair was sustained, 38 ayes to 37 noes.

3556. Also on the same day Mr. Joseph G. Cannon, of Illinois, made the point of order against a proposition in the Indian appropriation bill to pay a sum to the same band of Indians "in full for the amount found due said Indians by supplemental report of commissioners appointed by the President of the United States under Senate amendment to article 10, treaty of August 7, 1868, with said Pottawatomie Indians."

The Chairman[5] ruled:

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[1] See sections 3897–3903 of this work.

[2] First session Fifty-first Congress, Record, p. 6233.

[3] Edward P. Allen, of Michigan, Chairman.

[4] Edward P. Allen, of Michigan, Chairman. (First session Fifty-first Congress, Congressional Record, pp. 6228, 6231.)

[5] Edward P. Allen, of Michigan, Chairman. (First session Fifty-first Congress, Congressional Record, pp. 6231, 6232)

The Chair in passing upon this point of order desires to say, in addition to what the gentleman from Kansas [Mr. Perkins], the chairman of the committee, has said, that he heartily acquiesces in all that he has said about the injustice of delaying these long-deferred claims against the Government of the United States in favor of these Indian. And the gentleman from Kansas [Mr. Perkins] has the Chair for a witness as to his assiduity and faithfulness in undertaking to bring these claims to the attention of Congress and the country that they might be adjudicated. But that does not do away with the duty of the Chair to rule as he understands the rules of this House require, that claims of this nature can not be put into or acted upon in a bill which provides for "the current and contingent expenses of the Indian department and for fulfilling treaty stipulations with various Indian tribes for the year ending June 30, 1891." That all these claims can be paid whenever Congress desires to pay them is evident, and that the Committee on Indian Affairs has jurisdiction of these matters is also evident to the Chair, and they can be brought in by bills at any time and passed upon by this House; but the Chair still feels, and is stronger in his opinion than before, that upon an annual appropriation bill items of this kind have no place whatever, and the Chair sustains the point of order.

3557. On June 17, 1890,[1] the Indian appropriation bill being under consideration in Committee of the Whole House on the state of the Union, the Clerk read a paragraph appropriating a sum of money to carry out the treaty arrangements made with the Cherokee Indians by the United States of December 29, 1835, to pay their transportation to, and subsistence for a year after their arrival in, the Indian Territory.

Mr. Joseph G. Cannon, of Illinois, made the point of order that this was a claim or a deficiency.

The Chairman[2] sustained the point of order.

3558. On June 17, 1890,[3] the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read a paragraph providing for the payment of the expenses of transportation in a former year of 274 Creek Indians, at $30 each, and subsistence for twelve months, at $25 each, for 160 Creek Indians, the Indians being entitled to the sums per capita due them under the treaty of 1826 and the treaty of 1832 with the Creek Indians.

Mr. Joseph G. Cannon, of Illinois, made the point of order that this was a deficiency appropriation, not an appropriation for the coming fiscal year.

On June 18 the Chairman[2] ruled:

During the consideration of the bill by the Committee of the Whole yesterday a paragraph relative to the Cherokee Indians, to pay for their transportation to, and subsistence for a year after their arrival in, the Indian Territory, was the subject of a point of order made by the gentleman from Illinois [Mr. Cannon], the point being that the paragraph was not properly in this bill; that the item, if anything, was a claim or a deficiency, and had no place upon this general appropriation bill.

The Chair ruled upon that point of order and sustained it. Subsequently several other paragraphs were read, as to which the same and other points of order were made. These paragraphs embrace sundry items, some for the payment of money to individuals and others for the payment of money to tribes of Indians. The bill before the committee is entitled "A bill making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the year ending June 30, 1891, and for other purposes." Had these items been offered as amendments to the bill in Committee of the Whole and had the point been made upon them, all points of order having been reserved, the Chair does not hesitate to say that they would not have been

[1] First session Fifty-first Congress, Record, p. 6201.

[2] Edward P. Allen, of Michigan, Chairman.

[3] First session Fifty-first Congress, Record, pp. 6201, 6228.

in order. Though in the bill, they have no status higher than if offered as amendments. This is an appropriation bill, appropriating money for the current and contingent expenses of the Indian Department and for fulfilling certain treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1891, and for other purposes. The "other purposes," in the judgment of the Chair, are those incidental to the main purpose. If, then, these items could not be considered as amendments to the bill when offered in Committee of the Whole, neither can they be considered when reported in the bill. If they are anything, they are deficiencies—some of them—and others are claims of individuals.

3559. On January 28, 1897,[1] the Indian appropriation bill being under consideration in Committee of the Whole House on the state of the Union, the Clerk read a paragraph appropriating a sum of money to enable the Secretary of the Interior to reimburse the confederated Kaskaskia, Peoria, Piankeshaw, and Wea tribes of Indians the amount due them under the treaty of May 30, 1854.

Mr. Joseph G. Cannon, of Illinois, made the point of order that this was a claim and had no place on a bill appropriating for the service of the coming fiscal year.

The Chairman[2] sustained the point of order.

3560. On the same day Mr. Andrew R. Kiefer, of Minnesota, offered to the Indian appropriation bill an amendment appropriating a sum of money to certain Sioux scouts who served in 1862 and who were omitted from the pay roll of the year 1895, when payment was authorized.

Mr. Joseph G. Cannon made the point of order against the amendment.

The Chairman[3] sustained the point of order.

3561. On January 28, 1897,[4] Mr. James S. Sherman, of New York, offered to the Indian appropriation bill an amendment authorizing the Secretary of the Interior to pay the claims of the Chesapeake and Ohio Railroad Company for transportation of Indian pupils in September and October, 1889, to and from Hampton Normal and Agricultural Institute, out of the unexpended balance of appropriations for the support of Indian day and industrial schools for the fiscal year ending June 30, 1895.

Mr. Joseph G. Cannon, of Illinois, made the point of order that this was not in order on this bill.

The Chairman[2] sustained the point of order.

3562. Appropriations for the continuation of work on a public building, and not intended to supply any actual deficiency, belong to the sundry civil bill, not the general deficiency.—On March 17, 1880,[5] the House was in Committee of the Whole House on the state of the Union, considering the deficiency appropriation bill.

Mr. Benjamin Butterworth, of Ohio, offered the following amendment:

For completing the custom-house and post-office building at Cincinnati, Ohio, $150,000, said appropriation to be immediately available.

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[1] Second session Fifty-fourth Congress, Record, p. 1258.

[2] Albert J. Hopkins, of Illinois, Chairman.

[3] Albert J. Hopkins, of Illinois, Chairman. (Second session Fifty-fourth Congress, Congressional Record, p. 1258.)

[4] Second session Fifty-fourth Congress, Record, p. 1263.

[5] Second session Forty-sixth Congress, Record, p. 1650.

Against this amendment Mr. Joseph C. S. Blackburn, of Kentucky, made the point of order, under Rule XXI.

The Chairman [1] ruled:

Although the bill under consideration is not, technically speaking, a general appropriation bill, yet Rule 120 [2] of the old series was always held to apply to bills of this character, as well as to original appropriation bills. The difficulty with the amendment of the gentleman from Ohio [Mr. Butterworth] seems to be that it does not come from any committee having any jurisdiction of the subject. The right of individuals upon their own responsibility to offer amendments to appropriation bills has been very much restricted by the third clause of Rule XXI of the new rules. Without commenting upon that clause, the Chair holds that the amendment is not in order, coming from an individual Member of the House and not from a committee having jurisdiction of the subject-matter.

Mr. Thomas B. Reed, of Maine, having called attention to the fact that this was a public work or object already in progress, the Chairman said:

There is now a law making an appropriation for the work upon the Cincinnati custom-house and court-house for the present fiscal year. This bill is one making appropriations for deficiencies only. The amendment proposed by the gentleman from Ohio [Mr. Butterworth] is not to supply any actual deficiency, but to make provision for the completion of the work. * * * If the bill under consideration were the sundry civil appropriation bill, a bill which properly relates to these subjects, the Chair would hold that such an amendment would be in order, although offered by an individual.

3563. Deficiencies are not in order on appropriation bills reported by committees other than the Committee on Appropriations.—On January 14, 1903,[3] while the army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, a paragraph was read appropriating a certain sum, "one-half of this amount to be immediately available."

Mr. Joseph G. Cannon, of Illinois, made a point of order against the provision. After debate the Chairman [4] said:

The bill under consideration is the general annual army appropriation bill for the fiscal year beginning July 1, 1903, and ending June 30, 1904. The general appropriation for the present fiscal year of 1903 was made in the bill last year. It seem to the Chair that any expenditure for the Army during the current year must necessarily be considered as an expenditure to make up deficiencies in the army appropriation bill for the fiscal year 1903, or the current year. Any bill, therefore, whether this bill or any other measure, providing for the appropriation of the sums so used, must be considered as a deficiency bill, and the appropriation itself, whether made in this measure or in a measure with another title, would be an appropriation to make good a deficiency—an amount not provided for in the army appropriation bill for the current fiscal year. Being a deficiency appropriation, it should be included in a deficiency bill, and under clause 3 of Rule XI the deficiency bill would be a bill referred to and coming from the Committee on Appropriations. As it seems to the Chair that this is to make good a deficiency, the Chair is constrained to sustain the point of order.

3564. Deficiency appropriations are in order in any general appropriation bill within the jurisdiction of the Committee on Appropriations.—On February 14, 1901,[5] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and a point of order

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[1] John G. Carlisle, of Kentucky, Chairman.

[2] This rule is now section 2 of Rule XXI. (See sec. 3578 of this work.)

[3] Second session Fifty-seventh Congress, Record, pp. 804, 805.

[4] Henry S. Boutell, of Illinois, Chairman.

[5] Second session Fifty-sixth Congress, Record, p. 2419.

had been raised by Mr. William A. Jones, of Virginia, against the following paragraph:

For rent of old custom-house at New York, N. Y.: For rental of temporary quarters for the accommodation of certain Government officials from August 28, 1899, to June 30, 1900, $109,847.12; from July 1, 1900, to June 30, 1901, $130,600; from July 1, 1901, to June 30, 1902, $130,600; in all, $371,047.12.

In support of his point of order Mr. Jones urged that the bill under consideration was to provide for the fiscal year ending June 30, 1902, and that all expenditures for prior years belonged on the general deficiency bill.

After debate, the Chairman [1] held:

The Chair finds that all the precedents offered seem to relate to the Indian appropriation bill, and the rules make a distinction between the jurisdiction of the two committees. The Indian Affairs Committee only have control of the general appropriation bill for the Indian Service, and the deficiencies are given to the Committee on Appropriations. Now, none of the precedents relate to any bill reported from the Committee on Appropriations, and no reason is given in any decision, so far as the Chair is able to find—and there are two or three pages of them—that would exclude the Committee on Appropriations from reporting any appropriations for a deficiency in a general appropriation bill. The Chair, therefore, overrules the point of order.[2]

3565. The payment of one-half of District of Columbia expenses out of District revenues is in order on appropriation bills other than the District bill.—On February 17, 1900,[3] the legislative, etc., appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

Of the foregoing amounts appropriated under public buildings and grounds the sum of $27,130 shall be paid out of the revenues of the District of Columbia.

Mr. Sidney E. Mudd, of Maryland, made the point of order that this involved a change of law.

After debate, the Chairman [4] held:

As the Chair understands it, the point of order raised by the gentleman from Maryland [Mr. Mudd] is that the provision to exclude which the point of order is invoked is a change of existing law. * * * Clearly this provision is for a work now in progress. The gentleman from Maryland does not contend, as the Chair understands, that it is not so. The parks, according to the understanding of the Chair, are not on a parity with the Capitol grounds, but are rather similar to the streets of the city. The organic act of 1878 clearly intended, and in section 5, rather more clearly than in section 2, states that Congress should charge one-half of all public expenses in the District to the District of Columbia. Section 5 of the act expressly names "streets and sewers and any other work." So that the Chair thinks it was clearly the intention of Congress by that organic act to provide that Congress should charge the District of Columbia with one-half of all public expenses in the District. And this, it seems to the Chair, is such an expenditure as Congress intended by the act of 1878 should be borne one-half by the District of Columbia. The Chair, therefore, overrules the point of order.

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

[2] On January 30, 1819, the House adopted a rule that appropriations for carrying treaties into effect should not be included in a bill carrying appropriations for other objects. (Second session Fifteenth Congress, Journal, pp. 219, 221; Annals, pp. 872, 911.) This has long since ceased to be a rule of the House.

[3] First session Fifty-sixth Congress, Record, pp. 1803–1896.

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

3566. An appropriation bill covering several subjects may fairly be considered a general appropriation bill within the privilege conferred by the rule.—On January 18, 1907,[1] Mr. Lucius N. Littauer, of New York, from the Committee on Appropriations, reported a bill (H. R. 24541) making appropriations to supply additional urgent deficiencies in the appropriations for the fiscal year ending June 30, 1907, and for other purposes; which was read a first and second time, referred to the Committee of the Whole House on the state of the Union, and, with the accompanying reports, was ordered to be printed.

Mr. James R. Mann, of Illinois, rising to a parliamentary inquiry, asked whether it would be in order for the gentleman from New York to immediately move to go into Committee of the Whole House on the state of the Union for the consideration of this bill.

The Speaker[2] said:

Upon examination the Chair finds that the bill covers several items, and can fairly be called, and is, in fact, a general deficiency bill.

3567. On April 5, 1900,[3] Mr. Joseph G. Cannon, of Illinois, from the Committee on Appropriations, presented as privileged—

A bill making appropriations to supply additional urgent deficiencies in the appropriations for the fiscal year ending June 30, 1900, and for other purposes.

This bill, which carried a total of $405,000, provided for fees of jurors, witnesses, etc., of United States courts, and other expenses of the Department of Justice.

3568. On March 8, 1900,[4] Mr. Joseph G. Cannon, of Illinois, from the Committee on Appropriations, reported the bill (H. R. 9279) making appropriations to supply additional urgent deficiencies in the appropriations for the fiscal year ending June 30, 1900, and for prior years, and for other purposes.

This bill was reported as privileged without question.

3569. An urgent deficiency bill, appropriating generally for the various Departments and Services of the Government, was held to be a general appropriation bill within the meaning of Rule XXI.—On January 17, 1900,[5] the Committee of the Whole House on the state of the Union was considering the bill (H. R. 6237) "making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30, 1900, and for prior years, and for other purposes."

During the reading of the bill Mr. William S. Cowherd, of Missouri, offered this amendment:

Add, after the word "dollars, in line 6, page 4, the following: "Also, to enable the Secretary of the Treasury to provide the new post-office building in Kansas City, Mo., with elevators, to complete that building, $35,000."

Thereupon Mr. Joseph G. Cannon, of Illinois, made the point of order that the amendment was not in order on a general appropriation bill, since it proposed an

[1] Second session Fifty-ninth Congress, Record, pp. 1347, 1348.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] First session Fifty-sixth Congress, Record, p. 3799.

[4] First session Fifty-sixth Congress, Record, p. 2664.

[5] First session Fifty-sixth Congress, Record, p. 921.

appropriation unauthorized by law, the limit of cost for the building having been reached by appropriations already made.

Mr. Cowherd contended that the bill under consideration was not a general appropriation bill, and therefore that the amendment did not fall within the provision of Rule XXI,[1] section 2.

After debate the Chairman[2] held:

The gentleman from Missouri offers an amendment to the pending paragraph, to which the gentleman from Illinois makes the point of order that it is not in order because of the provisions of Rule XXI, section 2, which reads:

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

In the opinion of the Chair, following the precedents, the point of order must be sustained if the pending bill is a general appropriation bill. The gentleman from Missouri, however, urges that the pending bill is not a general appropriation bill, and therefore that section 2 of Rule XXI does not apply; and in support of his position he cites the introduction into the House on two previous occasions of deficiency appropriation bills that were admitted, according to the method then pursued, not to be general appropriation bills. In each of those cases, however, it will be observed that the subject-matter of the bill could have been covered in a single paragraph. * * * There was no pretense that the bills contained subject-matter relating to the Departments of the Government or a majority of the Departments of the Government. There is a vast distinction between the bills to which the gentleman refers and the bill before the House. This bill carries the sum of $58,000,000. It deals with the Executive Department, the War Department, the Navy Department, the District of Columbia, and various other subjects. It is manifestly on its face a general bill and, in the opinion of the Chair, must be so considered.

It is urged that the Committee on Appropriations can not present more than one general appropriation bill under any particular heading. There is nothing, so far as the judgment of the Chair goes, to prevent the Committee on Appropriations from dividing their general appropriation bills in case of necessity for such action on their part. The reason for the adoption of Rule XXI, section 2, was to prevent general legislation upon appropriation bills, and there is no reason why Rule XXI should be applicable to any general appropriation bill that does not apply with equal force to the one that is now before the House.

Without undertaking to put the decision at all upon this proposition, the Chair suggests that it may be a question whether or not the point made by the gentleman from Missouri can now be entertained. This bill was introduced into the House as a general appropriation bill. The right to so introduce it was recognized as a privileged right; it was submitted to the Committee of the Whole as a general appropriation bill. No Member rose in his place, either when the bill was presented or when it was committed to the Committee of the Whole House, to object that it was not a general appropriation bill, and it may very well be held that it is now too late to raise that question.

The House went into Committee of the Whole to consider it under the rules, and, without placing the decision upon that ground at all, the Chair sustains the point of order.

3570. On March 17, 1884,[3] a deficiency bill, appropriating for several departments of the Government, was reported from the Committee on Appropriations. A question being raised as to whether or not the bill was a general appropriation bill, the Speaker[4] said:

A special deficiency bill is not a general appropriation bill, because it is a bill which may or may not be presented to the House, according to the necessities of the Government. The general appropriation bills are bills which are required to be passed each year for the support of the Government.

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[1] See section 3578 of this work.

[2] John Dalzell, of Pennsylvania, Chairman.

[3] First session Forty-eighth Congress, Record, p. 1998.

[4] John G. Carlisle, of Kentucky, Speaker.

3571. No appropriation for the support of armies shall be for a longer term than two years.—Article I, section 8, of the Constitution provides:

The Congress shall have power * * * to raise and support armies, but no appropriation of money to that use shall be for a longer term than two years.

3572. Interpretation of the constitutional provision limiting the duration of appropriations for the support of armies.—On January 2, 1904,[1] the Solicitor-General of the United States, Henry M. Hoyt, rendered to the Secretary of War an opinion, which was approved by the Attorney-General, P. C. Knox, as to the construction of Article I, section 8, clause 12 of the Constitution, and the relation thereto of a proposed contract to pay a royalty in the use of certain gun carriages. After referring to the acts of Congress, the opinion proceeds:

These acts make the sums therein appropriated "to be available until expended;" and here arises the real inquiry, namely:

Whether, inasmuch as a judicious and proper use, for the purposes intended, of the moneys thus appropriated for military purposes, might, and in some cases probably would, extend over a period of more than two years, these appropriations are in conflict with Article I, section 8, clause 12 of the Constitution, which provides that Congress shall have power "to raise and support armies, but no appropriation of money to that use shall be for a longer term than two years."

The words "to that use" refer to the raising and supporting armies, so that the clause is as if it had read "no appropriation of money to raise and support armies shall be for more than two years." The question is, therefore, whether the appropriations here considered "for mountain guns, with their carriages, packing outfits, accessories and ammunition," are appropriations to raise and support armies. To raise and support an army is one thing. To render it effective, by equipping it with guns, ammunition, and other means for attack and defense, is another; and the word "equip" was, in military parlance, so common and well known as to preclude the idea that the framers of the Constitution intended the words "raise and support" as including, or as the equivalent of, "raise, support, arm, or equip," and thus to limit appropriations for forts, fortifications, heavy ordnance, arms, ammunition, and other means for the public defense to such as must be expended within two years.

Furthermore, it is not necessary to extend the meaning of the words "to raise and support" beyond their ordinary signification in order to include the power to arm and equip armies when they are raised and supported. That power follows as of course from the power to declare war; to raise and support armies; to provide forts, magazines, and arsenals; and to levy and collect taxes to provide for the common defense.

That the inhibition was not intended to go beyond the ordinary meaning of the term "raise and support," nor to forbid Congress, in time of peace, to prepare for war by erecting and arming forts and fortifications, providing arsenals, heavy artillery, arms, ammunition, and other means for the common defense and public safety, even though this should require appropriations for more than two years, is manifest: First, from the fact that, had a matter of such vast importance been actually intended, it would have been expressed with the clearness and precision which characterizes the whole of the Constitution, and would not have been left to what is, at best, a very doubtful inference from an ambiguous expression; and, second, it is manifest from the broad, unlimited powers conferred upon Congress in other parts of that instrument.

Thus the power to declare war is also the power to prepare for, maintain, and carry on war, offensive and defensive; of constructing and arming forts and fortifications, providing heavy artillery, arms, ammunition, and all other mean of warfare. This may and often does require appropriations for more than two years. The power to do these things was not intended to be taken away or restricted by the inhibition of appropriations to raise and support armies. The two purposes were different. The one was to raise and support armies, and to guard against excess in this the power was limited; the other was to arm, equip, and render effective such armies as we might have within the previous limitation, and to provide for the common defense. And, as to this latter purpose, no restriction is imposed.

[1] Vol. 25, Opinions of the Attorneys-General, p. 105.

Clause 17, section 8, Article I, which gives to the Government exclusive jurisdiction over all places purchased by the consent of a State, "for the erection of forts, magazines, arsenals, dockyards, and other needful buildings," confers upon Congress an unlimited power to procure sites for, erect, arm and supply, at will, these forts, magazines, arsenals, and other needful buildings for military purposes; and the fact that, in order to do these things, appropriations for more than two years would be required, in no wise detracts from or restricts the exercise of this power.

The constitutional provision that "no money shall be drawn from the Treasury, but in consequence of appropriations" equally forbids the making of contracts or promises for the payment of money for which no appropriation has been made; so that, if appropriations "to raise and support armies" embraced appropriations for forts, magazines, arsenals, cannon, arms, etc., Congress would be without power to contract for the completion or supply of any of these except such as could be completed or supplied within two years after the appropriation therefor.

The wide and unlimited power to levy and collect taxes, etc., to "provide for the common defense and general welfare" fully authorizes Congress to provide forts, magazines, arsenals, guns, ammunition, and military stores and supplies, without reference to whether or not the appropriations therefor extend over more than two years; and, in reading this and the other clauses referred to, it is impossible to suppose that the powers thus conferred without condition or restriction were, in fact, intended to be limited and qualified by the clause here considered.

I have no hesitation in reaching the conclusion that the appropriations forbidden by Article I, section 8, clause 12 of the Constitution are those only which are to raise and support armies in the strict sense of the word "support," and that the inhibition of that clause does not extend to appropriations for the various means which an army may use in military operations, or which are deemed necessary for the common defense, or which may be provided as a measure of precaution irrespective of the existence or magnitude of any present army.

And, answering your question more specifically, I am of opinion that the provisions referred to in the appropriation acts cited are not in conflict with clause 12, section 8, Article I of the Constitution.

3573. Executive communications are addressed to the Speaker and are by him referred.

The rule and the law governing the making up, transmittal, and reference of estimates for appropriations. (Footnote.)

Form and history of Rule XLII.

Rule XLII provides:

Estimates[1] of appropriations, and all other communications from the Executive Departments, intended for the consideration of any committees of the House, shall be addressed to the Speaker and by him referred, as provided by clause 2 of Rule XXIV.[2]

This rule dates from March 15, 1867, when it was adopted with the object of giving to the House information which had hitherto been sent only to the Committee on Appropriations.[3] It was old rule No. 159 before the revision of 1880. In the

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[1] The Statutes of the United States provide:

"All estimates of appropriations and estimates of deficiencies in appropriations intended for the consideration and seeking the action of any of the committees of Congress shall be transmitted to Congress through the Secretary of the Treasury, and in no other manner; and the said Secretary shall first cause the same to be properly classified, compiled, indexed, and printed, under the supervision of the chief of the division of warrants, estimates, and appropriations of his Department." (Session Laws first session Forty-eighth Congress, p. 254, act of July 7, 1884.) All officers making estimates are to furnish the same to the Secretary of the Treasury by October 15 of each year. (31 Stat L., p. 1009.) Estimates of expenses of the Government are to be prepared and submitted according to the order and arrangement of the appropriation acts of the year preceding. (34 Stat. L., p. 448.)

[2] See section 3089.

[3] First session Fortieth Congress, Globe, p. 120; Journal, p. 46.

revision of 1890 it was modified so that the reference of the Communications should be made under the rule instead of by the House.[1]

3574. The annual estimates of the Secretary of the Treasury for the support of the Government are printed in advance of the assembling of Congress.—On January 16, 1850,[2] the letter of the Secretary of the Treasury, transmitting the estimates for the service of the Government, was referred to the Ways and Means Committee. The index of the Journal contains the following entry:

Estimates not laid before the House by Speaker, but informally laid on Members' tables the first day of session, referred to the Committee of Ways and Means.[3]

3575. On December 18, 1847,[4] the House

Ordered, That the estimates of appropriations, transmitted to the House by the Secretary of the Treasury on the 6th instant, be referred to the Committee of Ways and Means.

The index of the Journal[5] has this entry:

This document was printed in the recess by order of the last House and was not, therefore, laid before the House in the usual way, and does not appear in the Journal at the time it was furnished to Members.

There is no mention of the receipt of the document in the Journal of the 6th.

These estimates, called the "Book of Estimates," are now printed in advance of the assembling of Congress. They are technically in the form of a letter to the Speaker, but are not actually delivered to him, and are not always introduced and referred in the House, although such procedure is technically required to give jurisdiction to the various committees reporting appropriation bills.[6]

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[1] Communications from the heads of the Departments and from other officers whose duty it is to make reports to Congress or to the House are addressed to the Speaker, who causes a brief statement of their contents to be indorsed thereon. Immediately after the approval of the Journal, these communications are referred under the rule to appropriate committees.

[2] First session Thirty-first Congress, Journal, pp. 326, 1641.

[3] This committee reported the appropriation bills then.

[4] First session Thirtieth Congress, Journal, p. 108.

[5] Page 1379.

[6] For the provisions of law as to the manner of communicating estimates, attention is called to the Revised Statutes, second edition, Title 41, p. 720, sections 3660 to 3671; to 18 Stat., chapter 129, page 370, section 3, Act of March 3, 1875, and to section 2, deficiency act of July 7, 1884 (23 Stat., p. 254). In estimating for new objects, it is desirable that the title of the appropriation be put in as few words as possible. The estimate of the amount required for the service of a Department should be the exact amount the head of the Department expects to be called upon to expend during the fiscal year, as, by the provisions of the fifth section of the act of July 12, 1870, Revised Statutes, second edition, page 729, section 3690, unexpended balances are not applicable to the service of the succeeding year.

The estimates should be transmitted to the Treasury Department in accordance with the following paragraph from the act of March 3, 1875 (18 Stat., chap. 129, p. 370): "Section. 3. That it shall be the duty of the heads of the several Executive Departments, and of other officers authorized or required to make estimates, to furnish to the Secretary of the Treasury, on or before the first day of October of each year, their annual estimates for the public service."

"And hereafter all estimates of appropriations and estimates of deficiencies in appropriations intended for the consideration and seeking the action of any of the committees of Congress shall be transmitted to Congress through the Secretary of the Treasury, and in no other manner; * * * ."—Deficiency act of July 7, 1884, section 2 (23 Stat., p. 254).

3576. Estimates of expenses of the Government are to be prepared and submitted according to the order and arrangement of the appropriation acts of the year preceding.

A law directs the committees to draft the appropriation bills on the general order and arrangement of the acts of the preceding year.

Section 4 of the act approved June 22, 1906,[1] provides:

Hereafter the estimates for expenses of the Government, except those for sundry civil expenses, shall be prepared and submitted each year according to the order and arrangement of the appropriation acts for the year preceding. And any changes in such order and arrangement, and transfers of salaries from one office or bureau to another office or bureau, or the consolidation of offices or bureaus desired by the head of any Executive Department may be submitted by note in the estimates. The committees of Congress in reporting general appropriation bills shall, as far as may be practicable, follow the general order and arrangement of the respective appropriation acts for the year preceding.

Hereafter the heads of the several Executive Departments and all other officers authorized or required to make estimates for the public service shall include in their annual estimates furnished the Secretary of the Treasury for inclusion in the Book of Estimates all estimates of appropriations required for the service of the fiscal year for which they are prepared and submitted, amd special or additional estimates for that fiscal year shall only be submitted to carry out laws subsequently enacted, or when deemed imperatively necessary for the public service by the Department in which they shall originate, in which case such special or additional estimate shall be accompanied by a full statement of its imperative necessity and reasons for its omission in the annual estimates.

3577. The House once passed a resolution requesting the President to cause a reduction of the executive estimates to be made.—On December 15, 1873,[2] the House, on account of the financial embarrassment throughout the country, passed a resolution requesting the President to cause a revision of the estimates submitted in the annual Book of Estimates, in order to make a reduction in the totals.

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[1] Legislative act, first session Fifty-ninth Congress. (34 Stat. L., p. 448.)

[2] First session Forty-third Congress, Journal, p. 128; Record, pp. 211–214.

Chapter XCV.

AUTHORIZATION OF APPROPRIATIONS ON GENERAL APPROPRIATION BILLS.

1. **The "rider rule" and its history. Section 3578.**
2. **A law of a prior Congress as related to the rule. Section 3579.**
3. **Appropriations prohibited by law. Sections 3580–3586.**
4. **A treaty as authorization. Section 3587.**
5. **Mere appropriation not law of authorization. Sections 3588–3590.**
6. **Reappropriation of balances. Sections 3591–3594.**
7. **General decisions as to authorizations. Sections 3595–3618.**
8. **Appropriations for payment of claims. Sections 3619–3646.**
9. **As to investigations by Agricultural Department. Sections 3647–3653.**
10. **As to appropriations for pay of House employees. Sections 3654–3663.**
11. **Appropriations for salaries and offices. Sections 3664–3700.**

3578. A rule forbids in a general appropriation bill any appropriation not previously authorized by law, unless for continuation of works or objects in progress.

A rule forbids any legislative provision in a general appropriation bill.

The old form of rule which admitted on appropriation bills legislation intended to retrench expenditures.

Form and history of section 2 of Rule XXI.

Section 2 of Rule XXI makes provision against legislation in general appropriation bills, 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, unless in continuation of appropriations for such public works and objects as are already in progress; nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto.

The origin of this rule is found about the year 1835. On December 10[1] of that year the delays of the appropriation bills were discussed, from which it appears that an important cause of that delay was the practice of including in the bills matters of legislation. Mr. John Quincy Adams, of Massachusetts, suggested at this time the desirability of a plan that the bills should "be stripped of everything but the appropriations." The fortifications appropriation bill failed at the preceding

[1] First session Twenty-fourth Congress, Debates, pp. 1949–1957.

session[1] to become a law because the Senate would not agree to a provision for $3,000,000 to be disbursed by the President for certain extraordinary military and naval purposes. On January 5, 1836,[2] the Committee on Rules recommended a rule in this language:

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

The House, however, did not adopt the rule at that time, and on February 25, 1837,[3] Mr. John Bell, of Tennessee, secured the addition to the fortifications bill of a "rider" to provide for the distribution of the surplus in the National Treasury. This caused the loss of the bill, the Senate adhering to its opposition. Apparently aroused by this result, in the next Congress, on September 14, 1837,[4] the House agreed to the rule which the Committee on Rules[2] had proposed in 1836.

In the year following the adoption of the rule, while the civil and diplomatic appropriation bill[5] was under consideration, certain important legislation was attempted by an amendment in relation to the salaries of customs officials, and which also included a provision for refurnishing the President's house.

The rule being invoked, the Chairman of the Committee of the Whole ruled the amendment out of order.[6] On the succeeding day, March 8, 1838, Mr. George N. Briggs, of Massachusetts, after referring to the difficulty which arose on the preceding day, proposed the following addition to the rule, which was agreed to a few days later, on March 13, 1838:[7]

Unless in continuation of appropriations for such public works and objects as are already in progress and for the contingencies for carrying on the several departments of the Government.

With this amendment, the rule remained in operation for thirty-eight years, until 1876, when, at the suggestion of Mr. William S. Holman, of Indiana, the House adopted the following rule:[8]

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

The debate on the adoption of this form of rule shows that the old rule had been construed to permit increases of salaries, but not decreases. Although jealousy of increased power which might come to the Committee on Appropriations as a result of the rule was manifested, it was agreed to by the House, Messrs. Samuel

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[1] Second session Twenty-third Congress, Journal, p. 518; Globe, p. 332.

[2] First session Twenty-fourth Congress, House Report No. 83. The committee making this report was composed of able Members: Messrs. Abijah Mann, of New York; John Quincy Adams, of Massachusetts; Francis Thomas, of Maryland; Lewis Williams, of North Carolina; Churchill C. Cambreleng, of New York; Edward Everett, of Massachusetts; Gorham Parks, of Maine; James Parker, of New Jersey, and George Chambers, of Pennsylvania.

[3] Second session Twenty-fourth Congress, Journal, p. 605; Globe, p. 219.

[4] First session Twenty-fifth Congress, Globe, p. 31.

[5] These services are now provided for in two bills.

[6] Second session Twenty-fifth Congress, Globe, p. 224.

[7] Second session Twenty-fifth Congress, Journal, p. 607.

[8] First session Forty-fourth Congress, Record, p. 445.

J. Randall, of Pennsylvania, and James A. Garfield, of Ohio, asking for it, with the especial object of enabling the Appropriations Committee to report in their bills reductions of salaries.

When the rules were revised, in 1880, the Committee on Rules, not being agreed as to the proper changes, reported the form of 1876.[1] But when the subject came before the House, after long and learned debate, the following form,[2] suggested by Mr. William R. Morrison, of Illinois, was agreed to:

No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress. Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as, being germane to the subject-matter of the bill, shall retrench expenditures by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill, *Provided,* That it shall be in order further to amend such bill upon the report of the committee having jurisdiction of the matter of such amendment, which amendment, being germane to the subject-matter of the bill, shall retrench expenditure.

The rule adopted in 1880 remained in use five years, until the adoption of the rules in the first session of the Forty-ninth Congress. The admission of a certain class of riders[3] had caused some opposition to the old rule, and the Committee on Rules recommended the following:

No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress, and for the contingencies for carrying on the several departments of the Government.

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[1] Second session Forty-sixth Congress, Congressional Record, p. 201.

[2] Congressional Record, second session Forty-sixth Congress, pp. 851–862, 954–958.

[3] Thus, on February 5, 1879 (third session Forty-fifth Congress, Record, p. 1038), an extensive scheme of legislation for the reorganization of the Army was admitted as an amendment to the army appropriation bill on the discovery by the Chairman of the Committee of the Whole that the general effect of it would be to reduce expenditures. Again, on February 19, 1879 (third session Forty-fifth Congress, Record, pp. 1568, 1597), an amendment to repeal a portion of the Federal election laws was admitted upon discovery by the Chairman of the Committee of the Whole that there would be a retrenchment of expenditures. (Also see first session Forty-sixth Congress, Record, p. 114.) The general subject of riders was exhaustively discussed in connection with this and similar amendments on appropriation bills in the Forty-fifth and Forty-sixth Congresses, when appropriation bills were vetoed because of these riders. (For further discussion, see Record, first session Forty-sixth Congress, p. 336.) On May 18, 1880 (second session Forty-sixth Congress, Record, p. 3488), an amendment providing for free seed distribution was admitted to the agricultural appropriation bill without a question of order, the wording being so arranged as to reduce the total appropriation from $80,000 to $79,000. The extent to which legislation was placed on appropriation bills at this time was illustrated on July 27, 1882 (first session Forty-seventh Congress, Record, pp. 6551–6569), the naval appropriation bill being before the Senate, when Mr. John Sherman, of Ohio, deplored the change which the House had made in its rule to prevent legislation on appropriation bills, and said of the pending bill: "Here is a bill 40 pages long passed at the heel of the session. * * * It is sent to us * * *. I will say that three-fourths of this bill either contains matter of a mere recitative character or is general legislation affecting the whole organization of the Navy from beginning to end."

Later on the same day Mr. J. Donald Cameron, of Pennsylvania, moved that the bill be recommitted to the Committee on Appropriations with direction to strike out all the general legislation changing existing laws. This motion was disagreed to, yeas 29, nays 34.

This form the House, on motion of Mr. George E. Adams, of Illinois, modified by striking out the words "and for the contingencies for carrying on the several departments of the Government" and inserting:

Nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto.[1]

Thus the rule was adopted[2] in its present form, which it has retained since, with the exception of the four years of the Fifty-second and Fifty-third Congresses, when there was a return to the form adopted in 1880, with a slight modification relating to reports of commissions in the proviso.

3579. A law passed by a prior Congress may not authorize legislation-like the specifying of contracts—on a general appropriation bill as against a rule of the existing House forbidding such legislation.—On February 20, 1907,[3] the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the clerk read:

For the transmission of mail by pneumatic tubes or other similar devices, $1,250,000; and the Postmaster-General is hereby authorized to enter into contracts not exceeding, in the aggregate, $1,388,759, under the provisions of the law, for a period not exceeding ten years: *Provided,* That said service shall not be extended in any cities other than those in which the service is now under contract under authority of Congress, except the borough of Brooklyn, of the city of New York, and the cities of Baltimore, Md.; Cincinnati, Ohio; Kansas City, Mo.; Pittsburg, Pa., and San Francisco, Cal.

Mr. Swager Sherley, of Kentucky, made the point of order that the paragraph proposed legislation.

Mr. Jesse Overstreet, of Indiana, argued that the making of the contracts was authorized by the act of June 13, 1903, saying:

The provision for the transmission of mail by pneumatic service and the general method of advertisement and inspection before the contracts are made are recited. Then follows this:

"That the Postmaster-General shall not, prior to June 30, 1904, enter into contracts under the provisions of this act involving an annual expenditure in the aggregate in excess of $800,000, and thereafter—"

Now, that language undoubtedly fixes it as permanent law—"and thereafter when such contracts shall be made as may from time to time be provided for in the annual appropriation act for the postal service, and all provisions of law contrary to this herein contained are repealed."

Under that act contracts were authorized and entered into for the establishment of pneumatic-tube service in the cities of Boston, Philadelphia, Chicago, St. Louis, and New York.

After further debate, the Chairman[4] held:

The Chair finds that this paragraph contains this language:

"And the Postmaster-General is hereby authorized to enter into contracts, etc., for a period not exceeding ten years—"

Extending away beyond, of course, the time for which the appropriations in this bill are to be used. The authority for that is said to be found in permanent legislation contained in the provisions of an appropriation bill approved April, 1902, which, fixing June 30, 1904, as the date for certain purposes, says:

"And thereafter only such contracts shall be made as may from time to time be provided for in the annual appropriation act for the postal service."

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[1] As the rule was thus perfected it was almost exactly in the words of a draft proposed on February 19, 1880 (second session Forty-sixth Congress, Record, p. 1020), during the revision of the rules, the proposer being Mr. George M. Robeson, of New Jersey.

[2] First session Forty-ninth Congress, Record, p. 333.

[3] Second session Fifty-ninth Congress, Record, pp. 3463, 3464.

[4] Marlin E. Olmsted, of Pennsylvania, Chairman.

Now, the best that could be said for that would be that contracts might be appropriated for from year to year in successive appropriation bills. It is doubtful if it contemplated ten-year contracts. But no matter what its construction, the present occupant of the chair does not think that that provision, although a permanent provision in a former appropriation bill, can be held to change the rule of this House that in a general appropriation bill there can be made no change in existing law. The Constitution itself expressly provides that "each House may determine the rules of its proceedings." This present House has adopted a positive rule that there shall not be in order in any general appropriation bill or in any amendment thereto "any provision changing existing law." That rule is not controlled by any act of any preceding Congress. Had the act of 1902 itself authorized ten-year contracts to be made such provision might support a subsequent appropriation, but it was not competent for the act of 1902 to authorize or direct this House in 1907 to provide for contracts in an appropriation bill in a way to change existing law. This is clearly an authorization to the Postmaster-General, which he does not now possess under existing law, to enter into contracts for a period of ten years. The Chair therefore sustains the point of order.

3580. It is not in order to propose on an appropriation bill an expenditure prohibited by law.—On February 7, 1901,[1] the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, the following amendment, offered by Mr. James R. Mann, of Illinois, being read:

Insert "by transportation of mail by pneumatic tube or other similar device by purchase or otherwise in St. Louis, Mo., and Chicago, Ill., two hundred and sixty-five thousand dollars."

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

After debate, and after the Chairman[2] had read section 2 of Rule XXI,[3] he held:

The Chair finds in the act of June 2, 1900, making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1901, the following language:

"For transportation of mail by pneumatic tube or other similar a devices, by purchase or otherwise, $225,000: *Provided,* That no part of this appropriation shall be used in extending such pneumatic service beyond the service for which contracts already are entered into, and no additional contracts shall be made unless hereafter authorized by law."

Now, under the law as it is to-day, the service as proposed by the amendment is not authorized. But in addition to that, under the second clause of the rule just read, the amendment is absolutely prohibited; so that it seems perfectly plain to the Chair that the amendment comes within the prohibitory clause of Rule XXI, and therefore the Chair sustains the point of order.

3581. An appropriation for the improvement of the Yosemite National Park was held not in order on a general appropriation bill, existing law declaring the expenditure not authorized.—On May 26, 1892,[4] the House was in Committee of the Whole House on the state of the Union, considering the sundry civil appropriation bill, Mr. Anthony Caminetti, of California, having offered this amendment:

For the improvement and protection of the Yosemite National Park, $10,000, the same to be expended by and under the direction of the Secretary of War.

Mr. William S. Holman, of Indiana, made the point of order that the object was without authorization of law.

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[1] Second session Fifty-sixth Congress, Record, p. 2097.

[2] Henry S. Boutell, of Illinois, Chairman.

[3] See section 3578 of this chapter.

[4] First session Fifty-second Congress, Record, pp. 4726, 4727.

The Chairman[1] ruled:

The amendment offered by the gentleman from California, Mr. Caminetti, is to appropriate $10,000 for the improvement and protection of the Yosemite National Park. The law which created that park provided for it in various ways, appropriated some money, and then closed with this clause:

"Nothing in this act shall authorize rules or contracts touching the protection and improvement of said reservation beyond the sums that may be received by the Secretary of the Interior under the foregoing provisions, or authorize any charge against the Treasury of the United States."

The gentleman proposes to appropriate a sum of money for the improvement of the park in addition to this, and therefore the Chair considers that this amendment is not only without law, but against law. * * * The Chair sustains the point of order.

3582. The policy of making no more appropriations for sectarian schools having been declared by law, an amendment authorizing appropriations for contract schools was held to involve a change of law.—On February 2, 1900,[2] while the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union, Mr. John J. Fitzgerald, of New York, offered this amendment:

After the word "Alaska," in line 14, page 45, insert the following:

"Provided, That the Secretary of the Interior may make contracts with present contract schools for the education of Indian pupils during the fiscal year ending June 30, 1901, but shall only make such contracts at places where the Government has not provided school facilities for all the children of school age residing thereat, and to an extent not exceeding the number of children in attendance at certain contract schools at the close of the fiscal year ending June 30, 1900."

Mr. John S. Little, of Arkansas, made the point of order against the amendment.

On February 3, after debate, the Chairman[3] held as follows:

The Chair is ready to rule. The gentleman from New York offers an amendment to this section which authorizes the Secretary of the Interior to expend the appropriation under contracts with the present contract schools, with certain limitations upon his power not necessary to state.

The gentleman from Arkansas makes the point of order against that amendment under Rule XXI, and, if the Chair understands him correctly, under the last clause of that rule, which is as follows:

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

* * * The Chair regrets that the gentleman from New York did not call his attention to the authority before, but will consider the effect of that authority in the decision which he is about to give. The question presented is not one of policy, but one of parliamentary law. The legislation with reference to the particular schools began in the Fifty-fourth Congress. The Chair thinks that it is agreed that the contract schools are sectarian schools. In the Fifty-fourth Congress, first session, the Indian appropriation act contains this language:

"It is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school."

The act then proceeds to make an appropriation for contract schools in an amount not exceeding 50 per cent of the amount used for the preceding fiscal year. The next Indian appropriation act, in the second session of the Fifty-fourth Congress, contains the same language with regard to the policy of the Government, and makes an appropriation for the contract schools in an amount not exceeding 40 per cent of the amount used in the fiscal year 1895. Again, the appropriation act passed at the first session of the Fifty-fifth Congress contains an appropriation for contract schools in an amount not to exceed 30 per cent of the amount so used in the fiscal year 1895. The appropriation act of the third session of the

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[1] Rufus E. Lester, of Georgia, Chairman.

[2] First session Fifty-sixth Congress, Record, pp. 1463, 1472.

[3] William H. Moody, of Massachusetts, Chairman.

Fifty-fifth Congress makes an appropriation for contract schools in an amount not exceeding 15 per cent of the amount so used in the fiscal year 1899, and concludes with this language:

"This being the final appropriation for sectarian schools."

What does that language mean, taken in connection with the declaration of policy in the first session of the Fifty-fourth Congress and the action of successive Congresses in reducing the amount of appropriation for that purpose? It seems very clear to the Chair—and he has given most careful attention to this question—that, in effect, it is a law forbidding appropriations for that purpose. In effect it is as if Congress had passed a separate act in substantially these terms:

"Be it enacted, etc., That hereafter there shall be no appropriations for sectarian schools for the Indians."

The language which Congress has used must be given some meaning. It is not to be supposed that it was a mere stump speech injected into the body of the statute. What meaning can the language which has been recited have except a meaning which will forbid such appropriations in the future? The Chair thinks it has that meaning.

Now, some gentleman may say, "One Congress can not bind another Congress." That is true. A Congress can not even bind itself. A Congress may enact a law to-day and repeal it to-morrow. But that law can not be repealed upon a general appropriation bill, under the rules of this House. It is clearly within the power of the House, upon the report of the Committee on Indian Affairs, in a suitable legislative bill to repeal the provision of law which is now upon the statute books; but it is not within the power of that committee, under our rules, to report in a general appropriation bill a provision repealing that law; nor is it in the power of the House to repeal the law by an amendment to a general appropriation bill. No legislation, whether it is good or bad legislation, is in order on such a bill.

Therefore, it seems clear, if the reasoning of the Chair is correct on this point, that the amendment offered by the gentleman from New York is in effect a repeal for one year—and that is a repeal pro tanto—of a provision of existing law.

The gentleman from New York cites to the Chair a decision in regard to pneumatic-tube service. The Chair recalls very well that in the last Post-Office appropriation bill there was enacted a provision in effect similar to that contained in the Indian appropriation bill—that hereafter there shall be no appropriation or no contract for pneumatic-tube service. The Chair remembers very well that the gentleman from California [Mr. Loud] at that time pointed out to the House that if that provision were made a law, the House thereafter, under its rules, could make no such appropriation, while the Senate, under its rules, could do so—conceding, apparently, that a point of order would lie against an appropriation in the House for the further continuance of the pneumatic-tube service. That was the understanding of the Chair, as an individual Member of the House, at that time; and it is his understanding now. The question raised here is not the question raised in the precedent cited by the gentleman from New York, but would be the question raised if upon the coming Post-Office appropriation bill an amendment were offered, against the provisions of law, to appropriate further for pneumatic-tube service.

The Chair is sustained by an authority created in the last session of the last Congress. The Chair in his own mind had come to the conclusion which he has announced before learning of this precedent. It is well, perhaps, to state it carefully. The law existing at the time of this precedent was as follows:

"From and after the 30th of June, 1898, no money appropriated for charitable purposes in the District of Columbia shall be paid to any church or religious denomination or to any institution or society which is under sectarian or ecclesiastical control."

That, in effect, although not in language, is the provision that is now law with regard to contract schools. The gentleman from Iowa [Mr. Henderson] on the 13th of December, 1898, offered an amendment to the District of Columbia appropriation bill providing for an appropriation for the St. Joseph Asylum. The gentleman from Vermont [Mr. Grout] made the point of order under Rule XXI. The gentleman from Pennsylvania [Mr. Dalzell) was in the chair, and after some discussion sustained the point of order.

The Chair thinks that this precedent is exactly in point. It confirms his views which were formed by reading the provisions of the successive Indian appropriation bills. The Chair thinks that the amendment of the gentleman from New York would change existing law, and is therefore obnoxious to the point of order made by the gentleman from Arkansas, which is accordingly sustained.

3583. The law having fixed the limit of cost of buildings at army posts, an appropriation in excess of the limit is a change of law.—On January 25, 1904,[1] the Army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the following paragraph was read:

Construction and repair of hospitals: For construction and repair of hospitals at military posts already established and occupied, including the extra-duty pay of enlisted men employed on the same, and including also all expenditures for construction and repairs required by the Army and Navy Hospital at Hot Springs, Ark., except quarters for the officers, and for the construction and repair of general hospitals and expenses incident thereto, and for additions needed to meet the requirements of increased garrisons, $475,000: *Provided,* That out of the above appropriation not to exceed $50,000 may be used to construct a hospital at any one post.

Mr. James A. Hemenway, of Indiana, made the point of order that this was in violation of section 1136 of the Revised Statutes, which prohibited the erection of such buildings at a cost of over $20,000 without specific authorization of law.

After debate the Chairman[2] said:

The Chair finds that section 1136 of the Revised Statutes appears to limit the amount which may be appropriated for such a purpose, without previous special authority of Congress, to $20,000. The proviso against which the point of order is made authorizes the expenditure of $50,000 for the construction of a hospital. It seems to have that effect, although the language is somewhat indefinite. That seems to be the proper construction of it. The Chair is therefore of the opinion that the point of order is well taken and must be sustained.

3584. An appropriation for a public building in excess of the limit of cost fixed by law is not in order on an appropriation bill.—On March 31, 1904,[3] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Power house for public buildings: For the preparation, by the superintendent of the Library building and grounds, of preliminary plans and estimates of cost for the location, construction, and equipment of a power house with distributing mains for heat, steam, and electric power to the existing and projected Government buildings on the Mall and in the vicinity of the White House, said superintendent to report thereon in full to Congress at its next session, $5,000.

Mr. Dewitt C. Badger, of Ohio, proposed this amendment:

On page 143, between lines 22 and 23, insert: "For extension and completion of the Government building at Columbus, Ohio, $300,000."

Mr. James A. Hemenway, of Indiana, made the point of order that the object was not authorized by law.

After debate the Chairman[4] held:

The Chair would state that this amendment, if in order, must be sustained under clause 2 of Rule XXI—that is, as an expenditure "in continuation of appropriations for such public works and objects as are already in progress." There is a great variety of decisions on this subject. It has been held that an appropriation for "an enlargement of the lands and water rights of a fish-culture station" was in order as the continuation of a public work. So, also, provision for a bridge on a public road in the District of Columbia has been sustained. The same may be said of "the repair of a bridge built at

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[1] Second session Fifty-eighth Congress, Record, p. 1148.

[2] Marlin E. Olmsted, of Pennsylvania, Chairman.

[3] Second session Fifty-eighth Congress, Record, pp. 4063, 4064.

[4] Theodore E. Burton, of Ohio, Chairman.

Government expense," and the construction of "necessary fireproof outbuildings for the Bureau of Engraving and Printing."

On the other hand, in another decision—and it is very hard to reconcile this with the one just cited by the Chair—it has been held that "the erection of laboratory buildings for the Department of Agriculture" was not a continuation of a public work.

It seems, however, to be a well-established rule in reference to so-called "public buildings" that they are recommended by the Committee on Public Buildings and Grounds, and a bill is passed fixing a limit. No appropriation can be made in excess of that limit. The rule seems to be established that although an appropriation has been made for a site, an amendment providing for the construction of the building is out of order; also that an order for a survey does not give ground for an appropriation in an appropriation bill. Under these rulings, especially the one last mentioned, the Chair feels compelled to hold that the amendment is not in order.

There might, perhaps, have been another question raised—as to the germaneness of this proposition to the paragraph to which it was offered, but the question having been decided on other grounds, it is unnecessary to dwell upon that.

3585. The number of enlisted men in the Marine Corps being fixed, it was held not in order to provide for additional ones on an appropriation bill.—On February 20, 1905,[1] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

Pay of noncommissioned officers, musicians, and privates, as prescribed by law; and the number of enlisted men shall be exclusive of those undergoing imprisonment with sentence of dishonorable discharge from the service at expiration of such confinement, and for the expenses of clerks of the United States Marine Corps traveling under orders; including additional compensation for enlisted men of the Marine Corps regularly detailed as gun pointers, messmen, signalmen, or holding good-conduct medals, pins, or bars; and the following additional enlisted men, namely, 10 first sergeants, 67 sergeants, 142 corporals, 10 drummers, 10 trumpeters, and 1,000 privates, $1,550,628.

Mr. James S. Sherman, of New York, made a point of order:

Mr. Chairman, I raise the point of order against lines 9, 10, and 11, and the last three words of line 8. I think the language itself shows that it is new. It says:

"And the following additional enlisted men."

The attempt is made to provide for many hundred additional men not provided for by any other law than is here attempted to be enacted.

After debate, the Chairman[2] said:

The Chair thinks that the decision of the point of order depends entirely upon the existence or nonexistence of the law. * * * The Chair finds that the personnel act of March 3, 1899, does fix the number of enlisted men in the Marine Corps, and therefore the point of order is well taken.

3586. The simple increase of an appropriation over the amount carried for the same purpose in a former bill does not constitute a change of law.—On February 16, 1901,[3] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and Mr. Marlin E. Olmsted, of Pennsylvania, made a point of order that the appropriation of the former law was increased in this paragraph:

Propagation of food fishes: For maintenance, equipment, and operations of the fish-cultural stations of the Commission, the general propagation of food fishes and their distribution, including the movement, maintenance, and repairs of cars, purchase of equipment and apparatus, contingent expenses, and temporary labor, $175,000.

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[1] Third session Fifty-eighth Congress, Record, pp. 2927, 2928.

[2] John Dalzell, of Pennsylvania, Chairman.

[3] Second session Fifty-sixth Congress, Record, p. 2539.

The Chairman[1] held:

The Chair desires to say to the gentleman from Pennsylvania that unless he can cite to the Chair some law limiting the appropriation, the mere fact that it is a few thousand dollars over the amount of the appropriation bill of last year would not serve as a precedent to sustain his point, in the opinion of the Chair. If there is no law which the gentleman can cite to the Chair limiting the appropriation, the Chair will be constrained to overrule the point of order.

3587. A treaty having been ratified by one only of the contracting parties, it was held not to have become law to the extent of sanctioning an appropriation on an appropriation bill.—On February 16, 1899,[2] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and this paragraph had been reached:

For the purpose of carrying out the obligations of the treaty between the United States and Spain concluded at Paris on the 10th day of December, A. D. 1898, to become immediately available upon the exchange of the ratifications of said treaty, $20,000,000.

Mr. Charles K. Wheeler, of Kentucky, made the point of order that the appropriation was not authorized by existing law, since the treaty had not been ratified by both parties to it, as required by its terms, and therefore was not existing law.

After debate the Chairman[1] held:

The objection raised to the pending paragraph invokes that part of Rule XXI which provides that "no appropriation shall be reported in any general appropriation bill or be in order as an amendment thereto for any expenditure not previously authorized by law," etc. The question is as to whether there is any law that authorizes this proposed appropriation. Under the Constitution all treaties made under the authority of the United States shall be the supreme law of the land. A treaty is a compact or agreement between two sovereign, independent states. The treaty does not become binding and effective until it has been executed by both the contracting sovereign states.

The appropriation in the pending bill against which the point of order is made is to carry out and make effective the treaty of peace negotiated and executed by the commissioners on the part of the United States and those representing the Spanish Monarchy at Paris on the 10th day of December last. The question arises, then, whether this treaty has reached that stage of completion, or rather ratification, where it can be treated as the supreme law of the land. Article XVII of the treaty reads as follows:

"The present treaty shall be ratified by the President of the United States by and with the advice and consent of the Senate thereof and by Her Majesty the Queen Regent of Spain, and the ratification shall be exchanged at Washington within six months from the date hereof, or earlier if possible. * * *

"Done in duplicate at Paris the 10th day of December, A. D. 1898."

While it is true that the Senate of the United States has approved this treaty and it has been signed by the President, it has not as yet been ratified by Her Majesty the Queen Regent of Spain and there has been no exchange of ratifications at Washington, as provided for in the article of the treaty which the Chair has just read. That part of Article III of the treaty which contains the $20,000,000 clause reads as follows:

"The United States will pay to Spain the sum of $20,000,000 within three months after the exchange of the ratifications of the present treaty."

This clearly shows that the Government of the United States does not become liable for the payment of the $20,000,000 until the exchange of the ratifications of the treaty at Washington. At the present time, then, there is no existing legal liability for the payment of which it is proposed to make the twenty million appropriation. The treaty itself does not become the supreme law of the land until it is ratified by Spain, as provided in the treaty, and the ratifications of the two Governments are exchanged at Washington. Hence the proposed appropriation is "not previously authorized by law." So the Chair feels constrained to sustain the point of order.

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[1] Albert J. Hopkins, of Illinois, Chairman.

[2] Third session Fifty-fifth Congress, Record, pp. 1944, 1948, 1956, 1958, 1959.

Mr. John S. Williams, of Mississippi, having appealed, after debate, the decision of the Chair was sustained, yeas 149; nays 56.

Thereupon Mr. E. D. Crumpacker, of Indiana, offered this amendment:

That for the purpose of concluding peace with the Government of Spain there is hereby appropriated and made immediately available, out of any money in the Treasury not otherwise appropriated, the sum of $20,000,000, or so much thereof as may be necessary, to be expended by the President in his discretion.

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

The Chair is no more responsible for Rule XXI than any other member of the committee. The Chair is called upon to interpret the rule, and it is his duty to interpret it as he thinks is right. From the examination given of the amendment sent to the desk by the gentleman from Indiana [Mr. Crumpacker] and read by the Clerk the Chair thinks it is practically the same amendment that has been ruled out by the Chair and sustained by the committee. There is no existing law for the President of the United States to pay out $20,000,000 at his discretion, and the Chair will sustain the point of order.

Thereupon Mr. Page Morris, of Minnesota, offered this amendment:

For the purpose of carrying out the obligations of such treaty of peace as may be concluded between the United States and Spain, to become immediately available upon the exchange of the ratifications of said treaty, $20,000,000.

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

It does not appear to the Chair that the amendment offered by the gentleman from Minnesota [Mr. Morris] differs in principle from the amendment offered by the gentleman from Indiana [Mr. Crumpacker] or from the clause which was stricken from the bill on the point of order made by the gentleman from Kentucky. The Chair therefore sustains the point of order.

3588. An appropriation for an object in an annual appropriation bill makes law only for that year, and does not become "existing law" to justify a continuance of the appropriation.—On December 13, 1898,[1] the House was considering the District of Columbia appropriation bill in Committee of the Whole House on the state of the Union. Mr. David B. Henderson, of Iowa, offered an amendment providing an appropriation for St. Joseph's Asylum.

Mr. William W. Grout, of Vermont, made the point of order that the amendment would change existing law.

After debate, the Chairman[2] held:

The gentleman from Iowa proposes an amendment to the bill by adding an appropriation for the St. Joseph's Asylum. The point of order is made thereto that the proposed amendment will change existing law. The law, as the Chair understands it, is in these words;

"And it is hereby enacted that from and after the 30th of June, 1898, no money appropriated for charitable purposes in the District of Columbia shall be paid to any church or religious denomination, or to any institution or society, which is under sectarian or ecclesiastical control."

The Chair understands it to be conceded that St. Joseph's Asylum is under sectarian control and it comes, therefore, within the very language of the law: "An institution or society which is under sectarian or ecclesiastical control." Now, the reply made to that by the gentleman from Iowa is that there is a provision in last year's appropriation bill like his proposed amendment, but in the opinion of the Chair that does not make existing law. A question similar in principle was raised on the 17th of

[1] Third Session Fifty-fifth Congress, Record, pp. 163, 164.

[2] John Dalzell, of Pennsylvania, Chairman.

January, 1896, in the Fifty-fourth Congress, when the House was in Committee of the Whole House on the state of the Union, and the gentleman from Maine [Mr. Dingley] was in the chair. With respect to that question he said:

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

Under the circumstances, the Chair is obliged to sustain the point of order.

3589. On March 31, 1904,[1] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a question arose as to the existence of law authorizing appropriation for supplying meals and lodgings for jurors in United States cases.

Mr. James R. Mann, of Illinois, having risen to a parliamentary inquiry, the Chairman[2] said:

The Chair would state to the gentleman from Illinois that the ruling has been sustained in all cases, as the Chair understands it, that the mere insertion of a provision for a branch of the public service in an appropriation bill is effective only for that year, and unless in language showing that the intention is to change or establish a permanent law, it does not afford a precedent for any succeeding year. The Chair will read the paragraph in the Digest pertaining to that rule, which is on page 348:

"An appropriation for an object in an annual appropriation bill makes law only for that year, and does not become 'existing law' to justify a continuance of the appropriation."

3590. The mere appropriation for a salary does not thereby create an office, so as to justify appropriations in succeeding years.—On February 7, 1902,[3] the Committee of the Whole House on the state of the Union were considering the legislative appropriation bill, when the Clerk read the following paragraph:

For rural free-delivery service: Superintendent, $3,000; supervisor, $2,750; chief of board of examiners of rural carriers, $2,250; 3 clerks of class 4; 6 clerks of class 3; 25 clerks of class 2; 40 clerks of class 1; 50 clerks, at $1,000 each; 115 clerks, at $900 each; 3 messengers; 10 assistant messengers; 5 laborers; 1 female laborer, $540; 3 female laborers, at $500 each; two charwomen; in all, $275,040.

Mr. Thetus W. Sims, of Tennessee, made the point of order that these offices were not authorized by law.

Mr. James A. Hemenway, of Indiana, quoted section 169 of the Revised Statutes:

Each head of a Department is authorized to employ in his Department such number of clerks of the several classes recognized by law, and such messengers, assistant messengers, copyists, watchmen, laborers, and other employees, and at such rate of compensation, respectively, as may be appropriated for by Congress from year to year.

It was argued that the words "and other employees" sanctioned the creation of such offices outside the classified service as were provided for in the paragraph of the bill before the committee. It was also urged that the offices had been appropriated for in the last appropriation act, and therefore were established by law.

The Chairman[4] said:

The Chair will ask the gentleman if he were drawing this statute if he would lay as much stress on the words "and other employees" coming, as they do, after "watchmen" and "laborers," as the gentle-

[1] Second session Fifty-eighth Congress, Record, p. 4060.

[2] Theodore E. Burton, of Ohio, Chairman.

[3] First session Fifty-seventh Congress, Record, pp. 1466, 1467.

[4] Eugene F. Loud, of California, Chairman.

man seems to? Was that intended to include three and four thousand dollar employees? If the gentleman had been drawing the statute, would he have not placed that first? * * * The Chair would hold that an appropriation bill may contain anything in relation to employees enumerated in these several sections; that is, clerks of classes one, two, three, and four may be employed, as well as messengers, assistant messengers, watchmen, and laborers, to such number as the Appropriations Committee may see fit to provide for. * * * The Chair has no difficulty whatever in disposing of the strongest contention of the gentleman from Indiana—that these offices are authorized by law. They are authorized by law for the year; that is, for the life of the appropriation bill. As has been decided time and again by the courts, nothing contained in an appropriation bill can live beyond the life of the bill. * * * Now, the Chair recognizes the danger of overruling a point of order of this kind. Considerable stress might be laid upon the argument of the gentleman from Illinois in relation to the words "and other employees;" and that is all that could possibly influence the mind of the Chairman to overrule the point of order. But the Chair does not believe that it was the intent of the framers of the law, using, as they did, the words "and other employees, watchmen, and laborers," to empower the Appropriations Committee to create a new division in an Executive Department, with salaries beyond those provided for in sections 167 and 168. The Chair feels constrained to sustain the point of order.

The point of order involves the superintendent, at $3,500, and the supervisor, at $2,750. If there be no objection, the Clerk will correct the totals of the paragraph.

3591. The reappropriation of an unexpended balance for an object authorized by law may be made on an appropriation bill.—On February 12, 1897,[1] the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

The Postmaster-General is authorized to apply to the payment of the salaries of letter carriers for the fiscal year 1897 the sum of $23,000, being an unexpended balance of $13,500 of the appropriation for the current fiscal year for street letter boxes, posts, and pedestals, and an unexpended balance of $9,500 of the appropriation for the current fiscal year for package boxes.

Mr. Orrin L. Miller, of Kansas, having made the point of order, the Chairman[2] ruled:

The Chair is of opinion that this is simply in the nature of an additional appropriation for letter carriers. There can be no question as to the authority of the Committee on the Post-Office and Post-Roads to report an appropriation giving an additional amount to letter carriers. The provision in this bill has simply the effect of a new appropriation. It proposes merely to use for this particular purpose an unexpended appropriation in the bill of last year. This appropriation is applied to an object already provided for by law, the payment of letter carriers. The Chair overrules the point of order on the ground that the provision is simply the application of a previous unexpended appropriation to a purpose contemplated by law.

"On January 29, 1898,[3] the District of Columbia appropriation bill being under consideration, this paragraph was read:

Bathing beach: For the care and repair of the public bathing beach on the Potomac River, in the District of Columbia, $1,000. That any balance remaining of the appropriation "toward adapting the inner basin on the Potomac Flats for a public bathing pool," contained in "An act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1887, and for other purposes," approved June 11, 1896, which remains unexpended, may be applied by the Commissioners of said District for the examination, improvement, repair, and care of the public bathing beach on the tidal reservoir.

Mr. James A Richardson, of Tennessee, reserved a point of order.

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[1] Second session Fifty-fourth Congress, Record, p. 1777.

[2] John A. T. Hull, of Iowa, Chairman.

[3] Second session Fifty-fifth Congress, Record, pp. 1213, 1214.

After debate, during which it was developed that the bathing beach had already been appropriated for, and therefore was a public work or object in progress, the Chairman [1] ruled:

The Chair finds this precedent established on the 12th of February last: In the post-office bill was a paragraph devoting an unexpended balance for street letter boxes, etc., to the payment of the salaries of letter carriers. A point of order being made, the Chairman ruled that inasmuch as the carriers were authorized by law, the appropriation might be made. Regarding that as a precedent, it would be decisive of this case. So the point of order will be overruled.

3592. On February 14, 1907,[2] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

Page 51, line 16, insert after the word "articles:"

"And provided further, That the unexpended balances under appropriations 'Provisions, Navy, for the fiscal years ending June 30, 1905, and 1906,' are hereby reapportioned for 'Provisions, Navy, for fiscal year ending June 30, 1908.'"

Mr. John J. Fitzgerald, of New York, made a point of order.

After debate the Chairman [3] held:

The Chair is of opinion that the question that has been raised has been covered by previous decisions of those occupying the chair, and in a moment the Chair will call the attention of the gentleman from New York to two decisions which he finds. In one of these decisions it was held:

"That a reappropriation of an unexpended balance for an object authorized by law may be made on an appropriation bill."

Now, in answer to the position stated by the gentleman from New York a moment ago, a second decision held—

"That a reappropriation of a sum required by law to be covered into the Treasury was not a change of law."

It seems to the Chair that these two decisions precisely cover the questions presented. Money has been appropriated for an object authorized by law and is now reappropriated for a similar object. That is the decision made by predecessors in the chair, and it has been held not to be a change of law and a thing that could properly be done upon an appropriation bill, and the Chair therefore overrules the point of order.

3593. The reappropriation of a sum required by law to be covered into the Treasury was held not to be a change of law.—On January 12, 1899,[4] the consular and diplomatic appropriation bill was under consideration in Committee of the Whole House on the state of the Union. The following paragraph was read:

Commercial Bureau of American Republics, $36,000: *Provided,* That any moneys received from the other American republics for the support of the Bureau, or from the sale of the Bureau publications, from rents, or other sources, shall be paid into the Treasury as a credit in addition to the appropriation, and may be drawn therefrom upon requisitions of the Secretary of State for the purpose of meeting the expenses of the Bureau.

Mr. Alexander M. Dockery, of Missouri, made the point of order that the proviso would involve a change of existing law, since the law of the first session of the Fifty-second Congress provided as follows:

Commercial Bureau of the American Republics, for the prompt collection and distribution of commercial information, as recommended by the International American Conference, $30,000. The sums contributed by the other American republics for this purpose, when collected, shall be covered into the Treasury.

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[1] William P. Hepburn, of Iowa, Chairman.

[2] Second session Fifty-ninth Congress, Record, pp. 2985, 2986.

[3] James B. Perkins, of New York, Chairman.

[4] Third session Fifty-fifth Congress, Record, pp. 624–627.

After debate the Chairman[2] held:

The gentleman from Missouri has pointed out the permanent law regulating the disposition of the money received from the American republics, and prescribing that when collected it shall be covered into the Treasury.

The Chair is unable to perceive what different disposition of that money—not speaking for the moment of this appropriation—is made in the paragraph before the committee, which provides that the money received from other American republics shall be paid into the Treasury. There seems to be no difference whatever between the disposition of the money received from the republics, prescribed by the section of the law to which the gentleman from Missouri has called the attention of the committee, and that prescribed by the provisions of the section under consideration. By the existing law the money is to be "covered into the Treasury." By this section the money is to be "paid into the Treasury." So far there is no change in the law.

Now, that being so, the question is whether it is within the power, under the rules of the House, for the House in a general appropriation bill to appropriate that money after it has been "paid into the Treasury," in the language of this provision, or "covered into the Treasury," in the language of the former law.

It seems to have been assumed by all persons taking part in the discussion that this undertaking, this support and maintenance of the Commercial Bureau of the American Republics, is either an "expenditure previously authorized by law" or a "public work and object already in progress." It follows that appropriations for the support of the undertaking may be made in the discretion of Congress, unless the form of the appropriation is such as to change existing law. The Chair is unable to see in what respect this part of the paragraph is obnoxious to any of the rules of the House which have been called to his attention and is constrained to overrule the point of order on that particular part of the paragraph.

The section prescribes that when paid into the Treasury it shall be "a credit in addition to the appropriation and may be drawn, etc., for the purpose of meeting the expenses of the Bureau." This is in effect the appropriation of the money paid into the Treasury from the American republics during the next fiscal year, construing the language to be merely the appropriation of the revenue from the source named for one fiscal year. There is no change in existing law. The Chair therefore overrules the point of order.

3594. A provision returning an unexpended balance to the Treasury was held to be in order on an appropriation bill.—On February 17, 1905,[2] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. John F. Rixey, of Virginia, offered this amendment:

After line 20, page 33, insert:

"Naval station, Guantanamo, Cuba: The unexpected balance on July 1, 1905, of the $200,000 heretofore appropriated for a dry dock is hereby directed to be covered into the Treasury."

Mr. George E. Foss, of Illinois, made a point of order, saying:

It was an appropriation that was made without any condition or qualification, and the gentleman from Virginia [Mr. Rixey] can not now at this late day change or divert the purposes of the appropriation as originally made without change of existing law.

It appeared from the debate that no part of the money had been expended, and that no contracts had been made.

The Chairman[3] ruled:

It does not seem to the Chair that the provision in the last appropriation bill upon this subject is existing law in the sense that the amendment would come within the provision of Rule XXI. The

[1] William H. Moody, of Massachusetts, Chairman.

[2] Third session Fifty-eighth Congress, Record, pp. 2798, 2799.

[3] John Dalzell, of Pennsylvania, Chairman.

Chair can see no reason why an unexpended balance can not be reappropriated, as, in point of fact, is proposed in this case. Instead of appropriating the money to the dock at Guantanamo, it is proposed to cover it into the Treasury of the United States. If it is competent to divert an appropriation already made for one purpose to another purpose, it is equally competent to divert an appropriation made for a certain purpose back again into the United States Treasury. The Chair therefore overrules the point of order. The question is on agreeing to the amendment offered by the gentleman from Virginia.

3595. The omission to appropriate during a series of years for an object authorized by law does not repeal that law; and consequently an appropriation when proposed is not subject to the point of order.—On May 3, 1878,[1] the legislative, executive, and judicial appropriation bill was reported from the Committee of the Whole House on the state of the Union, and Mr. Randall L. Gibson, of Louisiana, offered an amendment providing several items of appropriation, such as salaries for superintendent and employees, wages of workmen, cost of repairs, etc., for the mint at New Orleans.

Mr. John H. Baker, of Indiana, made the point of order against this amendment.

The Speaker[2] ruled on May 4:

The third paragraph of section 3495 of the Revised Statutes makes in distinct terms this provision: "Third. The mint of the United States at New Orleans."

The Chair supposes that the revisers in inserting this clause did so in pursuance of the sixty-fifth section of what is known as the coinage act of February 12, 1873, wherein a superintendent of the mint at New Orleans is recognized and the performance of additional duties is assigned to him.

It seems to the Chair that the act of 1874 also provides for the reopening of the mint at New Orleans, proceeding upon the same assumption as the amendment offered by the gentleman from Louisiana [Mr. Gibson], that there is a mint already authorized by law at New Orleans.

Allusion has been made to Senate bill No. 1058 as an indication that additional legislation is necessary to establish a mint at New Orleans. A careful reading of that bill, which is now in the hands of the Committee on Coinage, Weights, and Measures, will show that it proceeds upon the same assumption—that there is by law a mint authorized at New Orleans.

Thus the general law, particularly section 3495 of the Revised Statutes, provides for a mint at New Orleans, and subsequent sections authorize and direct the appointment of officers to keep the mints in operation. In accordance with this state of the law the Chairman of the Committee of the Whole on last Tuesday made this decision:

"As the law recognizes the existence of a mint at New Orleans, the Chair is inclined to hold that the necessary legislation to operate that mint is not new legislation in the sense of the rule, and that consequently such a provision is in order as an amendment to this bill. The Chair therefore overrules the point of order."

The gentleman from Michigan [Mr. Conger], during the debate that then took place upon the point of order, said:

"Now, if there be a mint at New Orleans and if the usual officers for a mint at New Orleans are not provided for in this bill, I do not claim that it is new legislation to provide for them, whether they have been left out by inadvertence or by design. But if there be no mint there organized; if this is the establishment of a mint instead of an assay office, as this bill provides for, then it will be new legislation. It was because I did not know what the law was upon that subject that I suggested to the Chair that it was new legislation.

"Now, I understand the gentleman from Louisiana [Mr. Gibson] to read from the law, which is unrepealed, as I understand him, to claim the establishment of a mint at New Orleans and to claim that the officers provided for in this amendment are the proper legal officers of this institution. If that be so, I can not insist upon the point of order that it is new legislation."

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[1] Second session Forty-fifth Congress, Journal, p. 1005; Record, pp. 3164–3177.

[2] Samuel J. Randall, of Pennsylvania, Speaker.

The gentleman from Ohio [Mr. Garfield], in the course of the same debate, said:

"During the several years while I was chairman of the Committee on Appropriations, when there was not enough coinage being done to require the rehabilitation of any mint, and even when we were providing for the sale of mints at Charlotte and Dahlonega and other points, we still kept the New Orleans mint alive by keeping up the form of appropriation, giving a small sum of money, because if we had not done so under the terms of the grant it would revert to its former owners. We are bound while we own it to keep it a mint."

This latter statement of the gentleman from Ohio referring to the period when he was chairman of the Committee on Appropriations agrees entirely with the recollection of the present occupant of the chair as to the action of the committee during the time he was its chairman. The committee at that time provided for keeping an officer at the New Orleans mint in order that the Government might retain the mint property under its contract with the city of New Orleans. This was avowedly the object.

The Chair, in view of the provision of section 3495 of the Revised Statutes, in consideration also of the act of 1874 and all the subsequent cumulative legislation recognizing a mint at New Orleans as established by law, is unwilling to reverse the decision of the chairman of the Committee of the Whole upon this amendment. The Chair thinks proper to go further and say that he believes the mint at New Orleans to be a mint authorized by the statutes, and that consequently this amendment providing appropriations for keeping that mint in operation is not at variance with existing law, and overrules the point of order. * * * The Chair desires to state in that connection that the mere omission on the part of Congress to appropriate money does not necessarily repeal distinct law authorizing a certain thing to be done, especially in the absence of a repealing provision. If Congress chooses to omit to appropriate when the law authorizes the thing to be done, the responsibility of course would be with Congress.

3596. If a motion to strike out certain words in a paragraph of appropriation in a general appropriation bill would change the object from one authorized by existing law to one not so authorized, the motion is not in order.—On February 21, 1907,[1] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. James R. Mann, of Illinois, proposed this amendment:

Insert at the end of line 18:

"To enable the Interstate Commerce Commission to investigate in regard to the use and necessity for block-signal system and appliances for the automatic control of railway trains, including experimental tests, at the discretion of the Commission, of said signal system and appliances only as may be furnished in connection with such investigation free of cost to the Government, in accordance with the provisions of the joint resolution approved June 30, 1906, $500,000."

Mr. Edgar D. Crumpacker, of Indiana, moved to strike out the word "automatic."

Mr. James R. Mann, of Illinois, made a point of order, saying:

Mr. Chairman, if it were a new proposition I might be willing to consent to what the gentleman suggests; but the amendment which I have offered is in accordance with the joint resolution already enacted into the law, is not subject to a point of order, and I have presented the amendment to the members of the Committee on Appropriations, who have made no objection to it. Therefore I would not feel that I had the right under the circumstances, having called the attention of the Committee on Appropriations to this subject, to widen the scope of this amendment. Hence I would be compelled to make a point of order on any change in the provision.

The Chairman[2] said:

I would like to ask the gentleman from Indiana [Mr. Crumpacker] whether or not his description, by striking out the word "automatic" here, would not let in a great many things? That is, would not the scope of the investigation be much wider and more extended than if the term "automatic" is included?

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[1] Second session Fifty-ninth Congress, Record, pp. 3569, 3570.

[2] George P. Lawrence, of Massachusetts, Chairman.

The response of Mr. Crumpacker and the ensuing debate having indicated that the effect of the amendment to the amendment might be to extend the scope of the investigation beyond the authorization of existing law, the Chairman held:

The Chair thinks the matter is not entirely free from doubt, but is inclined to sustain the point of order.

3597. Those upholding an item in an appropriation should have the burden of showing the law authorizing it.—On June 14, 1906,[1] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Defense of suits before Spanish Treaty Claims Commission: For salaries and expenses in defense of claims before the Spanish Treaty Claims Commission, including salaries of assistant attorney-general in charge as fixed by law, and of assistant attorneys and necessary employees in Washington, D.C., or elsewhere, $92,000.

Mr. James B. Perkins, of New York, made the point of order that there was no statutory authority for the appropriation.

After some debate, Mr. James A. Tawney, of Minnesota, said:

The gentleman from New York makes the point of order on the ground that there is no statutory authority, and then he calls upon the committee to cite the authority. I submit, Mr. Chairman, that the presumption is in favor of there being authority for the act, and the gentleman who makes the point of order has the burden of proof that there is no statutory authority.

The Chairman[2] overruled this contention of Mr. Tawney, saying:

The Chair is of the opinion that the gentleman making the proposition should show affirmatively that there is authority of law.

3598. An appropriation for carrying on a service beyond the limits assigned by an executive officer exercising a lawful discretion was held not to be authorized by existing law.

Keeping the Congressional Library open additional hours was held not to be a continuing public work of such tangible nature as to justify provision on an appropriation bill.

On December 16, 1897,[3] the legislative, executive, and judicial appropriation bill being under consideration in Committee of the Whole House on the state of the Union, a point of order was pending on this amendment, relating to the Congressional Library, which had been offered by Mr. Levin I. Handy, of Delaware—

For additional expense involved in keeping the Library open daily from 9 a. m. to 10 p. m., $15,000

The Chairman[4] ruled:

The amendment as offered yesterday is, in the judgment of the Chair, new legislation in this, that under existing law the Librarian of Congress has the power to regulate the hours when the Library shall be kept open, and if the amendment of the gentleman from Delaware is adopted it will operate as a restriction upon the discretion which the Librarian of Congress now possesses under existing law. Hence it would be new legislation and subject to the point of order. The Chair adheres to his ruling

[1] First session Fifty-ninth Congress, Record, p. 8513.

[2] James E. Watson, of Indiana, Chairman.

[3] Second session Fifty-fifth Congress, Record, p. 232.

[4] Albert J. Hopkins, of Illinois, Chairman.

upon that point. The gentleman from Delaware to-day presents the further proposition that it is competent to offer this amendment under a clause of the second paragraph of Rule XXI, which I will read:

"2. No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress."

That clause of the rule has been construed again and again by the Committee of the Whole, and its language has been held to relate only to public works of a tangible nature. The question was considered in the Fifty-fourth Congress on the agricultural appropriation bill. The same point that is now made by the gentleman from Delaware was made then, and it was held that the amendment was not in order. An appeal was taken from the ruling and the Chair was sustained by the committee. The present occupant of the chair holds that the Librarian is an executive officer of the Government, and that this clause of the rule does not apply to him. The Chair adheres to his ruling made yesterday that the amendment of the gentleman from Delaware is not in order.

3599. The law having specified the details of the Government exhibit at an exposition, an appropriation for a new object was held not in order in a general appropriation bill.—On May 25, 1892,[1] the House was in Committee of the Whole House on the state of the Union considering the sundry civil appropriation bill.

The paragraph providing for the Government exhibit at the World's Columbian Exposition having been reached, Mr. George W. Houk, of Ohio, proposed an amendment to provide for the expenditure of $100,000 out of the money hereinbefore appropriated, to be expended under the supervision of the board of control and management, for collecting and publishing statistics pertaining to the progress of the inhabitants of the United States of African descent from 1863 to 1893, the publication when completed to constitute a part of the Government exhibit at the exposition.

Mr. William S. Holman, of Indiana, having made a point of order that this was not authorized by law, on this ground the Chairman[2] sustained the point.

On the same day Mr. Christopher A. Bergen, of New Jersey, offered the same proposition in a different form, and Mr. Walt H. Butler, of Iowa, having made a point of order, the Chair ruled:

The amendment, * * * like the other one upon which the Chair ruled—the amendment of the gentleman from Ohio, Mr. Houk—appropriates this money for a specific object; that is to say, to make an exhibition of arts, industries, manufactures, etc., by the colored people of African descent residing in the United States, January 1, 1863, etc. That appropriation for that purpose is not authorized by the law of 1890 which established the exposition. The only provision by which the Government can make an exhibit under that law is that contained in section 16 of the act, which provides:

"That there shall be exhibited at said exposition by the Government of the United States, from its Executive Departments, the Smithsonian Institution, the United States Fish Commission, and the National Museum, such articles and materials as illustrate the function and administrative faculty of the Government in time of peace and its resources as a war power, tending to demonstrate the nature of our institutions and their adaptation to the wants of the people; and to secure a complete and harmonious arrangement of such a Government exhibit, a board shall be created to be charged with the selection, preparation, arrangement, safe-keeping, and exhibition of such articles and materials as the heads of the several Departments and the Directors of the Smithsonian Institution and National Museum may respectively decide shall be embraced in said Government exhibit."

That is all that is provided for, and it is specifically provided for. This is for another and different purpose altogether, and therefore would require legislation before it could be the subject of appropriation on a general appropriation bill. The Chair sustains the point of order.

On an appeal by Mr. Bergen, the decision of the Chair was sustained.

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[1] First session Fifty-second Congress, Record, pp. 4669–4671, 4675, 4684.

[2] Rufus E. Lester, of Georgia, Chairman.

3600. An appropriation of the surplus of the water fund of the District of Columbia for the extension of the water system was held to be authorized by law and in order on an appropriation bill.—On February 2, 1898,[1] the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was reached:

For continuing the extension of the high-service system of water distribution, to include all necessary land, machinery, buildings, mains, and appurtenances, and for the purchase, erection, maintenance, and inspection of water meters for the gradual extension of the meter system to all classes of consumers, so much as may be available in the water fund during the fiscal year 1899, after providing for the expenditures hereinbefore authorized, is hereby appropriated.

Mr. James D. Richardson, of Tennessee, reserved a point of order.

After debate, during which the law of the District on the subject was quoted, the Chairman[2] held:

The Chair thinks that the law quoted gives very full authority to the Commissioners on this subject, and the water rates by section 7 seem to be dedicated "for the maintenance, management, and repair of the system of water distribution."

3601. A provision on an appropriation bill appropriating the receipts of a Government telegraph system to extensions of the same was held out of order.—On February 27, 1906,[3] the Army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

OFFICE OF THE CHIEF SIGNAL OFFICER.

Signal Service of the Army: For expenses of the Signal Service of the Army, as follows: Purchase, equipment, and repair of field electric telegraphs, signal equipments and stores, binocular glasses, telescopes, heliostats, and other necessary instruments, including necessary meteorological instruments for use on target ranges; war balloons; telephone apparatus (exclusive of exchange service) and maintenance of the same; electrical installations and maintenance at military posts; fire control and direction apparatus and material for field artillery; maintenance and repair of military telegraph lines and cables, including salaries of civilian employees, supplies, and general repairs, and other expenses connected with the duty of collecting and transmitting information for the Army, by telegraph or otherwise, $200,000: Provided, That until June 30, 1907, the line receipts of the Alaskan military cable and telegraph system may be utilized in making such extensions to the system as may be approved by the President as a military necessity, such extensions to be reported to Congress by the Secretary of War.

Mr. Lucius N. Littauer, of New York, made a point of order against the proviso of the paragraph.

Mr. John A. T. Hull, of Iowa, admitted that the point of order was well taken, and the Chairman[4] ruled it out.

3602. Propositions to appropriate for the beginning of "necessary and special facilities" for railroad transportation of mail have been ruled out as not authorized by existing law.

An instance of the method of admitting legislation to an appropriation bill under the old rule permitting retrenchment legislation.

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[1] Second session Fifty-fifth Congress, Record, pp. 1352–1354.

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

[3] First session Fifty-ninth Congress, Record, p. 3080.

[4] Henry, S. Boutell, of Illinois, Chairman.

On May 5, 1880,[1] the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this amendment was offered by Mr. George D. Robinson, of Massachusetts:

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

Mr. James H. Blount, of Georgia, having made the point of order, the Chairman[2] ruled:

Although the meaning of the words "necessary and special facilities for postal service" is not very clear, yet the Chair held yesterday,[3] after giving the subject some consideration, that the effect of such an amendment would be to change existing law. The Chair still adheres to that opinion. But under the third clause of Rule XXI[4] an individual Member upon the floor may offer an amendment changing existing law provided it retrenches expenditures in one of three modes: First, by reducing the number and salaries of the officers of the United States; or, secondly, by reducing the compensation of persons paid out of the Treasury of the United States; or, thirdly, by reducing the amount covered by the bill. The amendment offered by the gentleman from Massachusetts does not propose to add an appropriation of $150,000 to the bill; but it provides that of the amount appropriated by the bill the sum of $150,000 may be used for certain purposes, and it diminishes the amount covered by the bill by striking out "$9,500,000" and inserting "$9,490,000." So the Chair is bound to hold that the amendment conforms strictly to the language of the rule. Whether the language actually used in this rule accomplishes the exact purpose which the House had in view in adopting it is not a question for the Chair to decide; but taking the language of the rule as it stands and putting upon it the construction which ordinarily would be put upon such language in a statute or in a rule of the House the Chair is compelled to hold that the amendment comes within the rule and is in order.

3603. On February 12, 1897,[5] the House was considering the post-office appropriation bill in Committee of the Whole House on the state of the Union, when this paragraph was read:

In the discretion of the Postmaster-General, any unexpended balance of the appropriation for the fiscal year ending June 30, 1897, for necessary and special facilities on trunk lines, may be used for other fast-mail facilities.

Mr. Jacob H. Bromwell, of Ohio, made the point of order against the paragraph.

After debate the Chairman[6] ruled:

If the gentleman from Missouri [Mr. Hall] can point the Chair to any law providing fast-mail facilities on other trunk lines in the United States, then the Chair will hold quite differently, but the Chair does not understand the gentleman to point out anything except as provided in the appropriation bill, where a specific line is named and none other.

Now, this amendment gives the power to the Postmaster-General to extend fast-mail facilities on any other trunk line in the country where he may desire to do so, and it would be clearly a change of existing law to do something in that way which the gentleman from Missouri [Mr. Hall] himself would say could not be done by the Committee of the Whole House on the state of the Union, the naming of other trunk lines and starting additional facilities by an appropriation bill, under the present rules of the House. It certainly is not in order to give authority for an officer of the Government to do what the House itself can not do.

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

[2] John G. Carlisle, of Kentucky, Chairman.

[3] See Congressional Record, pp. 2993–2995.

[4] This ruling was made when the rule (see section 3578 of this work) admitted such legislative provisions as would retrench expenditures.

[5] Second session Fifty-fourth Congress, Record, pp. 1782, 1783.

[6] John A. T. Hull, of Iowa, Chairman.

The Chair is of opinion that this amendment clearly and unequivocally changes existing law. It is not a question of simply making an appropriation of unexpended balances for purposes now authorized by law, but it is an appropriation of unexpended balances for purposes not authorized by law. In so far as it undertakes to expend unexpended balances for purposes not now authorized by law, or in so far as it undertakes the creation of new obligations upon the Government, the Chair thinks it is clearly out of order. The Chair sustains the point of order raised by the gentleman from Ohio [Mr. Bromwell]. The provision will be stricken from the bill.

3604. A deficiency appropriation to complete a transportation of silver coin authorized for the current year was held in order, although the original appropriation may have been without authority of law.—On January 20, 1906,[1] the urgent deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

Transportation of silver coin: To pay amounts found due by the accounting officers of the Treasury on account of the appropriation "Transportation of silver coin" for the fiscal year 1905, $3,426.65.

To this Mr. J. Warren Keifer, of Ohio, proposed an amendment as follows:

For transportation of silver coin, including fractional silver coin, by registered mail or otherwise, $10,000; and in expending this sum the Secretary of the Treasury is authorized and directed to transport from the Treasury or subtreasuries, free of charge, silver coin when requested to do so: *Provided,* That an equal amount in coin or currency shall have been deposited in the Treasury or such subtreasuries by the applicant or applicants. And the Secretary of the Treasury shall report to Congress the cost arising under this appropriation.

Mr. Ebenezer J. Hill, of Connecticut, made the point of order that the expenditure was not authorized by existing law.

In support of his amendment Mr. Keifer said:

On the 3d of March, 1905, the sundry civil appropriation bill was passed, providing an appropriation relating to the transportation of silver coin for the fiscal year ending June 30, 1906. * * * Now, the Secretary of the Treasury sent an estimate to Congress and the Committee on Appropriations, saying that for the purpose of carrying out that particular law he had to have $10,000 more money; and my amendment just sent up is to give that $10,000 to carry on the law of March 3, 1905. Perhaps I had better read the statute. I will say that the provision put in the appropriation act would read precisely, save as to the amount, in the words contained in the amendment, without a change in the law, without a change of punctuation. I better read. The Chair has the amendment.

"For the transportation of silver coin, including fractional silver coin, by registered mail or otherwise, $120,000—"

Now, the amendment adds $10,000; that is all—

"and in expending this sum the Secretary of the Treasury is authorized and directed to transport from the Treasury or subtreasuries, free of charge, silver coin when requested to do so: *Provided,* That an equal amount in coin or currency shall have been deposited in the Treasury or such subtreasuries by the applicant or applicants, and the Secretary of the Treasury shall report to Congress the cost arising under this appropriation."

Now, Mr. Chairman, the amendment that was sent up was to complete the transportation of silver coin for the fiscal year ending June 30, 1906.

After further debate, the Chairman[2] held:

The question presented is somewhat new, and has been argued, it seems to the Chair, with considerable in geniousness and force by the gentleman from Ohio [Mr. Keifer] and stated with very great clearness a moment ago by the gentleman from Georgia [Mr. Livingston]. Whether the provision in

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[1] First session Fifty-ninth Congress, Record, pp. 1325–1327.

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

the sundry civil act of March 3, 1905, would have been obnoxious to the rule had the rule been invoked at the time it is not necessary now to say. So far as anything which has been presented to the Chair is concerned, it would seem that that would have been ruled out had the point been made, but the point was not made, and the provision in the sundry civil act is the law until the 1st of July, 1906. The amendment offered by the gentleman from Ohio [Mr. Keifer] is to a bill which provides for making appropriations to supply urgent deficiencies for the fiscal year ending June 30, 1906, so that it does seem to the Chair that that is an appropriation asked for to carry out the provisions of the law which will be in effect until June 30, 1906. Of course, had the provision been made on the sundry civil bill to apply to the fiscal year ending June 30, 1907, there would be no question about its being out of order, so far as appears from anything here presented; but presented as an amendment to the deficiency bill for the year ending June 30, 1906, it seems to the Chair that the amendment is in order, and the Chair overrules the point of order.

3605. A provision for establishing a plant for the manufacture of powder was held not in order on an appropriation bill.—On March 1, 1906,[1] the Army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when, to the paragraph making appropriation for the purchase of powder, Mr. Oscar W. Gillespie, of Texas, offered this amendment:

Add the following: "One hundred and fifty thousand of which shall be expended in the establishment of a plant for the purpose of manufacturing gunpowder."

Mr. John A. T. Hull, of Iowa, having made a point of order, the Chairman[2] held:

This amendment seems to be for the establishment of a new factory for the manufacture of gunpowder. The Chair is of the opinion that it is new legislation, and the point of order is sustained.

3606. Propositions for acquisition of sites and buildings for embassies in foreign countries are not in order on the consular and diplomatic appropriation bill.

While it is in order on an appropriation bill to provide for the repair of a building, it is not in order to provide for a new building in place of one destroyed.

On May 29, 1906,[3] the consular and diplomatic appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Nicholas Longworth, of Ohio, offered this amendment:

Insert a new section after line 16, page 9:

"For the acquisition in foreign capitals of proper sites and buildings for the embassies and legations of the United States and for the residences of the ambassadors and envoys extraordinary and ministers plenipotentiary of the United States to foreign countries, $1,000,000."

Mr. Robert Adams, jr., of Pennsylvania, made a point of order against the amendment.

The Chairman[4] sustained it.

Soon thereafter the Clerk read:

REERECTION OF CONSULAR BUILDING AT TAHITI, SOCIETY ISLANDS.

For the reerection of the American consular building at Tahiti, Society Islands, $5,071.45.

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

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[1] First session Fifty-ninth Congress, Record, p. 3235.

[2] Henry S. Boutelle, of Illinois, Chairman.

[3] First session Fifty-ninth Congress, Record, pp. 7637–7640.

[4] Charles Curtis, of Kansas, Chairman.

After debate, the Chairman said:

Was this building completely destroyed, and is this appropriation to rebuild the building, or was it simply damaged, and is this item to repair it?

In reply it was stated that the foundation remained, but the superstructure was rendered uninhabitable. On the other hand, it was urged that the language of the paragraph specified "reerection" and not repair.

The Chairman sustained the point of order.

Mr. Edwin Denby, of Michigan, then proposed this amendment:

For the repair of the American consular building at Tahiti, Society Islands, $5,071.45.

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

The Chairman said:

The Chair will have to take the language of the amendment, and unless the gentleman from Illinois desires to be heard, the Chair is ready to rule. * * * The Chair would like to state to the gentleman that when the Chair ruled upon the point of order before he ruled according to the language, although the gentleman from New York said that the appropriation was "for repairs" and not "rebuilding" the building. * * * The Chair overrules the point of order.

3607. On June 27, 1907,[1] the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Daniel L. D. Granger, of Rhode Island, proposed this amendment:

On page 43, after line 18, insert the following paragraph:

"To replace detention buildings at the training station, Newport, R. I., destroyed by fire on January 28, 1906, to be utilized in segregating recruits, including mess hall, mess and galley outfits, laundry, wash rooms, latrines, and other necessaries to make the same habitable and sanitary; in all, $94,321."

Mr. Lucius N. Littauer, of New York, made the point of order that there was no authority of law for the appropriation.

The Chairman[2] held:

The identical question was decided by the Chairman of the Committee of the Whole House, when the diplomatic and consular appropriation bill was under consideration, on an item for the rebuilding of a public structure in one of the Pacific islands. The Chair then sustained the point of order to the provision. Following that precedent, the Chair sustains the point of order.

3608. On January 22, 1907,[3] the diplomatic and consular appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. James L. Slayden, of Texas, proposed this amendment:

After the word "necessary," in line 8, page 9, amend by adding:

"For the purchase of ground and the erection of an embassy building in the City of Mexico, $60,000."

Mr. Robert G. Cousins, of Iowa, made the point of order that there was no law authorizing the appropriation.

The Chairman[4] sustained the point of order.

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[1] First session Fifty-ninth Congress, Record, pp. 9398, 9399.

[2] Edgar D. Crumpacker, of Indiana, Chairman.

[3] Second session Fifty-ninth Congress, Record, pp. 1523, 1524.

[4] John A. Sterling, of Illinois, Chairman.

Later on the same day Mr. Nicholas Longworth, of Ohio, offered this amendment:

On page 22, at the end of line 5, insert:

"For the acquisition in foreign capitals of proper sites and buildings, which shall be used by the embassies and legations of the United States and for the residences of the ambassadors and envoys extraordinary and ministers plenipotentiary of the United States to foreign countries, to be expended by the Secretary of State, $500,000."

Mr. James R. Mann, of Illinois, having made the point of order, the Chairman [2] sustained it.

3609. Question as to appropriations for incidental and contingent expenses in the consular and diplomatic service.—On May 29, 1906,[1] the consular and diplomatic appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

To enable the President to provide, at the public expense, all such stationery, blanks, records, and other books, seals, presses, flags, and signs as he shall think necessary for the several embassies and legations in the transaction of their business, and also for rent, postage, telegrams, furniture, messenger service, compensation of kavasses, guards, dragomans, and porters, including compensation of interpreter, guards, and Arabic clerk at the consulate at Tangiers, and the compensation of dispatch agents at London, New York, and San Francisco, and for traveling and miscellaneous expenses of embassies and legations, and for printing in the Department of State, and for loss on bills of exchange to and from embassies and legations, $225,000.

Mr. John S. Williams, of Mississippi, made a point of order that the amount of the appropriation had been increased.

After debate, the Chairman [2] said:

If the point made by the gentleman from Mississippi wholly applies to the increase in the amount the Chair will overrule the point of order.

Mr. Williams replied:

The point of order necessarily is applied to all of it that is not specifically set forth. The point is made to all the paragraph, because the increase makes it new legislation.

The Chairman said:

The Chair overrules the point of order.

The Clerk then read:

STEAM LAUNCH FOR LEGATION AT CONSTANTINOPLE.

Hiring of steam launch for use of the legation at Constantinople, $1,800.

Mr. William Sulzer, of New York, made the point of order that there was no law authorizing this expenditure.

The Chairman overruled the point of order.

Soon thereafter the Clerk read:

EMERGENCIES ARISING IN THE DIPLOMATIC AND CONSULAR SERVICE.

To enable the President to meet unforeseen emergencies arising in the diplomatic and consular service, and to extend the commercial and other interests of the United States, to be expended pursuant to the requirement of section 291 of the Revised Statutes, $90,000, or so much thereof as may be

[1] First session Fifty-ninth Congress, Record, pp. 7636, 7637, 7641.

[2] Charles Curtis, of Kansas, Chairman.

necessary. The Secretary of State is authorized to apply in his discretion such portions of the appropriation for "Contingent expenses, foreign missions," for the fiscal year ending June 30, 1907, to the maintenance, driving, and operating such carriages or vehicles as may be necessary for the use of the Assistant Secretaries of the Department of State in the duties officially devolving upon them, and further to apply upon the order of the President such proportion of any fund which may properly be applied to the entertainment of visiting functionaries of foreign governments to such temporary hire of carriages as may be required for the use of such Assistant Secretaries in emergencies arising in connection with the necessary entertainment of such functionaries of foreign governments in the United States, or in such other emergencies as may require such expenditures to be made.

Mr. James R. Mann, of Illinois, raised the question of order to all of the paragraph after the first sentence.

The Chairman sustained the point of order.

3610. A proposition to pay the traveling expenses of the President of the United States by a paragraph in an appropriation bill was held to be unauthorized by law.—On June 9, 1906,[1] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

For the traveling expenses of the President of the United States, his attendants and invited guests traveling with him, to be disbursed at the discretion of the President, $25,000.

Mr. John S. Williams, of Mississippi, made the point of order that there was no law authorizing this expenditure.

Mr. Williams argued not only that there was no law authorizing the expenditure, but also said:

Now, Mr. Chairman, in this connection I want to read a part of the language of section 1, Article II, of the Constitution of the United States:

"The President shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected."

Now, if it stopped there there might be some reasonable room for constructive doubt about the meaning, but it goes on:

"And he shall not receive, within that period, any other emolument from the United States or any of them."

* * * * * * *

This provision would not only change existing statute law, but the fundamental law—the Constitution itself.

Now, in connection with the meaning of the word "emolument" used in the Constitution, my friend from New York did not read quite far enough. The Constitution says, not that an emolument is compensation, but as if to show that it means more than compensation it says, in the first part of this clause, that the "compensation" shall not be increased or decreased during the President's term, and then later on it says, nor shall any "emolument" be given to the President during the same time. Now, the gentleman did not read quite far enough in Worcester's definition of the word "emolument." If he had, he would have found this next definition:

"Advantage, good, or gain, in a general sense."

And it is illustrated by a quotation from that master of good English, the author of the Tattler, old Samuel Johnson, who says:

"Nothing gives greater satisfaction than the sense of having dispatched a great deal of business to the public emolument."

Emolument means advantage. It is just a longer word; that is all; a little different, because it leans toward pecuniary advantage.

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[1] First session Fifty-ninth Congress, Record, pp. 8198–8205.

Mr. Walter I. Smith, of Iowa, said:

Now, then, is this an "emolument?"

The word "emolument," as defined by Webster's International Dictionary, is:

"Profit arising from office, employment, or labor; gain, compensation, advantage, perquisites, fees, or salary."

If this money is not wholly expended in traveling expenses it is covered back into the Treasury. This is an extraordinary sum, covering a certain contemplated trip of the Presidents over the country visiting numerous colleges and other institutions of learning. It is probable that in ordinary years it would not exceed $5,000. He is not to receive a dime of it; and if this be "emolument," then it was an increase of emolument when we put $680,000 in repairs upon the White House during this Administration, and gave him the right to occupy a much better house than he had theretofore occupied, or any of his predecessors.

As to whether or not there was any law authorizing the expenditure, Mr. Smith said:

The Government of the United States has for many years borne in part the traveling expenses of the President of the United States. We annually carry a $20,000 appropriation to provide, among other things, carriages and horses to him as Commander in Chief of the Army, and we constantly furnish the *Mayflower* or some other vessel for water transportation to him as Commander in Chief of the Navy.

We have for many years borne a portion of the traveling expenses of the President of the United States. This is simply a proposition to increase the expenditures for the traveling expenses of the President of the United States, a large portion of which expenses are already borne. I can not think that it is new legislation so as to make it subject to the point of order.

The Chairman[1] had read the rule of the House forbidding on an appropriation bill any provision for "any expenditure not previously authorized by law," and said:

The Chair desires to ask the chairman of the Committee on Appropriations, or the gentleman having this item in charge, whether he can furnish the Chair with any statute authorizing this appropriation?

The response being that there was no specific statute, the Chairman ruled—

The Chair is clearly of the opinion that this item is not authorized by existing law, and therefore the Chair sustains the point of order.

As to the constitutional provision, the Chairman did not find it necessary to rule.

3611. While the fortifications appropriation bill carries general appropriations for a plan of work in progress, specific appropriations for individual works not authorized by law and not in progress are not in order thereon.—On January 15, 1907,[2] the fortifications appropriation bill was under consideration in Committee of the Whole House on the state of the Union when Mr. Harry L. Maynard, of Virginia, proposed an amendment, as follows:

On page 2, in line 8, after the word "dollars," insert the following:

"To make all necessary surveys, borings, and other investigations necessary for and the preparation of an accurate detailed estimate of what it would cost to construct proposed artificial island for fortifications between Capes Charles and Henry, Chesapeake Bay, and to ascertain whether the title to the site of said proposed artificial island can be obtained without expense to the United States, $3,000.

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[1] James E. Watson, of Indiana, Chairman.

[2] Second session Fifty-ninth Congress, Record, pp. 1175, 1176.

Mr. Walter I. Smith, of Iowa, made the point of order that it was not included in the plans of the Endicott Board, was not authorized by law to be executed, and therefore was not authorized by existing law.

Furthermore, in response to an inquiry of the Chair, Mr. Smith said:

I will say, Mr. Chairman, that I understand that Congress in 1885, shortly after the report of the Gun Foundry Board, passed a law creating a board to report a plan of fortifications, and that board reported in 1886. There has been no express act of Congress adopting the plans proposed by that board. They were prepared, however, by direct authority of Congress, and Congress has from time to time appropriated money for carrying out the plans of the Endicott Board. Last year the President, without any authority from the legislative branch of the Government, appointed a board to revise these plans. This project here referred to originates in the report of this executive board.

After debate, the Chairman [1] held:

The Chair does not understand that in the act of Congress authorizing the appointment of the Endicott Board Congress by law provided that that report should be adopted or that any act of Congress has been enacted since that time specifically adopting the report of the Endicott Board. On the other hand, Congress has provided in annual appropriation bills for the expenditure of money for fortification purposes, usually in general language making appropriations for purposes general in their nature, to be expended by the War Department. In a few cases appropriations have been made for specific purposes, but as a rule in general language.

In the opinion of the Chair, expressed with some doubt, under the practice of the House at least, the items in the appropriation bill in general language are probably in order, though the Chair does not undertake to rule upon the question at this time; but the Chair thinks that the introduction of a new item for a work not in progress is not in order, and the Chair therefore sustains the point of order.

Very soon thereafter Mr. Maynard proposed another amendment:

On page 2, in line 8, after the word "dollars," insert the following: "to make all necessary surveys, borings, and other investigations necessary for and the preparation of an accurate detailed estimate of what it would cost to construct proposed artificial island for fortifications between Capes Charles and Henry, Chesapeake Bay, and to ascertain whether the title of the site of said proposed artificial island can be obtained without expense to the United States, $3,000, out of any money in the Treasury which may now be available for this purpose."

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

In the opinion of the Chair, while, as the Chair stated before, the matter is in doubt and it may be to a certain extent an arbitrary ruling, the general appropriation under the practice of the House might probably be used by the War Department for the purpose of making the survey proposed by the amendment, but, in the opinion of the Chair, it is not within the province of the House, contrary to the rules, on this appropriation bill to provide for a work not in progress. This work is not in progress, and the Chair therefore sustains the point of order.

3612. On February 23, 1907,[2] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. George E. Waldo, of New York, offered this amendment:

Page 137, after line 25, insert: "For the purchase of a site for the increase of the fortifications and for the enlargement of seacoast defense at New York Harbor, $1,000,000."

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

The Chairman [3] sustained the point of order.

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[1] James R. Mann, of Illinois, Chairman.

[2] Second session Fifty-ninth Congress, Record, pp. 3776, 3777.

[3] James E. Watson, of Indiana, Chairman.

3613. The law authorizing the Geological Survey to examine the mineral resources and products of the national domain was held to justify an appropriation for investigating structural materials.—On February 23, 1907,[1] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when paragraphs relating to the Geological Survey were read.

Mr. George W. Norris, of Nebraska, offered an amendment:

After line 10, page 104, insert:

"For the continuation of the investigation of structural materials belonging to the United States, such as stone, clay, cement, etc., under the supervision of the Director of the United States Geological Survey, to be immediately available, $100,000."

Mr. James A. Tawney, of Minnesota, made the point of order that the appropriation was not authorized by law, and said:

I should like to know if the amendment is the same amendment that was offered a year ago after the Chair had ruled that the original proposition was not in order.

The Chairman[2] said:

Yes; because it has reference to materials of that character belonging to the United States, which the Chair held must be those materials belonging to the United States on the national domain, and limiting the scope of the appropriation. The Chair thinks it is clearly in order.

3614. An appropriation for the construction from Government surveys of maps of a foreign coast was held not to be in order on an appropriation bill.—On January 7, 1899,[3] the legislative, executive, and judicial appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

For the construction from Government surveys of a series of engraved nautical charts of the coasts and harbors of the Philippine Islands, $12,000.

Mr. Alexander M. Dockery, of Missouri, made the point of order that this appropriation was not authorized by law.

After debate the Chairman[4] sustained the point of order, saying:

The Chair is not able to ascertain whether this is a public work already commenced and which might be completed under the law. The Chair does not think, however, that an appropriation to publish maps and charts of a foreign country—which the Philippine Islands are now—should be a part of the general appropriation bill. The Chair therefore sustains the point of order.

3615. A department being created for the declared purpose of investigation, an appropriation for the instrumentalities of such investigation was held to be within the rule.[5]—On February 14, 1901,[6] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the

[1] Second session Fifty-ninth Congress, Record, pp. 3785, 3786.

[2] James E. Watson, of Indiana, Chairman.

[3] Third session Fifty-fifth Congress, Record, pp. 487, 488.

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

[5] See, however, section 3651 of this volume for a ruling not in harmony with this.

[6] Second session Fifty-sixth Congress, Record, pp. 2437, 2538.

state of the Union, and the Clerk had read the following paragraph relating to the work of the Fish Commission:

Employees at large: Two field-station superintendents, at $1,800 each; 2 fish culturists, at $960 each; 2 fish culturists, at $900 each; 5 machinists, at $960 each; 2 coxswains, at $720 each; in all, $13,560.

Mr. Martin E. Olmsted, of Pennsylvania, made a point of order against this paragraph, that the appropriations proposed were not authorized by law.

After debate, during which reference was made to sections 4395–4398, Revised Statutes, to the fact that the law of 1871 created the department for the prosecution of investigations, and to the decision of Chairman Payne, on January 30, 1897,[1] the Chairman,[2] on February 16, held:

The Chair is of the opinion that there is no limitation upon this section as to time, and that it has the same force and effect to-day that it had at the time it became a law on the 9th of February, 1871. This section in the bill which is objected to is clearly within the spirit and letter of that statute, and the Chair holds, therefore, that the point of the gentleman from Pennsylvania [Mr. Olmsted] is not well taken, and overrules the point of order.

3616. A proposition to appropriate for furnishing a Territorial capitol was held to be out of order on an appropriation bill.—On February 13, 1901,[3] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. J. F. Wilson, of Arizona, offered this amendment:

For furnishing the State house at Phoenix, in the Territory of Arizona, now completed but not furnished, the sum of $20,000.

Mr. Joseph G. Cannon, of Illinois, made the point of order that there was no law authorizing such expenditure.

The Chairman[2] sustained the point of order.

3617. An appropriation for relief of the native inhabitants of Alaska was held to be unauthorized by law.—On February 16, 1901,[4] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. William S. Cowherd, of Missouri, offered this amendment:

To enable the Secretary of the Treasury to furnish good fuel and clothing to the native inhabitants of Alaska, $50,000.

Mr. Joseph G. Cannon, of Illinois, made the point of order that there was no law authorizing the expenditure.

After debate the Chairman[2] said, on February 18:

In the opinion of the Chair this point of order should be sustained. There is no authority of law for the same.

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[1] See section 3719 of this volume.

[2] Albert J. Hopkins, of Illinois, Chairman.

[3] Second session Fifty-sixth Congress, Record, p. 2377.

[4] Second session Fifty-sixth Congress, Record, pp. 2551, 2605.

3618. An amendment authorizing the purchase of a special device for transporting the mails was held not to be in order on the Post-Office appropriation bill.—On March 14, 1902,[1] while the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, Mr. John J. Fitzgerald, of New York, offered the following amendment:

After line 18, page 19, as a new subdivision, insert:

"For transportation of mail by pneumatic tube or similar device, by purchase or otherwise, $500,000.

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

The Chairman[2] said, after debate:

The gentleman from New York concedes that the amendment is subject to a point of order. Therefore the Chair rules it out of order.

3619. Propositions to pay private claims against the Government (except judgments of the courts or audited claims) are not in order on general appropriation bills.—On August 21, 1850,[3] the House was in Committee of the Whole House on the state of the Union considering the civil and diplomatic appropriation bill. Mr. John A. McClernand, of Illinois, offered the following amendment, to come in at the end of the clause providing salaries for secretaries of legation abroad:

For compensation to Theodore S. Fay, secretary of legation to Prussia, for his services as acting chargé d'affaires to that Government, $1,701.40, which shall be in full for his claim for all such services.

The point of order being made, the Chairman[4] ruled:

This is a bill making appropriations for the fiscal year commencing on the 1st day of July last. The eighty-first rule[5] authorizes amendments to be offered to provide for contingencies in any one of the Departments. In the opinion of the Chair these contingencies must be for the future. This amendment is a provision to pay an individual claim of a private nature for services past, and, in the opinion of the Chair, is not in order.

On appeal the Chair was sustained, 67 yeas to 54 nays.

Again, on August 24, on the same bill, and Mr. Burt being again in the chair, a similar ruling was made on an amendment proposing to pay a claim of the State of New Hampshire for money expended in suppressing an insurrection at Indian Stream, in that State.

3620. On February 19, 1853,[6] during the consideration of the civil and diplomatic appropriation bill in Committee of the Whole House on the state of the Union, Mr. James F. Strother, of Virginia, offered an amendment for the payment of $123,000 to the Orange and Alexandria Railroad Company on account of an old claim.

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[1] First session Fifty-seventh Congress, Record, pp. 2797.

[2] Charles E. Littlefield, of Maine, Chairman.

[3] First session Thirty-first Congress, Globe, pp. 1617, 1651.

[4] Armistead Burt, of South Carolina, Chairman.

[5] This is now section 2 of Rule XXI. See section 3578 of this chapter.

[6] Second session Thirty-second Congress, Globe, p. 736.

Mr. George W. Jones, of Tennessee, made the point of order that the amendment was not in order, as it was a private claim, and a private bill was pending.

The Chairman[1] sustained the question of order. On an appeal the Chair was sustained.

3621. On February 8, 1854,[2] the House was in Committee of the Whole House on the state of the Union, considering House bill No. 49, to supply deficiencies in the appropriations for the service of the fiscal year ending the 30th of June, 1854.

An amendment was offered for the payment of William Irving $625 for services as acting superintendent of the Seventh Census for five months, from May 30, 1851.

The debate developed the fact that the superintendent also claimed the compensation for this period, and that the Department had not allowed it.

Mr. Fayette McMullin, of Virginia, having raised the point that the amendment was a private claim, and therefore not in order on an appropriation bill, the Chairman[3] decided the amendment in order, whereupon Mr. McMullin appealed, and the committee reversed the decision of the Chair.

So the amendment was decided not to be in order.

3622. On June 22, 1854,[4] the House was in Committee of the Whole House on the state of the Union considering the civil and diplomatic appropriation bill, when Mr. Thomas H. Bayly, of Virginia, offered an amendment for the compensation of Francis Daines for the discharge of the United States consular duties at Constantinople from the 16th of May, 1849, to the 20th of December, 1852, in conformity to the act of Congress approved the 11th of August, 1848, $3,794.50.

The point of order being made by Mr. John Letcher, of Virginia, the Chairman[1] said:

In deciding the question of order raised by the gentleman from Virginia, the Chair adheres to the decision which he made, and which has been twice affirmed by the committee, that the bill which is now under consideration is a bill making appropriations for the civil and diplomatic expenses of the Government for the year ending 30th June, 1855, and that these amendments are not in order to it.

3623. On May 25, 1892,[5] the House was in Committee of the Whole House on the state of the Union considering the sundry civil appropriation bill.

The paragraph providing for the Government exhibit at the World's Columbian Exposition having been reached, Mr. William Cogswell, of Massachusetts, offered this amendment to it:

Authority is hereby granted for the payment of $750 to St. Julian B. Dapray, for special and legal services rendered the board of control and management Government exhibit, World's Columbian Exposition, to be held at Chicago, Ill., 1892—93, from moneys hereby appropriated.

Mr. Benton McMillin, of Tennessee, made a point of order that there was no authority of law for such an appropriation.

The Chairman[6] ruled:

The Chair is satisfied that there is no law authorizing this specific appropriation, and the point of order is therefore sustained.

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[1] James L. Orr, of South Carolina, Chairman.

[2] First session Thirty-third Congress, Globe, p. 385.

[3] Origen S. Seymour, of Connecticut, Chairman.

[4] First session Thirty-third Congress, Globe, p. 1483.

[5] First session Fifty-second Congress, Record, p. 4668.

[6] Rufus E. Lester, of Georgia, Chairman.

3624. On February 2, 1897,[1] the consular and diplomatic appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Andrew R. Kiefer, of Minnesota, offered this amendment:

That the Secretary of the Treasury be, and he is hereby, directed to pay to Mrs. Harriet D. Newson, widow of Thomas M. Newson, late United States consul at Malaga, a sum of money equal to one year's salary of said consul, together with the sum of $197, which was collected from the estate of the said Thomas Newson by the Government of the United States after his death.

Mr. Robert R. Hitt of Illinois, made a point of order against the amendment.

The Chairman[2] sustained the point of order.

3625. The payment of an unadjudicated claim, even though the amount be ascertained and transmitted by the head of an Executive Department, is not in order on the deficiency bill.—On February 20, 1901,[3] the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. George A. Pearre, of Mary land, offered this amendment:

To pay the employees of the War Department for services rendered in excess of the regular day's labor of seven hours each from April 21, 1898, to January 31, 1899, as they shall respectively appear to be entitled to the same from the rolls of the War Department, to be distributed by the Secretary of War, $85,394.92.

Mr. Joseph G. Cannon, of Illinois, made the point of order that such an appropriation had not been authorized by law.

It was urged that this amount had been ascertained by the Secretary of War and communicated to the House in a letter from the Secretary.

The Chairman[4] sustained the point of order.

3626. On February 20, 1901[5] the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

Credit in account of Maj. T. E. True: That the proper accounting officers in the Treasury are hereby authorized and directed to credit and allow to Maj. T. E. True, quartermaster, United States Army, depot quartermaster, Washington, D. C., the voucher for $1,300 for payment made by him to Sheldon Jackson under the approval of the War Department of March 18, 1899, said payment being in the nature of extra compensation to Sheldon Jackson for services rendered by him in connection with the relief of people in the mining regions of Alaska, and to charge the same to the credit of the appropriation made for that purpose by the act approved December 18, 1897.

Mr. D. E. Finley, of South Carolina, made the point of order that this was a claim, and that there was no law authorizing its payment on an appropriation bill.

The Chairman[4] sustained the point of order.

3627. On February 20, 1901,[6] the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Henry S. Boutell, of Illinois, offered this amendment:

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[1] Second session Fifty-fourth Congress, Record, p. 1445.

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

[3] Second session Fifty-sixth Congress, Record, pp. 2713–2716.

[4] George P. Lawrence, of Massachusetts, Chairman.

[5] Second session Fifty-sixth Congress, Record, p. 2711.

[6] Second session Fifty-sixth Congress, Record, pp. 2709, 2710.

To pay John C. White the sum of $2,030.63, the same to be taken and receipted for in full satisfaction of his claim for services as charge d'affaires ad interim at Rio de Janeiro, Brazil, from December 23, 1878, to March 27, 1879, and from April 11, 1880, to June 30, 1880.

Mr. Joseph G. Cannon, of Illinois, made the point of order that there was no law authorizing the expenditure.

The Chairman[1] sustained the point of order.

3628. It is not in order to appropriate on the deficiency bill for an unadjudicated claim, even though it be transmitted to the House by an Executive message.—On February 20, 1901,[2] the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk read this paragraph:

To reimburse the master and owners of the Russian bark *Hans* for all losses and damages incurred by reason of the wrongful and illegal arrest and detention of Gustav Isak Dahlberg, the master and principal owner of said bark, by officers of the United States district court for the southern district of Mississippi in 1896, $5,000.

Mr. Thaddeus M. Mahon, of Pennsylvania, made the point of order that this paragraph related to a private claim, and was not in order on an appropriation bill.

It was explained by Mr. Joseph G. Cannon, of Illinois, who was in charge of the bill, that this claim had been sent to Congress by a message of the President of the United States and referred to the Committee on Appropriations. It seemed proper to make the appropriation in this way, but it must be admitted that the paragraph was subject to the point of order.

The Chairman[1] sustained the point of order, and the paragraph was stricken from the bill.

3629. Appropriations for payment of claims, even such as have been investigated and reported on by officers of the Government, are not in order on a general appropriation bill.—On August 7, 1890,[3] the House was in Committee of the Whole House on the state of the Union considering the general deficiency appropriation bill, when the Clerk read a list of appropriations to pay judgments of the Court of Claims.

At the conclusion of the reading Mr. William J. Stone, of Kentucky, offered an amendment to pay a certain sum to "the legal representatives of H. Cothes, deceased," admitting at the same time that this was "not strictly a judgment of the Court of Claims," but had been investigated and found to be due by the Quartermaster-General.

Mr. David B. Henderson, of Iowa, made a point of order against the amendment.

The Chairman[4] sustained the point of order.

3630. On August 7, 1890,[5] the House was in Committee of the Whole House on the state of the Union considering the general deficiency appropriation bill, when Mr. William D. Bynum, of Indiana, proposed an amendment to pay a certain sum

[1] George P. Lawrence, of Massachusetts, Chairman.

[2] Second session Fifty-sixth Congress, Record, p. 2709.

[3] First session Fifty-first Congress, Record, p. 8301.

[4] Lewis E. Payson, of Illinois, Chairman.

[5] First session Fifty-first Congress, Record, p. 8304.

to the heirs of Noah Noble, who had been receiver of the land office at Indianapolis prior to 1831, and to whom there was due this sum when he closed his accounts with the Government.

Mr. David B. Henderson, of Iowa, made a point of order against the amendment.

The Chairman[1] sustained the point of order.

3631. August 7, 1890,[2] the House was in Committee of the Whole House on the state of the Union considering the general deficiency bill, and an amendment submitted by Mr. Samuel P. Snider, of Minnesota, was under consideration, a point of order being pending.

The Chairman[2] held:

The Chair desires to state with reference to the amendment submitted by the gentleman from Minnesota [Mr. Snider], covering an appropriation in behalf of the postmaster at Minneapolis, Minn., for funds lost or stolen from that office, and which amendment was held under advisement on the point of order, that upon reference to the statute it will be seen that this amendment covers a claim provided for in the act of March 17, 1882, which provides that no losses of this character exceeding the sum of $2,000 shall be paid or credited until after all of the facts in relation to the same have been ascertained, on an investigation by the Postmaster-General, and submitted to Congress with his recommendations, and the appropriation is made therefor.

Under the general law each postmaster is an insurer of all Government funds and property that come into his hands by virtue of his office; and the Government is not liable, except by virtue of the statute referred to, for any loss that may occur. If the claim does not exceed the sum of $2,000, provision is made that the Postmaster-General, after the facts shall have been ascertained, may, in his discretion, allow for and credit to the postmaster such sum in his ordinary settlement. Where the amount therefore exceeds the sum of $2,000, it seems to the Chair that it is in the same position as any other claim which necessitates an appropriation by Congress and where the facts in relation to the same have been ascertained and reported to Congress and acted upon by a committee, as provided by law.

The language of the statute would seem to imply, and necessarily, that such a claim must be proceeded with in the order provided for such legislation in the treatment of any other claim; that is to say, that it must be certified to Congress and a bill introduced, referred to the Committee on Claims of the House and Senate, and reported with favorable recommendation, and adopted by each body.

This, in the judgment of the Chair, is not a claim of that character which would entitle it to consideration on an appropriation bill, either on a deficiency bill or any other general appropriation bill; and hence the Chair must sustain the point of order and rule the amendment out.

3632. The fact that a Department officer has reported on a claim in accordance with a direction of law does not thereby make an audited claim for which provision may be made in an appropriation bill.—On June 26, 1906,[3] the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

Payment to Texas: To reimburse to the State of Texas, in full settlement of all claims of any nature whatever on account of moneys actually expended by that State during the period of time between February 28, 1855, and June 21, 1860, in payment of State volunteers or rangers called into service by authority of the governor of Texas in defense of the frontier of that State against Mexican

[1] Lewis E. Payson, of Illinois, Chairman.

[2] First session Fifty-first Congress, Record, p. 8304.

[3] First session Fifty-ninth Congress, Record, p. 9305.

marauders and Indian depredations, for which reimbursement has not been made out of the Treasury of the United States, as ascertained under the act of Congress approved March 3, 1905, and certified in Senate Document No. 169 of this session, $375,418.94.

Mr. John Dalzell, of Pennsylvania, made the point of order that there was no law authorizing the appropriation.

After debate on this day the committee rose.

On June 27[1] the Chairman[2] held:

When the committee rose on yesterday there was pending a point of order to the paragraph in the bill on page 23 beginning on line 10 and extending to and including line 24. The paragraph carries an appropriation to reimburse the State of Texas for moneys expended by that State in defending its frontier against Mexican marauders and Indian depredations prior to June 20, 1860. The point of order was made by the gentleman from Pennsylvania [Mr. Dalzell] that there is no law authorizing an appropriation for the payment of the claim. Under the rules of the House no provision can be carried in a general appropriation bill for the payment of a claim against the Government of the United States unless the payment of the claim is clearly authorized by existing law. In the case now under consideration the State of Texas a number of years ago expended a considerable sum of money in defending its borders against invasion, primarily for the protection of its own citizens, but in doing that the State performed a duty that under the Federal Constitution belonged to the United States Government. There was no law then, and there is no law now, authorizing the reimbursement of States that expend funds in the execution of a service of the character mentioned.

In 1859 and in 1860 Congress made appropriations covering portions of the claim of the State of Texas included in the paragraph under consideration. In 1859 the appropriation was for the expense of six companies of State militia for a period of three months. In 1860 Congress extended the provisions of the law of 1859 so as to cover all the troops of the State of Texas that were engaged in defending the frontier, the State militia and the rangers, limiting the amount, however, to about $123,000. Those are the only acts of legislation that Congress ever made upon the subject. The appropriations were not drawn by the State, and under the operation of a general statute lapsed and were covered into the Treasury. In the general deficiency bill for 1905 a provision was incorporated directing the Secretary of War to inquire into and report to Congress for its consideration what sum of money were actually expended by the State of Texas during the period between February 28, 1855, and June 21, 1860, in payment of State volunteers or rangers called into service by authority of the government of Texas in defense of the frontier of that State against Mexican marauders and Indian depredations, for which reimbursement has not been made out of the Treasury of the United States.

The original acts of Congress appropriating money for the reimbursement of the State did not cover the entire claim that is contained in the paragraph under consideration, and therefore it is not necessary for the Chair to determine whether those appropriation acts—the appropriations having lapsed and been covered into the Treasury—constitute a continuing liability on the part of the Government for the payment of the claim or whether they were coupled with the appropriations and ceased to operate after the appropriations lapsed. If there is any law for the payment of this claim it is contained in the provision the Chair just quoted in the general deficiency act for the fiscal year 1905. The question is whether by that provision Congress created a legal liability upon the United States for the payment of this claim. The Chair is of the opinion that the provision did not create such liability. The Secretary of War was directed to inquire into the claim and report "for the consideration of Congress"—not for payment, but "for the consideration of Congress." The language fairly implies that Congress intended to further consider the question in the light of any new facts that might be developed by the investigation of the Secretary of War. The Chair is of the opinion that when Congress creates a commission to make an investigation of a particular subject or authorizes a Department to make such investigation for the consideration of Congress, that act does not commit the Federal Government to the project. The investigation is for information to enable Congress to intelligently determine what the position of the Government shall be in reference to the matter.

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[1] Record, p. 9397.

[2] Edgar D. Crumpacker, of Indiana, Chairman.

The investigation made by the Secretary of War was for the information of Congress. Congress, in the light of the investigation, was supposed to act upon the question of liability and decide whether the Government should assume the payment of the claim. Merely ordering the investigation did not amount to an assumption of the claim by the Government. Congress has the right to assume and pay the claim, but under the rules of the House a general appropriation bill can not carry a provision for its payment until Congress, by suitable action, has legally committed the Government to its payment. The Chair is clearly of the opinion that Congress did not create a legal liability on the part of the Government to pay the claim by the provision in the act of 1905, and therefore the Committee on Appropriations had no right to incorporate in this bill a provision for its payment.

It may have put the whole question before the Congress on its merits, but in distributing the business of the House under the rules appropriate committees investigate questions on their merits and report measures for action by the House; but the Committee on Appropriations, in making up general bills, is not supposed to investigate questions upon their merits, but to appropriate for objects authorized by law, the merits of which have been investigated by other committees and by Congress. A few years ago a provision similar to the one under consideration was incorporated in the naval appropriation bill, a provision authorizing the appointment of a commission to select a site for a naval training station on the Great Lakes and to ascertain the cost of the site and report to Congress. That commission was appointed and made a report, selecting a site and reporting the cost of the site to Congress. In the following naval appropriation bill a proposition was embodied providing an appropriation for the establishment of the naval training station, and a point of order was made against the provision and sustained on the ground that the creation of the commission for the purpose of investigating the question did not commit the Government to the project at all, but that it was only for the enlightenment of Congress. The Chair regards that decision directly in point, so far as the principle is concerned. The point of order is sustained. The Clerk will read.

3633. A proposition to pay a claim reported on favorably by a board of officers is not in order on the deficiency bill unless the expenditure for the object has been authorized by law.—On March 1, 1905,[1] the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. David H. Smith, of Kentucky, proposed an amendment:

After line 8, on page 29, insert:

"To pay amount found due by the board of appraisers appointed by the War Department on account of army maneuvers held at West Point, Ky., in September and October, 1903, $2,832.24."

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

Mr. Smith explained that this amount had been awarded by a board of officers appointed by the War Department to appraise damages.

Mr. Fred C. Stevens, of Minnesota, explained:

The law as to the payment of these expenses is about as follows:

The Dick militia bill, I think by section 15, provided that all expenses for army maneuvers for the National Guard should be paid out of the appropriate items of the regular appropriation for the support of the Army, so that the item for the pay for the Army could be drawn upon to pay for the salaries of the officers and men and the items for commissary supplies and quartermaster supplies in the army bill could be used for paying for commissary and quartermaster supplies in these maneuvers. That was the law until last year. It was the law at the time these maneuvers were held. Last year the army appropriation bill made a change, which is contained in the present bill this year, * * * providing that specific estimates should be made for such purposes now. But at the time these maneuvers were held at West Point and Fort Riley the law was in force that the payment of all expenses of

[1] Third session Fifty-eighth Congress, Record, pp. 3794–3796.

these maneuvers should be paid out of the appropriate items of the regular appropriations of the Army for these purposes, and the provision can be found, I think, in section 15 of what is known as "the militia bill," or the Dick bill.

After debate the Chairman[1] said:

The Chair is ready to rule. Referring to the Digest, page 358, the Chair finds that it has been held:

"The fact that a Department officer has reported on a claim in accordance with a direction of law does not thereby make an audited claim, for which provision may be made in an appropriation bill."

Also:

"It is not in order to appropriate on the deficiency bill for an unadjudicated claim, even though it be transmitted to the House by an Executive message."

Also:

"The payment of an unadjudicated claim, even though the amount be ascertained and transmitted by the head of an Executive Department, is not in order on the deficiency bill."

* * * As the Chair understands, the rule is that when a bill is incurred by authority of law the bill is presented to the Department of the Government authorizing it; it is there considered and audited, and if there be no appropriation to meet the bill as audited it is an item that can properly go on the deficiency bill. If there is such a law authorizing it, then the law should be presented, so that the Department can determine whether it is authorized by law or not.

The House can not assume that it is authorized by the law until it is passed upon by the proper officer, unless the law is presented showing clearly that it is authorized by law. * * * The gentleman from Kentucky may be correct, probably is correct about the equities of the case, but it happens with bills presented against the Government where the equities are concerned, where the bills are sent to be audited, and where the law does not clearly allow the particular claim. It seems to the Chair that this is not that sort of a claim, and the Chair sustains the point of order.

3634. It is in order to provide, on an appropriation bill as a deficiency, for the payment of a claim audited under authority of law.—On January 22, 1906,[2] the urgent deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

Payment to Indiana State board of agriculture: To pay the Indiana State board of agriculture the actual value of the use, occupation, and damage to their property by the United States military authorities for Government purposes during the war with Spain, as ascertained under the act approved April 7, 1904, and reported to Congress in House Document No. 48 of this session, $7,431.98.

Mr. Swagar Sherley, of Kentucky, made a point of order against the paragraph.

Mr. Lucius N. Littauer, of New York, explained:

This is simply an amount sent to us in accordance with the law requiring that this claim should be adjudicated. It has been adjudicated under the act passed April 7, 1904, entitled "An act for the relief of the Indiana State board of agriculture." The Assistant Secretary of War, under the terms of the law passed in April, 1904, investigated and reported to the Secretary of the Treasury that this amount was equitably and justly due to the State board of agriculture for the use of, occupation, and damage to this property in accordance with the law.

The Chairman[3] held:

The Chair overrules the point of order. It is the character of claim or item that it is customary to put into deficiency bills. It has over and over again been held that such an item is in order on a deficiency bill.

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[1] James R. Mann, of Illinois, Chairman.

[2] First session Fifty-eighth Congress, Record, pp. 1383, 1384.

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

3635. On August 5, 1890,[1] the House was in Committee of the Whole House on the state of the Union considering the general deficiency appropriation bill, when Mr. M. M. Boothman, of Ohio, offered this amendment:

For payment of the claims of the Mississippi Central Railroad Company, being the amount of Post-Office Department drafts in favor of W. Goodman, president of said road, in payment of mail transportation from April 1, 1861, to May 31, 1861, which were returned unpaid and canceled in April and May, 1866, the sum of $4,636.01, the said sum being a deficiency.

Mr. David B. Henderson, of Iowa, reserved a point of order on the amendment.

After debate, during which the fact was developed that this claim had been audited by the Treasury Department and had been referred first to the Committee on Claims, and subsequently rereferred, on recommendation of that committee, to the Committee on Appropriations, the Chairman[2] held:

Understanding that to be the state of facts applied to the amendment proposed by the gentleman from Ohio, the Chair will be compelled to hold that the amendment is in order. Of course that does not affect the merits of the claim or whether an appropriation shall be made for the payment of the claim. That is a matter for the committee to consider when it shall come to discuss the merits of the amendment. As at present advised, the Chair would overrule the point of order.

3636. It is in order to provide, on an appropriation bill as a deficiency, for the payment of an account audited under authority of law; but not to provide for such auditing.—On June 18, 1902,[3] the Committee of the Whole House on the state of the Union was considering the general deficiency appropriation bill when the clerk read the following:

Refunding to States expenses incurred in raising volunteers as follows: To the State of Indiana, $635,859.20; to the State of Iowa, $456,417.89; to the State of Michigan, $382,167.62; to the State of Ohio, $458,559.35; to the State of Illinois, $1,005,129.29.

Mr. Thetus W. Sims, of Tennessee, made the point of order that these appropriations, being in satisfaction of claims, were not in order on the bill.

Mr. Joseph G. Cannon, of Illinois, in debate, maintained that these were audited accounts for the payment of certain moneys that are due to certain States under the legislation of 1861 and 1862, and under additional legislation approved February 14, 1902:

And claims of like character arising under the act of Congress of July 27, 1861 (12 Stat., p. 276), and joint resolution of March 8, 1862 (12 Stat., p. 615), as interpreted and applied by the Supreme Court of the United States in the case of the State of New York against the United States, decided January 6, 1896 (160 U. S. Reports, p. 598), not heretofore allowed or heretofore disallowed by the accounting officers of the Treasury, shall be reopened, examined, and allowed, and if deemed necessary shall be transmitted to the Court of Claims for findings of fact or determination of disputed questions of law to aid in the settlement of the claims by the accounting officers.

It appeared further in the debate that these examinations and allowances had been by the Auditor, and that the claims had not been sent to the Court of Claims.

At the conclusion of debate the Chairman[4] held:

The statute which has been read in full plainly refers these several claims to the Auditor for reexamination and reauditing, with a view to allowance or disallowance. That has been done, as the gentleman from Illinois states, and the certificate of the Auditor is produced here.

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[1] First session Fifty-first Congress, Record, p. 8177.

[2] Lewis E. Payson, of Illinois, Chairman.

[3] First session Fifty-seventh Congress, Record, pp. 7028–7030, 7035–7037.

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

Now, it has been repeatedly held that any audited account—not necessarily the judgment of a court, but any account audited by direction of Congress—is in order on a deficiency appropriation bill. That is this case. The Chair overrules the point of order.

Later, during consideration of the same subject, Mr. Henry H. Bingham, of Pennsylvania, offered the following as an amendment:

Provided, That the like claims of the States of Pennsylvania, Maine, New Hampshire, Rhode Island, or other States for expenses incurred in raising volunteers for the war of the rebellion shall be reopened and reaudited and allowed by the Auditor of the War Department in accordance with the methods of interest calculations adopted by the Comptroller of the Treasury in the settlement of the claims of the States of Indiana, Illinois, Ohio, Iowa, and Michigan, and the said Auditor is directed to reopen the claims of all States not so audited and allow the same according to the method adopted by the Comptroller of the Treasury in the settlements heretofore referred to, notwithstanding the fact that any such State or States have accepted payments on items heretofore allowed them by any Auditor.

Mr. Oscar W. Underwood, of Alabama, made the point of order that the proposed amendment involved new legislation.

After debate the Chairman said:

This provision is clearly a legislative provision, and the Chair sustains the point of order.

3637. On April 2, 1902,[1] while the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, Mr. George A. Pearre, of Maryland, offered this amendment:

To enable the Secretary of War to reimburse George W. Dant for such expenses incurred by him in legal proceedings growing out of the Ford's Theater disaster on the 9th day of June, 1893, as the Secretary of War may decide to have been necessary, proper, and reasonable, $3,000, or so much thereof as may be necessary.

Mr. Joseph G. Cannon, of Illinois, having made a point of order, the Chairman[2] said:

The Chair will rule on the point of order. At the second session of the Fifty-sixth Congress it was held that it is not in order to appropriate on an appropriation bill for an unadjudicated claim, even though it be transmitted to the House by an Executive message.

There are several rulings which hold that propositions to pay private claims against the Government are not in order on general appropriation bills. There seems to be a long line of decisions covering the point, and the Chair sustains the point of order.

3638. The Comptroller having ascertained the amount of a claim on appeal, an appropriation bill may not carry a larger amount found by the Auditor who has been overruled.—On April 18, 1904,[3] the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

To the State of Massachusetts, $1,611,740.85.

To this Mr. John A. Sullivan, of Massachusetts, proposed this amendment:

Strike out all after the word "Massachusetts," in line 18, page 66, and insert in lieu thereof the words "two million four hundred and ninety-seven thousand four hundred and thirty dollars and seventy-three cents."

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[1] First session Fifty-seventh Congress, Record, pp. 3574, 3575.

[2] George P. Lawrence, of Massachusetts, Chairman.

[3] Second session Fifty-eighth Congress, Record, pp. 5025—5030.

Mr. James A. Hemenway, of Indiana, made the point of order that the amendment was not authorized by law, reading the following statute which gave jurisdiction to the committee to report the item in the bill:

That the Secretary of the Treasury shall, at the commencement of each session of Congress, report the amount due to each claimant whose claim has been allowed in whole or in part to the Speaker of the House of Representatives and the Presiding Officer of the Senate, who shall lay the same before their respective Houses for consideration.

Also the following statute governing the auditing of claims:

SEC. 8. The balances which may from time to time be certified by the Auditors to the division of bookkeeping and warrants, or to the Postmaster-General, upon the settlements of public accounts, shall be final and conclusive upon the executive branch of the Government, except that any person whose accounts may have been settled, the head of the Executive Department, or of the board, commission, or establishment not under the jurisdiction of an Executive Department, to which the account pertains, or the Comptroller of the Treasury, may, within a year, obtain a revision of the said account by the Comptroller of the Treasury, whose decision upon such revision shall be final and conclusive upon the executive branch of the Government.

It appeared that the Auditor had found originally the amount proposed in the amendment, but on review the Comptroller had cut the amount down to that carried in the bill.

After debate the Chairman [1] held:

The second section of Rule XXI provides that no appropriation shall be reported in any general appropriation bill or be in order as an amendment thereto for any expenditure not previously authorized by law. The question is not one of power on the part of the House, but is one of procedure under the rule at this time. The rule relates to appropriations for expenditures and not for the discharge of unascertained obligations or the payment of unliquidated liabilities against the Government. It relates to appropriations for expenditures in the payment of claims that have been ascertained and are ready to be paid. Now, it is admitted that the law requires claims of this general class to be audited in the various Departments, and the result certified to the Congress before appropriations can be made for their payment.

The philosophy of the law and the rule under consideration is that the various Departments of the Government, through their administrative and accounting boards and officers, have better facilities to ascertain the amount of a claim than this body can have. The work of auditing is not legislative; it is administrative. Therefore an expenditure is not authorized upon a demand against the Federal Government until it has been audited and the amount of the liability ascertained. The mere auditing is not the thing that gives the Committee on Appropriations jurisdiction under the rule. The purpose of auditing is to ascertain how much there is due from the Federal Government. As part of the accounting system of the Federal Government, the office of Comptroller of the Treasury is established. That office is part of the auditing mechanism, and it is invested with power to examine and decide questions of law and fact.

At this point Mr. John S. Williams, of Mississippi, asked if it would be in order for the Committee of the Whole to reduce instead of increasing the amount.

Continuing the Chairman said:

That would be entirely in order, because a less amount than that awarded by the auditing officer would be clearly authorized, and the House always has a right to appropriate a less amount than the law authorizes, but it does not follow that an appropriation bill may carry a larger amount than the law authorizes. When the appropriation goes beyond that which the law permits, it manifestly does that which is not authorized by law.

The object of auditing, as the Chair said a moment ago, is to ascertain the extent of the liability. When a claim is audited, an appeal may be taken from the award of the Auditor to the Comptroller of the

[1] Edgar D. Crumpacker, of Indiana, Chairman.

Treasury, and the decision of the Auditor may be reviewed, reversed, or modified. The decision of the Comptroller then stands in the place of the findings of the Auditor, and it is binding and conclusive until it is set aside by some superior officer or tribunal. The finding and the judgment of the Comptroller of the Treasury are the only finding and judgment that the disbursing officers of the Government can regard in the expenditure of money.

Now, the rule above quoted, in the judgment of the Chair, was made to apply to appropriations of money for the payment of claims where the amount has been properly ascertained. The award of the auditing officer is sufficient authority for an appropriation when it has not been appealed from or set aside, but when it has been appealed from and the Comptroller has revised or modified the award of the Auditor it is fully superseded by the decision on appeal, and the judgment and award of the Comptroller then constitute the only authority for an appropriation under the rule.

In this case it seems that the claim of the State of Massachusetts was duly audited, and the amount stated in the amendment offered by the gentleman from Massachusetts was found to be due. An appeal was taken from the award of the Auditor to the Comptroller of the Treasury, and that officer modified the award of the Auditor and reduced it in amount. The paragraph in the bill carries the amount found due from the Federal Government by the Comptroller. The Comptroller's decision has never been reversed or set aside. It seems clear that the award of the Auditor was entirely set aside and superseded by the decision of the Comptroller and in no sense fixes the liability of the Government. The finding and judgment of the Comptroller constitute the only legal authority for the payment of the claim. The amendment being predicated upon the Auditor's award, which was set aside and superseded by the appeal, is not authorized by law, and the point of order is sustained.

Mr. John S. Williams, of Mississippi, having appealed, the decision of the Chair was sustained, ayes 104, noes 89.

3639. The fact that a Department officer has reported on a claim in accordance with a direction of law does not thereby make an audited claim for which provision may be made on an appropriation bill.—On April 16, 1904,[1] the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. John Stephens, of Texas, proposed this amendment:

Insert after line 19, page 9, the following: "To refund to the State of Texas the sum of $50,875.53, the same being the amount due the State of Texas in the adjustment of claims relating to the transfer of Greer County, Okla., from the State of Texas to the United States."

Mr. James A. Hemenway, of Indiana, made the point of order that the proposed amendment was out of order, being a claim.

Mr. Stephens argued that the act of 1901[2] authorized the Secretary of the Interior to audit this account. The law actually provided that the Secretary of the Interior should examine the claims of Greer County against Texas and of Texas against Greer County and report to Congress. The law provided that the Secretary, having made the examination, should report in detail to Congress. But the law made no provision directing the payment of any balances due.

The Chairman[3] held:

The Chair is of the opinion, upon the statement of the gentleman from Texas, that the amendment is not in order. The appropriation is not authorized by existing law, and therefore the Chair sustains the point of order.

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[1] Second session Fifty-eighth Congress, Record, p. 4944.

[2] 31 Stat. L., p. 732.

[3] Edgar D. Crumpacker, of Indiana, Chairman.

3640. On April 18, 1904,[1] the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Francis W. Cushman, of Washington, proposed this amendment:

On page 18, at the end of line 21, insert the following:

"Reimbursement to John and David West, of Cathlamet, Wash.: That the Secretary of the Treasury is hereby authorized and directed to pay to John and David West, of Cathlamet, Wash., out of any money in the Treasury not otherwise appropriated, the sum of $88.50, as a reimbursement in full for all damages to their dock in the Columbia River at Cathlamet, Wash., accidentally inflicted by the United States dredge *W. S. Ladd*."

Mr. Cushman stated that the engineering division of the War Department had ascertained the amount due.

Mr. James A. Hemenway, of Indiana, having made a point of order, the Chairman[2] held:

It is not the function of the Committee on Appropriations to examine and allow claims. The Committee on Appropriations has only authority to pay claims that have already been allowed, the amount having been ascertained by the proper officer, and the understanding of the Chair is that the claim covered by the appropriation has not been audited and allowed as the law required. The Chair therefore sustains the point of order.

3641. It is in order on the deficiency bill to appropriate for the payment of judgments of the courts certified to Congress in accordance with the law.

It is in order to provide on a general appropriation that no part of a certain appropriation shall be expended in payment of an ajudicated claim until the said claim shall have been certified as finally adjudicated.

On February 21, 1901,[3] the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

For payment of judgments rendered by the Court of Claims in Indian depredation cases, certified to Congress at its present session in House Document No. 65, $82,211; said judgments to be paid after the deductions required to be made under the provisions of section 6 of the act approved March 3, 1891, entitled "An act to provide for the adjustment and payment of claims arising from Indian depredations," shall have been ascertained and duly certified by the Secretary of the Interior to the Secretary of the Treasury, which certification shall be made as soon as practicable after the passage of this act, and such deductions shall be made according to the discretion of the Secretary of the Interior, having due regard to the educational and other necessary requirements of the tribe or tribes affected; and the amounts paid shall be reimbursed to the United States at such times and in such proportions as the Secretary of the Interior may decide to be for the interest of the Indian Service: *Provided*, That no one of said judgments provided in this paragraph shall be paid until the Attorney-General shall have certified to the Secretary of the Treasury that there exists no grounds sufficient, in his opinion, to support a motion for a new trial or an appeal of said cause.

Mr. Charles H. Grosvenor, of Ohio, made the point of order against the entire paragraph on the ground that there was no law authorizing the payment of judgment of the courts in Indian depredation claims, and on the ground that the proviso proposed new legislation.

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[1] Second session Fifty-eighth Congress, Record, p. 5037.

[2] Edgar D. Crumpacker, of Indiana, Chairman.

[3] Second session Fifty-sixth Congress, Record, pp. 2791, 2792.

In the debate Mr. Joseph G. Cannon, of Illinois, who was in charge of the bill, cited the law of 1891 authorizing the Court of Claims to try the cases, render judgment, and certify the judgments to Congress. Those judgments were final against the Government. As to the proviso, he urged that it was a limitation.

The Chairman [1] held:

In a similar case [2] it has been held that—

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

It seems to the Chair that the appropriation is authorized by existing law, and that the proviso should be construed to be a limitation. The Chair therefore overrules the point of order.

The Chairman also, for the same reasons, overruled a similar point of order made by Mr. D. E. Finley, of South Carolina, against this paragraph of the bill:

For the payment of the judgments rendered by the Court of Claims, reported to Congress at its present session in House Document No. 354, $449,574.79: *Provided*, That none of the judgments herein provided for shall be paid until the right of appeal shall have expired: *Provided further*, That the payment, to officers and enlisted men severally entitled, of the judgments of the Court of Claims for bounty for destruction of enemy's vessels, under section 4635 of the Revised Statutes, be made on settlements by the Auditor for the Navy Department in the manner prescribed by law and Treasury regulation for the payment of prize money, the distribution of such individual share to be in accordance with the orders, rules, and findings of the Court of Claims.

3642. On January 29, 1904,[3] the urgent deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union when this paragraph was read:

Payment to the Pacific Coast Steamship Company: To pay the account of the Pacific Coast Steamship Company for damages to their steamer Ramona, caused by collision with the U. S. revenue steamer McCulloch off Martinez, Cal., April 28, 1903, $50.13.

Mr. Marlin E. Olmsted, of Pennsylvania, raised the question of order that this was a claim the payment of which was not authorized by law.

In the course of debate, Mr. James A. Hemenway, of Indiana, stated that the law authorized the adjudication of this claim.

The Chairman [4] overruled the point of order, saying:

And it has been held repeatedly that the adjudication authorizes an appropriation for the payment of the amount adjudicated or found to be due parties in those special cases.

3643. Findings filed by the court under the Bowman Act do not constitute such adjudications of claims as justify appropriation in the general deficiency appropriation bill.—On February 20, 1897,[5] the general deficiency appropriation bill was under consideration in Committee of the Whole House on

[1] George P. Lawrence, of Massachusetts, Chairman.

[2] See section 3936 of this volume.

[3] Second session Fifty-eighth Congress, Record, pp. 1386, 1387.

[4] James A. Tawney, of Minnesota, Chairman.

[5] Second session Fifty-fourth Congress, Record, p. 2065.

the state of the Union, and the portion of the bill making appropriations to pay judgments of the Court of Claims had been reached.

Mr. James D. Richardson, of Tennessee, proposed an amendment "for the allowance of certain claims for stores and supplies reported by the Court of Claims under the provisions of the act approved March 3, 1883, and commonly known as the Bowman Act." [1]

Mr. Joseph G. Cannon, of Illinois, made the point of order against the amendment.

After debate the Chairman [2] sustained the point of order.

3644. A claim having been adjudicated under authority of a treaty, an appropriation for its payment was admitted on the deficiency bill.—On June 26, 1906,[2] the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Payment to Germany: To pay to Germany the moiety of the United States of $40,000, in full settlement of the German claims for losses incurred in connection with the disturbances in Samoa in 1899, under the convention between the United States, Germany, and Great Britain of November 7, 1899, as set forth in Senate Document No. 85 of the present session, $20,000.

Mr. Edwin Y. Webb, of North Carolina, made the point of order that there was no law authorizing this expenditure.

After debate the Chairman [4] held:

Under the rules of the House, a general appropriation bill may carry an appropriation for any object that is authorized by law. In this case the claim was submitted by a treaty of arbitration to the King of Sweden for adjudication. A treaty when ratified is the law of the land. The King of Sweden, acting as a court, decided the question of liability and found that the Government of the United States was liable. The only thing left to ascertain was the amount, and like a court selecting, for instance, a master in chancery, the arbitrator with the consent of the parties appointed agents to ascertain how much was due. Those agents, duly appointed, accredited, and authorized, in their investigation found the sum due, and this appropriation carries that sum. It seems to the Chair that the paragraph is clearly in order, that it is an adjudicated claim, and the amount has been ascertained so as to come within the rule; and the Chair overrules the point of order.

3645. It is in order on a deficiency appropriation bill to appropriate in payment of a contract lawfully made.—On June 26, 1906,[5] the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

New York, N. Y., rent of old custom-house: For rental of temporary quarters for the accommodation of certain Government officials, $130,600.

Mr. William Sulzer, of New York, made a point of order that the expenditure was not authorized by law.

After debate the Chairman [4] held:

This provision is to appropriate money to pay an amount which the Government, under a contract, is to pay for the current fiscal year. The point of order is overruled.

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[1] These are not "judgments" of the Court of Claims, but are simply findings of fact. (See secs. 3298–3303 of this volume.)

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

[3] First session Fifty-ninth Congress, Record, pp. 9297–9299.

[4] Edgar D. Crumpacker, of Indiana, Chairman.

[6] First session Fifty-ninth Congress, Record, p. 9300.

3646. On June 27, 1906[1] the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

To pay the Adrian Brick and Tile Machine Company of Adrian, Mich., for street letter boxes manufactured by that company, as subcontractors, and furnished to the Post-Office Department by the contractor, Eugene D. Scheble, of Toledo, Ohio, trading as the Michigan Steel Box Company, under his contract covering the period from July 1, 1901, to June 30, 1905, $18,227.40.

Mr. John J. Fitzgerald, of New York, made the point of order that there was no law to authorize the expenditure.

After debate the Chairman[2] held:

In the opinion of the Chair the contractor has a valid claim against the Government. The effect of the document read by the gentleman from Michigan is an assignment in equity, if not in law, of that claim to the beneficiary of this provision, and therefore he holds now a valid, legal claim against the Government, which may be paid by an appropriation in a general appropriation bill. * * * Appropriation bills may carry appropriations for the payment of claims against the Government authorized by law, and this is clearly authorized by law. It is under a contract authorized to be made, and the Chair is clear upon the question. The point of order is overruled.

3647. The investigation of foods in their relation to commerce and consumption was held not authorized by law in such a way as to permit appropriation on the agricultural appropriation bill.—On May 1, 1906,[3] the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the clerk read:

Laboratory, Department of Agriculture: General expenses Bureau of Chemistry: Chemical apparatus, chemicals, * * * for the employment of additional assistants and chemists, when necessary, and for the rent of buildings, occupied by the Bureau of Chemistry; to investigate the adulteration, [false labeling or branding, and laws, regulations, and decisions relative thereto,] of foods, condiments, beverages, and drugs, when deemed by the Secretary of Agriculture advisable, and to publish the results of such investigations when thought advisable: *Provided,* That before any adverse publication is made notice shall be given to the owner or manufacturer of the articles in question. * * * To investigate the chemical composition of sugar and starch producing plants in the United States and its possessions, and, in collaboration with the Weather Bureau, the Bureau of Plant Industry, and agricultural experiment stations, to study the effects of environment upon the chemical composition of sugar and starch producing plants. [And the Secretary of Agriculture, whenever he has reason to believe that any articles are being imported from foreign countries which are dangerous to the health of the people of the United States, or which shall be falsely labeled or branded either as to their contents or as to the place of their manufacture or production, [or which are kinds of products excluded from any foreign country for any cause whatever when coming from this country], shall make a request upon the Secretary of the Treasury for samples from original packages of such articles for inspection and analysis, and the Secretary of the Treasury is hereby authorized to open such original packages and deliver specimens to the Secretary of Agriculture for the purpose mentioned, giving notice to the owner or consignee of the sampling of such articles, who may, after notification, be present and have the right to introduce testimony before the Secretary of Agriculture or his representative, either in person or by agent, concerning the suitability of such articles for entry; and the Secretary of the Treasury shall refuse delivery to the consignee of any such goods which the Secretary of Agriculture reports to him have been inspected and analyzed and found to be dangerous to health or falsely labeled or branded, either as to their contents or as to the place of their manufacture or production, or which are forbidden entry or to be sold, or are restricted in sale in the countries in which they are made or from which they are exported, [or which are kinds of products excluded from any foreign country for any cause whatever when coming from this country.] Employing such assistants, clerks, and other persons as the Secretary of Agriculture may consider necessary for the

[1] First session Fifty-ninth Congress, Record, pp. 9399, 9400.

[2] Edgar D. Crumpacker, of Indiana, chairman.

[2] First session Fifty-ninth Congress, Record, pp. 6227–6230.

purpose named, $130,920: [*Provided,* That no payment for storage, cartage, or damage incident to the inspection of food products which are found unsuitable for entry shall be made nor payment for similar expenses incident to the entry of other food products except accruing from an order of the Secretary of Agriculture, and then for no longer period than that terminated by notification by the Secretary of Agriculture that the articles are entitled to entry.]

Total for Bureau of Chemistry, $158,500.

Mr. Edgar D. Crumpacker, of Indiana, made a point of order on the words "false labeling or branding, and laws, regulations, and decisions relative thereto," on the ground that there was no law authorizing an appropriation for that service.

The Chairman [1] sustained the point of order.

Thereupon Mr. Crumpacker made a further point of order on all the latter portion of the paragraph beginning with the words "And the Secretary of Agriculture whenever he has reason to believe," etc; but later modified this point so as to cover only the words—

or which are kinds of products excluded from any foreign country for any cause whatever when coming from this country.

Mr. Crumpacker stated that these words had not been in the bill last year.

The Chairman sustained the point of order.

Mr. Wadsworth further specified the same words when they were repeated further along in the paragraph, and the concluding proviso.

The Chairman sustained the point of order.

Thereupon, Mr. Charles L. Bartlett, of Georgia, made a point of order against that portion of the paragraph in which occurred the lines stricken out on the point of order made by Mr. Crumpacker:

To investigate the adulteration, [false labeling or branding, and laws, regulations, and decisions relative thereto,] of foods, condiments, beverages, and drugs, when deemed by the Secretary of Agriculture advisable, and to publish the results of such investigations when thought advisable: *Provided,* That before any adverse publication is made notice shall be given to the owner or manufacturer of the articles in question, who shall have the right to be heard and to introduce testimony before the Secretary of Agriculture or his representative, either in person or by agent, concerning the suitability of such articles for food, or as to false labeling or branding.

It was urged in debate that this was permanent law, having been carried in the appropriation bill of the preceding year.

The Chairman ruled:

It seems to the Chair that if this language included in the lines upon which the point of order is made by the gentleman from Georgia is permanent law, as is claimed by the gentleman from New Jersey, then it should not be here. If it is not permanent law, then it seems to the Chair that it is new legislation and is clearly subject to the point of order.

Then the Chairman sustained the point of order.

Mr. James R. Mann, of Illinois, having made a point of order against the whole of the remainder of the paragraph, a discussion arose, in the course of which the Chairman said:

The organic law provides for practical and scientific experiments, but it does not provide, so far as the Chair is able to ascertain, for any of the investigations referred to in the matter that has been ruled out. * * * But the organic law provides (sec. 526):

"That the Commissioner of Agriculture shall procure and preserve all information concerning agriculture which he can obtain by means of books and correspondence, and by practical and scientific

[1] David J. Foster, of Vermont, Chairman.

experiments, accurate records of which experiments shall be kept in his office by the collection of statistics, and by any other appropriate means within his power."

The information must relate to agriculture.

Mr. Richard Wayne Parker, of New Jersey, contended that subjects relating to food were properly included, since the law establishing the Department (sec. 520 R. S.) made it the duty of the Department

to acquire and diffuse among the people of the United States useful information on subjects connected with agriculture in the most general and comprehensive sense of that word.

3648. On May 2, 1906,[1] the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the following paragraph was read:

Nutrition investigations: To enable the Secretary of Agriculture to investigate and report upon the nutritive value of the various articles and commodities used for human food, with special suggestions of full, wholesome, and edible rations less wasteful and more economical than those in common use, including special investigations on the nutritive value and economy of the diet in public institutions, and the agricultural experiment stations are hereby authorized and directed to cooperate with the Secretary of Agriculture in carrying out said investigations in such manner and to such extent as may be warranted by a due regard to the varying conditions and needs of the respective States and Territories, and as may be mutually agreed upon; and the Secretary of Agriculture is hereby authorized to require said stations to report to him the results of any such investigations which they may carry out, whether in cooperation with the said Secretary of Agriculture or otherwise, $20,000.

Mr. James B. Perkins, of New York, made the point of order that the appropriation was not authorized by existing law.

Mir. Franklin E. Brooks, of Colorado, in debate, quoted the following passages of the law of March 3, 1887:[2]

That it shall be the object and duty of said experiment stations to conduct original researches or verify experiments on the physiology of plants and animals. * * *

The chemical composition of manures, natural or artificial, with experiments designed to test their comparative effects on crops of different kinds; the adaptation and value of grasses and forage plants; the composition and digestibility of the different kinds of food for domestic animals, the scientific and economic questions involved in the production of butter and cheese; and such other researches or experiments bearing directly on the agricultural industry of the United States as may, in each case, be deemed advisable, having due regard for the varying conditions and needs of our respective States or Territories.

* * * * * * *

And the agricultural experiment stations are hereby authorized and directed to cooperate with the Secretary of Agriculture in carrying on such investigations.

* * * * * * *

That in order to secure, as far as practicable, uniformity of methods and results in the work of said stations it shall be the duty of the United States Commissioner of Agriculture to furnish forms, as far as practicable, for the tabulation of results of investigation or experiments; to indicate, from time to time, such lines of inquiry as to him shall seem most important; and, in general, to furnish such advice and assistance as will best promote the purposes of this act.

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Mr. Brooks also referred as a precedent to a ruling in a preceding Congress,[3] where a similar provision had been held in order under the general authority conferred by the law establishing the Department of Agriculture.[4]

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[1] First session Fifty-ninth Congress, Record, pp. 6274–6277.

[2] 24 Stat. L., p. 440.

[3] First session Fifty-seventh Congress, Record, pp. 4847.

[4] Title XII of Revised Statutes. See concluding portion of preceding section for text of this provision.

At the conclusion of the debate the Chairman [1] held:

The Chair may be permitted to say that it seems to the Chair a matter of regret that general legislation of this importance should be included year after year in these appropriation bills and that the question of continuing the work under them should finally be determined on a point of order. But, as the Chair indicated yesterday, when these points of order were raised, the Chair has no choice, but must follow the rules of the House.

In the judgment of the Chair there is no authority for this paragraph except that found under Title XII of the Revised Statutes. The Chair does not think that the law relating to experiment stations, to which the gentleman from Colorado [Mr. Brooks] called the attention of the Chair, has any force here. Now, section 520 of the Revised Statutes does give the Secretary of Agriculture authority to acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture, in the most general and comprehensive sense of that word. That is a very broad and general authority. And yet it seems to the Chair that it can not be said that authority "to investigate and report upon the nutritive value of the various articles and commodities used for human food, with special suggestions of full, wholesome, and edible rations less wasteful and more economical than those in common use, including special investigations on the nutritive value and economy of the diet in public institutions," can be said to be useful information on subjects connected with agriculture, even in the most general and comprehensive sense of that word.

The Chair held yesterday that certain work provided for in this bill, namely, among other things, authority "to investigate the adulteration, false labeling or branding, and laws, regulations, and decisions relative thereto, of foods, condiments, beverages, and drugs, when deemed by the Secretary of Agriculture advisable," was subject to a point of order, and it seems to the Chair that portions of this paragraph are equally subject to the point of order. The Chair therefore sustains the point of order.

The Chair will say in this connection that the precedent which arose in the Fifty-seventh Congress, to which the gentleman from Colorado [Mr. Brooks] called the attention of the Chair, does not seem to be in point. While the case may be an analogous one it is not a similar case. The Chair sustains the point of order.

3649. Because of the requirements of law, appropriations for investigations on subjects connected with agriculture are generally in order on the agricultural appropriation bill.—On April 29, 1902,[2] while the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, Mr. Joseph G. Cannon, of Illinois, raised a question of order as to the following paragraph:

To enable the Secretary of Agriculture to investigate the character of proposed food preservatives and coloring matters, to determine their relation to digestion and to health, and to establish the principles which should guide their use; to enable the Secretary of Agriculture to investigate the character of the chemical and physical tests which are applied to American food products in foreign countries, and to inspect before shipment, when desired by the shippers or owners of these food products, American food products intended for countries where chemical and physical tests are required before said food products are allowed to be sold in the countries mentioned, and for all necessary expenses connected with such inspection and studies of methods of analysis in foreign countries; to enable the Secretary of Agriculture in collaboration with the Association of Official Agricultural Chemists, and such other experts as he may deem necessary, to establish standards of purity for food products and to determine what are regarded as adulterations therein, for the guidance of the officials of the various States and of the courts of justice; for the preparation of reports, the purchase of apparatus, chemicals ., samples, and supplies required in conducting such investigations, the employment of local and special agents, clerks, assistants, and other labor required in conducting such experiments in the city of Washington and elsewhere, and in collating, digesting, and reporting the results of such experiments; for freight and express charges, and for traveling and other necessary expenses, and for the rent of building occupied by the Bureau of Chemistry.

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[1] David J. Foster, of Vermont, Chairman.

[2] First session Fifty-seventh Congress, Record, pp. 4847, 4848.

After debate, the Chairman[1] said:

The Chair regards food products as connected with agriculture. The act creating the Department of Agriculture reads, in the first section, as follows:

"There shall be at the seat of government a Department of Agriculture, the general design and duties of which shall be to acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture in the most general and comprehensive sense of that word, and to procure, propagate, and distribute among the people new and valuable seeds and plants."

Now, while this may not be free from some doubt, yet as food products are closely connected with agriculture "in the most comprehensive use of the word, "and as this provision in the bill simply permits the Secretary of Agriculture to carry out a regulation having this end in view, the Chair is inclined to believe, and will so rule, that it is not subject to the point of order made by the gentleman from Illinois.

Also Mr. Cannon made the point of order against the following paragraph, and the Chairman, for the same reason, overruled the point:

To investigate the chemical composition of sugar-producing plants in the United States and its possessions, and, in collaboration with the Weather Bureau and agricultural experiment stations, to study the effects of environment upon the chemical composition of sugar-producing plants, especially with reference to their content of available sugar, $60,500, $20,000 of which sum, or so much thereof as is necessary, shall be used in investigating, determining, and reporting the proper treatment and process in order to secure uniform grade and quality of first-class marketable table cane sirup.

3650. While an appropriation to enable the Secretary of Agriculture to make certain investigations is authorized in the agricultural appropriation bill, it is not in order to require cooperation of State experiment stations therein.—On January 30, 1907,[2] the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Irrigation and drainage investigations: To enable the Secretary of Agriculture to investigate and report upon the laws of the States and Territories as affecting irrigation and the rights of appropriators and of riparian proprietors and institutions relating to irrigation and upon the use of irrigation waters, at home and abroad, with especial suggestions of the best methods for the utilization of irrigation waters in agriculture, and upon plans for the removal of seepage and surplus waters by drainage and upon the use of different kinds of power and appliances for irrigation and drainage, and for the preparation, printing, and illustration of reports and bulletins on irrigation and drainage, including employment of labor in the city of Washington or elsewhere; and the agricultural experiment stations are hereby authorized and directed to cooperate with the Secretary of Agriculture in carrying out said investigations in such manner and to such extent as may be warranted by a due regard to the varying conditions and needs and laws of the respective States and Territories as may be mutually agreed upon, and all necessary expenses, $150,000.

Mr. Gilbert N. Haugen, of Iowa, made a point of order against the paragraph.

After debate, the Chairman[3] said:

The Chair has no difficulty down to line 7, beginning with the words "and the agricultural experiment stations," etc. Beginning at that point we have a provision which authorizes and directs the experiment stations to cooperate with the Secretary of Agriculture in carrying out certain investigations, It would seem to the Chair that the real question involved is whether that is new legislation or a change in existing law. * * * Now, if the law provides now for such cooperation, then there is no need of it here; if the law does not provide for such cooperation, it would seem to the Chair that this would be a change in existing law. * * * It seems to the Chair there can be no question as to the fact

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[1] Llewellyn Powers, of Maine, Chairman.

[2] Second session Fifty-ninth Congress, Record, pp. 1980, 1981.

[3] David J. Foster, of Vermont, Chairman.

that the language "the agricultural experiment stations are hereby authorized and directed to Cooperate with the Secretary of Agriculture," and so on, is new legislation. The point of order is sustained and covers the whole paragraph.

Thereupon Mr. Franklin E. Brooks, of Colorado, offered as a new section the paragraph with the portion relating to the experiment stations eliminated.

Mr. Haugen made a point of order, but the Chairman overruled it.

3651. While an appropriation for an investigation on a subject relating to agriculture is in order on the agricultural appropriation bill, it is not in order to appropriate for the organization of a bureau to make such investigations.—On January 30, 1907,[1] the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. John F. Lacey, of Iowa, offered this amendment:

Insert at the end of line 23, page 50, the following:

"BUREAU OF BIOLOGICAL SURVEY: Salaries, Bureau of Biological Survey: One biologist, who shall be chief of Bureau, $3,000; one clerk, class 1, $1,200; two clerks, at $1,000 each, $2,000; one clerk, $900; one messenger or laborer, $480; in all, $7,580.

"Biological investigations: General expenses, biological investigations: For biological investigations, including the geographic distribution and migrations of animals, birds, and plants, and for the promotion of economic ornithology and mammalogy for an investigation of the food habits of North American birds and mammals in relation to agriculture, horticulture, and forestry; for the employment of local and special agents, clerks, assistants, and other labor required in conducting experiments in the city of Washington and elsewhere, and in collating, digesting, reporting, and illustrating the results of such experiments; for freight and express charges; for office fixtures and supplies, gas and electric current, telegraph and telephone service; for preparation and publication of reports, and for illustrations, field work, and traveling and other expenses in the practical work of the Bureau, and to enable the Secretary of Agriculture to carry into effect the provisions of an act approved May 25, 1900, entitled 'An act to enlarge the powers of the Department of Agriculture, prohibiting the transportation by interstate commerce of game killed in violation of local laws, and for other purposes,' $44,420.

"Total for Bureau of Biological Survey, $52,000."

Mr. Edgar D. Crumpacker, of Indiana, made the point of order that there was no authorization of law for the appropriation, and that legislation was involved.

After debate, the Chairman[2] held:

The Chair finds that the act of May 25, 1900,[3] is quite broad in its provisions. It declares:

"That the duties and powers of the Department of Agriculture are hereby enlarged so as to include the preservation, distribution, introduction, and restoration of game birds and other wild animals. The Secretary of Agriculture is hereby authorized to adopt such measures as may be necessary to carry out the purposes of this act and to purchase such game birds and other wild birds as may be required therefor, subject, however, to the laws of the various States and Territories. The object and purpose of this act is to aid in the restoration of such birds in those parts of the United States adapted thereto where the same have become scarce or extinct, and also to regulate the introduction of American or foreign birds or animals in localities where they have not heretofore existed."

Then it requires the Secretary to collect and publish information as to their propagation, uses, and preservation; and it distinctly authorizes him to make and publish all needful rules and regulations for carrying out the purposes of the act.

Now, this proposed amendment has two divisions, the first establishes a Bureau of Biological Survey, provides a biologist who shall be the chief of the bureau, with a salary of $3,000, and provides certain clerks. It establishes a bureau fully officered. The second division, entitled "Biological

[1] Second session Fifty-ninth Congress, Record, pp. 1976, 1977.

[2] Martin E. Olmsted, of Pennsylvania, Chairman.

[3] 31 Stat. L., pp. 187, 188.

investigations," appropriates in a lump sum for biological investigations of the character therein set forth in some detail. The Chair finds that "biology," as defined by Webster, has to do with the "origin, structure, development, function, and distribution of animals and plants," and is inclined to think, and would hold, that the second portion of the amendment is supported by authority found in the act of 1900, and therefore in order. But the first division of the amendment, establishing the Bureau of Biological Survey, seems to hamper the discretion which the act of 1900 confers upon the Department of Agriculture. Whether that act confers upon the Secretary of Agriculture authority to establish such a bureau need not be discussed. The proposed amendment does not contemplate its establishment by him, but by Congress. It is the attempted establishment of a new bureau in an appropriation bill without any previous authority of law. The Chair therefore holds that the first division of the amendment is subject to the point of order, and, part of the amendment being so subject, the Chair is compelled to sustain the point of order against the entire amendment.[1]

3652. While the statute authorizing the Secretary of Agriculture to make investigation of subjects relating to agriculture is held to justify a broad line of appropriation, yet it does not justify appropriations for general investigations.

The point of order against unauthorized appropriations or legislation in general appropriation bills may be made against a portion of a paragraph, even though it be not more than two words.

On January 30, 1907,[2] the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Entomological investigations: General expenses, Bureau of Entomology: Promotion of economic entomology; investigating the history and habits of insects injurious and beneficial to agriculture, horticulture, and arboriculture; ascertaining the best means of destroying those found to be injurious, including an investigation into the ravages of insects affecting field crops; investigations of the insects affecting small fruit, shade trees, and truck crops, forests and forest products, and stored products; investigation of insects in relation to diseases of men and domestic animals, and as animal parasites.

Mr. Edgar D. Crumpacker, of Indiana, made a point of order against the words "men and," on the ground that there was no authority of law for the Secretary of Agriculture to investigate this subject.

The Chairman,[3] in response to an inquiry of Mr. Crumpacker, stated that a point of order might be confined to the two words indicated, and then ruled:

When this bill was under consideration a year ago, the Chair indicated how unsatisfactory a condition existed with reference to many matters involved in this appropriation bill. The Agricultural Department has grown up very largely without any general legislation. Many of the provisions in the appropriation bill have been there year after year, but nothing in the general law can be found justifying them, and therefore if a Member sees fit at any time to object to them, there is nothing for the Chair to do, in his judgment, but to sustain the point of order. * * * The Chair finds no law for this appropriation. * * * The Chair sustains the point of order.

3653. A provision to appropriate for compiling tests of dairy cows at an exposition was held not to be authorized as an expenditure by the general law giving to the Secretary of Agriculture authority to acquire and diffuse information pertaining to agriculture.—On February 18, 1896,[4]

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[1] See, however, section 3615 of this volume for a ruling not in harmony with this.

[2] Second session Fifty-ninth Congress, Record, pp. 1964, 1965.

[3] David J. Foster, of Vermont, Chairman.

[4] First session Fifty-fourth Congress, Record, pp. 1896–1899.

in Committee of the Whole House on the state of the Union, Mr. Sereno E. Payne of New York, raised the point of order against this paragraph of the agricultural appropriation bill.

To compile the records of the tests of dairy cows at the Columbian Exposition and prepare the same for permanent preservation.

After debate, during which section 520 of the Revised Statutes was cited:

There shall be at the seat of Government a Department of Agriculture, the general design and duties of which shall be to acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture, in the most general and comprehensive sense of that word, and to procure, propagate, and distribute among the people new and valuable seeds and plants.

The Chairman [1] ruled:

This is not simply a question of the Agricultural Department being authorized to acquire useful information, but it is an instruction to the Department to accept tests which have been made without authority of law, not made by any officer appointed by the Government to make the test. It seems to the Chair that there would be no question as to the right of the Agricultural Committee to insert a clause requiring the Department of Agriculture to make dairy tests and publish the results, but this is a different thing, because this language goes further than that and instructs the Department to accept a certain specific test which was made without any authority of law; and it seems to the Chair that in order to do that it would be necessary, first, under the rules of this Congress, for the House and Senate to pass a resolution or bill authorizing and directing the Secretary to accept this as a Government test. The Chair believes the point of order to be well taken.

3654. It is not in order to provide on an appropriation bill for payments to employees of the House unless the House by prior action has authorized the same.—On February 20, 1897 [2] the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and this paragraph was reached:

To pay Robert A. Stickney for services rendered in the office of the Clerk of the House of Representatives from January 9, 1896, to March 4, 1897, inclusive, $1,383.34.

Mr. Joseph G. Cannon, of Illinois, made the point of order.

During the debate it was stated that this and similar matters in the bill had been considered by the Committee on Accounts and reported on adversely, and that the House had acquiesced in the report.

Upon this statement the Chairman [3] ruled the paragraph out of order as not authorized.

Mr. Cannon also made a point of order against this paragraph:

To pay, under resolutions of the House, Isaac R. Hill at the rate of $1,500 per annum; Thomas A. Coakley, George L. Browning, and George Jenison at the rate of $1,200 per annum each; C. W. Coombs at the rate of $1,800 per annum, and James F. English at the rate of $900 per annum, from March 4 to December 1, 1897, inclusive, $5,799.50.

During the debate it was developed that these employees were authorized during the time of the Congress by resolution of the House, but that this paragraph was to provide for compensation from the period between the expiration of this Congress and the organization of the next.

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[1] John A. T. Hull, of Iowa, Chairman.

[2] Second session Fifty-fourth Congress, Record, pp. 2058, 2061.

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

The Chairman ruled:

It seems these employees were employed under the present rules of the House to perform specific duties, and to be paid out of the contingent fund of the House. Now, the very fact that these resolutions can not carry it after the end of the present Congress—while the present occupant of the chair is aware that from time and long-honored custom of the House such employees have always been accorded to the minority, and is in full sympathy with that idea—if the point of order is insisted on, as it is, the Chair thinks that their employment after the 4th of March by appropriation is not sustained by any law, and is therefore subject to the point of order; and the Chair sustains the point of order.

3655. On February 20, 1897,[1] the general deficiency appropriation bill being under consideration in Committee of the Whole House on the state of the Union, Mr. Joseph E. Washington, of Tennessee, offered an amendment to enable the payment of one month's pay for extra services to the employees of the House and Senate.

Mr. Joseph D. Sayers, of Texas, made the point of order.

After debate, during which precedents were cited for a series of years, the Chairman[2] ruled:

The Chair is aware of the line of precedents that the gentleman from Ohio has mentioned, which grew out of the practice of the occupants of the chair in submitting this question to the Committee of the Whole, instead of deciding it for themselves under the rules. The question is not new to the present occupant of the chair. The same point of order was presented during the last session of Congress upon a similar amendment, and the ruling was then made by the present occupant of the chair that the amendment was not in order. That decision was founded upon the reading of the rule of the House, which is very plain. These officers are employees of the House at certain fixed annual salaries. To give them a month's pay in addition to the annual salary is to change the salary fixed by law or resolution of the House. It is in effect adding so much to the salary. If it is not an addition to the regular salary it is a gratuity. In either case it is not in conformity with existing law.

If this question did not appear entirely clear upon its merits to the present occupant of the chair, he would have had much more hesitancy in deciding the case when first brought to his attention; but he can see no excuse for submitting it to the House unless it be so submitted in the form of an appeal. The rule seems plain, and, although the precedents have been examined, the Chair has been unable to find any reason given for holding that this proposition is not in violation of the rules, except that it has been entertained by the votes of Committees of the Whole.

The Chair does not recollect whether the decision made by the present occupant of the chair at the last session was appealed from or not, but the House, by its acquiescence in the decision, sustained the ruling then made, and certainly made it the rule for the Chair during the present Congress, that an amendment of this kind is obnoxious to the rules and subject to a point of order. Therefore, while feeling for the opinions of the eminent gentlemen whose names have been cited—Mr. Kasson, of Iowa, Judge Payson, of Illinois, and Mr. Carlisle, the former Speaker of the House (especially the latter)—upon questions of law or parliamentary law the highest respect, the Chair sustains the point of order.[3]

Mr. Washington having appealed, the decision of the Chair was sustained.[4]

3656. The House having passed a resolution from the Committee on Accounts authorizing the employment of a person, a provision for the salary is in order on an appropriation bill.—On December 8, 1904,[5] the legis-

[1] Second session Fifty-fourth Congress, Record, p. 2063.

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

[3] In the Fifty-fifth Congress a similar decision was overruled by the committee. (Second session Fifty-fifth Congress, Record, pp. 2289, 2290.)

[4] On May 14, 1900 (first session Fifty-sixth Congress, Record, p. 5513), an amendment providing an extra month's pay for employees was ruled out of order on the general deficiency bill by Chairman Hopkins, and on appeal the decision was sustained, ayes 58 to noes 24.

[5] Third session Fifty-eighth Congress, Record, pp. 75, 76.

lative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Washington Gardner, of Michigan, proposed an amendment providing an appropriation for salary of a docket clerk.

A question of order was raised by Mr. Charles L. Bartlett, of Georgia, which brought out the fact that the position of docket clerk was authorized by a resolution of the House, and therefore that the salary might be provided on an appropriation bill.

The Chairman [1] said:

The Chair would say that it has been uniformly held that a resolution regarding an officer of the House is existing law.

3657. The House having passed a resolution from the Committee on Accounts directing the Committee on Appropriations to provide for paying a certain sum to a certain employee, an amendment to effect this purpose was held in order on an appropriation bill.—On July 30, 1888,[2] in Committee of the Whole House on the state of the Union, Mr. Timothy E. Tarsney, of Michigan, offered this amendment to the deficiency appropriation bill:

To pay Samuel D. Craig for extra services connected with the preparation of the Calendar and indexing the same for the first session of the Fiftieth Congress, $600.

Mr. James N. Burnes, of Missouri, made a point of order against the amendment.

During the debate Mr. Tarsney presented, as the authorization for his amendment, this resolution, which the Committee on Accounts had offered and the House had adopted on a previous day:

Resolved, That there be paid to Samuel D. Craig the sum of $600 for extra services in connection with the preparation of the Calendars and indexing the same for the first session of the Fiftieth Congress, and that the Committee on Appropriations be directed to provide for the payment of said sum in the bill (H. R. 10896) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1888, and prior years, and for other purposes.

The Chairman [3] ruled:

The Chair is of the opinion that the rule which would otherwise prevent the consideration of this amendment has been suspended by the operation of the resolution passed by the House, and that the resolution is now in order.

3658. On June 27, 1906,[4] the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Lucius N. Littauer, of New York, offered the following amendments, explaining that they were to carry out the provisions of resolutions adopted by the House already:

On page 60, after line 22, insert:

"For annual clerks to the Committee on Immigration and Naturalization and Irrigation of Arid Lands, during the fiscal year 1907, at $2,000 each; in all, $4,000."

"For additional compensation of the superintendent of the House document room during the fiscal year 1907, $500."

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[1] John Dalzell, of Pennsylvania, Chairman.

[2] First session Fiftieth Congress, Record, p. 7057.

[3] William M. Springer, of Illinois, Chairman.

[4] First session Fifty-ninth Congress, Record, p. 9401.

Mr. John J. Fitzgerald, of New York, made a point of order that there was no authority for the appropriation.

The Chairman[1] held:

In the opinion of the Chair the resolution adopted by the House providing for the payment of its employees is a law within the sense of the rule, and therefore the Chair overrules the point of order.

3659. The House in appropriating for an employee may not go beyond the terms of the resolution creating the office.—On March 20, 1906,[2] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. James S. Sherman, of New York, offered an amendment, as follows:

On page 15, line 4, after the word "dollars," insert "assistant clerk to the Committee on Interstate and Foreign Commerce in lieu of session clerks authorized by resolution, $1,600."

On page 16, lines 1 and 2, strike out "two thousand six hundred and forty" and insert in lieu thereof "four thousand two hundred and forty."

Mr. Thomas W. Hardwick, of Georgia, made the point of order that this office had not been authorized.

In the debate Mr. Sherman said:

Mr. Chairman, I desire to be heard on the point of order. This proposition is not to create a new office. There is now an assistant clerk of the Committee on Interstate and Foreign Commerce, and what we desire to do by this amendment is to provide for the continuance of that clerk during the entire fiscal year. We are not attempting to create a new office. The amendment in terms so states. The amendment as presented there simply places a limitation upon the time that the person now in office, now appointed, a sworn officer of the Government, shall serve. That is all there is of it, and I think, Mr. Chairman, along the line of the ruling that the Chair made this morning—somewhat of a pioneer in its line, but a ruling which in my judgment was most essential to make in the line of good order in this House—that it is possible for the distinguished occupant of the chair to overrule this point of order; not only possible, but that it is proper and regular and right that he should do it.

The Chairman[3] said:

The Chair appreciates the force of the argument made by the gentleman from New York, but nevertheless if the Chair understands the matter the present resolution of the House, which is treated as law for this purpose, authorizes a clerk for the session, one whose term expires with each session of Congress, designated in the amendment as a session clerk. The amendment provides for an assistant clerk. Practically it extends the term of the session clerk or creates an office beyond the time authorized by the resolution of the House, and the Chair thinks the point of order should be sustained.

3660. A resolution by a preceding House authorizing an employee of the House was held to justify an appropriation for the salary.—On March 20, 1906,[4] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

Under Superintendent of the Capitol Building and Grounds: For chief engineer, $1,720; three assistant engineers, at $1,200 each; six conductors of elevators, at $1,200 each, who shall be under the supervision and direction of the Superintendent of the Capitol Building and Grounds; two laborers, at $820 each; six firemen, at $900 each; electrician, $1,200; laborer, $1,000; three laborers, at $720 each; and for the following for service in old library portion of the Capitol: Two attendants, at $1,500 each; watchman, $900; in all, $27,800.

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[1] Edgar D. Crumpacker, of Indiana, Chairman.

[2] First session Fifty-ninth Congress, Record, p. 4048.

[3] Marlin E. Olmsted, of Pennsylvania. Chairman.

[4] First session Fifty-ninth Congress, Record, p. 4043.

Mr. Thomas W. Hardwick, of Georgia, made the point of order that the pay of the elevator conductors had been increased from $1,100 to $1,200 each, and that this was not authorized by existing law.

Mr. Lucius N. Littauer, of New York, said:

Mr. Chairman, I would state for the information of the gentleman that the salaries of elevator conductors by resolution of this House in 1888 were placed at $1,200. The Committee on Appropriations uniformly, beginning two years thereafter, included in this bill their salaries at $1,100, but each successive Congress from that time down has increased that salary by $100. Our attention was called to this matter by the Committee on Accounts, who recommended that the salary be placed at $1,200 instead of $1,100, as carried in the legislative bill for years, in order that what has been indirectly done for many years may be directly done in the future.

After debate the Chairman [1] said:

Does the Chair understand that, by the resolution of the House under which this position was originally created, the compensation or salary was fixed at $1,200 a year?

Mr. Littauer replied:

That is correct.

The Chairman then ruled:

The Chair will assume that to be sufficient authority for the creation and continuance of that position, and the fact that Congress may in subsequent years have appropriated a less amount than $1,200 does not seem to the Chair to be a change of that law. It has often been ruled that Congress may, without changing existing law, either withhold an appropriation entirely or appropriate a less amount than is authorized. It may be a close question, but the Chair thinks that a previous resolution adopted some years ago and not modified by any subsequent action is sufficient authority for the salary of $1,200, within the spirit and intent of Rule XXI. The fact that the last Congress did not appropriate the full amount does not change the situation nor the law.

"An appropriation of a less sum than the amount fixed by law for the salary of an officer is not a change of law." (Parliamentary Precedents, House of Representatives, sec. 546.)

The Chair therefore holds that there is authority for the appropriation of $1,200, and overrules the point of order.[2]

3661. The recommendation of a committee of the House is not authorization sufficient to justify appropriations for House employees on the deficiency bill.—On February 21, 1901,[3] the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

To pay George F. Thompson for compiling, under the direction of the Committee on Coinage, Weights, and Measures, the legislative history of the coinage act of 1873, $500.

Mr. Thaddeus M. Mahon, of Pennsylvania, made a point of order.

Mr. Joseph G. Cannon, of Illinois, who was in charge of the bill, explained that the item had been inserted in the bill on the written request of the Committee on Coinage, Weights, and Measures.

The Chairman [4] sustained the point of order.

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[1] Marlin E. Olmsted, of Pennsylvania, Chairman.

[2] It afterwards appeared that the resolution of 1888 authorized but one elevator conductor.

[3] Second session Fifty-sixth Congress, Record, pp. 2780, 2781.

[4] George P. Lawrence, of Massachusetts, Chairman.

3662. On February 21, 1901,[1] the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and a portion of the bill had been reached for appropriating for certain employees of the House certain sums, the same having been audited and recommended by the Committee on Accounts. Among these was the following:

To James A. Gibson, $480.

Mr. Irving P. Wanger, of Pennsylvania, made the point of order against this paragraph.

The Chairman[2] sustained the point of order.

Then Mr. William H. Fleming, of Georgia, made the point of order on this paragraph:

To John Hollingsworth, $900.

The Chairman said:

The Chair is ready to rule. He has no doubt that this is an expenditure not previously authorized by law, and that it is subject to the point of order. The Chair has made similar rulings already in the consideration of this bill, and sees no reason why such rulings should be changed. The point of order is sustained.

3663. On February 21, 1901,[3] the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the following paragraph was read:

To pay William A. Watson, special messenger, authorized in the resolution adopted by the House of Representatives February 7, 1900, at the rate of $1,200 per annum, from March 4, 1901, to June 30, 1902, inclusive, $1,593.30.

Mr. William H. Fleming, of Georgia, made a point of order.

In the debate it was stated by Mr. Joseph G. Cannon, of Illinois, who was in charge of the bill, that the employee in question held his place under a resolution reported from the Committee on Accounts and agreed to by the House, authorizing his payment out of the contingent fund. But the House could not by law authorize such payments beyond the approaching expiration of Congress.

The Chairman[2] held:

On February 20, 1897,[4] a proposition to appropriate for certain employees for the period between the expiration of the Fifty-fourth Congress and the organization of the Fifty-fifth Congress was held out of order, although a resolution of the House had authorized their employment. * * * The Chair will follow the ruling then made and sustain the point of order.

3664. Propositions to increase salaries fixed by law or appropriate for offices not established by law are subject to a point of order.—On March 27, 1906,[5] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Office of assistant treasurer at New Orleans: For assistant treasurer, $4,500; chief clerk and cashier, $2,250: receiving teller, and paying teller, at $2,000 each; vault clerk, $1,800; two bookkeepers, at

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[1] Second session Fifty-sixth Congress, Record, pp. 2784, 2787, 2788.

[2] George P. Lawrence, of Massachusetts, Chairman.

[3] Second session Fifty-sixth Congress, Record, pp. 2788, 2789.

[4] See section 3654 of this chapter.

[5] First session Fifty-ninth Congress, Record, pp. 4365, 4366.

$1,500 each; coin clerk, $1,200; six clerks, at $1,200 each; two clerks, at $1,000 each; porter and messenger, $500; day watchman, $720; night watchman, $720; typewriter and stenographer, $1,000; in all, $28,890.

Mr. Thomas W. Hardwick, of Georgia, said:

I rise to make a point of order against the entire paragraph. It has one additional teller, at $2,000, in line 22, on page 63, not authorized by existing law. Then there is a vault clerk, at $1,800, not authorized by law; a coin clerk, at $1,200, not authorized by law; six clerks, at $1,000 each, none of whom are authorized by law.

Mr. Hardwick declared that these were increases over the force permitted by section 3609 of the Revised Statutes.

After debate the Chairman[1] held that the items were not specified in the statute, and therefore were not in order.

On March 27, 1906,[2] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read the paragraph appropriating for employees in the office of the assistant treasurer at Philadelphia.

Mr. Thomas W. Hardwick, of Georgia, made a point of order that the paragraph contained appropriation for certain employees not authorized by section 3605 of the Revised Statutes, establishing the office; also that there was a salary larger. than the amount fixed by the said statute.

Mr. James A. Tawney, of Minnesota, urged that by the act of 1846 this office was made a part of the Treasury, and therefore that section 169 of the Revised Statutes would apply.

The Chairman[1] did not find it necessary to decide as to whether or not section 169 would apply, saying:

The difficulty is that whether we treat it as a Department or not, an act of Congress itself specifically fixes the salary of this particular employee at $1,300, and the paragraph in question appropriates $1,700, or $400 apparently without authority of law; whereas the second clause of Rule XXI expressly declares that no appropriation shall be in order "for any expenditure not previously authorized by law." The Chair is, therefore, compelled to sustain the point of order.

3665. On March 27, 1906,[3] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Office of assistant treasurer at San Francisco: For assistant treasurer, $4,500; cashier, $2,500; bookkeeper, $1,800; chief clerk, $2,000; assistant cashier, $2,000; first teller, $2,250; assistant bookkeeper, $1,600; coin teller, and one clerk, at $1,800 each; clerk, $1,500; clerk, $1,400; messenger, $840; four watchmen, at $720 each; and two coin counters, at $900 each; in all, $28,670.

Mr. George W. Prince, of Illinois, made a point of order that the paragraph would appropriate for several employees not authorized by section 3610 of the Revised Statutes, which establishes the office.

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[1] Marlin E. Olmsted, of Pennsylvania, Chairman.

[2] First session Fifty-ninth Congress, Record, p. 4366.

[3] First session Fifty-ninth Congress, Record, p. 4367.

After debate the Chairman [1] held:

The Chair finds that there is a provision here in this paragraph for a clerk at a salary of $2,000 apparently not authorized by the statute. Now, even if this office of assistant treasurer at San Francisco can be construed a department, within the meaning of section 169 of the Revised Statutes, nevertheless, as that section has been construed by former occupants of the Chair strictly it does not authorize an appropriation for an employee above the class of clerk provided for in that statute, which was a clerk of the fourth class at $1,800. The Chair is therefore compelled to sustain the point of order against the paragraph.

3666. On March 27, 1906,[2] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Mint at Denver, Colo.: For superintendent, $4,500; assayer, melter and refiner, and coiner, at $3,000 each; chief clerk, $2,500; weigh clerk, $2,000; cashier, $2,250; assistant assayer, assistant melter and refiner, and assistant coiner, at $2,000 each; bookkeeper, $1,800; abstract clerk, warrant clerk, assistant weigh clerk, and calculating clerk, at $1,600 each; calculating clerk, $1,400; and two clerks, at $1,200 each; in all, $38,250.

Mr. Thomas W. Hardwick, of Georgia, having made a point of order, after debate the Chairman [1] held:

The Chair is of opinion that the officers, clerks, etc., in the mint at Denver, are fixed in the act of March 18, 1904; that was an appropriation bill, but nevertheless did more than appropriate for that year. It contained matters of permanent legislation and made continuing provision for this mint—appropriations would be in order upon this pending bill for any salary for any position authorized by the said act of 1904. It provides for a weigh clerk at $1,600. It provides for the position and fixes the salary. But in the paragraph to which objection is made the weigh clerk is allowed $2,000 or $400 more than the act of 1904 authorized. The attention of the Chair has been called to a ruling first made in the first session of the Fiftieth Congress, reported on page 355 of the Manual, thus:

"In the absence of a general law fixing a salary, the amount appropriated in the last appropriation bill has been held to be the legal salary, although in violation of the general rule that an appropriation bill makes law only for the year."

But the difficulty in applying that rule here is that the general law does fix the salary at $1,600, and as the paragraph appropriates more than that amount without authority of law, the Chair is compelled to sustain the point of order.

3667. On March 27, 1906,[3] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the paragraph appropriating for the office of the assistant treasurer at New York was read.

Mr. George W. Prince, of Illinois, made the point of order that certain employees were appropriated for which were not specified in section 3603 of the Revised Statutes establishing the office.

The Chairman [1] overruled the point of order on the ground that section 3604 of the Revised Statutes provided that the assistant treasurer might appoint from time to time other employees than those specified in section 3603 of the Revised Statutes.

3668. A general law authorizing certain employees when specifically provided for in an appropriation bill, a provision making the appropriation for them was held in order.—On February 16, 1901,[4] the sundry civil

[1] Marlin E. Olmsted, of Pennsylvania, Chairman.

[2] First session Fifty-ninth Congress, Record, pp. 4367, 4368.

[3] First session Fifty-ninth Congress, Record, p. 4366.

[4] Second session Fifty-sixth Congress, Record, pp. 2538, 2539.

appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk read this paragraph:

Expenses of administration: For contingent expenses of the office of the Commissioner, including stationery, purchase of special reports, books for library, telegraph and telephone service, furniture, repairs to and heating, lighting, and equipment of buildings, and compensation of temporary employees, $12,500.

Mr. Marlin E. Olmsted, of Pennsylvania, made a point of order against the appropriation for temporary employees, as unauthorized by law.

Debate arising, Mr. Joseph G. Cannon, of Illinois, quoted the following law, passed in 1882, in justification of the proposed appropriation:

No civilian officer, clerk, draftsman, copyist, messenger, assistant messenger, mechanic, watchman, laborer, or other employee shall hereafter be employed at the seat of government in any Executive Department or subordinate bureau or office thereof, or be paid from any appropriation made for contingent expenses or for any specific or general purpose, unless such employment is authorized and payment therefor specifically provided in the law granting the appropriation, and then only for services actually rendered in connection with and for the purposes of the appropriation from which payment is made.

The Chairman [1] said:

The Chair is of the opinion that under the law of 1882 this is not obnoxious as objected to by the gentleman from Pennsylvania, and the Chair therefore overrules the point of order.

3669. Construction of the law authorizing the employment of "watchmen, laborers, and other employees" in the Executive Departments.—On March 23, 1906 [2] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Thomas W. Hardwick, of Georgia, made a point of order that there was no law to authorize a proposed appropriation for "one telephone-switchboard operator" in the Department of State.

After debate the Chairman [3] held:

This is an appropriation for a telephone-switchboard operator in the Department of State, which is an Executive Department. Section 169 of the Revised Statutes provides that—

"Each head of a Department is authorized to employ in his Department such number of clerks of the several classes recognized by law, and such messengers, assistant messengers, copyists, watchmen, laborers, and other employees, and at such rates of compensation, respectively, as may be appropriated for by Congress from year to year."

A telephone-switchboard operator may fairly be classed as a sort of laborer-skilled laborer within the spirit and intendment of the statute.

The Chair is of opinion that this case is covered and the appropriation authorized by section 169, and overrules the point of order.

Very soon thereafter Mr. George W. Prince, of Illinois, made a similar point of order against a "wireman" appropriated for in the Treasury Department.

The Chairman held:

The Chair is of opinion that under section 169 of the Revised Statutes, which allows each head of a Department to employ "such clerks, messengers, assistant messengers, copyists, watchmen, laborers, and other employees as may be appropriated for by Congress from year to year,' this wireman may

[1] Albert J. Hopkins, of Illinois, Chairman.

[2] First session Fifty-ninth Congress, Record, pp. 4193, 4195.

[3] Marlin E. Olmsted, of Pennsylvania, Chairman.

properly be classed as a laborer or other employee within the designation there given. A "wireman" is understood to be a laborer who looks after telegraph, telephone, or other wires. And he is an employee in the office of the Treasury Department, which is one of the Executive Departments clearly covered by that statute. Now, as to the compensation, section 169 specifically provides that the employment may be "at such rates of compensation, respectively, as may be appropriated for by Congress from year to year." It seems, therefore, that the Department is authorized to employ at such compensation as the House in each successive year shall provide. The House is not bound by the appropriation for any previous year, but has authority under the statute to fix in this bill the compensation for the year it covers. The Chair, therefore, overrules the point of order.[1]

3670. The law authorizing the heads of Departments to employ such clerks as may be appropriated for does not apply to officers not allotted to Departments or to officers not at the seat of government.

The mere appropriation for a salary does not thereby create an office so as to justify appropriations in succeeding years.

On February 27, 1906,[2] the army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when certain paragraphs were read providing for certain clerks, watchmen, etc., at the headquarters of divisions and departments of the Army.

Mr. James A. Tawney, of Minnesota, made the point of order that these expenditures were not authorized by law.

On February 28,[3] after debate, the Chairman[4] ruled:

The gentleman from Minnesota [Mr. Tawney] makes the point of order that the items upon pages 9 and 10 providing for an increase in the number of clerks, messengers, and laborers at headquarters of divisions and departments and the Office of the Chief of Staff are obnoxious to clause 2 of Rule XXI. So much of that clause as applies to this case is 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 first question is, What law authorizes this appropriation? The only law referred to is that contained in section 169 of the Revised Statutes, which is as follows:

"Each head of a Department is authorized to employ in his Department such number of clerks of the several classes recognized by law, and such messengers, assistant messengers, copyists, watchmen, laborers, and other employees, and at such rates of compensation, respectively, as may be appropriated for by Congress from year to year."

The next question, of course, is whether these clerks referred to in the items to which objection has been made are to be employed by the head of a Department and in his Department. The gentleman from Iowa [Mr. Hull] is quite correct in his statement of the ruling made by the occupant of the chair [Mr. Hopkins], as referred to on page 2404 of the Record, third session Fifty-fifth Congress,[5] but it appears that at that time the Chairman of the Committee of the Whole was not familiar with the ruling of the Attorney-General, which has been submitted to. In that ruling, which was referred to in the following year in the decision made by the occupant of the chair at that time [Mr. Sherman, of New York], overruling the decision of Mr. Hopkins,[6] are found these words, defining a Department:

"The Department, with its bureaus or branches, is in contemplation of the law an establishment distinct from the branches of the public service and the officers thereof which are under its supervision."

This will be found in volume 15 of the opinions of the Attorney-General, on page 267. It seems, therefore, that in arriving at a conclusion on this question the present occupant of the Chair must hold

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[1] For another decision on this point see section 3590 of this chapter.

[2] First session Fifty-ninth Congress, Record, p. 3092.

[3] Record, pp. 3161–3163.

[4] Henry S. Boutell, of Illinois, Chairman.

[5] See section 3674.

[6] See section 3673.

that a Department, as referred to in section 169 of the Revised Statutes, refers to that branch of the Government technically known as an Executive Department, and presided over by a member of the Cabinet, and located in the city of Washington.

Now, then, are the clerks provided for in these items so employed? On page 10 of this bill, in line 18, will be found the proviso:

"Provided, That no clerk, messenger, or laborer at headquarters of divisions, departments, or Office of the Chief of Staff shall be assigned to duty with any bureau of the War Department."

So that, aside from what has been developed in the debate, it would appear to the Chair that these clerks, messengers, and laborers are to be employed outside of the Department, technically so called, and are to be employed in various parts of the country at headquarters of the Army, headquarters of the division, and at other points. It will be seen that the decision rendered by Mr. Sherman directly overruled the decision rendered by Mr. Hopkins a year earlier, but this same question came up even later, on December 9, 1904, when the legislative appropriation bill was before the Committee of the Whole House, and an item in the bill provided for the increase in the number of clerks in the Civil Service Commission. A point of order was made for the same reason that has been assigned in the case under consideration, and the opinion was rendered by Mr. Dalzell, then Chairman of the Committee of the Whole. In rendering his decision he referred specifically to the point made by the gentleman from Iowa [Mr. Hull], that if the ruling of the Attorney-General were correct, there was perhaps no law providing for any of these different clerks outside of the Department proper, except the appropriation bills of previous years, and the Chairman then said:

"The enactment of an appropriation bill is not a provision of law any more than for the current year, and it gains no force by having been repeated for two, three, or any number of succeeding years."

It would appear, therefore, from the ruling of the Attorney-General and from these decisions that the clerks of the Government outside of the Departments in Washington must be provided for by specific law, and that items in an appropriation bill providing for such clerks or increasing their number beyond that previously provided by law would not be in order. The Chair, therefore, is constrained to sustain the point of order.

3671. On March 23, 1906,[1] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

For three Commissioners, at $3,500 each; chief examiner, $3,000; secretary, $2,500; assistant chief examiner, $2,250; two chiefs of division, at $2,000 each; three examiners, at $2,000 each; six clerks of class 4; thirteen clerks of class 3; twenty-two clerks of class 2; twenty-six clerks of class 1; twenty clerks, at $1,000 each; ten clerks, at $900 each; five clerks, at $840 each; one messenger; engineer, $840; two firemen; two watchmen; one elevator conductor, $720; three laborers; and three messenger boys, at $360 each; in all, $163,390.

Mr. George W. Prince, of Illinois, made a point of order that there was no law for the "three examiners, at $2,000 each," and "twenty-two clerks of class 2."

After debate the Chairman[2] held:

The rule which has been invoked against the specified items in this paragraph is found in the second paragraph of Rule XXI, which provides that—

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

Now, it is urged that there is no authority of law for the appointment of so many clerks of certain classes as are specified in the paragraph. On the other hand, it has been suggested that authority may be found in section 169 of the Revised Statutes, which provides that—

"Each head of a Department is authorized to employ in his Department such number of clerks of the several classes recognized by law and such messengers, assistant messengers, copyists, watchmen,

[1] First session Fifty-ninth Congress, Record, pp. 4182, 4183.

[2] Marlin E. Olmsted, of Pennsylvania, Chairman.

laborers, and other employees, and at such rates of compensation, respectively, as may be appropriated for by Congress from year to year."

There is no doubt that as to any branch of the Government which is properly a "Department" within the meaning of that act, Congress may, from year to year, appropriate for an increasing number of clerks, but the question arises, Is the Civil Service Commission a "Department" within the meaning of the statute? It may be that there is very good reason why, as the gentleman from Indiana [Mr. Crumpacker] suggests, it ought to be treated as a Department, but has it been? Is it one within the terms of the statute?

By reference to section 158 we find that the Departments to which the act was applied are specifically enumerated; they are those governmental branches or executive divisions at the head of each of which there is a Cabinet officer. They are distinctly specified and set forth by name in section 158. Section 159 expressly declares that when the word "department" is used in that statute, it shall be held to mean "one of the Executive Departments enumerated in the preceding section." The Civil Service Commission is not one of the Executive Departments specified in section 158, and it can not therefore be construed as a Department, nor any member of it as the "head of a Department" within the meaning of section 169. Whether the Civil Service Commission is a governmental agency of such value and importance that it ought to be treated as a Department is not a matter for the Chair to decide. As it is not one within the terms and intendment of section 169 of the Revised Statutes, the Chair must rule that that section is not authority for the appropriation so as to relieve it from the operation of Rule XXI. Now, whether the second clause of Rule XXI is restrictive upon the Committee on Appropriations, or upon the House itself, is not for the Chair to determine. The Chair must construe the rule as it finds it. In fact, the same question appears to have been decided in the last session of the Fifty-eighth Congress by the gentleman from Pennsylvania, Mr. Dalzell, who sustained a similar point of order. For the reasons stated, the Chair sustains the point, or rather the two points of order which have been submitted for its decision.

3672. On December 9, 1904,[1] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a paragraph was read providing for certain new employees under the Civil Service Commission, as follows:

Field force: For three examiners, at $2,200 each; four examiners, at $2,000 each; two examiners, at $1,800 each; one clerk, $1,800; one clerk, $1,700; one clerk, $1,200; six clerks, at $1,000 each; seven clerks, at $900 each; three clerks, at $840 each; two clerks, at $800 each; two clerks, at $600 each; one messenger boy, $480; in all, $41,000.

Mr. Marlin E. Olmsted, of Pennsylvania, made the point of order that these positions were not authorized by law.

After debate, the Chairman[2] held:

A paragraph on page 34 of the bill provides for a "field force," designating a certain number of employees and fixing their salaries. The gentleman from Pennsylvania [Mr. Olmsted] makes a point of order against this paragraph and invokes in support of it clause 2 of Rule XXI, 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, unless in continuation of appropriations for such public works and objects as are already in progress; nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto."

The first question to determine, therefore, is whether or not the expenditures included in this paragraph have been previously authorized by law. It seems very clear to the Chair, without undertaking to read at length the provisions of the act creating the Civil Service Commission, that there is no provision in that act which would authorize this expenditure. The only other authority cited to authorize it is a provision in the Revised Statutes, section 169, Title IV, which provides:

"Each head of a Department is authorized to employ in his Department such number of clerks of the several classes recognized by law and such messengers, assistant messengers, copyists, watchmen,

[1] Third session Fifty-eighth Congress, Record, pp. 97, 98.

[2] John Dalzell, of Pennsylvania, Chairman.

laborers, and other employees and at such rates of compensation, respectively, as may be appropriated for by Congress from year to year."

If the Civil Service Commission were an Executive Department under the law, the point of order would have to be overruled. But is it such Department? Section 158 of this same title provides as follows:

"The provisions of this title shall apply to the following Executive Departments:

"First. The Department of State.

"Second. The Department of War.

"Third. The Department of the Treasury.

"Fourth. The Department of Justice.

"Fifth. The Post-Office Department.

"Sixth. The Department of the Navy.

"Seventh. The Department of the Interior."

And section 159 provides:

"The word 'Department' when used alone in this title and Titles V, VI, VII, VIII, IX, X, and XI means one of the Executive Departments enumerated in the preceding section."

So it seems very clear to the Chair that this paragraph of the bill can not be justified under the provisions of those three sections of the Revised Statutes. The only other suggestion made to justify the appropriation, if the Chair rightly understood the gentleman from New York [Mr. Littauer], was that such a force as is mentioned in the paragraph is already in existence, having been provided for from time to time by appropriation bills; but over against the provisions of the appropriation bills stand the provisions of the statute which do not authorize such a force and the provisions of Rule XXI, section 2, which requires for the creation of such a force a provision of law. The enactment of an appropriation bill is not a provision of law any more than for the current year, and it gains no force by having been repeated for two or three or any number of succeeding years. Therefore, without discussing at length the second proposition, the Chair is very clearly of the opinion that the point of order is well taken. The Chair sustains the point of order.

3673. On March 28, 1900,[1] the Army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read as follows:

Pay to clerks and messengers at department headquarters and at Headquarters of the Army: Nine clerks, at $1,800 each per annum, etc.

Mr. Thomas C. McRae, of Arkansas, made the point of order against the paragraph.

It appeared from the debate that an increase was made in the salaries of the clerks and a change of numbers of clerks in certain classes. Reference was made to a decision of the previous year on the same point.

The Chairman[2] said:

The Chair, in looking up the record, discovers that the basis of the decision made by the gentleman from Illinois while occupying the chair last year was a statute[3] which provides as follows:

"Each head of a Department is authorized to employ in his Department such number of clerks of the several classes recognized by law and such messengers, assistant messengers, copyists, watchmen, laborers, and other employees, and at such rates of compensation, respectively, as maybe appropriated for by Congress from year to year."

So that the decision of the gentleman from Illinois last year was based upon a provision of law for whatever number of clerks Congress chose to appropriate in any particular Department—which is a proposition differing distinctly from that suggested by the gentleman from Arkansas.

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[1] First session Fifty-sixth Congress, Record, pp. 3441, 3442, 3497.

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

[3] Section 169, Revised Statutes.

The Chair having taken the matter under further consideration, on the succeeding day held:

When the matter was passed over temporarily yesterday the Chair had sent for the volume of Opinions of the Attorneys-General of the United States, in order to look at an opinion that was given by the Attorney-General some years since in reference to what was covered by the expression "Executive Departments." The Chair is informed that this opinion was not presented to the gentleman from Illinois last year when he made the ruling to which reference was made by the gentleman from Iowa and by the Chair yesterday. That opinion,[1] in part, reads as follows:

"The several Executive Departments are by law established at the seat of government; they have no existence elsewhere. Only those bureaus and offices can be deemed bureaus or offices in any of these Departments which are constituted such by the law of its organization. The Department, with its bureaus or offices, is in contemplation of the law an establishment distinct from the branches of the public service and the offices thereof which are under its supervision. Thus, the office of postmaster or of collector of internal revenue or of pension agents or of consuls is not properly a departmental office not an office in the Department having supervision over the branch of the public service to which it belongs. True, an official relation exists here between the office and the Department, one, moreover, of subordination of the former to the latter; but this does not make the office a part of the Department."

In view of that opinion of the Attorney-General, which, as the Chair before stated, he understands was not called to the attention of the gentleman from Illinois when he made the ruling last year, it seems perfectly clear to the Chair that this provision, so far as it changes last year's appropriation bill, is susceptible to the point of order, and therefore the Chair sustains the point of order.

3674. On February 25, 1899,[2] the Army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and certain paragraphs were read, as follows:

PAY TO CLERKS AND MESSENGERS AT HEADQUARTERS OF THE ARMY.

Fifteen clerks, at one thousand eight hundred dollars each per annum, twenty-seven thousand dollars;

Fifteen clerks, at one thousand six hundred dollars each per annum, twenty-four thousand dollars;

Twenty clerks, at one thousand four hundred dollars each per annum, twenty-eight thousand dollars; etc.

To one of these paragraphs Mr. 0. W. Underwood, of Alabama, made the point of order that there was no authorization in existing law.

After debate the Chairman[3] held:

The Chair will rule. Title IV, section 158, reads as follows:

"The provisions of this title shall apply to the following Executive Departments: First, the Department of State; second, the Department of War."

Section 169 reads as follows:

"Each head of a Department is authorized to employ in his Department such number of clerks of these several classes recognized by law, and such messengers, assistant messengers, copyists, watchmen, laborers, and other employees, and at such rate of compensation, respectively, as may be appropriated for by Congress from year to year."

Under this statute it seems clear to the Chair that this is simply following what is authorized by law, and in this Department of War, and is not in violation of section 2 of Rule XXI, as contended for by the gentleman from Alabama. The Chair therefore overrules the point of order.[4]

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[1] Opinions of the Attorney-General, Volume 15, p. 267.

[2] Third session Fifty-fifth Congress, Record, p. 2404.

[3] Albert J. Hopkins, of Illinois, Chairman.

[4] It has been decided, however, that the term "Executive Departments" applies only to the service in bureaus constituted such by the laws of the organization of the Department—i. e., generally to the Departments in Washington. (See Opinions of the Attorneys-General, vol. 15, p. 267.)

3675. The general law authorizing the employment in the Executive Departments of such clerks as may be appropriated for is held to authorize appropriations for clerkships not otherwise authorized.—On December 9, 1904,[1] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union when this paragraph was read:

Office of the purchasing agent: For purchasing agent, $4,000; chief clerk, $2,000; one clerk of class 4; one clerk of class 3; one clerk of class 2; two clerks of class 1; two clerks, at $1,000 each; one assistant messenger; actual and necessary expenses of the purchasing agent while traveling on business of the Post-Office Department, $500; in all, $16,420.

Mr. Charles L. Bartlett, of Georgia, made the point of order that, while the purchasing agent had been authorized by law, there was no law authorizing the clerks.

After debate the Chairman[2] said:

The post-office appropriation bill for 1904 created the office of purchasing agent for the Post-Office Department. It did not, however, provide for any office force for the performance of the duty of that Department, but it prescribed that the purchasing agent should report direct to the Postmaster-General, and that under such regulations, not inconsistent with the existing law, as the Postmaster-General should prescribe, and subject to his direction and control, he should have supervision over the purchase of all supplies of the post-office service. It then goes on and prescribes the purchasing agent's duties, and they are such that he can not perform by himself without assistance of a clerical force. It is not to be assumed for a moment that such an anomaly was intended by the authors of that law, and, indeed, we find that no such anomaly exists, because, under section 169 of the Revised Statutes, Title IV, the head of the Post-Office Department and the heads of all other Executive Departments named in the title are authorized to employ such a number of clerks of the several classes recognized by law, such messengers, assistant messengers, copyists, and other employees at such rate of compensation, respectively, as may be appropriated for by Congress from year to year. So it seems to the Chair that the point of order is not well taken and must be overruled.

3676. Where the law fixes the amount of a salary a proposition to increase the amount is not in order on an appropriation bill.—On February 2, 1897,[3] the consular and diplomatic appropriation bill being under consideration in Committee of the Whole House on the state of the Union, Mr. Richmond Pearson, of North Carolina, moved to strike out "$2,500 per annum" and insert "$2,933 per annum" in the salaries of a certain class of consular officers.

Mr. James B. McCreary, of Kentucky, having made a point of order, the Chairman[4] decided:

As the Chair understands, these salaries are fixed by law at $2,500. The amendment proposes to increase them to $2,900 in round numbers. That would be a change of the existing law for the year; and the Chair sustains the point of order.

3677. On April 26, 1890,[5] the House being in Committee of the Whole House on the state of the Union, considering the legislative, executive, and judicial appropriation bill, the paragraph appropriating "For the Commissioner of Education $3,000" was reached.

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[1] Third session Fifty-eighth Congress, Record, pp. 106–108.

[2] John Dalzell, of Pennsylvania, Chairman.

[3] Second session Fifty-fourth Congress, Record, pp. 1441–1443.

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

[5] First session Fifty-first Congress, Record, p. 3893.

Mr. Mark H. Dunnell, of Minnesota, moved to strike out "$3,000" and insert "$4,000."

Mr. William S. Holman, of Indiana, made the point of order against the amendment.

The Chairman,[1] having called attention to the fact that the Revised Statutes provided that the salary should be $3,000 a year, sustained the point of order.

3678. On April 16, 1890,[2] the Military Academy appropriation bill was under consideration in Committee of the Whole House on the state of the Union. In the paragraph providing for the pay of an assistant engineer, Mr. Moses D. Stivers, of New York, moved to strike out "$1,000" and insert "$1,200."

Mr. Henry J. Spooner, of Rhode Island, made the point of order, stating that the salary was fixed by law.

The Chairman [1] sustained the point of order.

3679. On April 26, 1890,[3] the legislative, executive, and judicial appropriation bill was under consideration in Committee of the Whole House on the state of the Union. To the paragraph providing for the pay of watchmen at $720 per annum each Mr. Louis E. Atkinson, of Pennsylvania, offered an amendment making the pay of watchmen $840 per annum.

Mr. Daniel Kerr, of Iowa, having made a point of order, the Chairman [1] sustained it, on the ground that the Revised Statutes fixed the salary at $720.

3680. The law having established an office and fixed the salary it is not in order on an appropriation bill to provide for an unauthorized office and salary in lieu of it.—On February 17, 1896,[4] the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union. The paragraph relating to the salaries in the Bureau of Animal Industry having been reached, Mr. Leonidas F. Livingston, of Georgia, made the point of order that the appropriation of salary for the chief clerk had been omitted, although the statute organizing the Department specified that there should be such clerk and fixed his salary, and that an assistant chief of division not authorized by law, was appropriated for.

The Chairman [5] ruled that the point of order was well taken.

3681. The appropriation of a less sum than the amount fixed by law for a salary is not a change of law, even though a legislative provision in another portion of the bill may give it the practical effect of a reduction of the salary.—On February 21, 1896,[6] the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union. On a previous day, in the first section of the bill, a clause had been agreed to which provided that the amounts provided in the bill for salaries should be "in full compensation for the service."

This paragraph having been reached:

For pay of five Indian inspectors, at $3,000 per annum each, $16,000.

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[1] Lewis E. Payson, of Illinois, Chairman.

[2] First session Fifty-first Congress, Record, p. 3444.

[3] First session Fifty-first Congress, Record, p. 3902.

[4] First session Fifty-fourth Congress, Record, pp. 1808, 1809.

[5] John A. T. Hull, of Iowa, Chairman.

[6] First session Fifty-fourth Congress, Record, pp. 2009–2019.

Mr. Galusha A. Grow, of Pennsylvania, moved to strike out the words "three thousand" and insert "two thousand."

Mr. Charles F. Crisp, of Georgia, made the point of order that, while it was competent for the House to appropriate a less amount than the salary fixed by law, it was not competent for the House on an appropriation bill to say that such sum should be accepted in full compensation for services, as that would be a change of law.

After debate the Chairman[1] held:

The law fixing these salaries seems to be that embraced in the Revised Statutes, and it fixes them at $3,000 a year. Now, if this bill should pass with the amendment adopted yesterday, inserting the words "in full compensation for services for the fiscal year," and also with the amendment reducing the salary to $2,000, and if these inspectors should go on and serve during the year and accept the $2,000 there would result practically a reduction of the salary from $3,000 to $2,000.

But that is not the whole question presented here. This point of order arises on an amendment proposing to reduce the appropriation for salaries to $2,000 a year. That proposition standing alone is clearly within the power of the Committee of the Whole under the rule. Without further provision it would not reduce the salary, because under decisions which have been cited here the courts have held that under such an appropriation as that the incumbent of the office may accept the $2,000 and afterwards maintain his action in the Court of Claims for the balance of the salary. Hence this simple proposition does not change existing law.

But the Chair is referred to the amendment which was adopted by the Committee of the Whole yesterday inserting the words "in full compensation for services for the fiscal year." That amendment would clearly have been subject to a point of order if one had been taken at the time, unless another proposition, which the Chair will state later, would have relieved it from the point of order. It was an effort to provide that the salaries and payments made in this bill should be received in full compensation, accord, and satisfaction of the salaries provided by law. It was a notice to the Committee of the Whole of the propositions embraced in the bill to reduce salaries. Now, I think that under the practice of the Committee of the Whole it has been uniformly held that where an amendment subject to a point of order has been inserted in an appropriation bill, no point of order being made against it, and debate had followed, a proposition to amend that amendment, if germane to the matter in the amendment, would be in order, and a point of order that it was an amendment in the second degree would not lie. The question is whether the amendment now sought to be inserted, taken in connection with the previous amendment, would not fall under the rule applying in that class of cases. But further than that, if the proposition were the one on which a point of order was raised—the proposition of the gentleman from Oklahoma to strike out this provision—it is conceded that the amendment would not be subject to a point of order, because the House may refuse to appropriate a dollar for these inspectors during the fiscal year for which we are now providing.

Now, an appropriation of a less sum for the salary of these officers than that fixed by law would, if this less sum should be refused by these inspectors, still leave them without any reduction of salary, because if they should go on and serve for the year their salaries, in spite of this provision in the bill, would not be reduced, unless they should accept the $2,000 under the conditions named. If they did not choose thus to accept, they could go into the Court of Claims and collect the $3,000.

As already stated, Congress has a right to refuse to appropriate one dollar of this salary of $3,000. The greater must include the less, and therefore Congress has a right to make a limitation upon this appropriation, to fix conditions; and under the rules of the House this is not a change of existing law, and, as just stated, it is not a reduction of the salaries unless these men should decide to accept the $2,000 appropriated by the bill.

So the Chair holds that the point of order is not well taken. The amendment is in order.[2]

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

[2] On June 10, 1886, a provision in the legislative appropriation bill that all sums hereinafter appropriated should "be in full compensation" for the service during the coming fiscal year, was ruled out of order, Chairman James H. Blount, of Georgia, holding that it changed existing law. (First session Forty-ninth Conrgess, Record, pp. 5524–5534.)

3682. On December 9, 1904,[1] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. William A. Jones, of Virginia, proposed an amendment to reduce the salary of the disbursing clerk of the Department of Justice from $2,750 to $2,250.

Mr. Edgar D. Crumpacker, of Indiana, raised the question of order that this would effect a change of law in view of this paragraph in a preceding portion of the bill.

The appropriation to be in full compensation for the services of the fiscal year ending June 30, 1906, for the objects hereinafter expressed, namely.

Mr. Crumpacker further stated that the law fixed the salary at $2,750, the amount carried in the bill.

After debate the Chairman[2] held:

The Chair has a great deal of sympathy with the gentleman from Indiana. The same point of order that has been raised by the gentleman from Indiana was raised by the present occupant of the chair in the Fifty-first Congress, and was overruled. If the gentleman from Indiana had made his point of order against the clause on the first page of the bill, which says "in full compensation for the service, etc.," the point of order would have been sustained. That was not objected to, and it is now a part of the bill. It has been ruled so many times that it would be an assumption on the part of the Chair to rule otherwise, that Congress has the right to appropriate less than the sum fixed by law; and certainly in the condition in which this bill is now, with the point of order pending, it can work no change of law. The party has his remedy to recover his salary, notwithstanding the bill. The Chair therefore overrules the point of order.

Thereupon Mr. Crumpacker proposed to make a point of order against the paragraph in the first part of the bill making the amounts appropriated full compensation.

Mr. Henry H. Bingham, of Pennsylvania, raised a question of order on Mr. Crumpacker's proposition.

The Chairman ruled:

The Chair is ready to rule. In the first place, it is too late to make the point of order. In the next place, the very language of the paragraph on page 1 was notice to Members of the House that the salaries, as fixed by law, were to be lowered, because the provision is that the amounts appropriated shall be "in full compensation," notwithstanding that they are not in full compensation. * * * Unless there was an intention to reduce the appropriations in the pages following page 1 below the amount fixed by law, there was no necessity for putting in any such clause, and it was therefore a notice to Members of Congress that such appropriations would be contained in the bin below the amounts fixed by law. The Chair is very clear that the point of order ought to be overruled. The question now is on the amendment.

3683. On January 14, 1904,[3] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. William S. Cowherd, of Missouri, proposed an amendment reducing the salary of the Director of the Census from $6,000 to $5,000.

Mr. Henry H. Bingham, of Pennsylvania, made the point of order that the law creating the Bureau of Census fixed the salary at $6,000, and Mr. James A. Hemen-

[1] Third session Fifty-eighth Congress, Record, pp. 109–110.

[2] John Dalzell, of Pennsylvania, Chairman.

[3] Second session Fifty-eighth Congress, Record, p. 770.

way, of Indiana, reenforced this suggestion by calling attention to the fact that a clause in the pending bill provided that the salaries therein contained should be "in full compensation for services."

After debate the Chairman [1] said:

The Chair finds that this precise point appears to have been ruled in the first session of the Fifty-fourth Congress. The case is reported in section 546 of Parliamentary Precedents, by Mr. Hinds, and the very elaborate ruling was made by the gentleman from New York [Mr. Payne], then occupying the chair. It covers this precise case. The bill contained the same phrase, "in full compensation for services for the fiscal year," and it was fully considered. That ruling was followed twice in the Fifty-seventh Congress (Manual, 349). The decision of this point can hardly be affected by the repealing clause at the end of the bill. It has not yet been reached, and may or may not remain in the bill. The Chair therefore feels constrained to overrule the point of order.

3684. On December 16, 1902,[2] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union when the following paragraph was read:

Territory of Hawaii: For governor, $5,000; secretary, $3,000; chief justice, $5,500; and two associate justices, at $5,000 each; in all, $23,500.

Mr. Champ Clark, of Missouri, having proposed an amendment reducing these amounts, Mr. Henry H. Bingham, of Pennsylvania, made the point of order that such a reduction would be a change of law. These salaries were fixed by law. A prior paragraph in the pending bill provided:

That the following sum be, and the same are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, in full compensation for the service of the fiscal year ending June 30, 1904, and for the object hereinafter expressed.

Therefore the proposed amendment would effect a practical change of law.

The Chairman [3] said:

It has been held that the appropriation of a less sum than the amount fixed by law for the salary of an officer is not a change of law, even though it be accompanied by such a condition as practically effects a reduction of salary. * * * In conformity with former rulings on amendments of this character, the Chair is of opinion that the point of order is not well taken, and it is therefore overruled.

3685. On February 6, 1902,[4] the Committee of the Whole House on the state of the Union were considering the legislative appropriation bill, when the Clerk read the following paragraph:

Mint at Carson, Nev.: For assayer in charge, who shall also perform the duties of melter, $1,500; assistant assayer, at $1,250; in all, $2,750.

Mr. Francis G. Newlands, of Nevada, raised the question of order that the amounts proposed for the officers were less than the statutory salaries provided for those positions.

After debate the Chairman,[5] said:

It has been the uniform custom of the House to appropriate less than the amount of the statutory salary. The House, of course, has a right in an appropriation bill to refuse to appropriate at all. There

[1] Marlin E. Olmsted, of Pennsylvania, Chairman.

[2] Second session Fifty-seventh Congress, Record, p. 379.

[3] F. W. Mondell, of Wyoming, Chairman.

[4] First session Fifty-seventh Congress, Record, pp. 1424–1426.

[5] Eugene F. Loud, of California, Chairman.

is no doubt but that this committee would have the right, and not be subject to a point of order, to leave this appropriation out entirely. That is a power that is reserved to the appropriation committees in Congress. The Chair thinks that has been the uniform custom, that the House has the right to fix the amount less than the maximum salary. The Chair therefore overrules the point of order.

3686. The provision of the current law of an appropriation does not fix a salary as against a provision of general law. On February 17, 1900,[1] the legislative, etc., appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and this paragraph was read:

For surveyor-general of Nevada, $1,800.

Mr. Francis G. Newlands, of Nevada, offered an amendment to increase this amount to $2,000.

Mr. James A. Hemenway, of Indiana, made the point of order that this would involve a change of law, since the salary was carried at $1,800 in the last appropriation bill.

After debate the Chairman[2] held:

The Chair has before him section 2210 of the Revised Statutes, which provides that "the surveyors-general of Colorado, New Mexico, California, Idaho, Nevada, Montana, Utah, Wyoming, and Arizona shall each receive a salary at the rate of $3,000 a year." That being so, the fact that in subsequent appropriation bills less than that sum was appropriated does not change the statute, and so far as it relates to Nevada the point of order is overruled.

3687. In the absence of a general law fixing a salary the amount appropriated in the last appropriation bill has been held to be the legal salary, although in violation of the general rule that the appropriation bill makes law only for the year.—On May 29, 1888,[3] the legislative, etc., appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read the paragraph relating to the salaries of employees in the office of the superintendent of the State, War, and Navy Department.

Mr. Herman Lehlbach, of New Jersey, offered an amendment increasing the salaries named in the paragraph.

Mr. Samuel J. Randall, of Pennsylvania, made a point of order against the amendment.

After debate the Chairman[4] said:

It will be remembered that in the Forty-fourth Congress a rule was adopted providing that no legislation should be in order on an appropriation bill except such as reduced expenditures. That provision obtained through the Forty-fourth and Forty-fifth Congresses. In the Forty-sixth Congress the House changed the rule so as to abrogate the provision allowing legislation on appropriation bills where it retrenched expenditures generally and limited it to specific objects;[5] as, for instance where it reduced the amount of a salary or the amount to be appropriated by the bill. Many times during the Forty-fourth, Forty-fifth, and Forty-sixth Congresses, in cases where there was no general law regulating the salary of an office the question was raised whether the amount ascertained in the appropriation law was

[1] First session Fifty-sixth Congress, Record, p. 1902.

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

[3] First session Fiftieth Congress, Record, pp. 4717–4719.

[4] James H. Blount, of Georgia, Chairman.

[5] For changes in this rule see section 3578 of this volume.

contemplated as the legal salary, and throughout those years it was so held by the Chair, and that ruling was never appealed from, Congress after Congress acquiescing in that decision.

There is not an employee of the Senate or of the House carried in this bill whose employment rests on any other basis than an appropriation bill. There are very few of the officers in the employment of the Government whose employment rests on any other basis than an appropriation bill, and yet in the House of Representatives it has been held almost universally in Committee of the Whole that it was not competent for the Committee on Appropriations to change the salaries and amounts ascertained in the appropriation bills. Gentlemen seeking the purpose of the House in the adoption of the rule will find from its history that the object was to provide that a salary being once fixed, the amount so fixed should be the salary attached to that office, and should not be varied with the varying opinions of any committee. The Chair in making its ruling has but conformed to nearly all of the rulings that have been made upon this point.

An appeal having been taken, the decision of the Chair was sustained, ayes 85, noes 44.

3688. On March 30, 1898,[1] the House was in Committee of the Whole House on the state of the Union considering the naval appropriation bill. In the paragraph providing for the pay of professors and others at the Naval Academy, Mr. James A. Norton, of Ohio, proposed an amendment to fix the compensation for the assistant librarian at $1,800, instead of $1,400, as provided in the paragraph as read.

Mr. Joseph G. Cannon, of Illinois, made a point of order against the amendment, on the ground that if there was no statute providing for the salary of this officer, then the salary appropriated for from year to year in the appropriation bills was to be regarded as the legal salary.

The Chairman[2] sustained the point of order.

3689. On February 7, 1900,[3] the consular and diplomatic appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Consul-general at Monterey, at $2,500.

Mr. Jonathan P. Dolliver, of Iowa, moved to strike out $2,500 and insert $4,000.

Mr. Robert R. Hitt, of Illinois, made a point of order against the amendment, saying that the general law did not fix any salary for the place, but that the preceding consular and diplomatic appropriation bill, that approved February 9, 1899, had appropriated $2,500 for the salary.

The Chairman[2] said:

The Chair thinks the gentleman from Illinois is in error in his statement that it has been held that where a prior statute has fixed the salary and an appropriation bill changes that law the item in the appropriation bill governs; but where there has been no statute fixing a salary it has been held that the appropriation bill is the law which establishes that salary. * * * Upon the statement of the gentleman from Illinois the amendment is not in order, and the Chair will sustain the point of order.

3690. On February 16, 1900,[4] the legislative, etc., appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a paragraph was read providing in the office of the Director of the Mint "one assistant in laboratory, $1,000."

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[1] Second session Fifty-fifth Congress, Record, p. 3397.

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

[3] First session Fifty-sixth Congress, Record, p. 1628.

[4] First session Fifty-sixth Congress, Record, p. 1890.

To this Mr. John H. Stephens, of Texas, offered an amendment to strike out "1,000" and insert "$1,500."

It was shown by the debate that there was no general law authorizing the salary. The last appropriation bill had carried it at $1,000, and the Secretary of the Treasury had recommended that it be raised to $1,500.

The Chairman [1] held:

The recommendation of the Secretary would not make any difference as far as the point of order was concerned. The Chair understands that it was carried in the last appropriation bill at $1,000; and there being no other statute on this subject, the Chair must sustain the point of order.

3691. On February 6, 1902,[2] the Committee of the Whole House on the state of the Union were considering the legislative appropriation bill, when an amendment was offered by Mr. Elmer J. Burkett, of Nebraska, the effect of which was to increase the salaries of the telephone pages of the House.

Mr. James A. Hemenway, of Indiana, made the point of order that the increase over the amount in the preceding appropriation law was a change of law.

After debate, and the citation of rulings to show that in the matter of salaries the law of the preceding appropriation act had, contrary to the usual practice, been construed as the law fixing the salary, the Chairman [3] held:

The Chair can not refrain from saying that if this question were presented for the first time he would have no hesitation in ruling the amendment to be in order; but to carry out in that way the conviction of the Chair might overturn the whole appropriation bill, or so large a portion of it as to render it inoperative. The Chair therefore takes the opportunity to shield himself behind the decisions which have been heretofore made, and sustains the point of order.

3692. January 14, 1903,[4] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. John R. Thayer, of Massachusetts, proposed an amendment increasing the salary of a certain skilled laborer in the Bureau of Census.

Mr. Henry H. Bingham, of Pennsylvania, raised the question of order that, although no statute fixed the salary, the last appropriation law had placed the salary at the amount carried in the present bill, and that therefore the amendment involved a change of law.

The Chairman [5] said:

The Chair understands the gentleman from Pennsylvania to say, and it is assumed, to be the fact that in the current appropriation law this position is provided for at a salary of $840 per annum. Now, the gentleman from Massachusetts [Mr. Thayer] proposes to increase that amount to $1,000. The point of order made by the gentleman from Pennsylvania appears to have been frequently ruled upon, and the Chair will call attention to the statement on page 349 of the Manual that—

"In the absence of a general law fixing a salary, the amount appropriated in the last appropriation bill has sometimes been held to be the legal salary, although in violation of the general rule that the appropriation bill makes the law only for the year."

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

[2] First session Fifty-seventh Congress, Record, pp. 1420–1422.

[3] Eugene F. Loud, of California, Chairman.

[4] Second session Fifty-eighth Congress, Record, pp. 771, 772.

[5] Marlin E. Olmsted, of Pennsylvania, Chairman.

That proposition has been frequently sustained. It was declared by Mr. Blount, Chairman of the Committee of the Whole, in the Fiftieth Congress, and upon an appeal from the ruling of the Chair was sustained (Record, pp. 4717–4719). It was followed twice in the Fifty-seventh Congress, once in the first session (Record, pp. 1420–1422) and again in the second session, Mr. Grosvenor in the chair (Record, p. 1010). If it were a new question, the present occupant of the chair might be inclined to hold otherwise, but in view of the repeated rulings feels constrained to sustain the point of order.

3693. On January 20, 1903,[1] the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when a paragraph was read as follows:

For major and superintendent, $4,000; captain and assistant superintendent, $1,800; 4 captains, at $1,500 each; chief clerk, who shall also be property clerk, $2,000; clerk, $1,500.

Mr. John J. Fitzgerald, of New York, made the point of order that the appropriation heretofore fixed had been $3,000. It also appeared that this sum had been fixed by the District Commissioners in accordance with a law empowering them to fix the police salaries.

The Chairman[2] ruled:

The practice of the chairmen of the Committee of the Whole House on the state of the Union has been against, I may say, the opinion quite often expressed by the present occupant of the chair, that when an appropriation bill of the preceding year fixed a salary that that was the salary provided by law and that an addition to that salary was a change of existing law.

It seems to the Chair that the citation by the gentleman from New York is pertinent. This was in 1898. The preceding appropriation bill had provided a salary of $1,400 for the assistant professor at the Naval Academy, and the gentleman from Ohio [Mr. Norton] moved to increase that to $1,800, and the chairman of the Committee on Appropriations [Mr. Cannon] made the point of order that if there was no statute providing for the salary of this office, then the salary appropriated for from year to year in appropriation bills was to be regarded as the legal salary, and the Chair sustained the point of order. Following the precedent, the Chair will sustain the point of order.

3694. On January 24, 1905,[5] the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. W. Bourke Cockran, of New York, proposed this amendment:

On page 34, line 8, strike out the words "twenty-five hundred" and insert the words "three thousand;" so that the paragraph will read "for director of high schools, $3,000."

Mr. James T. McCleary, of Minnesota, made a point of order against the amendment.

After debate, the Chairman[4] ruled:

The gentleman from New York [Mr. Cockran] offers an amendment changing the salary for the director of high schools. The gentleman from Minnesota [Mr. McCleary] raises a point of order. The amendment offered by the gentleman from New York would increase the salary. The only way in which the salary is now fixed, as the Chair understands, is by the current appropriation law. Logically it would be the opinion of the present occupant of the chair that the committee, if it have authority to appropriate for the salary at all, would have the authority to raise the salary for the ensuing year without regard to the current appropriation law, provided, of course, that no general law would prevent. But the precedents in the House and in the committee have been such as to construe the rule to the effect that the existing appropriation law fixing the salary of the official appropriated for is the law under

[1] Second session Fifty-seventh Congress, Record, pp. 1009, 1010.

[2] Charles H. Grosvenor, of Ohio, Chairman.

[3] Third session Fifty-eighth Congress, Record, pp. 1306–1313.

[4] James R. Mann, of Illinois, Chairman.

which the committee operates, and that to increase that salary would be to change existing law. That may not be a logical position, however—

* * * The Chair will say that as an open question the Chair would consider the amendment proposed is in order. Still, in view of the decisions which have been made and sustained in the Committee of the Whole and in the House, the Chair is constrained to rule that the amendment is subject to a point of order. The Chair sustains the point of order.

Mr. Cockran appealed from the decision of the Chair.

After debate, the Chairman submitted the appeal to the committee, saying:

The Chair will say to the committee that whatever impression the present occupant of the chair might have of the question as an original proposition, he has felt constrained to follow the plain direction of the precedents. It is not a new question, having been ruled on several times. The Chair will refer to only one decision, although there are many to the same effect. On January 14, 1903, the Chairman of the Committee of the Whole House, Mr. Olmsted, made this ruling:

"The Chair understands the gentleman from Pennsylvania to say, and it is assumed to be the fact, that in the current appropriation law this position is provided for at a salary of $840 per annum. Now, the gentleman from Massachusetts [Mr. Thayer] proposes to increase that amount to $1,000. The point of order made by the gentleman from Pennsylvania appears to have been frequently ruled upon, and the Chair will call attention to the statement on page 349 of the Manual, that in the absence of the general law fixing a salary the amount appropriated in the last appropriation bill has sometimes been held to be the legal salary, although in violation of the general rule that the appropriation bill makes the law only for the year."

Then the Chair went on:

"That proposition has been frequently sustained. It was declared by Mr. Blount, Chairman of the Committee of the Whole in the Fiftieth Congress, and, upon appeal from the ruling of the Chair, was sustained. It was followed twice in the Fifty-seventh Congress, once in the first session and again in the second session, Mr. Grosvenor in the chair. If it were a new question the present occupant of the chair might be inclined to hold otherwise, but in view of the repeated rulings feels constrained to sustain the point of order."

The present occupant of the chair can do no more than cite a precedent of this kind.

The question being submitted, "Shall the decision of the Chair stand as the judgment of the committee?" there appeared, on a vote by tellers, ayes 97, noes 82.

So the decision of the Chair was sustained.

Thereupon Mr. David J. Foster, of Vermont, offered an amendment to strike out all the portion of the bill specifying the salaries of teachers of various classes and inserting the words "For teachers, $1,099,000," it being the object of the amendment to appropriate a larger amount than the aggregate of the various salaries specified in the bill.

Mr. McCleary made a point of order against the amendment, saying:

The existing law specifies the salaries. The amendment offered by the gentleman from Vermont does not, but in place thereof proposes an aggregate which in itself is larger than the amount under existing law.

The Chairman said:

May the Chair ask the gentleman from Minnesota whether there be any existing law, except the appropriation law, providing specifically for the teachers, as described in the pending bill?

Mr. McCleary replied:

There is no other law than the appropriation bill.

The Chairman ruled:

It seems perfectly plain to the Chair that in the absence of specific legislation providing for a specific number of different classes of teachers it is entirely within the province of the committee

to make a lump-sum appropriation, instead of dividing it up into specific appropriations; and if the committee has authority to make appropriations for the director of the high school specifically, it has authority to appropriate the money without specifying what specific teachers shall have the money. The Chair therefore overrules the point of order.

On February 20,[1] during consideration of the naval appropriation bill, the following paragraph was read:

Pay of professors and others, Naval Academy: One professor as head of the department of physics, $3,000.

Mr. John Lind, of Minnesota, proposed to amend by increasing the salary to $4,000.

Mr. George E. Foss, of Illinois, made a point of order.

After debate, the Chairman[2] held:

If the gentleman's proposition is to increase a salary relating to a salary fixed by general law it is subject to the point of order. On the other hand, it is equally subject to the point of order if the amount of salary named in the bill is identical with that named in the last appropriation bill. * * * The Chair will call the gentleman's attention to a statement in the Digest:

"In the absence of a general law fixing a salary, the amount appropriated in the last appropriation bill has sometimes been held to be the legal salary, although in violation of the general rule that the appropriation bill makes law only for the year."

That proposition has been frequently sustained. It was so declared by Mr. Blount, Chairman of the Committee of the Whole, in the Fiftieth Congress, and upon an appeal from the ruling the Chair was sustained. It was followed in the Fifty-seventh Congress, once in the first session and the beginning of the second session, Mr. Grosvenor in the chair. It was held again at the last session of this Congress, where the point of order was made upon the legislative bill, Mr. Boutell, of Illinois, in the chair, and it has also been held at this session on the point of order made to increase the teachers' salaries, Mr. Mann, of Illinois, in the chair. The Chair therefore is compelled to follow precedents and sustain the point of order.

3695. On March 30, 1906,[3] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, under the terms of a special order which prevented the raising of points of order on any portion of the bill as reported, and the Clerk read:

Bureau of Manufactures: Chief of Bureau of Manufactures, $4,000; assistant chief of Bureau, $2,500; chief of division, $2,100; two clerks of class 4; clerk of class[2]; four clerks of class 1; two clerks, at $1,000 each; clerk, at $900; three assistant messengers; two laborers; in all, $24,780.

Mr. John Dalzell, of Pennsylvania, moved to increase the salary of the assistant chief of the Bureau of Manufactures to $3,000.

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

Mr. Lucius N. Littauer, of New York, said of this office:

It was created in the urgent deficiency bill of this year, wherein there was a paragraph reading as follows:

"Bureau of Manufactures: For assistant chief of Bureau, to be selected and appointed by the Secretary of the Department of Commerce and Labor, at the rate of $2,500 per annum during the balance of the fiscal year 1906, $1,142, or so much thereof as may be necessary."

That is the first recognition in legislation of this office. The organization of the Bureau simply calls for the Chief of Bureau, together with a general provision for clerical assistance.

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[1] Record, pp. 2922, 2923.

[2] John Dalzell, of Pennsylvania, Chairman.

[3] First session Fifty-ninth Congress, Record, pp. 4497–4499.

At the conclusion of the debate, the Chairman [1] held:

It appears that section 5 of the act of Congress approved February 14, 1903, creating this Department, provides that there shall be in it a chief of said Bureau who shall be appointed by the President and who shall receive a salary of $4,000 per annum, and that there shall also be in said Bureau such clerical assistants as may from time to time be provided by Congress. The Chair, without stopping to look up the urgent deficiency bill passed at this session, is advised and understands it to be conceded that it does provide for this officer—names him and appropriates $2,500 as his compensation for the current year. The amendment offered by the gentlemen from Pennsylvania [Mr. Dalzell] proposes to appropriate $3,000 for the year covered by the pending bill, and a point of order is made that the amendment changes existing law in violation of clause 2 of Rule XXI. It has been ruled repeatedly that where a paragraph which itself changes existing law is permitted to remain in a bill any germane amendment perfecting that paragraph is in order. If this were a new office, a new fixing of the salary without authority of law, or a change of law, the paragraph as it now stands would be in violation of that rule; but, as under the special rule adopted by the House yesterday it is permitted to remain in the bill, it would, in the opinion of the Chair, be subject to any germane amendment. But if this paragraph would not in any event have been subject to the point of order, if the salary is already fixed by law at $2,500, so that the paragraph in its present form does not offend against Rule XXI, then the amendment would not be in order, because it would be a change of existing law. The question therefore arises, Does the urgent deficiency bill recently passed and which is for the current year ending June 30, 1906, constitute existing law so as to fix the salary for subsequent years? Does it permanently establish the salary of this officer at $2,500? If so, this amendment is out of order. Now, it has been held repeatedly—so often that it is unnecessary for the Chair to refer to the decisions—that an appropriation bill for the current year does not afford an authority of law for a subsequent appropriation for a different period of time. Such an item in a general appropriation bill has over and over again been held to be law only for the year for which it appropriates. There has, however, been one exception made, as will appear by reference to the Manual, at page 355:

"In the absence of a general law fixing a salary, the amount appropriated in the last appropriation bill has been held to be the legal salary, although in violation of the general rule that the appropriation bill makes law only for the year."

The Chair desires the committee distinctly to bear in mind that it has been ruled over and over and over again that an appropriation for the current year is not existing law so as to authorize an appropriation for the same object for another year. The only exception to it is found in this ruling, which was first made in the Fiftieth Congress, and has been on five or six occasions followed, with great reluctance, by those who have occupied the chair. The present occupant of the Chair, if the question were a new one, would be very much inclined to hold that the position taken in the ruling just cited was not the correct one. If an appropriation for the current year for an office not previously created by law does not constitute law beyond the year as to the office, it is difficult to understand upon what principle an appropriation for the current year of a compensation not previously fixed by law can be held to constitute permanent law as to the salary. If it expires with the appropriation year as to an office, why not as a salary? The Chair, however, does not feel at liberty to override a ruling which has been followed several times, but proposes to submit to the committee the question

At this point Mr. Mann withdrew the point of order.

3696. On May 26, 1906,[2] the consular and diplomatic appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Salaries of ambassadors and ministers: Ambassadors extraordinary and plenipotentiary to Austria-Hungary, Brazil, France, Germany, Great Britain, Italy, Japan, Mexico, and Russia, at $17,500 each, $157,500.

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[2] First session Fifty-ninth Congress, Record, pp. 7505–7507.

Mr. John S. Williams, of Mississippi, raised the question of order that the salary of the ambassador for Brazil was in the last bill $12,000 and that the salary here proposed was out of order.

The Chairman [1] sustained the point of order.

Soon thereafter Mr. Williams made a similar point of order against the salaries of the ministers to Belgium and the Netherlands.

The Chairman sustained the point of order, reading from the Manual:

In the absence of a general law fixing a salary the amount appropriated in the last appropriation bill has been held to be the legal salary, although in violation of the general rule that the appropriation bill makes law only for the year.

3697. The mere appropriation for a salary does not thereby create an office so as to justify appropriations in succeeding years.—On March 20, 1906,[2] the legislative, executive, and judicial appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Robert Adams, Jr., moved to insert among the employees of the office of the Clerk the following:

Insert on page 13, line 3, after the word "messenger," the following: "Three cabinetmakers who shall be skilled in their trade, one at $1,200 and two at $900 each."

Mr. Lucius N. Littauer, of New York, made a point of order against the amendment, that the positions had not been authorized.

The Chairman [3] said:

The Chair will state that the gentleman from New York has made the point of order, and will be glad to hear from the gentleman from Pennsylvania whether there is any resolution of the House or other authority for the appointment of the employees named in the resolution.

Mr. Adams stated that the appropriation act passed in the preceding year had provided for these places, but it appeared that this was the only authorization.

The Chairman said:

It has been repeatedly held that the mere fact that a similar office was appropriated for in a previous appropriation bill is not to be considered as existing law so as to authorize another appropriation for another year. It is not a law authorizing an appropriation for a subsequent year. Unless there is some resolution or some authority outside of the mere appropriation for the pay in a former bill the Chair will be compelled to sustain the point of order. * * * The Chair will be compelled to so rule unless some authority of law shall be shown for the creation of the office and the appropriation of the money.

3698. On March 20, 1906,[4] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Thomas W. Hardwick, of Georgia, made a point of order against an item providing for "two laborers, at $820 each."

Mr. Lucius N. Littauer, of New York, made an argument as follows:

The laborers covered by this provision were carried in the appropriation bill for the current year—one of them at $720 and the other at $820. If the point of order will lie against this increase of salary to this one laborer, who, by the way, is a coal weigher, performing more intelligent work than laborers

[1] Charles Curtis, of Kansas, Chairman.

[2] First session Fifty-ninth Congress, Record, p. 4037.

[3] Marlin E. Olmsted, of Pennsylvania, Chairman.

[4] First session Fifty-ninth Congress, Record, pp. 4044–4046.

usually perform, and whom we believe should be compensated at a fair salary for his work, it would do so equally against practically every provision in connection with the service of the House. No reform can ever be made; we could have neither reduction nor advance in salary, and it seems to me that the position is wrong from the very foundation. The House has a right to choose its own officers, and that must include everyone in connection with the service about the House. Having a right to choose its own officers, it has a right to place their compensation at any rate the House may choose, and I do not believe this constitutional right can be limited by a previous Congress or by any rule that may be made in connection therewith. It seems to me to be a fundamental right pertaining to the House and all its officers. I therefore have concluded that the rule made applicable to current appropriation law, and which naturally applies throughout the Departments, can not properly apply to the official force connected with the House.

After extended debate the Chairman [1] elicited the following state of facts: That there was authority for the appointment of one laborer at $820, but not two laborers at that figure.

The Chairman then ruled:

The facts being agreed upon, the Chair has a foundation upon which to rule. The question presented is one not heretofore directly passed upon and one of some importance. It is provided in the Constitution of the United States that "the House of Representatives shall choose their Speaker and other officers." The Chair thinks that under that constitutional provision it is not requisite that the consent of the Senate or of the Executive shall be obtained in order to provide, fix, or determine the officers of the House. The House itself is authorized to do that. The Constitution further provides that "each House may determine the rules of its proceedings." This House has determined its rules. In the twenty-first rule as now existing there appears this provision:

"RULE XXI, SEC. 2. No appropriation shall be reported in any general appropriation bill or be in order as an amendment thereto for any expenditure not previously authorized by law, etc."

In the ruling made a few moments ago the Chair went further, perhaps, than any previous ruling has gone in sustaining the proposition urged by the gentleman from Indiana, and held that a resolution of the House, even of a prior House, creating an office in the House was sufficient authority for the purpose of this rule to authorize an appropriation in the present Congress for the salaries of employees of the House there designated and provided for. But in the absence of any resolution or other authority whatever by the House for the creation of the office or the fixing of a salary, the Chair thinks the House is bound by its own rule in that regard, and that the provision for the second laborer at $820, without previous resolution or authority of any kind, does transcend that rule. The House is empowered under the Constitution to choose its own officers. But it must have chosen them or provided for the office in some way before there be said to exist the previous authority required by Rule XXI as the basis of an appropriation. The Chair therefore sustains the point of order.

3699. A motion to strike from an appropriation bill a provision for a salary authorized and fixed by law is not subject to the objection that it proposes legislation.—On February 2, 1897,[2] the consular and diplomatic appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and a class of consuls was reached whose salaries were rated at $1,000 each per annum.

Mr. Richmond Pearson, of North Carolina, moved to strike out all the salaries provided for in the class.

Mr. James B. McCreary, of Kentucky, made the point of order that these salaries were fixed by law, and that a refusal to appropriate for them would therefore be a change of law.

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[1] Marlin E. Olmsted, of Pennsylvania, Chairman.

[2] Second session Fifty-fifth Congress, Record, p. 1443.

The Chairman [1] ruled:

The Chair will state to the gentleman from Kentucky that he does not think this proposition changes existing law. It is not a change of existing law simply to refuse to make an appropriation. It does not abolish the office, but only fails to provide a salary for it. It does not abolish the salary, although it makes no provision for the payment of it. The Chair thinks therefore that the point of order is not well taken and overrules it.

3700. The statute requiring specific authorization and appropriation for clerks and other employees in the Executive Departments.—On January 29, 1907,[2] the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when in a paragraph relating to the forest reserves the following appeared:

to employ fiscal and other agents, clerks, assistants, and other labor required in practical forestry, in the administration of national forests, and in conducting experiments and investigations in the city of Washington.

Mr. James A. Tawney, of Minnesota, made the point of order that the appropriation herein described was in violation of the act of 1882,[3] which provided:

No civil officer, clerk, draftsman, copyist, messenger, assistant messenger, mechanic, watchman, laborer, or other employee authorized after October, 1892, to be employed in any of the Executive Departments or subordinate bureaus or offices thereof at the seat of Government, except only at such rates and in such numbers, respectively, as may be specifically appropriated for by Congress; and for such clerical and other personal services for each fiscal year no civil officer, clerk, draftsman, copyist, messenger, assistant messenger, watchman, mechanic, laborer, or other employee shall hereafter be employed at the seat of Government in an Executive Department or subordinate bureaus or offices thereof, or to be paid from any appropriation made for contingent expenses or for any specific or general purpose, unless such employment is authorized and payment therefor specifically provided in the law making the appropriation.

The Chairman [4] sustained the point of order.

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

[2] Second session Fifty-ninth Congress, Record, p. 1901.

[3] 22 Stat. L., p. 255.

[4] David J. Foster, of Vermont, Chairman.

Chapter XCVI

APPROPRIATIONS IN CONTINUATION OF A PUBLIC WORK.

1. **The rule. Section 3701.**
2. **General principles as to continuing work. Sections 3702–3704.**
3. **Interpretation of the words "in progress." Sections 3705–3708.**
4. **Meaning of the words "works and objects." Sections 3709–3715.**[1]
6. **Construction of the rule as to works in general. Sections 3716–3722.**
6. **As to new vessels, light-houses, dry docks, etc. Sections 3723–3736.**
7. **As to new factories and buildings. Sections 3737–3740.**
8. **New buildings at existing institutions. Sections 3741–3761.**
9. **Selection of a site not beginning of work. Sections 3762–3765.**
10. **Purchase of land adjoining a Government property. Sections 3766–3776.**
11. **As to rent, repairs, paving, etc. Sections 3777–3781.**
12. **Surveys, etc., not beginning of work. Sections 3782–3785.**
13. **Decisions on the general subject. Sections 3786–3809.**

3701. The requirement that appropriations in general appropriation bills shall be authorized by existing law does not apply to continuation of appropriations for public works or objects in progress.—Section 2 of Rule XXI[2] provides:

> No appropriation shall be reported in any general appropriation bill or be in order as an amendment thereto for any expenditure not previously authorized by law unless in continuation of appropriations for such public works and objects as are already in progress. * * *

3702. An appropriation in violation of existing law is not in order for the continuance of a public work.—On April 20, 1900,[3] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union and the Clerk had read this paragraph:

> Armor and armament: Toward the armament and armor of domestic manufacture for the vessels authorized by the act of March 2, 1895; for those authorized by the act of June 10, 1896; for those authorized by the act of March 3, 1897; for those authorized by the act of May 4, 1898; for those authorized by the act of March 3, 1899, and for those authorized by this act, $4,000,000: *Provided,* That the Secretary of the Navy is hereby authorized to procure by contract armor of the best quality for the battle ships *Maine, Ohio* and *Missouri,* authorized by the act of May 4, 1898, at a cost not to exceed $545 a ton of 2,240 pounds, including royalties.

Mr. W. D. Vandiver, of Missouri, made the point of order that the words "five hundred and forty-five dollars" changed existing law.

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[1] See also section 3598 of this volume.

[2] For full form and history of this rule see section 3578 of this volume.

[3] First session Fifty-sixth Congress, Record, p. 4500.

The existing law had been placed in former appropriation bills, and in the debate question was raised as to whether or not it was simply a limitation upon the price to be paid for armor bought with those particular appropriations, or whether it was a general limitation on all armor to be purchased for those vessels.

It was also urged that the purchase of armor for these vessels was the continuation of a public work; but in response to this the Chairman, cited the last clause of section 2 of Rule XXI—

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

and held as follows:

The Chair has been referred to the law of 1899, "armor and armament." The paragraph of that law—the whole paragraph—relates to the armament—to armor and armament of domestic manufacture for the vessels authorized by the different acts from 1894 to 1898, inclusive, with the proviso:

"Provided, That in procuring armor for the seagoing coast-line battle ships and the harbor-defense vessels of the monitor type, authorized by the act making appropriations for the naval service for the fiscal year ending June 30, 1899, and for other purposes, approved May 4, 1898, the Secretary of the Navy may contract for suitable armor for said vessels under the limitations as to price for the same as fixed by this act: *And provided further,* That no contracts for the armor of any vessel authorized by this act shall be made at an average rate exceeding $300 per ton of 2,240 pounds, including royalties, and in no case shall a contract be made for the construction of the hull of any vessel authorized by this act until a contact has been made for the armor of such vessel."

Now, the Chair thinks, taking the whole paragraph, that the intention of Congress in passing that law, and the intention of the law, was to apply to the armor for all of those vessels, and that it was not a limitation upon the appropriation, but was positively a legislative limit on the price of armor plate of $300 per ton, and, of course, to fix a limit at a greater price in this bill would be a change of existing law. Therefore the Chair sustains the point of order.

3703. An amendment for the enlargement of a general service of the Government is not in order under the clause relating to the continuation of a public work or object.—On February 2, 1900,[2] while the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union, this paragraph was read:

For the support of a school for the blind, to be provided for by contract by the Secretary of the Interior, in the Indian Territory, the sum of $10,000. And the Secretary of the Interior, under such rules and regulations as he may prescribe, may admit to such school blind children of other than Indian blood residing in such Territory. So much of said expenditure as may be found by the Secretary of the Interior to be incurred on behalf of Indian children shall be paid out of the school funds of the tribe to which such child belongs.

Mr. Joseph G. Cannon, of Illinois, made the point of order that no law authorized the expenditure, especially the portion relating to children not Indian.

After debate the Chairman[3] held:

The Chair understands that the question still presented for determination is whether the paragraph as reported in the bill is obnoxious to the point of order made under Rule XXI by the gentleman from Illinois. The Chair will restate the question as he understands it.

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

[2] First session Fifty-sixth Congress, Record, pp. 1458–1460.

[3] William H. Moody, of Massachusetts, Chairman.

The objection is made that the paragraph is in violation of Rule XXI, which provides that—

"No appropriation shall be reported in any general appropriation bill or be in order as an amendment thereto for any expenditure not previously authorized by law unless in continuation of appropriations for such public works and objects as are already in progress."

No law authorizing this appropriation has been brought to the attention of the Chair by any gentleman. The Chair does not understand that it is contended that the appropriation is authorized by any provision of existing law. But it is contended that, it being in furtherance of a great public object which the Congress of the United States has hitherto supported, it comes within the exception to the prohibition of Rule XVI as "a public work and object already in progress."

If the object of this appropriation is a public work and object already in progress, then it is in order in this bill. If it is not, it is not in order in this bill. It is unquestionably true that there are some decisions of previous presiding officers of the House and committee which sustain the construction of the rule for which the gentleman from Arkansas contends. The decision to which he refers, that a provision in a naval appropriation bill for the construction of ships is in order as a public work and object in progress because the policy of the Government is to construct and maintain a navy, is one of these; but, although that decision has been followed always in like cases, it seems to the Chair that its authority has never been recognized as going beyond the exact facts of that case, and that it ought not to be extended.

Perhaps, also, the decisions with regard to railway mail special facilities would support the contention of the gentleman from Arkansas. On the other hand there are many precedents giving to the words "public work or object already in progress" a much more restricted meaning. It has been held that an appropriation for a dry dock for the Navy was not in order on a general appropriation bill, by Mr. Butterworth on April 10, 1890, first session Fifty-first Congress; by Mr. Shively on April 13, 1892, first session Fifty-second Congress; by Mr. Hopkins on March 25, 1896, first session Fifty-fourth Congress, and by Mr. Sherman on February 23, 1897, second session Fifty-fourth Congress. It is certainly difficult to distinguish in principle these decisions from the decision respecting the construction of ships.

The maintenance of the Light-House Service is a public object to which the Government is as fully committed as to the maintenance of a navy. Yet it has been held that an appropriation for establishing a light (June 21, 1886, Reagan, first session Forty-ninth Congress) or for the construction of a tender for that Service (June 21, 1886, Reagan, first session Forty-ninth Congress) was not in order.

On April 25, 1890, first session Fifty-first Congress, a point of order was made against an appropriation. for nine members of the board of pension appeals, the law constituting the board providing only for three members. It was urged against the point of order that the granting of pensions was a public work or object in progress, and that the appropriation, being necessary to the execution of that work or object, was in order. Mr. Payson sustained the point of order.

The latter class of decisions seem to the present occupant of the chair to be in better accord with the spirit and purpose of Rule XXI. If the rule has the meaning which the gentleman from Arkansas attributes to it and the ship decision gives it, there would be little or nothing of significance or restraint in it. The appropriations committees would have a broader power than the rules intend to bestow upon them.

Finding some general purpose of Congress well established, they might appropriate for any instrumentality, however novel, which would promote that purpose. Such a construction of the rule would rob the legislative committees of their rightful jurisdiction. The Chair thinks that the words of there have a much more limited meaning; that the words "public work and objects already in progress" refer to specific and tangible things whose construction or support has heretofore been undertaken by the Government. Tested by this rule, the establishment of a school for the blind is not in order in this bill. Accordingly, the point of order is sustained.

3704. The continuation of a public work must not be so conditioned in relation to place as to become really a new work.—On May 5, 1900,[1] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read a paragraph providing for the erection of an extension of the Government Hospital for the Insane.

[1] First session Fifty-sixth Congress, Record, p. 5194.

To this Mr. David A. De Armond, of Missouri, offered an amendment to provide that this extension should be—

upon land already owned by the Government or such land, if any, as may be donated to the Government for the purpose.

Mr. Joseph G. Cannon, of Illinois, made the point of order that the amendment would allow the extension to be built anywhere, whereas the act creating the hospital located it in the District of Columbia.

After debate the Chairman [1] said:

All these paragraphs have relation to an established hospital. The Chair has already ruled and will continue to rule that any proposition to extend that hospital would not be subject to a point of order, because it is to be regarded as a continuation of a public work already in progress. The Chair was therefore disposed to hold the amendment in order until the gentleman [Mr. De Armond] conceded that the amendment properly construed would justify the erection of a hospital somewhere else than in connection with this hospital for the insane in the District of Columbia. That being the conceded meaning, the Chair sustains the point of order.

3705. Question as to whether or not a public work or object, to come within the terms of the rule, must be actually "in progress."—On May 15, 1906,[2] the naval appropriation bill was under consideration in Committee of the whole House on the state of the Union, when the paragraph was read providing for contingent expenses of the Marine Corps.

Mr. Adolph Meyer, of Louisiana, proposed an amendment as follows:

Erection of marine barracks and officers' quarters, $15,000, which sum shall be in addition to $15,000 appropriated for this object in the naval appropriation act approved March 3, 1901, and $6,500 provided in the naval appropriation act approved April 27, 1904, for the naval station at New Orleans, La., $15,000.

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

Mr. Meyer stated:

Mr. Chairman, I hardly think that provision is subject to the point of order, as it is simply an addition for an establishment heretofore authorized in two appropriation acts. It provides that it shall be in addition to $15,000 appropriated for this object in the naval appropriation act approved March 3, 1901, and $6,500 provided in the naval appropriation act approved April 27, 1904, for the naval station at New Orleans, La. * * * It was supposed that would complete it, but it was ascertained, by reason of the increased cost of material, that that was inadequate; hence the Department could not make any contract, under the law, and now we want $15,000, making the total cost $36,500.

Mr. Tawney argued that, as it appeared that no work had been done under previous appropriations and as there was no law authorizing the work, it could not be considered a work in progress.

The Chairman [3] overruled the point of order.

3706. A public work or object, to come within the terms of the rule, must be actually "in progress," according to the usual significance of the words.—On April 1, 1896,[4] while the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union,

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[1] John Dalzell, of Pennsylvania, Chairman.

[2] First session Fifty-ninth Congress, Record, pp. 6914, 6915.

[3] Edgar D. Crumpacker, of Indiana, Chairman.

[4] First session Fifty-fourth Congress, Record, p. 3447.

Mr. Franklin Bartlett, of New York, offered an amendment for making an appropriation to copy, print, and publish the papers and manuscripts of Thomas Jefferson and Alexander Hamilton. Mr. Bartlett said that the act of August 12, 1848, made a distinct appropriation for printing and publishing the papers of Jefferson and Hamilton. That act at that time became existing law, and this amendment was a continuation of an appropriation made in 1848.

Mr. Joseph G. Cannon, of Illinois, made the point of order that, although an appropriation might have been made in 1848, the publication of this work was not a public work "in progress" within the meaning of the rule.

The Chairman[1] sustained the point of order.

3707. An appropriation to complete a naval vessel on which work had long been interrupted was admitted as being for the continuation of a public work.—On February 19, 1885,[2] the House was in Committee of the Whole House on the state of the Union, considering the naval appropriation bill. A paragraph "for the completion of the *New York,* $400,000," had been reached, when Mr. Joseph G. Cannon, of Illinois, made a point of order against it.

The Chairman[3] ruled:

Clause 3, Rule XXI, provides that—

"No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress."

Unquestionably the general rule is that no appropriation is in order on a general appropriation bill unless the appropriation be authorized by previously existing law. That is the general rule. But to that general rule there is an express exception:

"Unless in continuation of appropriations for such public works and objects as are already in progress."

That is to say, if the work be a public work and it is already in progress, then there need not be any previous legislative authority for the work.

Now, the Chair must believe that the construction of this ship is a public work. The Chair also believes that it is in progress. The mere fact that this vessel, begun in 1865, is confessedly still incompleted, the Chair thinks, so far as this rule is concerned, does not show that that work is not now in progress. The fact that the actual construction is temporarily interrupted for want of appropriation or some other reason does not interfere with the idea that the work is in progress. The Chair therefore overrules the point of order.

3708. The continuation of a public work which has long been interrupted has been held to justify an appropriation.

Provisions as to the method of doing a work have been held to involve legislation, even though the work itself might be authorized.

On February 11, 1903,[4] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Joseph G. Cannon, of Illinois, proposed the following amendment:

On page 73, after line 22, insert:

"Toward the extension and completion of the Capitol building, in accordance with the original plans therefor by the late Thomas U. Walter, with such modifications of the intericr as may be found

[1] Albert J. Hopkins, of Illinois, Chairman.

[2] Second session Forty-eighth Congress, Record, pp. 1913, 1914.

[3] Olin Wellborn, of Texas, Chairman.

[4] Second session Fifty-seventh Congress, Record, pp. 2049, 2050.

necessary or advantageous, and for each and every purpose connected therewith, $500,000; and the said construction shall be made under the direction of a commission composed of three Senators, to be appointed by the President of the Senate, and three Members elect to the House of Representatives of the Fifty-eighth Congress, to be appointed by the Speaker of the House of Representatives of the Fifty-seventh Congress; and the Superintendent of the Capitol Building and Grounds, under the direction and supervision of said commission, is authorized to make contracts for said construction after proper advertisements and the reception of bids within a total sum not exceeding $2,500,000, including the sum herein appropriated, and said Superintendent, subject to the direction and approval of said commission, shall employ such professional and personal services in connection with said work as may be necessary. Any vacancy occurring by resignation or otherwise in the membership of the commission hereby created shall be filled by the Presiding Officer of the Senate or House, according as the vacancy occurs in the Senate or House representation on said commission."

Mr. John H. Stephens, of Texas, made the point of order that the amendment involved legislation.

After debate the Chairman[1] said:

Section 2 of Rule XXI provides:

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

The amendment offered by the gentleman from Illinois [Mr. Cannon] proposes to appropriate a certain sum for the completion of the Capitol building in accordance with the original plans and specifications and in accordance with existing law. That the construction of the building is incomplete is conceded, but the work necessary to its completion has been interrupted for a series of years. This interruption or delay, in the opinion of the Chair, does not operate so as to take this proposed amendment out of the operation of the exception to the general rule just read, which is "unless in continuation of appropriations for such public works and objects as are already in progress." If the work incident to the completion of the building was now in progress no one would claim that this amendment would not come within the exception just mentioned.

On February 19, 1885, the House was in Committee of the Whole House on the state of the Union, considering the naval appropriation bill. A paragraph "For the completion of the *New York,* $400,000," had been reached when Mr. Joseph G. Cannon, of Illinois, made a point of order against it. The Chairman of the Committee of the Whole [Mr. Olin Wellborn, of Texas] ruled:

"Now, the Chair must believe that the construction of this ship is a public work. The Chair also believes that it is in progress. The mere fact that this vessel, begun in 1865, is confessedly still incomplete, the Chair thinks, so far as this rule is concerned, does not show that that work is not now in progress. The fact that the actual construction is temporarily interrupted for want of appropriation or some other reason does not interfere with the idea that the work is in progress. The Chair therefore overrules the point of order."

In the opinion of the Chair, therefore, the amendment is not obnoxious to paragraph 2 of Rule XXI upon the ground that the appropriation is not in continuation of such public works as are already in progress.

But the point of order made by the gentleman from Texas goes further. It is claimed that the amendment is not in order because it involves new legislation or would be legislating upon an appropriation bill. It provides that the completion of the Capitol building as originally proposed shall be "under the direction of a commission composed of three Senators, to be appointed by the President of the Senate, and three Members-elect of the House of Representatives of the Fifty-eighth Congress, to be appointed by the Speaker of the House of Representatives of the Fifty-seventh Congress, and the Superintendent of the Capitol Building amd Grounds," and authorizes this commission to enter into contracts for the said construction "after proper advertisement," and also authorizes said commision to employ such professional and personal services in connection with said work as may be necessary, and then specifies how vacancies upon said commission hereafter occurring are to be filled.

[1] James A. Tawney, of Minnesota, Chairman.

This, in the opinion of the Chair, is legislation inhibited by the last paragraph of the clause of Rule XXI which the Chair has just read.

This question, almost identical in form, was decided on February 28, 1898, by the Chairman of the Committee of the Whole House on the state of the Union, Mr. Sereno E. Payne, and for the information of the committee I will read from paragraph 513, Parliamentary Practice of the House of Representatives of the United States, page 289:

"Provided also for the appointment of a commissioner-general and other officials, with specified duties and salaries; authorized certain heads of departments to prepare exhibits under certain conditions and regulations, etc.

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

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

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

The facts in the case just read being almost identical with the facts in the case now before it, the Chair is clearly of opinion, after a careful reading of the proposed amendment, that it proposes new legislation in connection with the proposed appropriation, which is not permissible under the rule, and that, therefore, the amendment is not in order.

3709. By public works and objects already in progress are meant tangible matters like buildings, roads, etc., and not duties of officials in Executive Departments.—On April 25,1890,[1] the House was in Committee of the Whole House on the state of the Union, considering the legislative, executive, and judicial appropriation bill.

The Clerk having read the paragraph relating to salaries in the Interior Department, Mr. Joseph D. Sayers, of Texas, made a point of order that there was a provision for nine members of a board of pension appeals to be appointed by the Secretary of the Interior, at a salary of $2,000 each, whereas the law constituting the board provided for three members only.

After debate, on the succeeding day, the Chairman[2] gave his ruling. He said that legislation of like character had been adopted on the bill for the past five years, but it appeared from the Record that no point of order was urged against the provision. The existing law was found in the Revised Statutes, pages 26 and 27. "Four classes of clerks and three salaries are provided for," continued the Chairman:

The Chair understands that by statute every office in an Executive Department above the grade of a fourth-class clerk, the salary of which grade is $1,800 per year, is provided for in terms; the office is named and salary provided for, and no question is made that to provide for any office of such higher character legislation must be had in some other way than in an appropriation bill.

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[1] First session Fifty-first Congress, Record, pp. 3835, 3881.

[2] Lewis E. Payson, of Illinois, Chairman.

The provision in this bill against which the point of order is urged is embodied in the paragraph on page 76, in the following words:

"Nine members of a board of pension appeals, to be appointed by the Secretary of the Interior, at $2,000 each."

The members of the proposed board do not come within any of the classes of employees provided for by the Revised Statutes.

The first provision the Chair finds in reference to this subject, as was remarked during the argument on the point of order, is in the legislative appropriation act of 1884, where there was provision made for three members of the board of pension appeals to be appointed by the Secretary of the Interior, at a compensation of $2,000 per annum. That bill became a law, and an examination of the Record during the consideration of the bill shows that no point of order was made against the provision at that time. In subsequent appropriation bills, coming down to the appropriation bill for the present fiscal year, the same provision has been carried on the different bills for a board of pension appeals, but the number constituting the board has varied in accordance with the exigencies of the service, as was showm to be necessary from time to time.

But the question here presented is whether or not, these offices only being provided for in an annual appropriation bill, the tenure of the office ending with the life of the bill—that is to say, on the 30th day of June of each year—whether the renewal of the provision in succeeding appropriation bills renders the proposition obnoxious to the point of order. That can only be determined, in the judgment of the Chair, by the consideration of clause 2 of Rule XXI. The Chair will read the entire clause:

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

If this provision is properly in this bill at all, the point of order being raised against it, it must be, in the judgment of the Chair, because it is connected with an "object already in progress" under the statutes of the United States. Now, it is urged in behalf of those opposing the point of order that because an appeal is allowed from the Commissioner of Pensions to the Secretary of the Interior, and because it is a physical impossibility for the Secretary of the Interior to personally perform all of the duties devolving upon the office he holds, and because it has been thought advantageous, in the performance of the duties devolving upon the head of that Department, to render the assistance in the direction indicated by this provision by a board of pension appeals in his office, as a part of the executive force of the office, that therefore it is one of the "objects" contemplated by the rule "as already in progress." The Chair was inclined to think, on the adjournment of the House yesterday, that that point was well taken; but upon consideration, and upon such reflection as the Chair has been able to give to the matter later, the Chair is inclined to think that it can not be so held.

The rule imposes this limitation on the power of the House as to legislation on appropriation bills: That no appropriations shall be made thereby for any expenditure not previously authorized by law, unless such proposed expenditure is in continuation of a public work or an object already in progress; that is, a public work or object previously authorized by statute and not yet completed.

"Public works" contemplated, in the judgment of the Chair, clearly contemplates tangible matters, as buildings, roads, and such other matters as readily suggest themselves.

So the question only remains, Does the expression "objects already in progress" include the duties to be performed by this board during the ensuing year?

It must be remembered that these duties are only to hear and determine appeals from the Commissioner of Pensions to the Secretary, and to be settled by that officer, but, as it is practically impossible for the Secretary to do this, the performance of that duty is devolved upon this board as part of the force in the Secretary's office.

The duties are only part of the ordinary duties of an important executive office, routine duties to be performed as the papers come to the Secretary's office, day by day.

These duties so to be performed are not, in the judgment of the Chair, the "object in progress" contemplated by the rule.

The clause in the rule contemplates specific legislation for a certain purpose, for which provision has been made by law, but which specific legislation has not been consummated by the attainment of

the object, under the appropriation made for it, and for which the appropriation made has proved insufficient.

In such case the rule allows an appropriation on a general bill to complete the "object." But the clause does not include the ordinary performance of regular routine duty by the clerical force in a Department.

The clause against which the point is raised proposes at least six new officers, not contemplated by the statute, at a salary above that provided for in the classified service, and so is new legislation, because it is not an increase of the clerical force recognized in the Revised Statutes.

Because of this, and that the duties do not come within the clause of "objects as are already in progress," as contemplated by the rule, the Chair is impelled to hold that the clause in the bill is obnoxious to the point of order, and it will be sustained.

3710. On March 20, 1906,[1] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

For stenographic and typewriting services, to be expended by the chairman of the conference minority, $600.

Mr. George W. Prince, of Illinois, made a point of order that there was no authority for the provision.

After debate the Chairman[2] said:

The Chair will inquire of the gentleman from New York if there is any resolution or authority of law existing except the fact that heretofore appropriation has been made for the item against which the point of order is raised?

Mr. Lucius N. Littauer, of New York, said:

There is no resolution. There was a request by the representatives of the minority to put it into the deficiency bill last year. The deficiency bill last year was approved by this House. It is current law to-day, standing the same, as I believe, in the same line as all the other matters that have been passed on. It is a work in progress, current law, and authorized by law.

The Chairman ruled:

The rule invoked in this instance is Rule XXI, the second section of which provides that—

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

Now, without going into the matter more in detail, it has been held—was held in the third session of the Fifty-eighth Congress—as reported in page 354 of the Manual:

"The reenactment from year to year of a law intended to apply during the year of its enactment only, does not relieve the provision from the point of order."

It had been previously ruled, in the Fifty-fifth Congress, in the Fifty-seventh, and again in second session of the Fifty-eighth, as cited on page 353 of the Manual, that—

"An appropriation for an object in an annual appropriation bill makes law only for that year, and does not become 'existing law' to justify a continuance of the appropriation."

Rule XXI makes an exception in this language:

"Unless in continuation of appropriations for such public works and objects as are already in progress."

And that phrase also has been defined, as will appear, upon page 345 of the Manual, wherein it is held:

"By public works and objects already in progress are meant tangible matters, like buildings, roads, etc., and not duties in an Executive Department."

It seems to the Chair that there is no provision, resolution, or authority of law for this appropriation; and that it is not in continuation of a Government work in progress, and the Chair feels constrained to sustain the point of order.

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[1] First session Fifty-ninth Congress, Record, pp. 4054, 4055.

[2] Marlin E. Olmsted, of Pennsylvania, Chairman.

3711. On March 20, 1906,[1] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

For packing boxes, $3,500, or so much thereof as may be necessary.

Mr. Thomas W. Hardwick, of Georgia, made a point of order against the amendment.

After debate, and after the Chairman[2] had become satisfied that the boxes were in process of construction, he overruled the point of order, holding that the proposed appropriation was for a work in progress.

3712. On March 22, 1906,[3] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

BOTANIC GARDEN.

For superintendent, $1,800.

For assistants and laborers, under the direction of the Joint Library Committee of Congress, $14,593.75.

Mr. Thomas W. Hardwick, of Georgia, made the point of order that the appropriation for assistants and laborers was not authorized by law.

Mr. Lucius N. Littauer, of New York, urged that the appropriation was in continuance of a public work or object.

The Chairman[2] held:

This is an item of appropriation for assistants and laborers under the direction of the Joint Library Committee of Congress. The Chair is unable to see that this stands in a different position from the appropriation for laborers in and about any of the other Departments[4] or buildings, and thinks that it hardly comes within the exception as to public works in progress mentioned in the second clause of Rule XXI. The Chair sustains the point of order.

3713. On March 23, 1906,[5] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Thomas W. Hardwick, of Georgia, made a point of order that there was no law to authorize a proposed appropriation of $1,800 for a change teller at the office of the assistant treasurer at Chicago.

After debate the Chairman[2] held:

The Chair finds in section 3611 of the Revised Statutes this provision:

"There shall be employed in the office of the assistant treasurer at Chicago one cashier, at $2,500 a year; one clerk, at $1,800 a year; two clerks, at $1,500 a year; one clerk, at $1,200 a year; one messenger, at $840, and one watchman, at $720."

* * * Section 3611 of the Revised Statutes expressly declares the officers and employees that shall be employed in the office of the assistant treasurer at Chicago and fixes their salaries. That statute does not appear to include the two offices against which these points of order are directed, and the Chair has not been pointed to any subsequent legislation authorizing them.

The suggestion is made that the appropriation may be considered as in continuation of appropriations for a Government work already in progress, and as such within the exception found in clause 2 of

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[1] First session Fifty-ninth Congress, Record, p. 4060.

[2] Marlin E. Olmsted, of Pennsylvania, Chairman.

[3] First session Fifty-ninth Congress, Record, pp. 4143, 4144.

[4] Evidently the Chair did not have in mind the laborers in the Executive Departments in Washington, who are provided for by section 169, Revised Statutes.

[5] First session Fifty-ninth Congress, Record, p. 4200.

Rule XXI. A similar point was raised and decided in the first session of the Fifty-first Congress upon a paragraph in an appropriation bill increasing the number of members of the Board of Pension Appeals. Mr. Payson, of Illinois, an experienced parliamentarian, then in the chair, having heard exhaustive debate and considered the question overnight, rendered an exhaustive ruling, found in section 502 of Hinds's Parliamentary Precedents, in the course of which he held that the phrase "public works" contemplates only tangible matters, such as buildings, roads, and the like, and not the ordinary duties of an executive or administrative office. The Chair thinks that the duties of a teller or clerk in receiving or disbursing money or keeping Treasury accounts do not fall within the legislative description of "public works already in progress." It may well be that the great increase of business since the designation of clerks and officers by the act of 1873 justifies or requires an increased number in the office of the assistant treasurer at Chicago, but in order to sustain an appropriation for them under the rules of this House there must first be legislation authorizing such increase. Without such previous authority for the expenditure the appropriation can not remain in the bill if the rule is invoked against it. There being no authority of law for the specific appropriations to which the point of order is urged, the Chair must sustain the point.

3714. By continuing work or objects are meant tangible matters capable of completion within a definite time.

A proposition to continue the gauging of streams was held not to be authorized by the legislation creatin the Geological Survey.[1]

The gauging of streams was held not to be a continuing work within the meaning of the rule.

On June 13, 1906,[2] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union when the Clerk read a paragraph under the head of "Geological Survey" providing an appropriation—

to continue the preparation of a geological map of the United States, gauging streams, and determining the water supply.

Mr. Edgar D. Crumpacker, of Indiana, made a point of order that there was no authority of law for the expenditure.

After debate the Chairman[3] held:

The Chair thinks this question has been discussed with great freedom, is ready to submit his ruling on the question involved. It is difficult for the Chair as a Member of the House, as it doubtless is for every other Member of the House, to divorce his ideas as to what the law is—the cold-blooded law—from the sentiment involved in the controversy. The Chair is of opinion that the point of order is well taken. The only authority for the enactment of the sections to which the point of order lies is that they are public works in progress. The Chair thinks that it would have been better had the gentleman from Indiana [Mr. Crumpacker] made the point of order on the different phrases instead of the lines.

"To continue the preparation of a geological map of the United States" is one proposition. "Gauging streams and determining the water supply of the United States" is a separate and distinct proposition, and in the opinion of the Chair the point of order to these different propositions rests upon different grounds. As the Chair stated in the beginning, the broad proposition that they are public works in progress rests upon two grounds; first, that there is authority of law for the work contemplated by the section, or, secondly, that even though they were never authorized by express statute, they are yet works which were begun under authority of Congress, and are therefore works in progress within the meaning, which is a well-established meaning, of the rule of this House. In order to determine whether or not there is authority of law for the first proposition, "to continue the preparation of a geological map of the United States"—

[1] See also section 3795 of this volume.

[2] First session Fifty-ninth Congress, Record, pp. 8415–8423.

[3] James E. Watson, of Indiana, Chairman.

At this point Mr. Crumpacker intervened to withdraw that portion of the point of order which related to the publication of maps.[1]

The Chairman then continued:

The Chair is of opinion that it is wise in the gentleman from Indiana [Mr. Crumpacker] to withdraw the point, because it rests upon an entirely different basis from the other proposition involved—gauging streams and determining the water supply. In order to determine whether or not there is authority of law for these works, either of them, recourse may be had to the statute creating the Geological Survey; defining the duties of the officer in charge, and limiting the scope of his authority. And in order that the statute may be intelligently discussed and understood it might perhaps be well to call attention to the conditions which existed with reference to the Geological Survey before the enactment of that statute. This question has been somewhat discussed by gentlemen, and the Chair will not go fully into details; but previous to that time, without any authority of law for making these surveys, appropriation bills had repeatedly contained provisions for geological surveys. For instance, in 1872 (this law having been enacted in 1879) the appropriation bill for that year contained this clause:

"For the continuation of a geological and geographical survey of the Territories of the United States, under the direction of the Secretary of the Interior."

In 1873 there was a like provision, and again in 1875 and 1877. In other words, before the enactment of the statute of 1879, creating the office of a Geological Survey and defining the powers of the officer in charge, the appropriations for geological surveys were always confined to the Territories of the United States. Now, in 1878 the cause of the confusion which theretofore existed—and that confusion the Chair will briefly call attention to—grew out of the fact that the different Departments of the Government undertook to assume jurisdiction of various phases of geological surveys, paleontological surveys, ethnological surveys, and all that sort of thing; so that in 1879 we had a geological and geographical survey of the Territories, a geographical and geological survey of the Rocky Mountain region under the Department of the Interior, geographical surveys west of the one hundredth meridian under the War Department, and confusion resulted because of these several jurisdictions. Thereupon * * * a resolution [was] adopted by Congress as follows:

"Provided, That the National Academy of Sciences is hereby requested at their next meeting to take into consideration the method and expense of conducting all surveys of a scientific character under the War or Interior Departments and the surveys of the Land Office, and to report to Congress as soon thereafter as may be practicable a plan for surveying and mapping the Territories of the United States on such general system as will, in their judgment, secure the best results at the least possible cost."

This resolution had reference solely to the Territories of the United States. Under the foregoing provision the National Academy of Sciences recommended, almost in the exact language of the statute immediately thereafter adopted by Congress:

"That Congress establish under the Department of the Interior an independent organization, to be known as the United States Geological Survey, to be charged with the study of the geological structure and economical resources of the public domain; such survey to be placed under a Director, to be appointed by the President, etc."

Having reference to what? Manifestly to what had been done always before in the history of the Geological Survey; manifestly to what had been called for by the resolution of Congress made to the Academy of Sciences, the Territories of the United States or the public domain. Now, the Chair desires to call attention to the specific item referred to, the gauging of stream and the determining of the water supply of the United States. When the statute creating the office of Geological Survey was passed it had in it this language, and the Chair assumes that if the Geological Survey of the United States has any power, it was conferred upon the Geological Survey by the express language of this statute, and aside from this statute it has no power. Here is the provision:

"Provided, That this officer shall have the direction of the geological survey and the classification of the public lands and the examination of the geological structure, mineral resources, and products of the national domain."

Now, will the gentleman contend, or has it been contended, that the gauging of a stream comes within any of those provisions? Manifestly not, and the Chair believes that even if the language in

[1] On the sundry civil bill in the first session Forty-seventh Congress, a provision for the publication of the map was ruled out.

the appropriation bill was entirely different from what it is and confined to gauging of streams of the public domain, that it would not be in order. Can the gauging of streams be held to be a part of the geological survey, a classification of the public lands, the examination of the geological structure, the examination of the mineral resources, or an examination of the products of the national domain? The Chair thinks not. The Chair thinks that the only power that the Geological Surveyor has has been conferred upon him by the express language of this statute. Aside from that he has no power, and the gauging of streams is not within the provision of these several powers conferred upon him by this statute. Therefore the Chair thinks clearly the term "gauging of stream and determining the water supply "does not fall within any of the provisions of the statute creating the office of the Geological Survey and defining and limiting the power of its officers. Furthermore, in order to determine whether or not there is authority of law for the work contemplated, we have recourse to the statute passed in 1879, as the Chair has already said; and the Chair repeats that, in the opinion of the Chair, even if the language of the appropriation bill under consideration confined the gauging of a stream and the determining of the water supply of the United States to the national domain, it would yet not be in order. Why not? The Chair thinks it is obnoxious and the point of order should be sustained.

Secondly, because the authority conferred by the law upon the Director of the Geological Survey has reference only to the national domain. And the Chair thinks there has been some confusion in terms between the "national domain" and "public domain." The Chair believes that the District of Columbia is the national domain, but yet it is certainly not the public domain, because the public domain has reference only to the public lands, and "public domain" and "public lands" are terms interchangeably used, in the opinion of the Chair, and mean one and the same thing, and they have reference to land which can be distributed for settlement. The forest reserves are a part of the national domain, and yet are not a part of the public lands, because they have been disposed of. The Chair believes that the Territory of New Mexico is a part of the national domain, and yet vast portions of it which have already been distributed and are already settled are not a part of the public domain. The Chair thinks that that is a distinction which has been lately made and that it is the wise distinction to make in this instance.

Now, what is the other question involved? The only other jurisdiction for the enactment of this section is that it is a public work already in progress within the meaning of our rule. And the reason given therefor is that previous statutes heretofore enacted have contained this express provision. The rule of this House imposes this limitation on the power of the House as to legislation on appropriation bills, that no appropriation shall be made for any expenditure not previously authorized by law, unless such proposed expenditure is in continuation of a public work or object already in progress—that is, a public work or object previously appropriated for and yet not completed. But what is a public work in progress? In order to ascertain that it will be necessary to have recourse to the discussions on these specific propositions. It has been repeatedly held, and held in one instance by the gentleman from Pennsylvania [Mr. Olmsted], that the term "public work" as contemplated by the rule of the House clearly has reference to some tangible matter, as to a building, or a road, and such other matters of a like character as will readily suggest themselves.

Now, at the first session of the Fifty-first Congress this subject was taken up, and Mr. Payson, of Illinois, Chairman of the Committee of the Whole House on the state of the Union, in a decision which the Chair regards, after careful examination, was as well considered, if not better, than any other one made on this subject, held that the term "public work" had reference only to a tangible matter. The case is so clear in point and is so certainly decisive of the question involved that the Chair will take the liberty of calling the attention of the committee to it by quoting a part of it:

"If this provision," he says—and it is not necessary to state what provision, because the language is readily applicable to this provision—"is properly in this bill at all, the point of order being raised against it, it must be, in the judgment of the Chair, became it is connected with an 'object already in progress' under the statutes of the United States.

"The term 'public works,' in the judgment of the Chair, clearly contemplates tangible matters, as buildings, roads, and such other matters as readily suggest themselves.

"So the question only remains, Does the expression 'objects already in progress' include the duties to be performed by this board during the ensuing year?

"It must be remembered that these duties are only to hear and determine appeals from the Commissioner of Pensions to the Secretary, and to be settled by that officer, but, as it is practically impos-

sible for the Secretary to do this, the performance of that duty is devolved upon this board as part of the force in the Secretary's office.

"The duties are only part of the ordinary duties of an important executive office—routine duties, to be performed as the papers come to the Secretary's office day by day.

"These duties so to be performed are not, in the judgment of the Chair, the 'object in progress' contemplated by the rule."

Then the Chair well says:

"The clause in the rule contemplates specific legislation for a certain purpose, for which provision has been made by law, but which specific legislation has not been consummated by an attainment of the object under the appropriation made for it and for which the appropriation made had proved insufficient.

"In such case the rule allows an appropriation on a general bill to complete the 'object.' But the clause does not include the ordinary performance of regular routine duty by the clerical force in the Department."

A decision more clearly in point and on all fours with the present case was rendered by Hon. Sereno E. Payne in the second session of the Fifty-fourth Congress. At that time Mr. James A. Tawney, of Minnesota, offered this amendment.

The Chair calls attention to the similarity between the amendment offered by the gentleman, in effect, to the one under consideration at this time:

"Fiber investigations: To enable the Secretary of Agriculture to continue the investigations relating to textile fibers indigenous in or adapted to the United States, including their economic growth, cleansing, and decorticating."

The Chair again calls attention to the exact language:

"Fiber investigations: To enable the Secretary of Agriculture to continue investigations"—

Investigations having theretofore been authorized by previous appropriation bills. Thereupon, Mr. Wadsworth, of New York, made the point of order, and the Chairman, Mr. Payne, held that the amendment was not in order, as the investigation was not such a tangible thing as would bring it within the exception whereby public works may be continued.

Mr. Olmsted, of Pennsylvania, held later, under a similar point of order, public works and objects to mean "tangible matters, like buildings," etc., and "that the mere appropriation of a salary does not thereby create an office so as to justify appropriations in the succeeding year."

Now, the gist of these decisions is: Was it a public object in progress at the time the appropriation was asked for? If so, it must be a tangible work, something that would be completed. An object that could be completed at some time, something with a definite, fixed object, and not a continuing something; that it must have a definite end in sight in order to be an object in progress within the meaning of this rule. Provision for gauging streams is not a tangible object. It is not a definite something that can be concluded, nor is a determination of the water supply of the United States such a definite object in progress; and because of these statements, and because of these reasons, the Chair believes that the point of order should be sustained as to these two items, the gentleman from Indiana having withdrawn the point of order on the other item, and the Chair sustains the point of order.

3715. On June 14,[1] in a later portion of the bill, the following paragraph was read:

For gauging the streams and determining the water supply of the United States, and for the investigation of underground currents and artesian wells, and the preparation of reports upon the best methods of utilizing the water resources, $100,000.

Mr. Edgar D. Crumpacker, of Indiana, made the point of order that there was no law authorizing the expenditure.

Mr. Frank W. Mondell, of Wyoming, argued that water was in the nature of a mineral resource, and therefore that this subject was within the limits prescribed by the law creating the Geological Survey, but also that the appropriation was

[1] Record, pp. 8487, 8488.

authorized by the joint resolution of March 20, 1888, which directed the survey to report on the capacity of streams, etc., in the and regions, and "report to Congress as soon as practicable."

The Chairman [1] held:

On yesterday the Chair in an elaborate discussion took up the identical proposition presented by the point of order this morning. On page 75 the questions having reference to the "gauging of streams and determination of the water supply" were identical with those on which the point of order is now raised. The Chair, after having carefully examined existing law on the subject, together with the joint resolution to which the gentleman from Wyoming [Mr. Mondell] this morning called the Chair's attention, decided at that time that, in the opinion of the Chair, it was subject to the point of order. And, for the reasons then stated, without again elaborating or repeating, the Chair sustains the point of order.

Mr. Mondell having appealed, the decision of the Chair was sustained—ayes 68, noes 37.

Immediately Mr. Mondell offered the following as a new paragraph:

For measuring the capacity of streams in accordance with the joint resolution of March 20, 1888, $100,000."

Mr. Crumpacker made the same point of order. After debate the Chairman held:

The new paragraph offered by the gentleman from Wyoming was read, as follows:

"For measuring the capacity of streams, in accordance with the joint resolution of March 20, 1888, $100,000."

Recourse must therefore be had to the joint resolution of 1888 in order to determine the meaning of the proposition of the gentleman from Wyoming. That resolution reads as follows:

"Resolved, etc., That the Secretary of the Interior, by means of the Director of the Geological Survey, be, and he is hereby, directed to make an examination of that portion of the and regions of the United States where agriculture is carried on by means of irrigation, as to the natural advantages for the storing of water for irrigating purposes, with the practicability of constructing reservoirs, together with the capacity of the streams, and the cost of construction and capacity of reservoirs, and such other facts as bear on the question of storage of water for irrigating purposes; and that he be further directed to report to Congress as soon as practicable the result of such investigation."

It will be seen from this joint resolution that it is not in any sense a continuing law, but merely a direction to the then Secretary of the Interior to make certain investigations and report as soon as practicable. Now, if the then Secretary, or any Secretary of the Interior since that time, has not reported a resolution requiring him to report might be in order, possibly, under this joint resolution; but the gentleman from Wyoming does not seek to do that by this paragraph. He seeks to make it a continuing law under this joint resolution, which is not a continuing law, but which is only a resolution directed to the then Secretary of the Interior to do a certain thing.

The Chair therefore thinks very clearly that the new paragraph is subject to the point of order as being new legislation. The Chair sustains the point.

3716. The construction of a submarine cable, although in extension of one already laid, was held not to be in continuation of a public work.

An appropriation made "immediately available" is a deficiency appropriation not in order in the army appropriation bill.

Where the law limits appropriations to two years, a provision that an appropriation shall remain available until expended is in violation of existing law.

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[1] James E. Watson, of Indiana, Chairman.

All points of order should be stated before a decision is made as to any.

On January 23, 1904,[1] the army appropriation bill was under consideration in Committee of the Whole House on the state of the Union when the following paragraph was read:

Submarine cable, Sitka to Fort Liscum, Alaska: For the purchase, installation, operation, and maintenance of a submarine military cable for connecting the headquarters Department of the Columbia with military garrisons in Alaska, said cable to extend from Sitka, Alaska, to Fort Liscum, Alaska, to be immediately available and to remain available until expended, $321,580.

Mr. Henry W. Palmer, of Pennsylvania, made the point of order that the construction of the cable was not authorized by existing law.

Mr. Oscar W. Underwood, of Alabama, made the point of order that the words "to be immediately available" constituted the proposed appropriation a deficiency, not in order on this bill.

Mr. Elmer J. Burkett, of Nebraska, proposed, after these points of order should be decided, to raise the question that the language "to remain available until expended" was in violation of the law limiting appropriations to two years.[2]

The point of order having been stated, after debate, the Chairman[3] held:

The Chair is ready to rule upon the points of order. Rule 21, second paragraph, provides that—

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

Now the Chair has not been pointed to any law authorizing the laying of any submarine cable of which this cable is to be a continuation, nor to any appropriation of which this proposed appropriation will be in continuation. Upon its face this appears to be an entirely new appropriation for an entirely new cable, and the situation is much the same as if it appropriated for the construction of a transcontinental railroad for the transportation of troops without previous authority of law for its construction. Furthermore, as suggested by the point made by the gentleman from Alabama, the language of the paragraph makes this appropriation "immediately available," and in the point made by the gentleman from Nebraska it is "to remain available until expended," although this is the army appropriation bill "for the fiscal year ending June 30,1905." Upon consideration of all these matters, the Chair holds that this paragraph is not in order upon this bill.

3717. An appropriation to continue the marking of a boundary line of the nation is in continuation of a public work.—On January 29, 1904,[4] the urgent deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union when this paragraph was read:

To enable the Secretary of State to mark the boundary, and make the surveys incidental thereto, between the Territory of Alaska and the Dominion of Canada, in conformity with the award of the Alaskan Boundary Tribunal and existing treaties, $100,000, to remain available until the close of the fiscal year 1905.

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[1] Second session Fifty-eighth Congress, Record, pp. 1081, 1082.

[2] Rev. Stat., sections 3690, 3691; with exceptions, Supp. Rev. Stat. (second edition), Vol. I, pp. 18, 51, 375.

[3] Marlin E. Olmsted, of Pennsylvania, chairman.

[4] Second session Fifty-eighth Congress, Record, p. 1383.

Mr. James Hay, of Virginia, having raised a question of order, the Chairman[1] held:

The Chair is of the opinion that this appropriation, which is to defray the expense of marking the boundary and making the necessary surveys between the Territory of Alaska and the Dominion of Canada, is in continuation of a tangible public work already begun. The Commission was created by authority of law for the purpose of defining that boundary line, in accordance with a treaty between the United States and Great Britain, and an appropriation was made for the purpose of ascertaining the exact boundary. Volume 32, page 1138, Statutes at Large, provides for or authorizes the beginning of the work of marking this boundary. The paragraph against which the gentleman has made the point of order is in continuation of that public work which is to mark the boundary line as ascertained by the Commission, and the Chair therefore overrules the point of order.

3717a. An appropriation to complete a list of claims was held to be in continuation of a public work or object.—On December 13, 1902,[2] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union when Mr. James R. Mann, of Chicago, reserved a point of order on the following paragraph:

To enable the Clerk of the House to prepare and complete a digested summary and alphabetical list of private claims presented to the House of Representatives from the Fifty-second to the Fifty-seventh Congress, inclusive, 3 clerks, at $1,600 each, during the fiscal year 1903; in all, $4,800. And said work shall be completed and ready to be printed on or before July 30, 1904.

In debate it was explained that the preceding bill, now the current law, carried the same provision, and that the work was going on.

The Chairman[3] held:

The Chair finds that the statutes on page 582 axe exactly as have been read by the gentleman from Pennsylvania, and that under Rule XXI of the House this is clearly a continuation of a public work already in progress, and hence the Chair overrules the point of order.

3718. An appropriation for the printing of a series of opinions indefinite in continuance is not for such continuance of a public work as justifies placing it in a general appropriation bill.—On February 19, 1907,[4] the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

To complete the work of printing and binding the opinions of assistant attorneys-general for the Post-Office Department, $10,000.

Mr. Arthur P. Murphy, of Missouri, made the point of order that the appropriation was not authorized by law.

Mr. Jesse Overstreet, of Indiana, said in explanation:

In a letter of the Department to the chairman of the committee, under date of January 21, 1907, the Department made this explanation:

"The act making appropriations for the service of the Post-Office Department for the year ended June 30, 1904, embraced an item appropriating $5,000 for"—

Here are the quotation marks: "Printing and binding the opinions of the Assistant Attorney-General for the Post-Office Department."

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[1] James A. Tawney, of Minnesota, Chairman.

[2] Second session Fifty-seventh Congress, Record, p. 282.

[3] Adin B. Capron, of Rhode Island, Chairman.

[4] Second session Fifty-ninth Congress, Record, pp. 3371, 3372.

And then the letter goes on:

"Of that appropriation $4,208.75 was expended in printing and binding two volumes, covering opinions of this office from the date of its establishment, namely, June 23, 1873, to March 7, 1892, both inclusive. To complete the work of compiling, printing, and binding these opinions there remain to be covered the period from March 7, 1892, to the present time, being nearly fifteen years; and it is believed that if performed with the same economy which characterized the previous work, this can be accomplished at an expenditure of about $10,000, including the preparation and printing of a suitable digest."

Mr. Chairman, that is the authority appropriating $5,000 in the act of June 30, 1904, for this work, and this item of appropriation is for the completion of that service.

The Chairman[1] made inquiry as to whether the proposed appropriation was for completion of work for the period covered by the original appropriation, or for continuing work which would be indefinite in its continuation. And it appearing that the work would be indefinite in continuance, he sustained the point of order.

3719. The continuation of a scientific investigation by a Department of the Government does not constitute a work in progress, but must be appropriated for under authorization of prior law.—On January 30, 1897,[2] the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union.

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

Fiber investigations: To enable the Secretary of Agriculture to continue the investigations relating to textile fibers indigenous in or adapted to the United States, including their economic growth, cleansing, and decorticating, preparatory to manufacture; the testing machines and processes for said cleansing and decorticating; for the purchase of material for said tests; for the purchase of fiber plants and seeds for distribution, propagation, and experiment, and for the labor and expenses incident thereto; and for traveling expenses in connection with said duties, $5,000.

Mr. James W. Wadsworth, of New York, having made a point of order against the amendment, the Chairman[3] having ascertained that there had been established no experimental farm or anything of that nature in connection with the work, held that the amendment was not in order, as the investigation was not of such a tangible nature as would bring it within the exception relating to public works and objects already in progress.

Later, Mr. Tawney having presented section 526 of the Revised Statutes to the attention of the Chair:

The Commissioner of Agriculture shall procure and preserve all information concerning agriculture which he can obtain by means of books and correspondence, and by practical and scientific experiments, accurate records of which experiments shall be kept in his office, by the collection of statistics, and by any other appropriate means within his power; he shall collect new and valuable seeds and plants; he shall test, by cultivation, the value of such of them as may require such tests; shall propagate such as may be worthy of propagation, and shall distribute them among agriculturists.

The Chairman[3] ruled:

The Chair will state that if the attention of the Chair had been called to the statute the gentleman has just read before ruling on the amendment when first presented, the ruling would have been different. The Chair thinks that clearly the statute authorizes the work suggested in the amendment, and therefore overrules the point of order and will submit the question to the committee.

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

[2] Second session Fifty-fourth Congress, Record, pp. 1356, 1357, 1358.

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

3720. An appropriation to continue the duties of a commission was held not to be the continuation of a public work.—On January 29, 1904,[1] the urgent deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Ebenezer J. Hill, of Connecticut, raised a question of order against this paragraph:

For expenses of the Commission on International Exchange, appointed under the provisions of the sundry civil act of March 3, 1903, to bring about a fixed relationship between gold-standard and silver-using countries, $100,000.

It appeared in the debate that the sundry civil law passed in the last preceding session of Congress contained this paragraph:

To enable the President to cooperate through diplomatic channels with the Governments of Mexico, China, Japan, and other countries for the purpose set forth in the message of the President and accompanying notes submitted to Congress January 29, 1903, and printed as Senate Document No. 119, second session Fifty-seventh Congress, $25,000.

And it was urged that the appropriation now proposed was for the continuation of a public work or object.

After debate the Chairman[2] held:

The Chair desires to call to the attention of the committee the language of this paragraph against which the point of order has been made; for it seems to the Chair from that language that the appropriation is not in continuation of such a public work or object in progress as the second clause of Rule XXI contemplates:

"For expenses of the Commission on International Exchange, appointed under the provisions of the sundry civil act of March 3, 1903, to bring about a fixed relationship between gold-standard and silver-using countries, $100,000."

The paragraph does not state specifically what these expenses are; but in view of the language of the act, which the Chair has before it, creating or authorizing the President to create the commission referred to, it is reasonable to infer that this appropriation is for the payment of salaries and other expenses of employees of the Government—that is, employees at large, as contradistinguished from employees of the Departments, and duties, too, that are not defined by law. In the opinion of the Chair it is difficult to see how the paragraph can be sustained under the provision of Rule XXI, to which the Chair has referred. That rule 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, unless in continuation of appropriations for such public works and objects as are already in progress."

The question is whether this Commission, the purpose of its creation and the continuation of its duties, is such a public object already in progress as this rule intends. On this question the uniform ruling or holding of previous Chairmen has been that public works or objects already in progress authorizing appropriations not provided for by law had to be of a tangible, substantial nature, like the erection of buildings, construction of roads, etc.

The Chair finds in the Book of Precedents a decision on a very similar state of facts; the decision was made by Mr. Payson, of Illinois, who then occupied the chair:

"On April 25, 1890, the House was in Committee of the Whole House on the state of the Union, considering the legislative, executive, and judicial appropriation bill.

"The Clerk having read the paragraph relating to salaries in the Interior Department, Mr. Joseph D. Sayers, of Texas, made a point of order that there was a provision for nine members of a Board of Pension Appeals, to be appointed by the Secretary of the Interior, at a salary of $2,000 each, whereas the law constituting the Board provided for three members only.

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[1] Second session Fifty-eighth Congress, Record, pp. 1381–1383.

[2] James A. Tawney, of Minnesota, Chairman.

"After debate, on the succeeding day the Chairman gave his ruling. He said that legislation of like character had been adopted on the bill for the past five years, but it appeared from the Record that no point of order was urged against the provision. The existing law was found in the Revised Statutes, pages 26 and 27. 'Four classes of clerks and three salaries are provided for,' continued the Chairman."

After reciting the law providing for a less number on the Board of Pension Appeals, the Chair said:

"If this provision is properly in this bill at all, the point of order being raised against it, it must be, in the judgment of the Chair, because it is connected with an 'object already in progress' under the statutes of the United States. Now, it is urged in behalf of those opposing the point of order that because an appeal is allowed from the Commissioner of Pensions to the Secretary of the Interior, and because it is a physical impossibility for the Secretary of the Interior to personally perform all of the duties devolving upon the office he holds, and because it has been thought advantageous, in the performance of the duties devolving upon the head of that Department, to render the assistance in the direction indicated by this provision by a board of pension appeals in his office, as a part of the executive force of the office, that therefore it is one of the 'objects' contemplated by the rule 'as already in progress.' The Chair was inclined to think, on the adjournment of the House yesterday, that that point was well taken; but upon consideration, and upon such reflection as the Chair has been able to give to the matter later, the Chair is inclined to think that it can not be so held.

"The rule imposes this limitation on the power of the House as to legislation on appropriation bills: That no appropriations shall be made thereby for any expenditure not previously authorized by law, unless such proposed expenditure is in continuation of a public work or an object already in progress—that is, a public work or object previously authorized by statute and not yet completed.

"'Public works' contemplated, in the judgment of the Chair, clearly contemplates tangible matters, as buildings, roads, and such other matters as readily suggest themselves.

"So the question only remains, Does the expression 'objects already in progress' include the duties to be performed by this board during the ensuing year? The Chair held it did not, and sustained the point of order."

This decision has been repeatedly cited and followed in like and similar cases, and since the provision against which the gentleman from Connecticut [Mr. Hill] has made the point of order merely provides for continuing the duties of this Commission for another year, it does not, in the opinion of the Chair, appropriate for the continuation of such an "object already in progress" as the rule contemplates. Therefore the Chair sustains the point of order.

3721. The continuation of an investigation of materials, coal, etc., was held not the continuation of a public work.

A proposition to investigate coal, etc., the property of the United States, and this only, was held to be authorized by the law creating the Geological Survey.

On June 14, 1906,[1] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

For the continuation of the investigation of the structural materials of the United States (stone, clays, cements, etc.), under the supervision of the Director of the United States Geological Survey, to be immediately available, $50,000.

Mr. John W. Weeks, of Massachusetts, made the point of order that there was no legislation authorizing, the appropriation, and that it was not a continuing work.

After debate, the Chairman[2] held:

The Chair will state that, in ruling on this proposition, the ruling is made regretfully. The Chair believes this to be a very meritorious measure, and one that ought to be enacted into law in order that it may be properly appropriated for. The Chair is constrained, however, to sustain the point of order

[1] First session Fifty-ninth Congress, Record, pp. 8487–8496, 8500.

[2] James E. Watson, of Indiana, Chairman.

on the legal question involved, for the following reasons: In the opinion of the Chair a good part of the difficulty has arisen because of a confusion of terms. The two terms "the United States" and the "national domain" have been greatly confused, in the opinion of the Chair, not only by the House but by the Department and the Geological Survey itself in times past. If we read these lines carefully, we see here this language: "For the continuation of the investigation of structural materials of 'the United States.'" Now, what does that mean? Does that mean structural material belonging to the United States? In the opinion of the Chair it does mean that; and therefore can have reference only to the structural materials on the national domain, because they alone belong to the United States. But the construction that gentlemen who are the proponents of this proposition place upon it is, that it means all materials belonging to everybody in the United States, throughout the whole United States. Now, the Chair desires to call attention to the fact that the gentleman from Ohio has said, that the gentleman from Illinois [Mr. Madden] has said, and that all the other gentlemen who have participated in the discussion have said, that this investigation does not have reference to the materials found upon the national domain alone, therefore owned by the United States, but that it does have reference to the material of private individuals anywhere in the United States. The Chair desires, therefore, to call attention to the organic act conferring power upon the Geological Survey and defining the authority of the Geological Surveyor. The Chair desires especially to call attention to these words, and wants the committee to hear:

"And that the Director and members of the Geological Survey shall have no personal or private interest in the lands or mineral wealth of the region under survey, and shall execute no survey or examination for private parties or corporations."

There is an express prohibition. And why was it put in there? Manifestly because under this original act the only materials of this kind that were to be investigated were the materials of the United States—that is, belonging to the United States. In other words, materials that were on the public domain or the national domain. Therefore when this organic act was passed, it said squarely that only those materials which belonged to the United States should be investigated; but not only that, but that no materials belonging to private individuals or to corporations should be investigated; an express prohibition, an express inhibition, and therefore, in the opinion of the Chair, the point of order would have to be sustained on that ground alone.

In the further opinion of the Chair, this point of order should be sustained because it is not a public work in progress, as the Chair believes. The Chair believes it is not one of those fixed and definite objects that can be completed, but would go on forever without completion.

"Stones, clays, cements, etc."

In that connection, the Chair might incidentally remark that cement is not a structural material of the United States, but is a compound, and the Chair thinks clearly that this would have reference only to those articles of building material, structural material, found in the earth. But be that as it may, the Chair is of the opinion that it is not one of those fixed and definite objects within the meaning of the law, within the meaning of our rules, that can be appropriated for.

Now, it is quite evident that Congress has not heretofore believed it to be one of those continuing objects, and it is quite evident that the gentlemen who propose this item do not believe it to be a continuing work in progress within the meaning of the law. Last year in the sundry civil appropriation bill this clause was embodied:

"For the continuation and completion on or before July 1, 1906."

Now, the Chair does not believe that that precludes another appropriation, but that it is simply descriptive of that act, and therefore the Chair calls attention to it only for this purpose, that Congress at that time probably thought it was a work which might be completed. But now gentlemen come up with the statement that it is not a work that can be completed for the $7,500 then asked for, but ask for a further appropriation of $50,000, showing conclusively, in the opinion of the Chair, that the gentlemen who framed this bill believed it was not a work which could be completed, but that it would go on indefinitely and with an increasing appropriation. Now, it was evidently the intention of the Congress that framed this law originally to have the structurals of the United States, or those mentioned in the succeeding paragraph, coal, and so forth, belonging to the United States, to be investigated, and not belonging to private individuals, because it says squarely in the organic act that no investigation or examination shall be made for private parties or corporations, evidently having in view that only those

materials which belong to the United States should be investigated by the United States and at the expense of the United States. Therefore the Chair is clearly of the opinion that this is obnoxious to the rule; and, regardless of the merits of the proposition, the Chair is compelled to sustain the point of order.

* * * "National domain" and "public lands" are not convertible terms; but the Chair believes that the national domain has a well-defined meaning, and does not mean the whole United States. The gentleman from Pennsylvania yesterday argued that the "national domain" means the whole United States and all the States of the United States. The Chair has an entirely different opinion from that.

Mr. Richard Bartholdt, of Missouri, having appealed, the decision of the Chair was sustained without division.

Thereupon, Mr. George W. Norris, of Nebraska, offered the following as a new paragraph:

For the continuation of the investigation of structural materials belonging to the United States, such as stone, clays, cement, etc., under the supervision of the Director of the United States Geological Survey, to be immediately available, $100,000.

Mr. James A. Tawney, of Minnesota, made the point of order that the same objection would apply as to the paragraph just ruled out.

After debate the Chairman ruled:

As everyone who has kept pace with this legislation understands, there are several very fine distinctions constantly being raised by these points of order on these paragraphs. The Chair is of the opinion that the amendment offered by the gentleman from Nebraska is in order and not subject to a point of order. That paragraph reads as follows:

"For the continuation of investigation of structural materials belonging to the United States"

Having reference to the materials on the national domain, which alone belongs to the United States, and therefore brings it within the act, in the opinion of the Chair. Further it says:

"For the continuation of the investigation of structural materials belonging to the United States, such as stone, clays, cement, etc."

Heretofore the appropriation was for these materials of the United States. Now, the Chair does not know, as a matter of fact, but what there are in progress investigations and examinations of the structural materials on the public domain belonging to the United States, but taking into consideration what is meant now by the national domain, the public domain, the Chair is not inclined to hold that the structural materials to be investigated on the national domain are of such an extensive nature that it is not a work of progress to be completed within our rule. * * * The Chair will state to the gentleman from Iowa [Mr. Smith] that the Chair would be much better satisfied with the amendment from a legal standpoint if it contained the express prohibition, as the Chair suggested in the other ruling, that none of this investigation was to be conducted for the benefit of private individuals, yet the language of the present amendment is not such, the Chair thinks, as to enable him to decide that it is the intention to conduct these examinations for the benefit of private individuals or private corporations. * * * The Chair stated squarely that, in his opinion, these investigations had not been exclusively for private individuals, but a portion of them may have been for the United States, and of materials belonging to the United States, on the public domain, and that therefore, so far as this amendment was concerned, it might relate to them—a continuation of the investigation of those particular items which had heretofore been investigated. * * * The Chair overrules the point of order.

Soon thereafter the Clerk read this paragraph of the bill:

For the continuation of the analyzing and testing of the coals, lignites, and other fuel substances of the United States, in order to determine their fuel values, and so forth, under the supervision of the Director of the United States Geological Survey, to be immediately available, $100,000.

Mr. Lucius N. Littauer, of New York, made the point of order that the appropriation was not authorized by existing law, and that it was obnoxious to the law

of the last appropriation act, which provided for "completion at St. Louis, Mo., on or before July 1, 1906."

The Chairman [1] said:

The present occupant of the chair is unable to differentiate between this paragraph and the preceding paragraph which was ruled out on the point of order. Therefore the Chair sustains the point of order.

Mr. Franklin E. Brooks, of Colorado, thereupon offered the following as a new paragraph:

For the continuation of the analyzing and testing of the coals, lignites, and other minerals and fuel substances belonging to the United States, in order to determine their fuel value, and so forth, under the supervision of the Director of the United States Geological Survey, to be immediately available, $100,000.

Mr. Walter I. Smith, of Iowa, made a point of order against the amendment.

The Chairman [1] held:

The organic act, which has already been referred to and quoted, provides for the examination of the geological structure and mineral resources and products of the national domain. It seems to the present occupant of the chair that that language is broad enough to cover fuel substances belonging to the United States. The Chair therefore overrules the point of order.

3722. An appropriation for continuing the work of extending the foreign market of certain products was held not in order as for the continuation of a public work.—On April 30, 1906,[2] the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the paragraph making appropriation for the Bureau of Animal Industry was read, including lines as follows:

And the Secretary of Agriculture may use so much of this sum as he deems necessary for promoting the extension and development of foreign markets for dairy and other farm products of the United States, and for suitable transportation of the same; and such products may be bought in open market and disposed of at the discretion of the Secretary of Agriculture, and he is authorized to apply the moneys received from the sales of such products toward the continuation and repetition of such experimental exports.

Mr. Edgar D. Crumpacker, of Indiana, made a point of order, saying:

The point of order is based upon the idea that the provision changes existing law. This paragraph has been carried in a number of agricultural appropriation bills, but from its nature it is temporary—not permanent, not continuing. It applies to the immediate appropriation. The paragraph appropriates upward of a million and a half dollars to be used during the next fiscal year for the purposes enumerated, so that it is necessarily and essentially a provision limiting and confining the appropriation, or authorizing the appropriation for this specific purpose. It applies of necessity to the appropriation contained in the paragraph.

Now, I concede that where there is legislation of a permanent and continuing character contained in an appropriation bill it is just as much law, when enacted and approved, as if it were contained in an independent bill, and subsequently it may become the basis for appropriations in general appropriation bills under the rules of the House. On the other hand, it is settled by a large number of precedents in this House that a provision of this kind, carried from year to year in an appropriation bill, is only for the fiscal year. It only makes law for that one year, and does not furnish the basis, under the rules of the House, to authorize an appropriation on the same subject for the next year.

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[1] James R. Mann, of Illinois, Chairman.

[2] First session Fifty-ninth Congress, Record, pp. 6142–6144.

After debate the Chairman [1] ruled:

In the judgment of the Chair the proposition contained in this paragraph is not a continuation of a public work within the language and intent of the rule of the House, and there being no law authorizing the provision, that contained in previous annual appropriation bills being merely temporary, the Chair holds that this paragraph does involve a change in existing law, and is therefore subject to the point of order, and the Chair sustains the point of order.

3723. By a broad construction of the rule, the principle of which is not generally applied in other matters, an appropriation for a new and not otherwise authorized vessel of the Navy is held to be for continuance of a public work.

By an exceptional ruling a legislative provision increasing the enlisted force of the Navy was admitted on an appropriation bill. (Footnote.)

On February 26, 1887,[2] the House was in Committee of the Whole House on the state of the Union considering the naval appropriation bill, when Mr. Joseph D. Sayers, of Texas, offered an amendment authorizing the construction of "two swift double-bottomed steel cruisers" and making an appropriation therefor.

Mr. William S. Holman, of Indiana, made the point of order that there was no law authorizing the appropriation.

After debate the Chairman [3] cited the rule and exception, and said:

That is to say, if the work be a public work, or if the object is a public object, and it is already in progress, then there need not be any previous legislation authorizing it. The Chair believes that the construction of a navy is a public object or a public work, and the language of the bill which we have been considering, and the appropriation made at the last session, show that the construction of the Navy is in progress. It may be said, also, that the proposed amendment providing money for the construction of vessels does not change existing law, and is not prohibited by law.

It is very agreeable to the present occupant of the chair to be able to refer to a precedent bearing upon the point of order now raised. In the Forty-sixth Congress (Mr. Carlisle in the chair) it was decided "that appropriations for public works and objects" already in progress could be included in general appropriation bills or could be inserted as amendments; and that the word "objects" meant something in addition to the word "works," and must be held to include the public Departments of the Government, and the civil, military, and naval establishments recognized by law and supported by the Government.

The Government has undertaken to maintain, and is annually maintaining, a naval establishment, and under the rule appropriations may be made for it in a general appropriation bill, and such has always been the practice until last session, when appropriations for the construction of ships for the Navy and armaments for them were made in a separate bill. Before the last session such appropriations were made in the naval appropriation bill, under the rule exactly as it now is.

There is no law prescribing the number of ships that shall constitute the Navy or the number of guns they shall carry. Those matters depend entirely on the amount of money appropriated for those purposes, just as the number of clerks and other employees in the Departments depend upon the appropriations made. * * * This decision allows an important amendment to be offered, but it gives to the Committee of the Whole the right to pass upon this interesting question, and an opportunity to say whether it is in favor of increasing the Navy or not.[4]

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[1] David J. Foster, of Vermont, Chairman.

[2] Second session Forty-ninth Congress, Record, pp. 2336, 2337.

[3] James B. McCreary, of Kentucky, Chairman.

[4] A similar ruling was made in the Fifty-first Congress (Congressional Record, first session Fifty-first Congress, p. 3222), and also in the Fifty-fifth Congress (see Congressional Record, second session Fifty-fifth Congress, p. 3459). In each of these cases the ruling was based on that of 1887. It is easy to see that this ruling is entirely out of harmony with the decisions relating to dry docks, light-houses,

3724. On May 17, 1902,[1] the naval appropriation bill being under consideration in Committee of the Whole House on the state of the Union, Mr. Oscar W. Underwood, of Alabama, raised the question of order that the following paragraph involved a change of law:

That the appointment of 500 additional cadets at the Naval Academy, Annapolis, Md., under such detailed rules and regulations as the Secretary of the Navy shall prescribe, is hereby authorized, such appointments to be made as follows:

On May 19,[2] after debate, the Chairman[3] held:

The Chair does think that it is the duty of the Chairman to decide points of order as they appear and to disregard entirely his individual hopes and desires in reference to the subject-matter under consideration. And the present occupant of the chair has always been so guided in deciding points of order. On more than one occasion he has been obliged to rule against his inclinations and desires. The Chair also thinks it is the duty of members of the committee and the House to sustain the Chair when they believe he is right. The Chair thinks there have been occasions when that has not been followed.

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light-house tenders, etc., and the principle on which it is based, if extended, would practically render useless the rule forbidding appropriations not authorized by previous law to be included in general appropriation bills. In one instance, indeed, the principle was extended to justify an outright legislative provision. On February 19, 1895 (third session Fifty-third Congress, Record, p. 2406), the House was in Committee of the Whole House on the state of the Union considering the naval appropriation bill.

Mr. Joseph D. Sayers, of Texas, had on the preceding day made a point of order on a provision of the bill providing that the Secretary of the Navy should be authorized to enlist "as many additional seamen as in his discretion he may deem necessary, not to exceed 2,000."

The Chairman (Joseph H. O'Neil, of Massachusetts) said:

"The point of order is made that this changes existing law and does not retrench expenditure.

"The rulings which have been made from time to time on points of order raised on the naval appropriation bill have established a pretty clear line of precedents; and whatever may have been the opinion or feeling of the Chair on the original proposition, yet, in pursuance of the practice of the House, he feels bound to follow the precedent established by previous presiding officers. So that when a provision was offered to a bill providing for an additional ship to the Navy, notwithstanding the fact that it added to the Navy and increased the expenditure, it has been uniformly held that it was in continuation of existing works or objects already in progress, and was not subject to the point of order.

"Now, the point is made that this provision in the bill is obnoxious to Rule XXI, and many instances have been cited in support of that position. For instance, it is claimed that the Committee on Military Affairs, if this provision shall be held in order, might properly bring in an amendment or a provision in their bill increasing the military strength of the United States; and yet it seems to the Chair that a moment's reflection will convince any person that the Military Committee and the Naval Committee do not stand on the same footing in that regard.

"For instance, the Appropriations Committee of this House has charge of two bills which carry large amounts of money for the maintenance of the Army and the defenses. The fortifications bill carries, for instance, the appropriations for the coast and harbor defenses, and the sundry civil bill carries also large appropriations for the maintenance of the army posts and other expenses of the Army, and the Military Committee brings in the bill providing for the maintenance of the military force of the United States, Now, it would seem to the Chair that under the rulings which have been made it is entirely competent for the committee to bring in a provision in continuation of any public work or object already in progress; that when it is admitted, as it has been by the practice of the House, that it is competent to bring in a provision authorizing the construction of a new ship, it carries with it also the right to maintain that ship, or to continue and maintain work already in progress. This seems to the Chair to be very clear, and after giving a great deal of consideration to the question he is obliged to overrule the point of order."

Mr. Sayers having appealed, the decision of the Chair was sustained by a vote of 143 ayes to 37 noes.

[1] First session Fifty-seventh Congress, Record, p. 5613.

[2] Record, pp. 5635–5637.

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

The ruling in reference to the construction of a battle ship is one which the present occupant of the chair has heretofore followed, although he did not originally make it, and is frank to say that, although he has great respect and regard for the gentleman who did make it, he doubts, if he had been in the chair when the question arose, if he would have made it. He has never been in sympathy with it. But that was a provision to increase the number of battle ships when the number was not specifically defined by statute. Likewise, so far as the Chair has been able to ascertain from a hurried reading and inspection of the statutes, there was no specific provision as to the number of seamen. Both of these questions, then, were decided upon the broader ground whether or not it was increasing the general naval establishment.

In the case now presented there is a statute, section 1513, which reads:

"There shall be allowed at said Academy one cadet midshipman for every Member and Delegate of the House of Representatives, one for the District of Columbia, and ten appointed annually at large."

There is a specific, general statutory provision as to the number of cadets at the Naval Academy. The amendment to which the gentleman from Alabama has raised the point of order changes the number of cadets and changes existing law, which is clearly and uneqivocally against the provision of the rule, section 2 of Rule XXI, which provides: "Nor shall any provision changing existing law be in order on any general appropriation bill." The Chair therefore sustains the point of order.

3725. An appropriation for a new vessel for use as a light-house tender is not admissible as in continuation of a public work or object.—On June 21, 1886,[1] the House was in Committee of the Whole House on the state of the Union, considering the sundry civil appropriation bill.

The following paragraph having been read—

For building and completing a new steam tender for service in the Fourth light-house district, $68,300.

Mr. Benton McMillin, of Tennessee, made the point of order that the construction of the tender was not authorized by law.

It was urged in opposition to the point of order that the new vessel was for the purpose of taking the place of an old one already in the service; thall, the general law authorized the administration of the service and that the new boat was necessary to that administration, and that in fact the construction of the new boat was the continuation of a public work already in progress.

The Chairman[2] ruled:

Under clause 3 of Rule XXI no appropriation for any expenditures not previously authorized by law, unless in continuation of appropriations for such public works as are already in progress, can be made. Under that clause of the rule the Chair sustains the point of order.

Mr. Cannon having appealed, the committee sustained the ruling of the Chair.

3726. On February 13, 1901,[3] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read this paragraph:

Tender for the engineer of the Seventh light-house district: For constructing, equipping, and outfitting, complete for service, a new steam tender for construction and repair service in the Seventh light-house district, $85,000. And the Light-House Board is authorized to employ temporarily at Washington not exceeding three draftsmen, to be paid at current rates, to prepare the plans for the tenders for which appropriations are made by this act; such draftsmen to be paid from and equitably charged to the appropriations for building said vessels; such employment to cease and determine on or before the date when, the plans for such vessels being finished, proposals for building said vessels are invited by advertisement.

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[1] First session Forty-ninth Congress, Record, pp. 5977, 5979.

[2] John H. Reagan, of Texas, Chairman.

[3] Second session Fifty-sixth Congress, Record, pp. 2377–2380.

Mr. Marlin E. Olmsted, of Pennsylvania, made a point of order against the paragraph.

After debate the Chairman [1] held:

The Chair desires to call the gentleman's attention to a decision made by a Chairman of the Committee of the Whole a year ago on the sundry civil bill when the proposed appropriation was $20,000, to be immediately available, for the purchase or construction of one small steamer for the Coast and Geodetic Survey. The point of order was made against that, and the gentleman from Pennsylvania [Mr. Dalzell], who was in the chair, sustained the point of order. * * * The Chair is constrained to follow the decision rendered by Judge Reagan in the Forty-ninth Congress, backed up, as the Chair thinks, and supported by the decision of the Chair, the gentleman from Pennsylvania [Mr. Dalzell], on the sundry civil bill one year ago. Therefore the Chair will sustain the point of order.

3727. The construction of a new vessel for the Coast Survey was held not to be the continuation of a public work or object.—On May 4, 1900,[2] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the following was read under the head of "Coast and Geodetic Survey:"

For rebuilding and refitting the steamer *Bache,* to be immediately available, $60,000.

For purchase or construction of one small steamer, to be immediately available, $20,000.

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

After debate the Chairman [3] held:

The law in respect to this matter seems to be in section 4686 of the Revised Statutes, which reads:

"The President is authorized, for any of the purposes of surveying the coast of the United States, to cause to be employed such of the public vessels in actual service as he deems it expedient to employ, and to give such instructions for regulating their conduct as he deems proper, according to the tenor of this title."

The Chair assumes that the steamer *Bache*, referred to in lines 14 and 15, is a public vessel in actual service, which the President has detailed for the purposes of this Survey. If that assumption be correct, then it seems to the Chair the point of order is not well taken, as the rebuilding and refitting of the steamer is simply the continuance of a public work already begun.

There is not, however, so far as the Chair is advised, any existing law which would authorize the purchase or construction of a steamer by the Coast and Geodetic Survey. Nor does it seem to the Chair that this Survey stands upon the same basis as the Navy, or that the same argument which would authorize an appropriation for the building of a battle ship applies to a department such as the Coast and Geodetic Survey, which has no navy of its own, which has no vessels at all except those which are detailed by the President under section 4686. The Chair therefore overrules the point of order so far as lines 14 and 15 [relating to the *Bache*] are concerned, but sustains the point of order so far as lines 16 and 17 [relating to new steamer] are concerned.

3728. An appropriation for a new light-house not authorized by existing law was held not to be in continuation of a public work.—On June 21, 1886,[4] the House was in Committee of the Whole House on the state of the Union, considering the sundry civil appropriation bill.

The following paragraph had been reached:

Lubec Narrows light station, Maine: For establishing a light to guide through the dredged channel in Lubec Narrows, Maine, $40,000.

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[1] Albert J. Hopkins, of Illinois, Chairman.

[2] First session Fifty-sixth Congress, Record, pp. 5167, 5168.

[3] John Dalzell, of Pennsylvania, Chairman.

[4] First session Forty-ninth Congress, Record, p. 5976.

Mr. Benton McMillin, of Tennessee, made the point of order that this was an appropriation not authorized by law. Mr. Samuel J. Randall, of Pennsylvania, said that the bill establishing that light had passed both Houses, but had not yet become a law.

The Chairman[1] sustained the point of order.

3729. An appropriation for a new naval dry dock, which has not been began under authority of prior law, has been held not to be in continuation of a public work.—On April 10, 1890,[2] the House was in Committee of the Whole House on the state of the Union considering the naval appropriation bill.

Mr. Theodore S. Wilkinson, of Louisiana, offered this amendment:

For the purchase, under such regulations as the Secretary of the Navy may prescribe, of additional lands for a site for a navy-yard and dry dock at or near the lands bought by the United States for a naval depot at Algiers, La., the establishment of which navy-yard and dock at Algiers, La., was recommended by the commission of naval officers appointed under the act of Congress approved September 7, 1888, a sum not exceeding $75,000.

Mr. Charles A. Boutelle, of Maine, made the point of order against the amendment.

The Chairman[3] ruled:

The Chair is of opinion that this amendment is obnoxious to clause 2 of Rule XXI. The proposition of the honorable gentleman from Louisiana is to make an appropriation for the purchase of a site and the establishment of a navy-yard and dry dock, which is not an expenditure "previously authorized by law," nor is it an appropriation "in continuation of appropriations for such public works and objects as are already in progress." It does change existing law by authorizing that to be done which is not now authorized by law. It is in sympathy with the proposition contained in the bill against which the point of order was made, and the Chair thinks the point of order is well taken as against this proposition, both in the letter and the spirit of the rule.

3730. On April 13, 1892,[4] the House was in Committee of the Whole House on the state of the Union considering the naval appropriation bill.

Mr. William S. Holman, of Indiana, raised a point of order against a paragraph in the bill providing for the appropriation of $250,000 and the authorization of a contract for $840,000 for the construction of "a timber dry dock at Algiers, La., in accordance with the recommendation of the two commissions to report as to the most suitable site for a dry dock and navy-yard at some point on the shore of the Gulf of Mexico or the waters connected therewith, and for the purchase of such land as is shown by the report of said commission to be necessary for the purpose, in addition to the present Government reservation."

The Chairman[5] ruled:

No existing law has been called to the attention of the Chair authorizing the adoption of a site or the purchase of the land for such site or the erection of a structure thereon. The section under consideration is therefore in conflict with the rule. Then the question arises, Does this section come within the exception to the rule? It appears that no previous appropriations have been made for the purchase of land as a site or the erection of a structure upon such site, nor can the objects of the proposed appropriations be held to be public works or objects already in progress.

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[1] John H. Reagan, of Texas, Chairman.

[2] First session Fifty-first Congress, Record, p. 3274.

[3] Benjamin Butterworth, of Ohio, Chairman.

[4] First session Fifty-second Congress, Record, pp. 3225, 3261.

[5] Benjamin F. Shively, of Indiana, Chairman.

The intent of the rule is to exclude from general appropriation bills such subject-matter as involves new and original themes of discussion and new objects of appropriation. This is a general appropriation bill, and to such bills the rule by its terms is confined. An examination of the precedents that have been called to the attention of the Chair discloses a conflict of authority. As there is such a conflict of authority and as the provisions of the pending section appear to be in conflict with both the rule and exception thereto, the point of order is sustained.

3731. On March 25, 1896,[1] the House being in Committee of the Whole House on the state of the Union considering the naval appropriation bill, Mr. Henry H. Bingham, of Pennsylvania, offered an amendment for appropriating the sum of $200,000 toward the construction of a dry dock at the League Island Navy-Yard.

Mr. Nelson Dingley, of Maine, made the point of order that the proposed appropriation was for an object not authorized by law.

After debate the Chairman[2] ruled:

Rule XXI of the rules governing this body is identical with the rule that was adopted in the Fifty-first Congress. In that Congress, when the naval appropriation bill was under consideration, the identical question that is raised by the gentleman from Maine was then raised, and Mr. Butterworth, of Ohio, was at that time in the chair. The question was fully discussed, and after mature deliberation the Chair then held that the point of order was well taken.

The same question was raised when the naval bill was under consideration in the Fifty-second Congress. Mr. Shively, of Indiana, was then in the chair. The Chair has the Record before him, where the matter was fully discussed, and, while the Chair then recognized that previous to the Fifty-first Congress the ruling was as contended by the gentlemen from Massachusetts and Pennsylvania, the Chair then felt constrained to hold, both on authority and precedent, that the point was well taken. In pursuance of those two precedents, the Chair will hold that the point made by the gentleman from Maine is well taken.

3732. On February 23, 1897,[3] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union. Mr. William E. Barrett, of Massachusetts, offered an amendment for appropriating $1,000,000 to the construction of a concrete dry dock at the navy-yard at Boston, Mass.

Mr. Cyrus A. Sulloway, of New Hampshire, reserved a point of order against the amendment.

After debate the Chairman[4] sustained the point of order.

Mr. Barrett having appealed, the decision of the Chair was sustained, 67 ayes to 19 noes.

3733. On March 30, 1898,[5], the House was in Committee of the Whole House on the state of the Union considering the naval appropriation bill.

Mr. Joseph G. Cannon, of Illinois, made a point of order against this paragraph of the bill:

Toward the construction of one double-sided steel floating dock of the type known as the combined floating and graving self-docking dock, $200,000, said dock to be located at the naval reservation at Algiers, La., to be capable of lifting a vessel of 15,000 tons displacement and 27 feet draft of water, to cost, including moorings and wharf, $850,000.

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[1] First session Fifty-fourth Congress, Record, p. 3200.

[2] Albert J. Hopkins, of Illinois, Chairman.

[3] Second session Fifty-fourth Congress, Record, p. 2150.

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

[5] Second session Fifty-fifth Congress, Record, p. 3389.

In the debate it was urged that in the act making appropriations for the naval service, approved March 3, 1893, was the following:

Toward the establishment of a dry dock on the Government reservation near Algiers, La., for plans and specifications and for the acquisition of such additional land as may be necessary, etc.

And in the act making appropriation for the naval service, approved July 26, 1894, the following:

For the purpose of completing the purchase of additional land necessary for the establishment of a dry dock at Algiers, La.

And that these appropriations constituted the beginning of the work.

The Chairman [1] ruled:

Clause 2 of Rule XXI provides, among other things, that no appropriation shall be in order upon any appropriation bill, whether original or as an amendment thereto, that has not been previously authorized by law.

Surely any appropriation, under the language of the rule, that has been authorized by previous law is in order; and it seems perfectly clear to the Chair that it was the intention of Congress, by the act of March, 1893, and of July, 1894, to provide for a dry dock at Algiers, La. That seems to be perfectly clear, and the Chair therefore is constrained to overrule the point of order.

3734. On February 13, 1907,[2] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. William B. Lamar, of Florida, proposed an amendment on the paragraph relating to the navy-yard at Pensacola, to appropriate $75,000 toward—

One stone dry dock, to cost not exceeding one million one hundred thousand.

Mr. Edward B. Vreeland, of New York, made the point of order that the appropriation was unauthorized.

The Chairman [1] sustained the point of order.

3735. An appropriation for a floating dry dock, not otherwise authorized by law, is not in order on the naval appropriation bill as in continuation of a public work.—On February 13, 1907,[3] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

Steel floating dry dock: One steel floating dry dock (to cost not exceeding $1,400,000), $100,000.

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

After debate the Chairman [1] sustained the point of order.

3736. On May 11, 1906,[4] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

Steel floating dry dock: Steel floating dry dock (to cost $1,250,000), $100,000.

Mr. James A. Tawney, of Minnesota, made the point of order that the expenditure was not authorized by law.

After debate and an exhaustive citation of precedents the Chairman [5] held:

The paragraph under consideration carries an appropriation for a floating dry dock. A rule of the House prohibits appropriations in general appropriation bills for expenditures "not previously authorized

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

[2] Second session Fifty-ninth Congress, Record, pp. 2915, 2916.

[3] Second session Fifty-ninth Congress, Record, pp. 2918, 2919.

[4] First session, Fifty-ninth Congress, Record pp. 6737–6743.

[5] Edgar Crumpacker, of Indiana, Chairman.

by law, unless in continuation of appropriations for such public works and objects as are already in progress." It is not claimed that the object for which the appropriation in question is sought to be made is authorized by law, but it is insisted that it is a public work or object already in progress within the meaning of the rule.

The question raised by the point of order in some of its aspects is a novel one. There is no precedent exactly covering it, and it must be decided by the application of principles recognized in the decision of analogous questions. It is settled that general naval appropriation bills may carry appropriations for additional officers and seamen, for new war vessels, for colliers, and for necessary equipment and supplies for the Navy without their being previously authorized by law.

On the other hand, it is settled by the precedents that appropriations for a new naval station, for a new navy-yard, for the selection of a site for a naval station, for the establishment of an armor-plate factory, for the erection of buildings for a naval hospital with authority to acquire a new site, for the construction of stationary dry docks are not in order in general naval appropriation bills unless previously authorized by law.

The logical inference from the precedents is that the Navy proper, consisting of the war fleet, officers, and seamen, with necessary equipment and supplies, is a public work or object already in progress within the meaning of the rule, and appropriations therefor are in order in appropriation bills without previous authority of law, while the administrative branches and the construction and repair establishments of the Navy Department, including, among other things, naval stations, navy-yards, hospitals, magazines, and stationary dry docks, do not ipso facto constitute a public work or object in progress, and appropriations therefor must be previously authorized by law.

The question for decision is whether a floating dry dock is an essential part of the equipment of the Navy proper or whether it belongs to the administrative service of the Navy Department. Dry docks are for the purpose of repairing vessels, and the only essential difference between floating dry docks and stationary dry docks is the portability of the former. Both kinds are intended for the same purpose and belong to the same class of service. Colliers have been held to be an essential part of the equipment of the Navy, obviously because they sail with naval squadrons and attend them in action as supply boats.

A floating dry dock can not convoy a naval squadron on the high seas after the fashion of a collier. It can only be taken from place to place where the sea is calm or it can be securely moored for the purpose of repairing vessels. It is not an essential part of the equipment of the Navy, but clearly belongs to the administrative service of the Navy Department. The point of order is, consequently, sustained.

On May 16 [1] Mr. Sidney E. Mudd, of Maryland, proposed this amendment:

One steel floating dry dock, to be so constructed as to serve the purpose of a repair ship and capable of being propelled or towed to any place that may be necessary for the use of the fleet, or any part thereof, for such purpose, to cost not exceeding $1,250,000, of which amount the sum of $100,000 is hereby appropriated.

Mr. Joseph T. Johnson, of South Carolina, made a point of order against the amendment.

After debate the Chairman held:

The authorities are in harmony upon the proposition that dry docks are not an essential part of the equipment of the Navy proper. The present occupant of the chair so held a few days ago, and this amendment, the Chair thinks, is within the principle laid down by the Chair in that decision. The Chair sustains the point of order.

The Chairman also ruled out the following amendment, also proposed by Mr. Mudd:

Amend by adding after line 17, page 72, as follows: "One large steel vessel, capable of lifting, receiving, and docking the largest battle ship afloat, to be so constructed as to answer the purposes of a self-docking dry dock and repair ship, to cost not exceeding $1,250,000, of which amount the sum of $100,000 is hereby appropriated."

[1] Record, pp. 6984, 6985.

3737. A proposition to appropriate for the establishment of an armor-plate factory was held not to be in order on the naval appropriation bill, such appropriation not being in continuation of a public work or object.—On February 22, 1899,[1] the naval appropriation bill being under consideration in Committee of the Whole House on the state of the Union, Air. Oscar W. Underwood, of Alabama, offered, as an amendment to a pending amendment relating to the price of armor plate, a proposition to appropriate $4,000,000 for the establishment of a plant for the manufacture of armor plate for the Navy.

Mr. Charles A. Boutelle, of Maine, made the point of order against the proposition.

Mr. Underwood contended that the appropriation for such a factory would be in continuation of the public work of building up the Navy.

After debate, and on February 23, the Chairman[2] held:

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

3738. On April 20, 1900,[3] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union and Mr. W. D. Vandiver, of Missouri, had offered an amendment providing for the construction of an armor-plate factory.

Mr. Alston G. Dayton, of West Virginia, made the point of order that the amendment proposed new legislation.

After debate, the Chairman[4] held:

The question is whether this amendment authorizing the building of a plant for any purpose in the way of making armor plate is new legislation on an appropriation bill. It is not a question of building new buildings in place of old ones, the replacing of buildings already made; it is not a question like those which were decided in reference to the Naval Academy. There it was held that the Government already had a work in progress, the naval school, in the language of the decision of Mr. Cox in the West Point Academy case, and they could build a new building there for that purpose. This is not that question. The Government has never gone into the armor-plate business; it has always bought what is needed by contract. It has never made any, never had any plant for the construction of armor plate, and therefore it seems to the Chair to be most clearly new legislation. It is in line with all the decisions, even the decisions made in the West Point case and the Annapolis case in former Congresses, and the Chair therefore sustains the point of order.

Mr. Oscar W. Underwood, of Alabama, having appealed, the Chair was sustained on a vote by tellers, ayes 97, noes 83.

3739. The erection of an armor-plate factory, even though on land already owned by the Government, is not the continuation of a public work.—On February 26, 1904,[5] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. John F. Rixey, of Virginia, offered this amendment:

That the Secretary of the Navy is hereby authorized to procure by contract armor of the best quality for any or all vessels herein authorized, provided such contracts can be made at a price not to

[1] Third session Fifty-fifth Congress, Record, pp. 2191, 2246.

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

[3] First session Fifty-sixth Congress, Record, p. 4495.

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

[5] Second session Fifty-eighth Congress, Record, pp. 2440–2442.

exceed $398 per ton; but in case he is unable to make contracts for armor under the above conditions, then there is hereby appropriated the sum of $4,000,000 for the erection, upon property now owned by the Government, of an armor-plate factory of the character and to the extent that the Secretary of the Navy may in his judgment deem necessary and practicable under the appropriation.

Mr. John Dalzell, of Pennsylvania, made a point of order that the provision for an armor-plate factory involved legislation.

After debate, the Chairman [1] held:

As the Chair has already ruled several times during the pendency of this bill, it is quite within the power of Congress to withhold in appropriation or to make it upon a condition that it shall not be used except in a certain way. Undoubtedly the House may withhold entirely an appropriation for armor plate. Undoubtedly it may appropriate with the limitation that no more than a certain amount shall be paid per ton. That has been held in the case cited during the discussion, but here is an amendment which goes further and appropriates $4,000,000 for the erection, upon property now owned by the Government, of an armor-plate factory. A similar proposition has already been ruled out, but it is contended that this stands upon a different footing because of the expressed provision that the factory shall be erected on property owned by the Government. The argument is made that it would therefore be in continuation of a public work.

Undoubtedly it is within the power of Congress to authorize the erection of an armor-plate factory, and when that has been done to make an appropriation, but Rule XXI expressly provides that—

"No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress."

It is not pretended that there is any armor-plate factory in progress, but the attention of the Chair has been called to a ruling authorizing the erection of additional buildings on Government ground at West Point and Annapolis. Those rulings have gone to what has been considered the extreme limit. Subsequent occupants of the chair, both Mr. Sherman, of New York, and Mr. Payne, of New York, have held that as original propositions they would not have sustained such a paragraph as in order. Thus, in the fast session of the Fifty-sixth Congress, Mr. Payne, in the chair, upon an appropriation for a new building at the Naval Academy, said:

"If this were a new proposition the Chair would hesitate to declare it in order, but the Chair feels bound to follow the precedent that has been set and acquiesced in by Congress, and therefore overrules the point of order."

But that building was an addition to the plant of the Naval Academy, so to speak. It was considered as going to a great length to sustain that new building as a continuation of a public work, but even that ruling has not been considered as extending to a case where the additional building was for a purpose other than that to which the existing buildings were dedicated. Thus, on May 17, 1902, the naval appropriation bill then, as now, being under consideration, there was involved a paragraph reading as follows:

"Toward the construction of a building on land owned by the Government at Annapolis for an experiment station and testing laboratory, in the department of marine engineering and naval construction, at a cost not to exceed $250,000, and the complete equipment of the same with all the necessary appliances and apparatus, at a cost not to exceed $150,000."

To that paragraph Joseph G. Cannon, the present Speaker of this House, made the point of order that there was no law authorizing the expenditure, and the Chairman, Mr. Sherman, of New York, held—this is his language:

"Upon the statement of the gentleman from Illinois, chairman of the committee, and also of the gentleman from Maryland, namely, that the building was not considered as a part of the Academy, the Chair is very clear in the opinion that the provision is not in order, and the Chair sustains the point of order."

Now, here is a provision for an armor-plate factory upon Government land, but there is no pretense that there is any existing factory in continuation of which this might be considered. It was held in the second session of the Forty-fifth Congress that, although an appropriation had previously been made

[1] Marlin E. Olmsted, of Pennsylvania, Chairman.

for the purchase of a site for a public building, a proposed amendment appropriating for construction of the building was not in order upon a general appropriation bill.

Now, here is clearly legislation upon an appropriation bill, an appropriation for what is not a continuation of a public work now in progress, nor authorized by existing law, and the Chair sustains the point of order.

3740. An appropriation for buildings and grounds for a new army hospital was held not to be in continuation of a public work.—On January 25, 1904,[1] the army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

Army general hospital, District of Columbia: For the construction in or near the city of Washington, D. C., of an army general hospital, for the treatment of special classes of cases, for purposes of instruction in connection with an army medical school, for training enlisted men of the Hospital Corps in nursing, and to serve as a base hospital in time of war, and for the purchase of land in the District of Columbia for a site for said hospital, $400,000: *Provided,* That no part of this appropriation shall be used until it shall have been determined by the Secretary of War that the entire cost of plans, buildings, and grounds will not exceed the sum hereby appropriated.

Mr. Henry W. Palmer, of Pennsylvania, made a point of order that no existing law authorized the appropriation.

After debate the Chairman[2] held:

The question "What constitutes a continuation of a public work or the continuation of an appropriation for a public work?" is one which has given rise to many decisions, some of them conflicting. It was decided in the Forty-ninth Congress, as the gentleman from Iowa stated the other day, that the construction of a new vessel for the Navy was a continuation of a public work already in progress. That was probably the extreme limit of the decisions in that direction. It was subsequently held that the construction of a new vessel for the Coast Survey was not the continuation of a public work. That was decided in the Fifty-sixth Congress. It has been repeatedly held—several times in the Fifty-sixth Congress—that the establishment of a light-house, even the building of a new vessel for a light-house tender, was not a continuation of a public work. It was held that the construction of a new dry dock for the Navy was not a continuation of a public work; that the location for a site for a naval magazine was not the continuation of a public work.

Upon this point—the purchase of sites—the weight of authority appears to be to the effect that where the appropriation is for land adjoining an existing site and for the purpose of additional buildings it will be treated as a continuation of a public work, but where the appropriation is for a new site it will not be so treated. In the Fifty-sixth Congress, on the sundry civil appropriation bill, an amendment was offered by the gentleman from Illinois, Mr. Cannon, authorizing the Secretary of the Interior to acquire, by condemnation, 140 acres of land adjoining the present building site of the Government Hospital for the Insane. The gentleman from Missouri [Mr. De Armond] offered an amendment to the effect that if that could not be obtained at a specified price a new site should be purchased. Against that amendment the gentleman from Illinois, the present Speaker, made the point of order which is urged here, and so good a parliamentarian as the gentleman from Pennsylvania [Mr. Dalzell], then in the chair, sustained it.

Now, in addition to that, section 1136 of the Revised Statutes limits the appropriation which may be made for a structure not authorized by previous special authority of Congress to $20,000. The paragraph here involved provides for an entirely new hospital upon an entirely new site and appropriates $400,000. It seems to the Chair, therefore, that the point of order is well taken and must be sustained.

3741. While appropriations for new buildings at existing Government institutions have sometimes been admitted as in continuance of a public work, they are not regarded as establishing a principle.—On Jan-

[1] Second session Fifty-eighth Congress, Record pp. 1148–1151.

[1] Marlin E. Olmsted, of Pennsylvania, Chairman.

uary 12, 1889,[1] the House was in Committee of the Whole House on the state of the Union considering the Military Academy appropriation bill.

A section of the bill was read providing for the erection of a fireproof building on the grounds of the Military Academy at West Point.

Mr. C. B. Kilgore, of Texas, made the point of order that the building had not been authorized by law.

After debate the Chairman[2] ruled:

The Chair decides that, within the meaning of the provision just read, the building proposed to be erected—"fireproof building on site of public grounds at West Point"—is within the purview of the rule. The construction of a building is an incident to the maintenance of the academy itself, the object being already in progress—the main object contemplated, not only by the bill, but by the very institution of the academy itself.

Therefore the Chairman overruled the point of order.

3742. On March 30, 1898,[3] the House was in Committee of the Whole House on the state of the Union considering the naval appropriation bill. Mr. Sidney E. Mudd, of Maryland, offered an amendment authorizing the erection of such new buildings at the Naval Academy at Annapolis as the Secretary of the Navy might consider necessary and practicable, and the removal of old buildings.

Mr. Joseph G. Cannon, of Illinois, made a point of order against the amendment.

After debate, the Chairman[4] ruled:

The Chair, following the precedent cited, the decision of Chairman Cox, will overrule the point of order.

3743. On March 2, 1892,[5] the House was in Committee of the Whole House on the state of the Union considering the District of Columbia appropriation bill.

A paragraph of the bill provided for the erection and completion of a suitable building or buildings on the United States Reform School farm in the District to be used as a reform school for girls.

Mr. Walt H. Butler, of Iowa, having made the point of order that this was new legislation, the Chairman[6] said, after quoting the rule:

The Chair has examined the rulings of former occupants of the chair in Committee of the Whole, particularly the ruling referred to by the gentleman from Maine [Mr. Dingley], of Mr. Cox, of New York, and also the ruling by the gentleman from Kentucky [Mr. McCreary], when occupying the chair, both of which are reported in the Rules and Digest. In the case in which Mr. Cox made his ruling it was upon an amendment providing for the construction of a building at West Point on property which belonged to the Government, and for an institution which the Government was bound to maintain, and where it was charged with the maintenance and support of the institution.

So also in the case decided by the gentleman from Kentucky [Mr. McCreary]. That was for the construction of a Naval War College building upon property owned by the Government, and in that case the Chair held that it was an appropriation for works already in progress. The Government owned the property and was bound to maintain that property and that institution.

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[1] Second session Fiftieth Congress, Record, p. 717.

[2] Samuel S. Cox, of New York, Chairman.

[3] Second session Fifty-fifth Congress, Record, p. 3398.

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

[5] First session Fifty-second Congress, Record, pp. 1656, 1686.

[6] James D. Richardson, of Tennessee, Chairman.

Here the Chair raised a question as to the ownership of the property on which the building was to be placed, and it was stated that the property was vested in the United States.

The Chair, continuing, said:

It may be, however, that the Government does, own the title in the property, but that will not affect the decision of the Chair or the result at which the Chair will arrive. * * * The distinction which the Chair thinks exists between this case and those referred to, in which the gentleman from New York [Mr. Cox] and the gentleman from Kentucky [Mr. McCreary] made those decisions, is this: The Government was bound to maintain the institutions referred to in the former cases; in this case the Government is certainly not in any way bound to maintain either a boys' reform school or this school. There is no obligation on the Government to maintain either of those schools, and that has been the difficulty the Chair has had in arriving at a conclusion in the matter. But, inasmuch as this is a matter of grave importance, and one which the Chair would not like to prevent the committee from voting upon if it is desirable, the Chair will not decide the point, but, as has been done on former occasions, will submit the question to the committee.

By a vote of 27 ayes to 72 noes the committee decided not to sustain the point of order.

3744. On January 26, 1897,[1] the House was in Committee of the Whole House on the state of the Union considering the Indian appropriation bill.

The paragraph providing for the support and education of Indian pupils at the Indian school, Shoshone Reservation, Wyo., having been reached, Mr. Frank W. Mondell, of Wyoming, offered an amendment appropriating "for the erection and equipment of a shop for manual training."

Mr. James S. Sherman, of New York, made the point of order that this was new legislation, opening up a new field of education at that particular school, and not the continuation of a public work.

The Chairman[2] sustained the point of order.

3745. On April 18, 1900,[3] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, this paragraph having been read:

Building and grounds, Naval Academy: For the construction at the Naval Academy, Annapolis, Md., of a building suitable for use as cadets' quarters, at a cost not to exceed $2,500,000, including the architect's fees and the pay of the clerk of the works and the inspectors, $350,000.

Mr. Joseph G. Cannon, of Illinois, made the point of order that this paragraph contemplated an expenditure not authorized by law.

After debate, and on the succeeding day, the Chairman[4] held:

When the committee rose last evening a point of order was pending against the paragraph at the close of page 33, making an appropriation for a building suitable for use as cadet quarters at the Annapolis Academy. The point of order raised against this proposition was that it was new legislation, and it was stated that in former appropriation bills provision had been made for the building of new buildings at Annapolis, including this one, and that a limit of cost bad been fixed amounting to $1,200,000; that Congress had appropriated at one time $500,000 and at another time $700,000, or the full limit of the appropriation.

The Chair has examined the former appropriation bills, on which appropriations were made, and finds that those appropriations and that limit were for specific buildings, none of which included cadet

[1] Second session Fifty-fourth Congress, Record, p. 1192.

[2] Albert J. Hopkins, of Illinois, Chairman.

[3] First session Fifty-sixth Congress, Record, pp. 4396, 4443.

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

quarters or quarters suitable for cadets, which is the only item appropriated for or included in this particular portion of this bill. So that the Chair concludes that there is nothing in that previous legislation to limit the amount of the appropriation for this particular item in the bill.

The point is also made that this is new legislation and is not in continuance of a public work already in progress. The Chair finds that there have been several rulings upon similar propositions. There was one made in the Fiftieth Congress on a proposition to appropriate for a building at the West Point Military Academy. It was held there by the then presiding officer and acquiesced in without any appeal from any member of the committee at that time that the appropriation was in order, the decision of the Chairman, Mr. Cox, of New York, being in the following words:

"The Chair decides that within the meaning of the provision just read the building proposed to be erected—'fireproof building on site of public grounds at West Point'—is within the purview of the rule. The construction of a building is an incident to the maintenance of the Academy itself, the object being already in progress—the main object contemplated not only by the bill, but by the very institution of the Academy itself."

Two years ago when a proposition was made in the naval appropriation bill to build some other buildings at Annapolis, the same point of order was raised, and the gentleman who was then in the chair, Mr. Sherman, of New York, ruled as follows:

"The Chair, following the precedent cited-the decision of Chairman Cox, will overrule the point of order."

So that there are these two decisions that were acquiesced in by the House at the time, no one appealing from the decision of the Chair.

The Chair finds that there are other decisions, one on an item in the Indian appropriation bill only a short time ago, in 1897, the Chair thinks. It was proposed to build a manual training school at one of the Indian reservations, and that was proposed as a part of a work, in progress, namely, the educating of the Indians. But that particular proposition was ruled out on a point of order.

Of course there are the familiar illustrations of propositions to build dry docks, which have been held to be not in order where they required the purchase of the land, and where the work was not in progress in any sense of the word. If this was an original proposition before the House, the Chair then would not be in accord with the former rulings, which he has cited above. The Chair is inclined to think that those points were not fully discussed before the committee; in neither of these cases was there much discussion before the committee and in the presence of the Chair. It is a case of breaking over the rules. Precedents have been established.

The Chair would not, if called upon to rule in the case of a public building—of a post-office, for instance, tearing down a post-office at a given city and building another one on the same lot—the Chair would not rule that such a proposition was in order. If this were a new proposition, the Chair would hesitate to declare it in order, but the Chair feels bound to follow the precedents that have been set and acquiesced in by Congress, and therefore overrules the point of order.

3746. On June 18, 1902,[1] while the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, Mr. George W. Steele, of Indiana, offered the following amendment:

On page 26, after line 21, insert:

"Marion Branch, at Marion, Ind.: For quartermaster and commissary storehouse and repairing old storehouse and constructing fireproof vaults therein for offices, $30,000."

Mr. Charles L. Bartlett, of Georgia, made the point of order that there was no legislation authorizing the appropriation; and Mr. Leonidas F. Livingston, of Georgia, raised the further point that the appropriation was not in order on this bill.

After debate the Chairman said:

The Chair held in a former Congress in reference to Annapolis Academy that an amendment providing for an additional building there was in order. The Chair stated at the time that he so held in

[1] First session Fifty-seventh Congress, Record, p. 7025.

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

deference to former decisions, not because he would have so held had it originally come before the present occupant of the chair. If there was no other question involved now than the question of the enlargement of the plant, the necessary enlargement, the Chair would be inclined to hold that it was in order, following the precedent established in the Naval Academy case and the cases upon which it was based. But the Chair is inclined to think that the suggestion and point made by the gentleman from Georgia, that it is not in order on a general deficiency bill, is well taken. * * * If the Chair may suggest to the gentleman from Illinois, it seems to him that in the preservation of harmony between the bills that this item in all fairness ought to be on the sundry civil bill and not on the general deficiency bill. The Chair is unable to find any ruling which holds one way or the other upon the proposition. * * * The Chair will sustain the last point of order raised by the gentleman from Georgia.[1]

3747. The construction of a new building at the Naval Academy, but not for the work of the academy, was held not to be in continuation of a public work.—On May 17, 1902,[2] while the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, the clerk read the following paragraph:

Toward the construction of a building, on land owned by the Government, at Annapolis, for an experiment station and testing laboratory in the Department of Marine Engineering and Naval Construction (at a cost not to exceed $250,000), and the complete equipment of the same with all the necessary appliances and apparatus (at a cost not to exceed $150,000), $200,000.

Mr. Joseph G. Cannon, of Illinois, made the point of order that there was no law authorizing this expenditure.

After debate, during which it was admitted by those in charge of the bill that the building was not considered as a part of the academy, the Chairman[3] held:

Upon the statement of the gentleman from Illinois, the chairman of the committee [Mr. Foss], and also that of the gentleman from Maryland [Mr. Mudd], the Chair is very clear in the opinion that the provision is not in order. The Chair sustains the point of order.

3748. The completion of the buildings at the Army War College was held to be in continuation of a public work.—On January 25, 1904,[4] the army appropriation bill was under consideration in Committee of the Whole House on the state of the Union when the Clerk read:

For the completion of the necessary buildings, including approaches, heating and lighting plant, for the Army War College, at Washington Barracks, District of Columbia, in accordance with plans of the architects, $300,000: *Provided*, That no part of this appropriation shall be used until it shall have been determined by the Secretary of War that the entire cost of finishing the buildings, providing the approaches, heating and lighting plant shall not exceed the appropriation herein made.

Mr. James A. Hemenway, of Indiana, made the point of order that there was no law authorizing the construction of these buildings, and that section 1136 of the Revised Statutes prohibited the use of over $20,000 for such a purpose without specific authorization.

It appeared in the debate that in the preceding appropriation bill[5] there was enacted the following:

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[1] It should be noted, however, that one function of the deficiency bill is to provide for appropriations not estimated for until other appropriation bills have passed the House.

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

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

[4] Second session Fifty-eighth Congress, Record, pp. 1156–1159.

[5] 32 Stat. L., p. 512.

Provided, That the Secretary of War is hereby authorized to expend the sum of $400,000, or so much thereof as may be necessary, from the unexpended balance of the emergency fund appropriated in the act approved March 3, 1899, for the erection of the necessary buildings for the Army War College established at Washington Barracks, D. C., for the instruction of officers of the Army and Militia of the United States.

After debate the Chairman [1] said:

Section 1136 of the Revised Statutes provides:

"Permanent barracks or quarters and buildings and structures of a permanent nature shall not be constructed unless detailed estimates shall have been previously submitted to Congress and approved by a special appropriation for the same, except when constructed by the troops; and no such structures, the cost of which shall exceed $20,000, shall be erected unless by special authority of Congress."

Whether that means $20,000 for one structure or $20,000 for all the structures it is not necessary to decide here, as in the opinion of the Chair that provision of law as to this particular college was repealed by the act of June 30, 1902, which authorized the expenditure of $400,000 and did not limit the cost of the buildings even to that amount, but authorized the expenditure of that amount for that year.

Now, section 1136 of the Revised Statutes being thus repealed as to this college by the act of 1902, the Chair is of opinion that the paragraph against which this point of order is made specifically providing for the completion of the necessary buildings, which the Chair is advised are already in course of construction under authority of law heretofore given, the point of order must be overruled.

3749. The erection of necessary fireproof outbuildings for the Bureau of Engraving and Printing was held to be the continuation of a public work.—On May 3, 1900,[2] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and this paragraph had been read:

For the erection and completion of necessary fireproof outbuildings for the Bureau of Engraving and Printing, $115,000.

Mr. J. H. Bankhead, of Alabama, made the point of order under section 2 of Rule XXI.

After debate the Chairman [3] said:

The Chair would suggest to the gentleman from Alabama that it has been held that an entire new building on the naval grounds at Annapolis was a continuation of a work already begun; and the same ruling was made with respect to appropriations for a new building on the grounds at West Point. This appropriation is for a necessary fireproof outbuilding, a building that has already been began. * * * The Chair thinks that, following the precedents that have been established in cases at Annapolis and West Point, he is compelled to overrule the point of order.

3750. The erection of new houses for quarters at the Naval Observatory was held to be the continuation of a public work.—On January 24, 1901,[4] the naval appropriation bill (H. R. 13705) was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read the following paragraph relating to the Naval Observatory:

New buildings: Erection of three houses for quarters, and for gas, steam, water, and electric-light connections, and furniture for the same, $18,000.

Mr. Joseph G. Cannon, of Illinois, made the point of order that the expenditure was not authorized by law.

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[1] Marlin E. Olmsted, of Pennsylvania, Chairman.

[2] First session Fifty-sixth Congress, Record, p. 5100.

[3] John Dalzell, of Pennsylvania, Chairman.

[4] Second session, Fifty-sixth Congress, Record, pp. 1412–1414.

The Chairman[1] having reserved his decision until the precedents could be examined, held:

The Chair understands that the Naval Observatory is an institution maintained on land belonging to the Government; that it consists of a group of buildings devoted to the scientific purposes which its title would indicate, and that the appropriation for its maintenance and improvement is made in the naval appropriation bill. The particular provision which is challenged is an appropriation for certain new buildings specified in the language of the provision. It is challenged under the second paragraph of Rule 21, which provided as follows:

"No appropriation shall be reported in any general appropriation or be in order as an amendment thereto for any expenditure not previously authorized by law unless in continuation of appropriations for such public works and objects as are already in progress."

It has not been shown to the Chair that there is any law authorizing the erection of these buildings except the general law which authorizes the establishment and continuance of the institution itself; and the question at once arises, Does the appropriation come within the exception specified in the rule? In other words, is it a continuation of appropriation for a "public work or object already in progress?"

What, then, is a "public work or object in progress?" A resort to all the decisions upon that part of the rule would simply result in disclosing a contradiction which could not be reconciled. There are many decisions upon the one side and the other of the question which it would be utterly impossible and indeed unprofitable to review at this time, because such a review would disclose nothing but contradiction and darkness. Accordingly the Chair has confined his attention to the precedents which most nearly resemble the case under discussion.

The Chair has found two precedents which may be claimed to sustain the point of order made by the gentleman from Illinois. The first is a ruling made by Mr. Hopkins, of Illinois, in the first session of the Fifty-fourth Congress, to be found on page 1192 of the Record for that session. In that case an amendment providing for the establishment of a manual-training school had been offered and a point of order was made against it. It appeared that the general object of educating the Indians was carried on at the place where this training school was intended to be located, but that no education of the class or kind described in the amendment had yet been undertaken. Upon that ground it was pressed upon the Chair that the amendment provided for something other than a "public work or object in progress," and upon that ground, apparently, the point of order was sustained.

The other precedent upon that side of the question is a ruling made in the first session of the Fifty-sixth Congress (Record, p. 3993) by the Chairman, Mr. O'Grady, in which he sustained a point of order against a provision for laboratories for the Department of Agriculture. The point of order was sustained without any discussion and without the assignment of any reason by the Chair.

On the other hand, there are many precedents tending the other way. The Chair will allude to some of them. The first precedent was on January 12, 1889, when it was held by Mr. Kilgore, of Texas, that a provision for the erection of a building on public grounds at West Point was in order under the rule.

Again, on March 30, 1898, an amendment was offered for the erection of a new building at the Naval Academy at Annapolis. A point of order was made by the gentleman from Illinois [Mr. Cannon] against the amendment, and after debate it was ruled by Mr. Sherman, of New York, then occupying the chair in Committee of thee Whole, that the amendment was in order, following the precedent to which the Chair has just alluded.

In 1892, on March 2, Mr. Richardson, of Tennessee, being in the chair, a paragraph for the erection and completion of a suitable building or buildings on the United States Reform School farm in the District of Columbia was under consideration. The point of order was made against the provision and, after some discussion as to the point of order, the Chairman—as a doubtful question—submitted the consideration of the point of order to the committee. By a vote of 27 ayes to 72 noes it was held by the Committee of the Whole that the amendment was in order. On May 3, 1900, Mr. Dalzell held that an appropriation for the erection of outbuildings for the Bureau of Engraving and Printing was in order in the sundry civil bill.

The last precedent to which the Chair will direct the attention of the committee was a ruling by Mr. Payne, of New York, in the first session of the present Congress, as appears by the Record, page

[1] William H. Moody, of Massachusetts, Chairman.

4396 and page 4443. A paragraph in the naval appropriation bill was under consideration providing for the construction at the Naval Academy of cadet quarters. A point of order was made against the paragraph, and considerable debate took place thereon. The question was reserved by Mr. Payne until the next day, when he rendered a decision evidently carefully prepared and after consideration. The Chair will read the closing words of that decision:

"If this were a new proposition, the Chair would hesitate to declare it in order. But the Chair feels bound to follow the precedents which have been set and acquiesced in by Congress, and therefore overrules the point of order."

It is impossible for the present occupant of the chair to distinguish this case from those of the Naval Academy or the Military Academy to which reference has been made, and while a literal reading of the rule and the construction of the rule which the Chair knows is followed by at least one committee of the House would lead him to the conclusion that the paragraph was not in order, yet the precedents which the Chair has laid before the committee constrain the Chair, in obedience to the salutary principle that a well-settled construction of a rule is a part of the rule itself, to overrule the point of order.

3751. The establishment of a new station under the Fish Commission was held to be unauthorized by law.—On February 14, 1901,[1] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, the portion relating to the work of the Fish Commission having been reached.

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

For the establishment of a station at Middletown, Pa., including the purchase of necessary land $20,000.

Mr. Joseph G. Cannon, of Illinois, made the point of order that the amendment proposed an expenditure not authorized by law.

The Chairman[2] sustained the point of order.

3752. The erection of laboratory buildings for the Department of Agriculture was held not to be in continuation of a public work already in progress.—On April 10, 1900,[3] the agricultural appropriation bill being under consideration in Committee of the Whole House on the state of the Union, this paragraph was read:

Buildings for laboratories, Department of Agriculture: For all labor, materials, heating and power apparatus, plumbing, lighting, ventilating, and other necessary expenses in erecting and fitting up suitable fireproof laboratory buildings for the use of the United States Department of Agriculture, on reservation No. 2, in the city of Washington, D. C., all plans and specifications to be approved by and the work to be done under the supervision of the Secretary of Agriculture, $200,000, to be immediately available.

Mr. Thaddeus M. Mahon, of Pennsylvania, made the point of order that this was new legislation.

The Chairman[4] sustained the point of order.

3753. The purchase of sites and erection of buildings for the Weather Bureau not being authorized by prior legislation, an appropriation therefor is not in order on the agricultural appropriation bill.—On January 26, 1907,[5] the agricultural appropriation bill was under considera-

[1] Second session Fifty-sixth Congress, Record, p. 2437.

[2] Albert J. Hopkins, of Illinois, Chairman.

First session Fifty-sixth Congress, Record, p. 3993.

[3] James M. E. O'Grady, of New York, Chairman.

[4] Second session Fifty-ninth Congress, Record, pp. 1758, 1759.

ation in Committee of the Whole House on the state of the Union; when the Clerk read:

Buildings, Weather Bureau: For the purchase of sites and the erection of not more than five buildings for use as Weather Bureau observatories, and for all necessary labor, materials, and expenses, plans and specifications to be prepared and approved by the Secretary of Agriculture, and work done under the supervision of the Chief of the Weather Bureau, including the purchase of instruments, furniture, supplies, flagstaffs, and storm-warning towers to properly equip these stations.

Mr. James B. Perkins, of New York, made the point of order that there was no law authorizing the appropriation.

In the course of the debate, the Chairman [1] asked:

The Chair would like to ask the gentleman from New York if he contends that there is legislation on our statute books authorizing the erection of five buildings?

Mr. James W. Wadsworth, of New York, cited the general law establishing the Weather Bureau, which contained no specific provisions authorizing the construction of buildings.

The Chairman then held:

The Chair would like to call the attention of the chairman of the Committee on Agriculture to a ruling made in the first session of the Fifty-seventh Congress.

The ruling I refer to is on page 349 of the Manual, where an appropriation for Weather Bureau observatories was held not to be a continuation of a public work or object. Has there been any legislation since that first session of the Fifty-seventh Congress?

No legislation being cited, the Chairman continued:

The Chair thinks be should follow the ruling made in the Fifty-seventh Congress—that there is no authority in law to appropriate for these observatories. The Chair therefore sustains the point of order.

3754. On April 28, 1902,[2] while the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union. Mr. Joseph G. Cannon, of Illinois, made a point of order against the following paragraph:

For the purchase of sites and the erection of not less than six buildings for use as Weather Bureau observatories, and for all necessary labor, materials, and expenses, plans, and specifications to be prepared and approved by the Secretary of Agriculture, and work done under the supervision of the Chief of the Weather Bureau, including the purchase of instruments, furniture, supplies, flagstaffs, and stormwarning towers to properly equip these stations, $50,000.

In opposition to the point of order it was urged that the law establishing the Weather Bureau provided:

It shall be the duty of the Secretary of Agriculture to prepare future estimates for the Weather Bureau, which shall be hereafter specially developed and extended in the interests of agriculture.

At the conclusion of the debate the Chairman [3] said:

The Chair has read the statute upon which the gentleman from New York bases the claim that the committee has authority to report in this bill appropriations of this kind. It seems to the Chair that section 9 of that statute simply directs what shall be the duty of the Bureau in a certain contingency. The Chair does not think the statute was intended to ever confer the power upon the Committee

[1] George P. Lawrence, of Massachusetts, Chairman.

[2] First session Fifty-seventh Congress, Record, pp. 4784, 4785.

[3] Llewellyn Powers, of Maine, Chairman.

on Agriculture to include in an appropriation bill an appropriation authorizing the Department to purchase sites and erect buildings.

The object of an appropriation bill is to make appropriations for certain specific objects where laws recognizing the necessity and conferring the power to make them already exists. It has been held that the enlargement or continuation of a work previously authorized by law is permissible upon an appropriation bill and is not subject to a point of order.

But the Chair has not had his attention called to any ruling by which it has been held that under the exceptional clause of the rule it is legitimate or proper to authorize the purchase of a new site and the erection of a building thereon. On the other hand it has been held distinctly that the erection of a laboratory building for the Department of Agriculture was not to be regarded as a continuation of a public work already in progress and that an appropriation for that purpose was subject to a point of order. The purchase of an adjoining building for a hospital already established was held to be such a continuation of a public work as came within the exception to the rule. But there is nothing of that sort here. And it has also been held that an appropriation undertaking to authorize the purchase of land was, under this language of the rule, subject to a point of order, where the land proposed to be purchased was separate and distinct from other land owned by the Government.

The Chair is therefore inclined to adopt the view of the gentlemen from Illinois [Mr. Cannon] that this provision is distinctly legislation upon an appropriation bill; that the wisdom or unwisdom of establishing these sites and erecting buildings thereon—the decision of the question of their necessity or the contrary—is a matter to be determined on a proper bill, considered properly under the rules, and coming from a proper committee. Therefore the Chair holds that this provision upon this, a general appropriation bill, is subject to the point of order made by the gentleman from Illinois [Mr. Cannon], and the point of order made by the gentleman from Illinois is sustained.

3755. The construction of barracks at a navy-yard was held not to be the continuation of a public work or object.—On May 17, 1902,[1] while the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, the paragraph was read making appropriation for various improvements and repairs at the navy-yard, New York.

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

On page 28, line 15, after the word "dollars," insert "barracks for enlisted men to cost $500,000, $200,000."

Mr. George E. Foss, of Illinois, made a point of order.

After debate the Chairman[2] held:

The rule invoked in this instance by the chairman of the committee is one which has not at all times and by all chairmen been similarly interpreted. In the opinion of the present occupant of the chair a rather large hole was driven through the rule in order to permit the construction of battle ships without special authorization; but it seems to the Chair that the entering upon the construction of barracks in the way suggested by this amendment is the entering upon a new line of work. It is not a necessary adjunct to the New York Navy-Yard. It is not, in the opinion of the Chair, under a strict interpretation of the rule, a proper amendment. It is, in the opinion of the Chair, under a fair construction of the rule, obnoxious to it. The statute expressly provides, in reference to barracks for the Army, that they can not be constructed except after specific estimates therefor shall come to the House, and then only by a special act providing for them. Now, while that does not apply to the Navy, it seems to the Chair that in interpreting the rule it is fair to consider that provision. As the Chair intimated, the decisions have not been identical; but the notion of the Chair is borne out by ample precedents that this amendment is not in order, and the Chair therefore sustains the point of order.

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[1] First session Fifty-seventh Congress, Record, pp. 5590–5592.

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

3756. An appropriation for a naval prison at a navy-yard was held not to be in continuation of a public work, and not in order on the naval appropriation bill.—On February 13, 1907,[1] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

Navy-yard, Pensacola, Fla.: Machinery for central power plant, $35,000; naval prison, $28,000; conduit system, $2,500; improvements to storehouse, building No. 25, $5,000; in all, navy-yard, Pensacola, $70,500.

Mr. John J. Fitzgerald, of New York, made the point of order against the appropriation for "naval prison."

The Chairman[2] sustained the point of order.

3757. On February 17, 1905,[3] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

Navy-yard, Pensacola, Fla.: Central power house (to complete), $44,500; tools for yards and docks, $2,000; water system, $10,000; fire-protection system, $5,000; closets and lavatories, $3,500; garbage crematory, $7,500; machinery for central power house (to cost $120,000), $50,000; naval prison, $20,000; railroad track and equipment, $10,000; telephone system, extensions, $2,000; elevator for building No. 1, $1,000; in all, navy-yard, Pensacola, $155,500.

Mr. John J. Fitzgerald, of New York, said:

Mr. Chairman, I make the point of order against the provision for a naval prison, $20,000, in line 8. I submit that that is not a part of the equipment of a navy-yard. It is an authorization for a naval prison. I submit that it comes within the ruling made a few years since holding that it was improper to appropriate for a barracks at a navy-yard.

The Chairman[4] said:

The Chair will state that the decisions on this point are very numerous and point both ways, but the tendency of the decisions recently made has been to sustain the point of order. The Chair feels constrained to do the same. The Chair sustains the point of order.

3758. An appropriation for officers' quarters at a navy-yard is not in order on the naval appropriation bill as in continuance of a public work.—On February 13, 1907,[5] the naval appropriation bill was under consideration in Committee of the Whole House on the State of the Union, when the Clerk read:

Naval station, New Orleans, La.: Improvement of water front, $25,000; levee improvement and grading, $25,000; central electric light and power plant, extension, $50,000; railroad system, $5,000; drainage system, $10,000; central heating plant, $18,000; paving, $10,000; quarters for commandant, $12,000; fitting up yard buildings 8 and 16, $4,300; dispensary building, $9,000; in all, navy-yard, New Orleans, $168,300.

Mr James R. Mann, of Illinois, made the point of order against the words, "quarters for commandant, $12,000."

After debate, the Chairman[2] sustained the point of order.

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[1] Second session Fifty-ninth Congress, Record, p. 2915.

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

[3] Third session Fifty-eighth Congress, Record, p. 2797.

[4] John Dalzell, of Pennsylvania, Chairman.

[5] Second session Fifty-ninth Congress, Record, pp. 2916, 2917.

3759. An appropriation for a hospital for lepers at a naval station was held not in order on the naval appropriation bill as in continuation of a public work.—On February 13, 1907,[1] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Buildings for lepers, island of Guam: Naval station, island of Guam: Buildings for lepers and other special patients, island of Guam, $4,000; maintenance and care of lepers and other special patients, $16,000; in all, $20,000.

Mr. John J. Fitzgerald, of New York, made a point of order against the appropriation for the building.

The Chairman[2] sustained the point of order.

3760. The erection of new buildings for a naval hospital, with an authorization to acquire a new site, was held to involve legislation.—On February 18, 1903,[3] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Naval hospital, Washington, D. C.: The erection and completion of new buildings for the accommodation of the United States naval hospital, Washington, D. C., on the grounds belonging to the United States Naval Museum of Hygiene, $125,000: *Provided,* That the Secretary of the Navy be, and is hereby, authorized, in his discretion, to sell and convey the plot of land and buildings thereon, known as the United States naval hospital, Washington, D. C., situated at Ninth street and Pennsylvania avenue SE., in the city of Washington, D. C., to the highest bidder at public sale, and, after deducting the expenses incident to said sale, he shall pay into the Treasury of the United States, to the credit of the naval hospital fund, the net amount received from said sale: *Provided further,* That the Secretary of the Navy shall have the right to reject any and all bids.

Mr. James A. Hemenway, of Indiana, made a point of order against the paragraph.

After debate the Chairman[4] said:

The decisions are undoubtedly contradictory upon appropriations for buildings upon Government land. The decisions which allowed buildings to be ordered at West Point and at Annapolis by an appropriation bill, it seems to the Chair, have gone to the verge of the law in that direction, and the gentleman who gave the elaborate decision allowing the erection of quarters at Annapolis indicated that he would rule in conformity with what he considered the more numerous precedents rather than as logic required. It seems to the Chair that the rule should not be further strained, and that unless this paragraph comes clearly within these decisions the point of order should be sustained.

In those cases the buildings were to carry out the direct purpose for which the land and buildings there were already being used. This proposition goes a step further, and, instead of being for the direct purpose for which the land is now used, diverts it to another purpose, for there is now no hospital there. It seems to the Chair like the case recently decided, where an appropriation for barracks at a navy-yard was ruled out of order, and like the case last year on this navy appropriation bill, where an appropriation for a laboratory building at Annapolis was held subject to a point of order. The Chair thinks those precedents cover this case, and that logic is upon the same side, and therefore sustains the point of order.

3761. It is not in order on the naval appropriation bill to appropriate for a new foundry not previously authorized by law at a navy-yard.

It is not in order on a general appropriation bill to establish a limit of cost on a public building.

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[1] Second session Fifty-ninth Congress, Record, p. 2919.

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

[3] Second session Fifty-seventh Congress, Record, p. 2363.

[4] Frederick H. Gillett, of Massachusetts, Chairman.

The mere appropriation of a sum "to complete" a work does not fix a limit of cost to exclude future appropriations for a public building on a general appropriation bill.

On February 13, 1907,[1] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

Navy-yard, Washington, D. C.: Paving, to extend, $10,000; grading, to extend, $10,000; quay wall, $25,000; railroad bridge and tracks, $40,000; in all, navy-yard, Washington, $85,000.

Mr. James H. Southard, of Ohio, offered this amendment thereto:

For brass and iron foundry, to cost $300,000, $100,000.

Mr. Thomas S. Butler, of Pennsylvania, made the point of order against the amendment that it was not authorized by law.

After debate the Chairman[2] held:

The merits of any proposition or the desirability of any proposed work should not be considered by the Chair in determining whether the proposed work can be appropriated for in a general appropriation bill. What the Chair is to determine is procedure, not merit; and the Chair, accepting as correct the statement of the gentleman from Pennsylvania [Mr. Butler], and differentiating between the present situation and the additional buildings at the Naval Academy and an additional war ship, which have been specifically ruled upon, the former rulings having been followed by the present occupant of the chair on a former occasion, and at that time the present occupant of the chair stating that he was controlled by a specific ruling theretofore made, differentiating between that situation and this, and calling to the attention of the House particularly a decision made by a chairman, the occupant not now being remembered by the present occupant of the chair, but where the present occupant on the floor made a point of order against a provision for the creation of a manual training building for an Indian school, the point of order being sustained.

Properly interpreting the rules and the general line of decisions made thereunder, and drawing a distinction between the general line of decisions and those special decisions in reference to battle ships and in reference to the two academies, the Chair is constrained to hold that the amendment, as now presented, is not within the rule and decisions, and therefore the Chair sustains the point of order.

Thereupon Mr. Southard offered an amendment in this form:

For an addition to brass and iron foundry (to cost $300,000), $100,000.

Mr. Butler again made a point of order.

On February 14,[3] Mr. Southard in argument said:

I find no affirmative act, what we usually term an "organic act," establishing a naval gun factory at the Washington Navy-Yard. This term "naval gun factory" is an evolution. Away back in the fifties or sixties we made appropriations for a gun foundry at the Washington Navy-Yard. So I take it that at that early date we had in existence in the navy-yard what is known as a "gun foundry." Afterwards appropriations were made for what was termed a "gun plant," and the words "gun factory" were used first in legislation, so far as I have been able to discover, in the act of 1889; and on June 30, 1890, an appropriation was made in terms for the "Naval Gun Factory" at the Washington Navy-Yard. By the naval act approved March 3, 1883, the President is authorized to select an ordnance board, and by the act of March 3, 1889, an appropriation was made to complete the gun plant and other buildings at the Naval Gun Factory. That appropriation is in the following words:

"To complete the construction and equipment of ordnance shops, offices, and gun plant at Washington Navy-Yard, to be made immediately available, $625,000."

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[1] Second session Fifty-ninth Congress, Record, pp. 2911–2913.

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

[3] Record. pp. 2991, 2992.

I will say, Mr. Chairman, that this building, which is now known as the "foundry" was built in 1867, and was then a part of the Steam Engineering Bureau. By Executive order No. 354, made August 14, 1886, the building was turned over to the Ordnance Department, establishing what is now called the "Naval Gun Factory." Changes and alterations have been made since that date and numerous appropriations for buildings at the gun factory have been made. These buildings have been erected and appropriations for equipment have been made until now we have a plant there which has involved an expenditure of millions of dollars.

Now, the question is, and, as I understand it, the only question is, Is this a public work or object which is now in progress?

The Chairman, however, referring to the words "to cost $300,000" in the amendment, ruled:

The Chair assumes that this is a public work in progress there can not be any doubt about. And the appropriation to give to it the addition the gentleman from Ohio refers to in the opinion of the Chair is not a limitation upon the cost. The act says "complete." It has over and again been held prior to and during this Congress that to limit the cost is a legislative provision and can not be incorporated in an appropriation bill; and this amendment is clearly an attempt, by this appropriation, to limit the cost, and therefore it is obnoxious to the rules; and the Chair sustains the point of order.

Thereupon Mr. Southard offered the amendment in this form:

For addition to brass and iron foundry, $100,000.

Mr. James R. Mann, of Illinois, made the point of order that it was not in order to appropriate for such addition, since the acts appropriating for the plant at the Washington Navy-Yard had used the words "to complete the construction." He maintained that this fixed a limit of cost.

The Chairman ruled:

The Chair thinks that the words "to complete" do not definitely fix a limit of cost in the mind of the lawmaking power. It does not say that the lawmaking power, in making that statement, intends to definitely limit the total cost of that work to that amount for all time. Where a statement is made, as was made in the amendment as originally offered by the gentleman from Ohio, for an addition to cost $300,000, there being now $100,000 appropriated, that indicates definitely the intention of the lawmaking power to limit the cost to the $300,000. But to appropriate a given sum with the words "to complete," does not, it seems to the Chair, constitute a declaration on the part of the lawmaking power that all future appropriations shall be limited to that amount for that object. With that understanding, that there has heretofore been no definite declaration of Congress limiting the cost of this general work, the Chair overrules the point of order.

3762. The selection of a site for a naval magazine was held not to be the continuation of a public work or object.—On May 17, 1902,[1] while the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, Mr. Joseph G. Cannon, of Illinois, made the point of order on the following paragraph:

New England naval magazine: The Secretary of the Navy is hereby directed to appoint a board of naval officers whose duty it shall be to recommend a suitable site or sites for one naval magazine on the New England coast, between Boston and Portsmouth, suitable for the use of the Boston and Portsmouth navy-yards, and, if upon private land, to estimate its value and ascertain as nearly as practicable the cost for which it can be purchased or acquired, and also to estimate the cost of necessary buildings, grading and filling in, building roads and walks, improvement of water front, necessary wharves and cranes, railroad tracks and rolling stock, fire and water service, and for general equipment of said naval magazine.

The Chair[2] sustained the point of order.

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[1] First session Fifty-seventh Congress, Record, p. 5600.

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

3763. The creation of a commission to select a site for a public building is not such a beginning of a public work as to justify an appropriation for a site.—On January 29, 1904,[1] the urgent deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union; when Mr. William Sulzer, of New York, proposed the following as an amendment:

That the sum of $2,000,000, or so much thereof as may be necessary, be, and the same hereby is, appropriated, out of any money in the Treasury not otherwise appropriated, to purchase the site in the city of New York heretofore recommended by the commission for the new post-office.

Mr. James A. Hemenway, of Indiana, made the point of order that the appropriation proposed was not authorized by law, and also that if in order it should be provided for in the sundry civil appropriation bill.

In the debate Mr. Sulzer cited the following law as justifying the appropriation:

That a commission hereby created, consisting of the Secretary of the Treasury, the Postmaster General, and the Attorney-General of the United States, be, and is hereby, authorized and directed to acquire, by purchase, condemnation, or otherwise, a suitable site in the city of New York, borough of Manhattan, and State of New York, upon which to erect a fireproof building for the use and accommodation of the United States post-office in said city: *Provided,* That the site selected shall be bounded on each side by a street. When said commission has acquired a site in said city, as herein provided, the commission shall make a report to Congress, stating the location, dimensions, and cost of the same, and recommend to Congress the character and size of a building that should be erected upon said site, and state the probable cost of such a building, including fireproof vaults, heating and ventilating apparatus, and approaches.

The Chairman[2] held:

Accepting the statement of the gentleman from New York as to the condition of the law, the Chair is of the opinion that it is not such as would authorize this appropriation. The mere appointment of a board for the purpose of selecting a site, but with no authority to purchase the site when selected, does not constitute such a beginning of a public work that the appropriation involved in this proposed amendment can be considered as in continuation of an appropriation for a public work; but, in any event, such an appropriation would be in order, if at all, upon the sundry civil bill, and not upon this, which is an urgent deficiency bill to supply deficiencies in the appropriations for the fiscal year ending June 30, 1904, and for prior years. The Chair therefore sustains the point of order.

3764. The creation of a board to select a site for a naval training station was held not to be such a beginning of a work as to authorize appropriation for the station itself.—On February 17, 1903,[3] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read the following:

Naval training station, Great Lakes: For the purchase of a site for a naval training station and toward the erection of the necessary buildings thereon, $250,000: *Provided,* That said site shall be upon the shore of Lake Michigan below latitude 43° 40′, at a point to be selected, with the approval of the Secretary of the Navy, by the board of naval officers appointed by the Secretary of the Navy for that purpose in pursuance of the authority conferred by the act making appropriations for the naval service for the fiscal year ending June 30, 1903, and for other purposes, approved July 1, 1902.

Mr. Charles H. Grosvenor, of Ohio, raised a point of order against the paragraph.

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[1] Second session Fifty-eighth Congress, Record, pp. 1387, 1388.

[2] Marlin E. Olmsted, of Pennsylvania, Chairman.

[3] Second session Fifty-seventh Congress, Record, pp. 2325–2327.

After debate, the Chairman[1] held:

It seems very clear to the Chair that if it were not for the legislation of last year this section would be subject to a point of order. The decisions are quite uniform on that subject. Take, for instance, the decisions with reference to dry docks, and even the Algiers case, cited by the gentleman from West Virginia [Mr. Dayton]. The first time in that case the point of order was sustained. It was only afterwards overruled when some appropriation had already been made for purchase of land; so that it seems clear to the Chair that without the legislation of last year this point of order must be sustained.

The question then arises, Does the legislation of last year bring it within the rule, and is this a continuation of a work now in progress? The legislation of last year provided that a board should select a site, estimate its value, and report to Congress. It does not follow from this that Congress would appropriate for that site or would approve the action of the board, and this section in question provides not for the purchase of a selected or specific site, but for a site still to be selected. A work would not be considered begun, in the ordinary use of language, simply by an appropriation for a board which was to select a site and make a report which might or might not be acted upon favorably by Congress, so that, it would seem to the Chair, if there were no authority pertinent, that the legislation of last year would not be sufficient ground for this appropriation.

But there is extensive authority in the same line. The decision cited by the gentleman from Ohio [Mr. Grosvenor] as to the Nicaraguan Canal is very closely in point, and sustains the point of order. There was a decision last year in reference to an appropriation for a survey of a dam and site. The appropriation for the survey was held not to be the commencement of a work. The Chair also has before him a decision by Mr. Speaker Carlisle, which holds that the purchase of land for a building is not such a commencement of the work as to authorize an appropriation for that building. He says:

"The Chair has before him the act approved March 3, 1875, which authorized the purchase of a site for this building, but it confers on the Secretary of the Treasury no authority whatever to contract for the erection of a public building, and the Chair is therefore bound to rule the amendment out of order."

That is certainly a much stronger case than the one in question. The Chair therefore sustains the point of order.

3765. On February 23, 1904,[2] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union; when the Clerk read:

Naval training station, Great Lakes: The purchase of land and the establishment of a naval training station on the shore of Lake Michigan, south of latitude 43° 30′, $250,000.

Mr. Henry A. Cooper, of Wisconsin, made the point of order that there was no law authorizing this expenditure.

It appeared that a commission authorized by law had examined and reported on various proposed sites for this station.

On February 24[3] the Chairman[4] sustained the point of order.

3766. The purchase of adjoining land for a work already established was held to be in continuation of a public work.—On February 22, 1907,[5] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

To enable the Secretary of the Interior to purchase additional land in the District of Columbia for the use of the Government Hospital for the Insane, and for expenses incident to such purchase, $25,000, or so much thereof as may be necessary, $25,000.

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[1] Frederick H. Gillett, of Massachusetts, Chairman.

[2] Second session Fifty-eighth Congress, Record, p. 2281.

[3] Record, p. 2329.

[4] William P. Hepburn, of Iowa, Chairman.

[5] Second session Fifty-ninth Congress, Record, p. 3703.

Mr. James Hay, of Virginia, made the point of order that there was no legislation authorizing the appropriation, saying:

On page 430 of the hearings the superintendent of the Hospital for the Insane, in respect to the location of the land, says:

"The land is just across the road from our property, at the southeast extremity."

Well, land across the road is not land adjoining land upon which the hospital is built, and therefore, as it is not adjoining this land, it is subject, in my judgment, to the point of order.

Mr. James A. Tawney, of Minnesota, explained that the land was needed for extending the farm of the institution, and also that the road was a public highway.

The Chairman [1] held:

Assuming that the gentleman from Minnesota [Mr. Tawney] correctly states the facts in relation to the location of the land—and his statement is corroborated by what has been read from the hearings—and that he also correctly states the facts in relation to the highway being an easement upon the land and the abutters upon either side own to the center thereof, subject to the easement of the way, the Chair holds that the provision is not obnoxious to the rule, and therefore overrules the point of order.

3767. On February 19, 1901,[2] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk read this paragraph, relating to the Hospital for the Insane:

For the purchase, at the discretion of the Secretary of the Interior, of not less than 145 acres of land immediately adjoining the present building site of the hospital on the south and extending from Nichols avenue to the Anacostia River, to be acquired by condemnation or otherwise, a sum not to exceed $145,000, to be immediately available.

Mr. Marlin E. Olmsted, of Pennsylvania, made the point of order that the expenditure was not authorized by law.

During the debate Mr. David A. De Armond, of Missouri, called attention to the law of the preceding session,[3] which appropriated for the extension of the hospital on "lands already owned by the Government, or upon such suitable lands as may be donated to the Government within the District of Columbia for that purpose." As the hospital could not be extended on the land proposed to be purchased, he argued that the appropriation now proposed could not be in continuation of a public work.

The Chairman [4] held:

The law which the gentleman from Missouri calls to the attention of the Chair relates to the location of buildings used for hospital purposes, and declares that these buildings shall be erected upon land already owned by the Government, or that may be donated to the Government in the District of Columbia. In the opinion of the Chair, that does not militate against the power of the Committee on Appropriations to appropriate a specific sum to acquire additional territory for the asylum. Now, there is a large asylum there that is furnishing accommodations for several thousand soldiers; and it is apparent to all that the land, as well as the buildings, is necessary for this great public purpose, and the Chair thinks that the point of order is not well taken. It is for the committee to say whether the entire 145 acres shall be purchased, or, by amendment, that number of acres shall be enlarged or decreased; but that it is in continuation of this great public object the Chair has no doubt, and therefore overrules the point of order.

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[1] Charles E. Littlefield, of Maine, Chairman.

[2] Second session Fifty-sixth Congress, Record, pp. 2666–2669.

[3] 31 Statutes at Large, p. 619.

[4] Albert J. Hopkins, of Illinois, Chairman.

3768. On May 4, 1900,[1] the sundry civil appropriation bill being under consideration in Committee of the Whole House on the state of the Union, Mr. Sidney E. Mudd, of Maryland, made a point of order against this paragraph:

For the purchase, in the discretion of the Secretary of the Interior, at a total cost not exceeding $210,000, of not less than 140 acres of land adjoining the present building site, $210,000: *Provided,* That if said amount of land can not be purchased for said amount or for a less sum, the amount herein appropriated shall be applied to the construction of buildings for special classes of patients on the present grounds of the hospital, suitable for the extension as herein proposed.

After debate, the Chairman[2] held:

The Chair thinks that, following the precedents in the West Point case and the Annapolis case, he is compelled to overrule the point of order.

3769. On May 5, 1900,[3] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Joseph G. Cannon, of Illinois, offered this amendment:

To enable the Secretary of the Interior to acquire by condemnation, at a total cost not exceeding $210,000, which sum is hereby appropriated, not less than 140 acres of land adjoining the present building site of the Government Hospital for the Insane: *Provided,* That if said amount of land cannot be acquired by condemnation as herein provided the amount herein appropriated shall be applied to the construction of buildings for special classes of patients on the present grounds of the hospital, suitable for the extension as herein proposed.

To this Mr. David A. De Armond, of Missouri, offered this amendment:

For the extension of the accommodations for the insane, and to provide for the increasing number of such persons to be cared for by the Government, the Secretary of the Interior shall accept for the Government the absolute free gift of a suitable tract of land, containing not less than 500 acres, if the same be offered; and if no suitable tract be offered as a donation, the said Secretary shall buy for the Government a suitable tract of not less than 500 acres, at a price not to exceed $100 per acre; and the sum of $50,000 is hereby appropriated for the use aforesaid: *Provided,* That said sum shall be added to the appropriation hereinafter made for buildings for the insane asylum, if not used in buying land as herein authorized.

Mr. Cannon having made a point of order against the amendment to the amendment, the Chairman[2] held:

The Chair understands the gentleman from Missouri to concede that his substitute is new legislation, but to argue that it is admissible because the amendment for which it is offered as a substitute is subject to a point of order. If the original paragraph struck out this morning was not subject to a point of order, this amendment offered by the gentleman from Illinois is not subject to a point of order. The Chair held yesterday, following precedents as he understands them, that the original paragraph was not subject to the point of order, and is therefore now compelled to hold that the amendment offered by the gentleman from Illinois is not subject to the point of order. That being so, the substitute offered by the gentleman from Missouri is subject to the point of order; and the Chair therefore sustains the point of order.

3770. On February 16, 1901,[4] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when, in the portions relating to the Fish Commission, the Clerk read the following paragraph:

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[1] First session Fifty-sixth Congress, Record, pp. 5178, 5179.

[2] John Dalzell, of Pennsylvania, Chairman.

[3] First session Fifty-sixth Congress, Record, pp. 5186–5188.

[4] Second session Fifty-sixth Congress, Record, pp. 2541, 2542.

For the purchase of additional land and water rights and construction of additional ponds at the San Marcos, Tex., station, $6,000.

Mr. Marlin E. Olmsted, of Pennsylvania, having made a point of order against the paragraph, the Chairman [1] held:

I will state to the gentleman from Iowa that the Chair is entirely clear that, if there is a law authorizing this station, this is only a continuation of what has already been authorized. It is not obnoxious to the point of order.

3771. On January 15, 1907,[2] the fortifications appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. George E. Waldo, of New York, proposed this amendment:

Amend by including, on page 2, between lines 23 and 24, the following words:

"For the purchase of land adjoining Fort Hamilton, Brooklyn, N. Y., and necessary for the enlargement of said fort and the maintenance and preservation of the fortifications at said fort, the sum of $250,000."

Mr. Walter I. Smith, of Iowa, made a point of order against the amendment. After debate, the Chairman [3] ruled:

While the Chair thinks there may be some question in reference to the form of amendment making a declaration that this purchase of land is necessary, and that possibly that might be construed to be a change of existing law, yet the Chair assumes that that is more a matter of argument than it is a declaration of law. The rulings have been that where the Government owns land, or a site, the purchase of adjoining land is not subject to a point of order and is a continuance of a work in progress. The Chair, therefore, overrules the point of order.

3772. On April 28, 1902,[4] while the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, Mr. Joseph G. Cannon, of Illinois, made a point of order against the following paragraph:

Provided further, Not to exceed $10,000 of the amount hereby appropriated may be used for the purchase of additional land for Bureau of Experimental Stations.

After debate, the Chairman [5] said:

The Chair will say that this is not a new question. It has been ruled upon before. There are precedents where it has been held that the purchase and establishment of a distinct station where the Government has not one now is clearly subject to a point of order, but where it is necessary to purchase additional land that you may utilize and properly use a station that the Government has for any purpose it has been held that an appropriation of money to do that is not subject to a point of order.

The Chair has two cases before him. The purchase of adjoining land for a hospital already established was held to be a continuation of a public work and not subject to a point of order, while an amendment for acquiring a new site was ruled out.

The enlargement of the land and water rights of a fish-culture station was held to be a continuation of a public work and an appropriation for the same not subject to a point of order. The Chair thinks that that distinction has been maintained in the long line of precedents, and even the persuasive reasoning of the gentleman from California will not induce the Chair to go contrary to them and try to establish a new order of precedents.

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[1] Albert J. Hopkins, of Illinois, Chairman.

[2] Second session Fifty-ninth Congress, Record, pp. 1176–1178.

[3] James R. Mann, of Illinois, Chairman.

[4] First session Fifty-seventh Congress, Record, p. 4787.

[5] Llewellyn Powers, of Maine, Chairman.

3773. On May 17, 1902,[1] while the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, the Clerk read the following:

Navy-yard, Washington, D. C.: Gunners' storehouse, $88,000; coppersmith shop, $32,000; bronzing and plating house, $20,000; purchase of land, $100,000; in all, navy-yard, Washington, $240,000.

Mr. Joseph G. Cannon, of Illinois, made a point of order against the words "purchase of land, $100,000."

After debate, the Chairman[2] ruled:

The chairman of the Committee on Naval Affairs asserts that the land in question does not adjoin the navy-yard, in addition to which the estimate submitted for this appropriation clearly states that its object is the enlargement and extension of the present yard, or, in other words, a continuance of the work in progress.

It seems to the Chair perfectly clear from that estimate, and also in line with the ruling for which the gentleman from Illinois [Mr. Cannon] himself contended, which ruling was made in the instance cited by the gentleman from Pennsylvania [Mr. Olmsted], that this provision is proper, and the Chair therefore overrules the point of order made by the gentleman from Illinois.

3774. The purchase of additional ground and the erection of an addition to an existing building was held to be in continuation of a public work.—On February 14, 1907,[3] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Marlin E. Olmsted, of Pennsylvania, called attention to this paragraph, which had been ruled out on a point of order on the preceding day:

For the purchase of ground adjoining the quartermasters' depot, Philadelphia, Pa., and erection thereon of an addition to said depot, not to exceed $200,000, $200,000.

Mr. Olmsted said:

I desire to state, Mr. Chairman, that the depot is now one building and covers a lot 80 by 100 feet, that the ground proposed to be purchased is just adjoining it, and that the object is to extend the present building out on to that lot. It is situated on South Broad street, Philadelphia. The building is overcrowded, and the Government is now paying $4,000 rent for another one. This addition to that building is needed to provide the necessary space for that important depot.

The Chairman[2] said:

The Chair desires to state to the gentleman from Pennsylvania [Mr. Olmsted] that of course the rulings have always been that additional property could be purchased and not additional buildings erected, and the Chair supposed that this was an additional building. On the gentleman's statement that it is simply an addition to an existing building the Chair thinks the proposition would be in order.

Thereupon Mr. Olmsted offered this amendment to take the place of the paragraph which had gone out:

For the purchase of ground adjoining the quartermasters' building, now owned and used by the Government at Philadelphia, Pa., and extending thereon the said depot building, at a cost of ground and building not to exceed $200,000, $200,000.

No question was insisted on as to this amendment, which was agreed to.

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[1] First session Fifty-seventh Congress, Record, pp. 5593–5595.

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

[3] Second session Fifty-ninth Congress, Record, p. 2965.

3775. On February 21, 1907,[1] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. James A. Tawney, of Minnesota, offered this amendment:

On page 31, after line 25, insert:

"To enable the Secretary of the Treasury to acquire, by condemnation or otherwise, additional land adjoining the present site occupied by the Bureau of Engraving and Printing, and for the erection, completion, including heating and ventilating, of an addition to, or extension of, the buildings of the Bureau of Engraving and Printing, which shall conform architecturally in character and quality to the material used in the existing buildings of the said Bureau, $150,000."

Mr. William Sulzer, of New York, made a point of order that there was no authorization of law.

The Chairman[2] held:

The Chair finds that the proposed amendment is for the purchase of land adjoining the site occupied by the present building, and for the extension of the present building. The Chair overrules the point of order.[3]

3776. A proposition to purchase a separate and detached lot of land for an army target range was held not to be in continuation of a public work.—On June 11, 1906,[4] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Francis W. Cushman, of Washington, proposed an amendment:

Land for target range: For the purchase of a tract of land, of 3,000 acres or less, at American Lake, near Tacoma, State of Washington, for a target range, $30,000.

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

After debate, the Chairman[5] ruled:

The gentleman from Indiana [Mr. Crumpacker] has raised a point of order. The Chair thinks it is clearly obnoxious to the rule and subject to the point of order. The Chair thinks you might purchase land next to an army post and that it would probably be a continuation of a public work, but it is evidently not in order to purchase a separate piece of land, as this amendment proposes. It is no more in order, in the opinion of the Chair, than it would be to provide on an appropriation bill for the erection of a hospital building or the construction of an army post without a previous authorization of law therefor. The Chair therefore sustains the point of order.

3777. An appropriation for rent and repairs of buildings used in the public service was held to be in continuation of a public work.—On January 27, 1905,[6] the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and a paragraph was read as follows:

Purchase and distribution of valuable seeds: For the purchase, propagation, testing, and distribution of valuable seeds, bulbs, trees, shrubs, vines, cuttings, and plants; for rent and repairs; the employment of local and special agents, clerks, assistants, and other labor required in the city of Washington and elsewhere, etc.

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[1] Second session Fifty-ninth Congress, Record, p. 3566.

[2] George P. Lawrence, of Massachusetts, Chairman.

[3] Of course if it had been shown that a limit of cost had been fixed by law for the existing building the ruling would necessarily have been different.

[4] First session Fifty-ninth Congress, Record, p. 8299.

[5] James E. Watson, of Indiana, Chairman.

[6] Third session Fifty-eighth Congress, Record, pp. 1483–1485.

Mr. Charles Q. Tirrell, of Massachusetts, made a point of order against the words "rent and repairs."

After debate, the Chairman [1] held:

The Chair is of the opinion that the words "for rent and repairs" should be limited in their application to the work necessary to distribute seeds, and that it is simply an appropriation for the continuance of a public work. The Chair therefore overrules the point of order.

3778. Appropriations for repairs to public buildings are admitted in general appropriation bills as in continuation of a public work.—On February 21, 1907,[2] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union when the Clerk read:

For Treasury building at Washington, D. C.: For repairs to Treasury, Butler, and Winder buildings, including personal services of skilled mechanics, $18,000.

Mr. Frank Clark, of Florida, made the point of order that the expenditure was not authorized by law.

The Chairman [3] held:

The Chair will state the rulings are practically uniform that repairs to public buildings are authorized by existing law, and services of skilled mechanics are of course simply incidental thereto. The Chair overrules the point of order.

3779. A proposition to repair paving originally laid by the Government in a city street adjacent to a public building was held not to be in continuation of a public work.

A proposition to pave city streets adjacent to a public building was held to be without authority of law.

On June 6, 1906,[4] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Chicago, Ill., post-office and court-house: The appropriation made in the urgent deficiency appropriation act approved February 27, 1906, for improvements and changes of a general nature is hereby made available also for the interior decoration of the building.

Mr. James R. Mann, of Illinois, proposed an amendment to insert the words "for repair of paving, $15,000."

Mr. James A. Tawney, of Minnesota, made the point of order that there was no law authorizing the expenditure.

In the course of the debate the act of cession by which Illinois ceded the land for the building to the Federal Government was read, but it did not show a cession of any part of the streets surrounding the lot, but did show a cession of streets running through the lot.

On June 16,[5] by unanimous consent, Mr. Mann was permitted to modify his amendment, so it would read as follows:

For repair of paving laid by and for the United States adjacent to the said building, $15,000.

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

[2] Second session Fifty-ninth Congress, Record, pp. 3565, 3,566.

[3] George P. Lawrence, of Massachusetts, Chairman.

[4] First session Fifty-ninth Congress, Record, p. 7592.

[4] Record, pp. 8645–8648.

After debate on the point of order, the Chairman [1] ruled:

This amendment is different in character and rests upon a different basis from the amendment proposed by the gentleman from Georgia [Mr. Bartlett] and other amendments of like character, because the amendment proposed by the gentleman from Georgia and others of like character that are pending are original propositions for paving around a public building, whereas the one submitted by the gentleman from Illinois [Mr. Mann] is for the repair of a pavement previously laid by the Government. The Chair is clearly of the opinion that a proposition to pave originally is legislation and manifestly subject to the point of order. The only question therefore is as to whether a proposition to repair a pavement already laid by the Government of the United States is legislation or whether or not it is authorized by any existing law. If this proposition be in order, it rests upon one or two facts, if they be facts: First, that the Government of the United States owns the fee where this paving is sought to be done, or, secondly, that it is a "work in progress" within the meaning of our rule. When the proposition was first advanced by the gentleman from Illinois [Mr. Mann], the Chair was inclined to hold that it was in order because the Government of the United States owned the fee, that impression having been given the Chair by the reading of the cession made to this land by the State legislature of Illinois, which the gentleman at that time produced. A careful reading, however, convinces the Chair that it has no reference whatever to the street on which the paving was originally made, that is sought to be repaired, and I presumed that that contention is not made at this time by the gentleman from Illinois. * * * The Chair will read:

"That in case there shall be any street or alley running through any lot or tract of land so purchased or acquired by the said United States for any of the purposes described in the said act therein set forth, all that portion of said street"—

What street? Running through the block on which the building is erected—"or alley, then such block or tract of land shall, upon the purchase of the same by the United States or the transfer of the same to the United States, by condemnation or otherwise, for any of the purposes aforesaid, be, and the same is hereby, vacated and closed, and the lots or tracts of land abutting upon such street or alley"—

"Such," referring back to the street or alley running through this block on which the building has been erected—

"shall extend to the central line."

And so forth.

Manifestly, in the opinion of the Chair, having reference only to alleys and streets running through this block, then possessed by the Government, on a part of which the public building was erected, and having no reference to the streets or alleys then originally paved and now sought to be repaired. * * *

The legal fiction is that the adjoining landowner owns to the middle of the street, owns subject to an easement. That is a legal fiction resorted to to prevent the fee from being in nubibus, or in the clouds, it being necessary in legal contemplation for it to vest somewhere or in somebody, and is only a legal fiction. The Chair is clearly of the opinion that the Government does not own the fee for the purpose of this legislation to the center of the street.

Now, the only other proposition is that this is a "work in progress." The Chair is of the opinion that when the Government of the United States laid the paving in question, now sought to be repaired, that it did not do it because of any legal obligation resting upon it to do the paving, but that it was a mere gift to the city of Chicago, which had absolute control of the streets and alleys of that city; that it was a mere gratuity on the part of the Government to the city, and that the Government of the United States does not now have such an interest in that paving that it might prevent the city of Chicago from doing with it as it pleases. In other words, if the city of Chicago desired to take up that pavement, which was laid there by the United States, the United States Government has no such interest in that paving that it could enjoin the city of Chicago from taking it up, casting it aside, or doing with it as it pleased. Essentially, the streets and alleys of the city are exclusively within the control of the municipality of the city of Chicago, and not in the United States Government.

Now, the gentleman has made another point, which was that this proposed amendment which he has offered, even if it be subject to a point of order, is sought to be appended as an amendment to a clause which is itself subject to a point of order, and therefore takes his amendment from under the operation of the general rule.

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[1] James E. Watson, of Indiana, Chairman.

The Chair desires to call the attention of the gentleman from Illinois to the fact that it has been frequently held that, while a paragraph changing existing law may be allowed by general consent to remain and, thus remaining, may be amended by any germane amendment; yet that this does not permit an amendment which adds general legislation. So that if his amendment be legislation, it is still subject to the point of order. For these reasons the Chair is inclined to the opinion that this is not authorized by law, and is therefore subject to the point of order, and the Chair sustains the point of order.

Mr. Charles L. Bartlett, of Georgia, then called attention to an amendment which he had proposed on a previous day, for paving around the Government building at Macon, Ga.

The Chairman held:

The Chair is of the opinion that the amendment proposed by the gentleman from Georgia is not authorized by existing law, and therefore sustains the point of order.

3780. On June 16, 1884,[1] the deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. James O. Broadhead, of Missouri, proposed an amendment providing for paving streets adjoining certain public buildings in St. Louis, Mo., Des Moines, Iowa, and other cities.

Mr. Samuel J. Randall, of Pennsylvania, made the point of order that there was no law authorizing this expenditure.

Mr. Broadhead argued that the paving of the adjoining streets was the continuation of a public work; that the executive officers of the Government recommended it, and Mr. James N. Burnes, of Missouri, further argued that, as the United States Government in purchasing the property had not limited its obligations, it must discharge the obligations that would rest on a private owner, of which in Missouri the paving of the adjacent streets was one.

Mr. Randall stated that the buildings referred to in the amendment were completed structures, and that this appropriation was not in continuance of the work.

At the conclusion of debate the Chairman[2] held:

The gentleman from Pennsylvania [Mr. Randall] makes the point of order that the expenditure contemplated by this amendment is not authorized by law. In answer to that the gentleman from Missouri who proposes the amendment cites the recommendation of the executive officer having this work in charge. The recommendation of an executive officer is not legal authority to do anything. It is usually coupled with a request to Congress asking for a law to authorize the work recommended. The ingenious argument made by the gentleman from Missouri on the right that the tax laws of the State of Missouri imposed this burden on this property and therefore authorized the expenditure is not good, because that would make the Treasury of the United States liable to every burden that a legislature might see fit to impose upon public property. All these arguments might be good reasons offered to Congress for the enactment of a law to authorize the expenditure. But until that is done such an appropriation can not be made. It seems that the executive officer who had this work in charge did not feel himself authorized to expend any part of the money appropriated for that public work in this particular piece of work which this amendment asks to be provided for, and if he could find in the law no authority for this expenditure it is safe to conclude that there was no authority to do it.

The Chair thinks that the point of order is well taken. This is a deficiency bill, intended to carry appropriations for liabilities already incurred and not to authorize them. The Chair sustains the point of order.

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[1] First session Forty-eighth Congress, Record, pp. 5196–5199.

[2] Poindexter Dunn, of Arkansas, Chairman.

3781. On August 4, 1890,[1] the House was in Committee of the Whole House on the state of the Union, considering the general deficiency appropriation bill, when Mr. Joseph H. Outhwaite, of Ohio, offered this amendment:

For completion of work upon court-house and post-office grounds at Columbus, Ohio: For repairing of pavements of streets and alleys adjacent to said grounds for one-half the width thereof (in excess of limit for said building), $4,247.30.

Mr. David B. Henderson, of Iowa, made the point of order that this would be an expenditure not authorized by law.

The Chairman[2] sustained the point of order.

3782. The making of a survey to ascertain the feasibility, etc., of a proposed public work was held not to be such a beginning of the work as would authorize an appropriation in an appropriation bill.

A proposition relating to the construction of the Nicaragua Canal was held not germane to the sundry civil appropriation bill.

On February 14, 1899,[3] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. William P. Hepburn, of Iowa, offered an amendment authorizing the President to purchase land necessary to construct the Nicaragua Canal; authorizing the President to direct the Secretary of War to construct the canal of a certain specified capacity; appropriating one hundred and fifteen millions of dollars for the work, and specifying various details relating to the administration of the work.

Mr. Joseph G. Cannon made a, point of order against this amendment as follows:

First, the amendment is not germane; second, the amendment is obnoxious to Rule XXI in this, that it proposes legislation; third, that it appropriates money not authorized by existing law; fourth, it appropriates money not in pursuance of a public work or object in progress.

Mr. Hepburn thereupon cited the act of March 2, 1895, whereby Congress had appropriated for a board of engineer officers to inspect and report on the feasibility, permanence, and cost of construction and completion of the canal; and the act of 1898, whereby provision was made for continuing the surveys and examinations.

After debate, and on February 15,[4] 1899, the Chairman[5] ruled:

The committee will observe that the point raised by the gentleman in charge of the bill does not affect the merits of the bill relating to the construction of the Nicaragua Canal. The point raised is one purely of a parliamentary character, and simply relates to the construction of the rule that was invoked by the gentleman who has the appropriation bill in charge. The bill, as the committee will remember, is a general appropriation bill, and when we reached the point on page 74 indicated by the Clerk the gentleman from Iowa [Mr. Hepburn] arose and presented an amendment, which has been read from the Clerk's desk, and the gentleman from Illinois [Mr. Cannon] raised the following points against it. He said:

"Mr. Chairman, I desire to make the point of order against this amendment. First, the amendment is not germane; second, the amendment is obnoxious to Rule XXI in this, that it proposes legislation; third, that it appropriates money not authorized by existing law; fourth, it appropriates money not in pursuance of a public work or object in progress."

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[1] First session Fifty-first Congress, Record, p. 8121.

[2] Lewis E. Payson, of Illinois, Chairman.

[3] Third session Fifty-fifth Congress, Record, p. 1872.

[4] Record, pp. 1908, 1909.

[5] Albert J. Hopkins, of Illinois, Chairman.

The rule referred to by the gentleman reads as follows:

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

The gentleman from Iowa who offered the amendment, in answer, insisted that the amendment is permissible because it is in continuation of public works already in progress; and in support of that he cited to the Chair a law that was adopted by Congress in 1895 providing for surveys and a supplementary law of 1898 making additional appropriation. In regard to determining whether this law can be construed as having established the public works, namely, the construction of this canal, it is important to examine the language itself. The committee will note that it says "for the purpose of ascertaining the feasibility and cost of the construction and completion of the Nicaraguan Canal, etc., $20,000 are appropriated," The language clearly indicates that it is for the purpose of ascertaining facts that will guide the action of Congress in the future, without committing it to any policy whatever.

Now, the amendment of 1898 does not enlarge the scope or purpose for which the original appropriation was made. It simply increases the amount, but limits it to these purposes, namely, to ascertaining a state of facts that can be used for the public hereafter. The wisdom of that will be noted on reflection, because of the wide divergence of opinion as to the manner in which this Nicaraguan Canal should be constructed, whether by private enterprise or by the Government guaranteeing the bonds that should be issued, or whether the Government should take a copartnership with private individuals; or, as proposed by the gentleman from Iowa, take the construction upon itself and obtain the control and sovereignty over the territory through which the canal is to be constructed.

So that, to the Chair, it is entirely clear that the law cited by the gentleman from Iowa is not susceptible of the construction suggested by him, but is to ascertain the facts, leaving the Government of the United States entirely clear hereafter to determine whether it will embark in such an enterprise or not. Indeed, the Chair is fortified in this by the amendment sent to the Clerk's desk by the gentleman from Iowa [Mr. Hepburn], which provides that the President shall be authorized in the first instance to purchase territory, and, in the second, to direct his Secretary of War to go on and take all the preliminary steps necessary for the construction of the canal itself. So that, as the Chair construes it, the very amendment offered by the gentleman is a refutation of the statement that the preliminary legislation appropriating in 1895 $20,000 and in 1898 $150,000 commits the Government to the construction of this canal.

Now, on this part of the rule, the Chair is fortified by the previous decision on other questions. As has been stated by several gentlemen, this rule, invoked by the gentleman from Illinois, has been the rule in this House for more than a generation, and there have been repeated rulings on the identical point raised that the Chair is now considering. As late as the Forty-fifth Congress, Mr. Carlisle, of Kentucky, one of the ablest parliamentarians who has ever presided over this body, was called upon to pass upon this question.[1] While the committee were considering an appropriation bill, Mr. Ryan, of Kansas, offered the following amendment to be incorporated into the bill:

"Fifty thousand for a building at Topeka, Kans., of the kind and for the uses provided in the act of Congress entitled 'An act to authorize the purchase of a site for a public building at Topeka, Kans.,' approved March 3, 1875, and such building shall not exceed in cost the sum of $200,000."

Mr. Atkins, of Tennessee, raised the point of order that under this rule, invoked by the gentleman from Illinois, it was not a proper amendment, and Mr. Carlisle, after discussion, ruled that it was not. Mr. Ryan in his argument showed that Congress had already authorized the purchase of a site, and that $10,000 had been appropriated for that purpose, and that the jurisdiction of the site bad been given by the State of Kansas to the United States Government.

But Mr. Carlisle held that the purchase of a site did not authorize the construction of a building upon it, although the purpose for which the site was bought was the construction of a public building; and he held that the amendment was not in order. There was no appeal from that decision.

In the Fifty-first Congress Mr. Wilkinson, of Louisiana, offered an amendment to a general appropriation bill appropriating $75,000 for the construction of a dry dock at Algiers, La. Prior to the offering of that proposition a naval board, acting with full authority under the law, had indicated the location

[1] Second session Forty-fifth Congress, Record, p. 4445. See section 3785 of this chapter.

for the site for a dry dock at Algiers. That amendment was offered when the naval appropriation bill was under consideration.

The gentleman from Maine [Mr. Boutelle], the chairman of the Naval Committee at that time, made a point of order against the amendment that it was obnoxious to the rule now under consideration. Mr. Butterworth, of Ohio, a very able parliamentarian, as the older Members of the House will remember, was in the chair, and, after listening to a full discussion, held that the locating of the site by that naval board did not authorize the appropriation of $75,000 for the construction of the dry dock. He sustained the point of order. The committee acquiesced in his ruling.

There are numerous other decisions along this line, all of them in harmony with the two decisions which the Chair has read to the committee in support of his position that the point made by the gentleman from Iowa that the law cited by him is a commencement of the construction of the canal is not well taken.

Now, as to the point made by the gentleman from Michigan that this amendment is proper under existing law because there is a treaty between the United States and the Republic of Nicaragua looking to the construction of a canal. An examination of that treaty will show that it is entirely foreign to the proposition contained in the amendment offered by the gentleman from Iowa. The canal that is contemplated in that treaty is a canal that is to be under the supervision and absolute control of the Government of Nicaragua; so that the United States would be eliminated from the matter at the pleasure of the Republic of Nicaragua. The amendment offered by the gentleman from Iowa proposes to buy a strip of territory where the Government of the United States shall become absolutely supreme. So that the two are inconsistent; and the Chair holds that that does not authorize the amendment offered by the gentleman.

There are a few other considerations on this point that the Chair desires to present to the committee. The bill under consideration, under the rule which has been invoked, makes appropriations only to meet existing law. No appropriation is provided for unless it is to meet some obligation which has accrued by virtue of existing law. * * *

The amendment offered by the gentleman from Iowa [Mr. Hepburn] goes entirely beyond that; it recognizes the fact that there are no obligations whatever on this question between the United States, and the Republics of Nicaragua and Costa Rica, and provides in the first section that the President of the United States shall be authorized to purchase from the States of Costa Rica and Nicaragua, for and in behalf of the United States, such portion of territory now belonging to those States as may be desirable and necessary for the construction of this canal, and authorizes the necessary expenditure for that to be made by the President of the United States.

The gentleman from Illinois (Mr. Cannon] claims as one of his objections that this amendment is not germane to the bill, and the Chair is inclined to hold that that objection is well taken, for this reason, that this amendment proposes to enter into negotiations with two separate, independent States by the President of the United States looking to the acquiring of foreign territory. Gentlemen are familiar with the Constitution of the United States and the decisions of the Supreme Court of the United States, which hold that we can acquire foreign territory only under the war and treaty making power. One of the leading cases, I think, is that of Fleming *v.* Page. Another is the recent Mormon case, decided in 136 United States Reports, by Mr. Justice Bradley, wherein he elaborates the point that foreign territory can be acquired only under this clause of the Constitution.

Now, suppose, instead of seeking to acquire foreign territory from these two small States, the amendment had been to acquire the island of Ireland from the British Government. Does anybody contend for a moment that that would be held germane to this appropriation bill, and that we could go on and legislate for the purchase of that island from Great Britain if she were willing to sell? It seems to the Chair that this extreme illustration shows that in the first section of the amendment offered by the gentleman from Iowa [Mr. Hepburn] it departs widely, not only from the requirements of an appropriation bill itself, but from the rules that govern and control us.

If we can not purchase Ireland by an amendment to this appropriation bill, the same objection holds true that we have no right to purchase foreign territory from any country whatever.

Another test as to whether this legislation is germane and should be considered is this: All gentlemen of the committee are familiar with the rule which provides for the dividing of the work of the House among the various committees of the House. Among those committees we have the Committee on Appropriations, whose work is not to consider legislation, but to report appropriations. That committee

can create no laws. It is limited simply to make appropriations to carry out laws that already exist. Another committee is the Committee on Interstate and Foreign Commerce. That committee has the right to originate bills that may become laws, and this amendment that has been offered here is offered by the chairman of the Committee on Interstate and Foreign Commerce. Coming from that committee as a separate bill, its hearing before the House would be entirely proper.

But suppose that bill had been introduced and sent to the Speaker's desk and the question had arisen as to which committee it should go to, what committee should have jurisdiction of it. Suppose the chairman of the Committee on Appropriations had insisted that it should go to the Committee on Appropriations and the chairman of the Committee on Interstate and Foreign Commerce had insisted that it should go to his committee and that his committee should take jurisdiction. The Chair apprehends there would have been no doubt in the Speaker's mind in determining that the committee presided over by the gentleman from Iowa [Mr. Hepburn], the Committee on Interstate and Foreign Commerce, should have jurisdiction of this subject rather than the committee presided over by the gentleman from Illinois [Mr. Cannon], the Committee on Appropriations.

For the reasons indicated the Chair is inclined to sustain the point of order made by the gentleman and to hold that the amendment proposed is not in order.

Mr. Hepburn having appealed, the decision of the Chairman was sustained on a vote by tellers, ayes 127, noes 109.

3783. On February 20, 1902,[1] the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the following paragraph was read:

To enable the Secretary of the Interior to begin the preliminary work in the construction of a reservoir on the Gila River, in the Territory of Arizona, at a favorable point near the San Carlos Indian Agency, for storing the flood waters of said river, said water to be used for the benefit of the Indians on the Gila River and such others as may be allotted land there, the excess of waters to be used for reclaiming vacant public lands and supplying present appropriated water rights. The Secretary of the Interior is also authorized to acquire and prepare the dam site, and do such detailed work as may be necessary for preparing specification for advertising for bids for the various classes of work connected with the construction of the dam and its appurtenances, and to prepare plans and estimates of cost of construction (with Indian labor, so far as the same can be profitably used), and designate the vacant public lands which can be irrigated from the stored water of said reservoir; the sum of $50,000 is hereby appropriated, or so much thereof as may be necessary. The Secretary shall report fully at the next session of Congress as to the details herein enumerated as to the cost and benefits of said works and of bids received for the construction and completion of said reservoir.

Mr. Joseph G. Cannon, of Illinois, made the point of order that this work was not authorized by existing law.

The Chairman,[2] after debate, ruled:

The Chair knows of no existing law which authorizes an appropriation for the purpose of reclaiming public lands or for the purpose of furnishing waters for the irrigation of lands in private ownership, as is undoubtedly contemplated by the provision. The chairman of the committee and the gentleman from Arizona have stated that this provision is, in their opinion, simply a continuation of a work heretofore authorized, an appropriation having heretofore been made for a survey of and report upon a dam at the point contemplated in this provision. It was held in a very notable case that the making of a survey to ascertain the feasibility of proposed public works was not such a beginning of work as would authorize an appropriation in an appropriation bill.

The Chairman then had the ruling read, which was made February 14, 1899.[3]

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[1] First session Fifty-seventh Congress, Record, pp. 1997–2000.

[2] Frank W. Mondell, of Wyoming, Chairman.

[3] Ruling of Chairman Hopkins on an amendment authorizing the construction of the Nicaragua Canal. See section 3782 of this volume.

The Chairman then called the attention of the committee to the former legislation on this subject:

For ascertaining the depth of the bed rock at a place on the Gila River, in Gila County, Ariz., known as The Buttes, and particularly described in Senate Document No. 27, Fifty-fourth Congress, second session, and for ascertaining the feasibility and estimating in detail the cost of the construction of a dam across the river at that point for purpose of irrigating the Sacaton Reservation, and for ascertaining the average daily flow of water in the river at that point, $20,000, or so much thereof as may be necessary, the same to be expended by the Director of the United States Geological Survey under the direction of the Secretary of the Interior: *Provided*, That nothing herein shall be construed as in any way committing the United States to the construction of said dam.

The Chairman then said:

The committee will note that the proviso in this legislation is very similar to the proviso contained in the legislation on which the former ruling was made—that nothing therein contained should pledge the United States to the construction of a dam at that point. * * * So that the question as to whether or not a former survey pledged the Government to a continuation of the work, it seems to the Chair, is clearly settled by the language of the legislation itself as well as by the decision already quoted.

Now, even though there were legislation providing for the reclamation of public lands, which there is not, even though there were legislation providing for expenditures for the purpose of providing waters for the irrigation of private land, it would be a grave question whether an appropriation for those purposes would be germane to an Indian appropriation bill. In view of all these facts the Chair believes that the provision is very clearly subject to a point of order, and the point of order is therefore sustained.

Thereupon, Mr. Marcus A. Smith, of Arizona, offered, in lieu of the paragraph ruled out, the following as an amendment:

To enable the Secretary of the Interior to begin the preliminary work in the construction of a reservoir on the Gila River in the Territory of Arizona, at a favorable point near the San Carlos Indian Agency, for storing the flood waters of said river, said water to be used for the benefit of the Indians on the Gila River; the Secretary of the Interior is also authorized to acquire and prepare the dam site, and do such detailed work as may be necessary for preparing specification for advertising for bids for the various classes of work connected with the construction of the dam and its appurtenances, and to prepare plans and estimates of cost of construction (with Indian labor, so far as the same can be profitably used), and designate the vacant public lands which can be irrigated from the stored water of said reservoir; the sum of $50,000 is hereby appropriated, or so much thereof as may be necessary. The Secretary shall report fully at the next session of Congress as to the details herein enumerated, as to the cost and benefits of said works, and of bids received for the construction and completion of said reservoir.

Mr. Joseph G. Cannon, of Illinois, made the same point of order.

The Chairman said:

The Chair endeavored to be as clear and explicit as possible on the point as to whether or not the former survey pledged the Government to a continuation of work at that point, and, following former rulings and the plain provisions of the statute, held that it did not so pledge the Government. The language of the legislation itself clearly indicates that it was not intended that that legislation should pledge the Government to a continuation of the work. It says that "nothing herein shall be construed to in any way commit the United States to the construction of said dam."

So that it seems to the Chair that there can be no controversy on that point. Now, the question is as to whether the elimination of the words in the former paragraph, omitted in the gentleman's amendment, so changes the character of the proposed legislation as to bring it within the rule.

While legislation providing for general irrigation on Indian reservations, to be expended at the discretion of the Commissioner or the Secretary, might be held to be germane, it is very questionable whether a provision for a specific irrigation work is not subject to a point of order. In a ruling made a few days ago on the urgent deficiency bill it was held that a paragraph providing for the establishment of an Army post was subject to a point of order, but that an amendment providing in general for the

shelter of troops was not. The Chair calls the gentleman's attention to the fact that there is in his amendment a provision authorizing and instructing the Secretary to "designate the vacant public lands which can be irrigated from the stored water of said reservoir," clearly indicating the purpose of the amendment to provide water for lands other than lands of the Indians; and as there is no law authorizing this class of expenditures, the Chair holds that the point of order is well taken, and the point of order is therefore sustained.

3784. The law having authorized surveys to determine the practicability of a cable to Hawaii, a proposition to authorize the construction of a cable to Hawaii and the Philippines was held not to be within the exception relating to the continuation of a public work.—On February 14, 1899,[1] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. John B. Corliss, of Michigan, proposed an amendment to authorize the construction of a cable to Hawaii and the Philippine Islands.

Messrs. Alexander M. Dockery, of Missouri, and Joseph G. Cannon, of Illinois, having reserved points of order, Mr. Corliss argued that the construction of the cable had been undertaken by this paragraph in the act of 1891 for the support of the Navy:

Telegraphic cable surveys: To enable the President to cause careful soundings to be made between San Francisco, Cal., and Honolulu, in the Kingdom of the Hawaiian Islands, for the purpose of determining the practicability of the laying of a telegraphic cable between those points, $25,000, or so much thereof as may be necessary, and the President is hereby authorized to direct the use of any vessel or vessels belonging to the United States in making such survey.

After debate the Chairman[2] held:

The Chair is ready to rule on the amendment. The committee will observe that the bill now under consideration is a general appropriation bill, and that section 2 of Rule XXI, referred to by the gentleman from Michigan [Mr. Corliss], provides that in bills of this character no amendment is proper that is not authorized by existing law and germane to the subject-matter of the bill under consideration.

An examination of the amendment itself, it seems to the Chair, will satisfy any person that this amendment is not in order. The very first line provides that "the President of the United States be, and is hereby, authorized to construct," which is an admission that under existing law the President of the United States has no such power or authority. It says he is hereby "authorized to construct, lay, maintain, and operate a magnetic line of cables from a point on the Pacific coast to the Hawaiian Islands and thence to the Philippines." This is in the first section, and every line of it provides for new legislation. It recognizes the fact that under existing law there is no authority for the President of the United States to construct such a line as is proposed in the first section of the bill, either to the Hawaiian Islands or to the Philippine Islands.

The second section is additional new legislation, because it provides that after the authority is granted to the President, and the President has exercised it in pursuance of the direction of Congress, he shall transfer the management and authority under it to the Secretary of War. Of course there is no law in existence to-day that authorizes the Secretary of War to provide for the management of any cable line between the United States and the Hawaiian Islands or the Philippine Islands, or any other place in the Pacific Ocean, as is provided for in section 1.

The third section directs the Secretary in what manner this line shall be governed and controlled by his Department, and also authorizes the sending of cables by individuals. So, to the Chair, it seems entirely clear that it is new legislation.

Now, if we are to adhere to the requirements contained in section 2 of Rule XXI, which provides that such an amendment as this is not in order, it seems to the Chair that it is his duty to hold that the

[1] Third session Fifty-fifth Congress, Record, pp. 1864–1866.

[2] Albert J. Hopkins, of Illinois, Chairman.

point made by the gentleman in charge of the bill is well taken, and that the amendment is not in order, and the Chair so rules.

3785. Although an appropriation had previously been made for the purchase of a site for a public building a proposed amendment appropriating for the construction of the building was ruled out of order.—On June 11, 1878,[1] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Thomas Ryan, of Kansas, offered this amendment:

Fifty thousand dollars for a building at Topeka, Kans., of the kind and for the uses provided in the act of Congress entitled "An act to authorize the purchase of a site for a public building at Topeka, Kans.," approved March 3, 1875, and such building shall not cost to exceed $200,000.

Mr. J. D. C. Atkins, of Tennessee, made a point of order against the amendment.

The Chairman[2] ruled:

The language of Rule 120[3] is very specific. It is that "no appropriation shall be reported in such general appropriation bills, or be in order as an amendment thereto, for any expenditure not previously authorized by law." And then the exception is made in these cases, "unless in continuation of appropriations for such public works and objects as are already in progress * * *." Heretofore no provision has been made for the construction of a building and no such work is in progress. The rule requires that both of those conditions shall exist in order to make the amendment in order on an appropriation bill. The Chair has before him the act approved March 3, 1875, which authorized the purchase of a site for this building, but it confers on the Secretary of the Treasury no authority whatever to contract for the erection of a public building, and the Chair is therefore bound to rule the amendment out of order.

3786. The distribution of card indexes, etc., by the Library of Congress was held to be in continuation of a public work.—On March 22, 1906,[4] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph relating to the Library of Congress:

Distribution of card indexes: For service in connection with the distribution of card indexes and other publications of the Library, including not exceeding $500 for freight charges, expressage, and traveling expenses connected with such distribution, $10,800.

Mr. Thomas W. Hardwick, of Georgia, made the point of order that this paragraph involved an increase of appropriation not authorized by law.

In debate Mr. John J. Fitzgerald, of New York, said:

I desire to say that the Library of Congress is authorized by law. This is a part of the Library work. It is one of the things which is generally authorized in the maintenance of the Library. It is not one of those cases where a point of order is good against the item. It is a service done in continuation of the work of the Library, and merely because the amount is increased it does not come within the rule so as to make it subject to a point of order, as it would if it were an increase of salary. It is for a continuation of a work in progress, the work of maintaining the Library, which is existing under the law, and which work is done in pursuance of law. It seems to me under these circumstances it is proper to appropriate the amount determined upon by the committee.

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[1] Second session Forty-fifth Congress, Record, p. 4445.

[2] John G. Carlisle, of Kentucky, Chairman.

[3] Now section 2 of Rule XXI. See section 3578 of this volume.

[4] First session Fifty-ninth Congress, Record, pp. 4139, 4140.

After debate the Chairman [1] held:

It is hardly within the province of the Chair to enter into a minute consideration and discussion of the various duties imposed upon the Librarian by the general act of Congress creating his office and in more or less general terms defining his duties. It seems to have been conceded by both branches of Congress and the President in past years that this was a proper part of the duties, because appropriations have from time to time been made for it. The gentleman from Georgia makes the point of order that the amount of appropriation is increased this year without previous authority of law, and that point would be good were it not for the exception found in the last part of the second clause of Rule XXI in favor of public works and objects already in progress. The Chair finds that it ruled in the Fifty-seventh Congress, as appears on page 349 of the Manual, that "an appropriation to complete a list of claims was held to be the completion of a public work or object." The Chair thinks that this is even more within the exception than the completion of a list of claims, and therefore overrules the point of order.

3787. An appropriation for current repairs and improvements in the Botanic Garden was held to be the continuation of a public work.—On March 22, 1906,[2] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

For procuring manure, soil, tools, fuel, purchasing trees, shrubs, plants, and seeds; and for services, materials, and miscellaneous supplies, and contingent expenses in connection with repairs and improvements to Botanic Gardens, under direction of the Joint Library Committee of Congress, $6,500.

Mr. Thomas W. Hardwick, of Georgia, made a point of order that there was no law authorizing this expenditure, and that it was not for a continuing work.

After debate the Chairman [1] held:

The paragraph against which this point of order is urged shows upon its face that it is for the purpose of improving and continuing a Government plant. It is in continuation of appropriations heretofore made for a public work and object in progress, and therefore within the exception to the general prohibition found in the second clause of Rule XXI. The Chair therefore overrules the point of order.

3788. A proposition to complete the marking of certain graves of soldiers was held to be in continuation of a public work.—On June 11, 1906,[3] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. J. Warren Keifer, of Ohio, proposed the insertion of the following amendment:

For completing the marking of places where American soldiers fell and were temporarily interred in Cuba and China, $4,000, or so much thereof as may be necessary, such sum to be immediately available.

Mr. James A. Tawney, of Minnesota, made the point of order that there was no authority of law for the appropriation.

It appeared from the debate that the last sundry civil appropriation law had provided:

For marking the places where American soldiers fell and were temporarily interred in Cuba and China, $9,500, said sum to be immediately available.

It also appeared from a letter from the Quartermaster-General of the Army that an additional appropriation would be needed to complete the work.

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[1] Marlin E. Olmsted, of Pennsylvania, Chairman.

[2] First session Fifty-ninth Congress, Record, p. 4144.

[3] First session Fifty-ninth Congress, Record, p. 8293.

After debate the Chairman [1] held:

The Chair finds in the appropriation bill passed in 1905 an appropriation "For marking places where American soldiers fell and were temporarily interred in Cuba and China." It seems to be a definite object appropriated for in the last bill and capable of being carried into execution and completion. The Chair thinks it is not subject to the point of order, and therefore overrules the point of order.

3789. An appropriation for free evening lectures in the school buildings of the District of Columbia was held to be without authorization of law and not in continuation of the public work of education.—On January 21, 1907,[2] the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. J. Van Vechten Olcott, of New York, offered this amendment:

After line 6, page 53, insert the following:

"For free evening lectures, to be given in the public school buildings or such halls as may be designated under rules and regulations of the board of education, $1,500."

Mr. Albert S. Burleson, of Texas, made the point of order that the amendment was for an expenditure not authorized by law.

After debate the Chairman [3] held:

Of course the power of Congress over the public schools is plenary, and Congress has provided by law for the government of the schools of the District through the board of education. As the Chair understands, the board of education has power under that law to provide in reference to the curriculum and has full authority within the limitations of the law. It seems to the Chair that it would not be within the province of Congress on an appropriation bill to add a provision requiring the board of education to teach a particular thing or use a particular text-book. On an appropriation bill an item limiting or changing the authority of the board of education would be subject to a point of order, and the Chair thinks that this item is for something not provided by law directly; that it is a limitation upon the power of the board of education not proper on an appropriation bill, and that it can not be called a work in progress, because the appropriation one year for that fiscal year does not indicate that it shall be continued by Congress. The Chair, therefore, sustains the point of order.

3790. The erection of a new schoolhouse in the District of Columbia was held not to be in continuation of a public work.—On January 24, 1905,[4] the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the following paragraph was read:

For site for and toward construction of one eight-room building in the fifth division to relieve Curtis School, $29,800; and the total cost of said building, including cost of site, under a contract which is hereby authorized therefor, shall not exceed $59,800.

Mr. C. R. Davis., of Minnesota, made the point of order that there was no law authorizing the construction of this building.

Mr. James T. McCleary, of Minnesota, referred to the general law, which provided for a school system and the proper extension of that system as exigencies arise, citing it as follows:

And the Commissioners of the District of Columbia shall have power, subject to the limitations and provisions herein contained, to apply the taxes and other revenues of said District to the payment

[1] James E. Watson, of Indiana, Chairman.

[2] Second session Fifty-ninth Congress, Record, pp. 1468. 1469.

[3] James R. Mann, of Illinois, Chairman.

[4] Third session Fifty-eighth Congress, Record, pp. 1320, 1321.

of the current expenses thereof, to the support of the public schools, the fire department, and the police, and for that purpose shall take possession and supervision of all the offices, books, papers, records, moneys, credits, securities, assets, and accounts belonging or appertaining to the business or interests of the government of the District of Columbia, and exercise the duties, powers, and authority aforesaid.

Mr. McCleary continued:

That is, under the act of 1878 comes this division of the work of the District and the maintenance of the schools, and it occurs to me that this is authorized by law. It would seem that the appropriation is justified in another way, as being for a continuation of an existing work—a work in progress.

The Chairman [1] held:

Does the gentleman from Minnesota think that the fact that the District maintains public schools constitutes such a work that the building of a new schoolhouse would be a continuation of a work in progress? * * * The Chair is clearly of the opinion, and he is sustained by the precedents, that to buy a site for a new schoolhouse would require positive legislation, just the same as it would to buy a site for a new wharf or a new dry dock or any other new public structure. The Chair can not see any difference between these cases; it is just as necessary in order to maintain the District government to have a District building as it is to have a District schoolhouse to carry on school work. The District building must be and authorized by positive legislation, without regard merely to an appropriation. The Chair sustains the point of order.

3791. An appropriation for the purchase of playgrounds for the District of Columbia was held not to be such a continuation of the work of the school system as would enable it to be placed in a general appropriation bill.—On January 17, 1907,[2] the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

For the purchase of playground sites, to be immediately available, $75,000.

Mr. Champ Clark, of Missouri, made the point of order that the appropriation was not authorized by law.

In the course of the debate Mr. Frederick W. Gillett, of Massachusetts, argued:

Mr. Chairman, what is in order on the District appropriation bill, it seems to me, ought to be decided upon somewhat different grounds, or at least there ought to be a different leaning on the part of the Chair, from other appropriation bills. because there is here a municipal government for the continued operation of which this bill provides, and it may be if the same rules are applied that are applied to other appropriation bills a great deal that is in the regular District appropriation bill, and which everyone would agree ought to be there, might be stricken out.

Therefore, it seems to me that the Chair should consider that a District appropriation bill appropriates for a work in progress—namely, the municipal government—and all those phases of municipal government which are necessarily appropriated for are in order on a District appropriation bill.

The Chairman, held:

The gentleman from Missouri [Mr. Clark] makes the point of order upon the paragraph of the bill providing for the purchase of playground sites, to be immediately available.

The gentlemen who contend that the matter is not subject to the point of order seem to rely principally upon the proposition that this is a part of the public school system in some way. It seems to the Chair that if the gentlemen had thought at the time of the preparation of the bill that the playgrounds were a part of the public school system the item would have been inserted at some point among the twenty pages of the bill under the heading of public schools. It scarcely seems to the Chair that the

[1] James R. Mann, of Illinois, Chairman.

[2] Second session Fifty-ninth Congress, Record, pp. 1297–1299.

purchase of playgrounds apart from the public schools can be called a part of the public school system; and it has been held by the Chair that even a provision in the bill providing for the erection of a new public school was subject to the point of order in this bill if not previously authorized.

As the Chair understands, there is no direct legislation authorizing the purchase of the playgrounds. If a bill were introduced in the House for that purpose it would be referred to the Committee on the District of Columbia, which would have jurisdiction to consider and report it. If a bill reported from that committee were passed upon the subject, then the Committee on Appropriations would acquire jurisdiction. In the opinion of the present occupant of the chair, contrary to his personal inclinations as to playgrounds, the item is new legislation and is subject to the point of order; and the Chair therefore sustains the point of order.

3792. An appropriation for additional playgrounds in the District of Columbia, not for enlargement of existing playgrounds, was held not to be in continuation of a work in progress.—On January 21, 1907,[1] the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. George W. Norris, of Nebraska, offered to the paragraph relating to the equipment and maintenance of school playgrounds the following:

For the purchase of additional playgrounds, $75,000.

Mr. Joseph T. Johnson, of South Carolina, made the point of order that the expenditure was not authorized by law.

After debate the Chairman[2] held:

The Chair does not feel called upon to express any opinion as to whether an item would be in order to enlarge any present playground or the purchase of land adjacent to them. It has been held in a number of cases that where the Government owns land for a particular purpose, that it has bought or otherwise has, it was in order to add to the amount of ground by an appropriation as a work in progress. The Chair thinks that it has been the uniform ruling that the purchase of a new piece of ground for a new project, unless authorized by existing law, is subject to the point of order. While the present occupant of the chair is very much in sympathy with the idea of an appropriation for playgrounds, he feels constrained, as Chairman, to hold that the item is not authorized by law and is not in order. The Chair therefore sustains the point of order.

3793. An appropriation for continuation of an authorized road in the District of Columbia, and not in excess of the limit of cost, was admitted as in continuation of a work.—On January 24, 1905,[3] the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. C. R. Davis, of Minnesota, made the point of order that the following paragraph proposed an appropriation not authorized by law:

For completing the opening, grading, and macadamizing of Fourteenth street from its present terminus at Lydecker avenue to Piney Branch road, $37,245.

Mr. James T. McCleary, of Minnesota, explained as follows:

This is clearly a work in progress, authorized by the last appropriation act. The last appropriation act contains the following language:

"For grading and macadamizing, according to the plans of the first section permanent system of highways, Fourteenth street from its present terminus at Lydecker avenue, with the same width of roadway now open immediately south of said avenue to the junction near Brightwood of said street

[1] Second session Fifty-ninth Congress, Record, p. 1470.

[2] James R. Mann, of Illinois, Chairman.

[3] Third session Fifty-eighth Congress, Record, pp. 1301, 1302.

extended with Piney Branch road, including connecting line of avenue where Fourteenth street is shifted from its direct extension, and for the removal, with the assent of owners, of houses and barns, or other improvements which may be within the lines of said streets to adjacent sites of present owners, $20,000, the whole cost of said work, under a contract which is hereby authorized therefor, not to exceed $59,000."

This paragraph, Mr. Chairman, appropriates for the balance of that sum.

The Chairman [1] said:

Does the Chair understand from the statement of the gentleman from Minnesota [Mr. McCleary] that the amount carried in this paragraph is included within the limit of cost fixed by the law to which the gentleman refers?

Mr. McCleary having replied in the affirmative, the Chairman overruled the point of order.

3794. The construction of a bridge on a road in the District of Columbia was held to be the continuation of a public work.—On May 4, 1900,[2] the sundry civil appropriation bill being under consideration in Committee of the Whole House on the state of the Union, this paragraph was read:

For construction of a bridge across Rock Creek on the line of the roadway from Quarry road entrance under the direction of the Engineer Commissioner of the District of Columbia, $22,000, one-half of which sum shall be paid out of the revenues of the District of Columbia.

Mr. J. H. Bankhead, of Alabama, having made a point of order, the Chairman [3] held:

The Chair has no doubt that this appropriation is in continuation of a public work already begun and is not subject to a point of order.

3795. The continuation of the preparation of a geological map of the United States was held to be in continuation of a public work within the meaning of the rule.

The gauging of streams was held not to be a continuing work within the meaning of the rule.[4]

On February 23, 1907,[5] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

For general expenses of the Geological Survey: For the Geological Survey and the classification of the public lands and examination of the geological structure, mineral resources, and the products of the national domain, and for surveying forest reserves, including the pay of necessary clerical and scientific force and other employees in the field and in the office at Washington, D.C., and all other absolutely necessary expenses, including telegrams, furniture, stationery, telephones, and all other necessary articles required in the field, to be expended under the direction of the Secretary of the Interior, namely.

Mr. John Dalzell, of Pennsylvania, moved to amend by inserting after the words "national domain" the following:

To continue the preparation of a geological map of the United States, gauging streams, and determining water supply.

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[1] James R. Mann, of Illinois, Chairman.

[2] First session Fifty-sixth Congress, Record, p. 5173.

[3] John Dalzell, of Pennsylvania, Chairman.

[4] See also section 3714 of this volume.

[5] Second session Fifty-ninth Congress, Record, pp. 3777–3781, 3784, 3785.

Mr. James A. Tawney, of Minnesota, made the point of order that there was no authority of law for the preparation of the map or the gauging of streams.

After debate the Chairman [1] held:

A year ago, it will be remembered by those who took an interest in it at that time, that all of these questions were presented elaborately in an argument covering two days in this House. The present occupant of the chair was then sitting as the Chairman of the Committee of the Whole House on the state of the Union, and in an elaborate opinion settled these questions at that time.

Therefore, the Chair at this time does not think it necessary to go fully and completely into these cases. The Chair therefore desires to say that he thinks that the point of order should be sustained to the amendment proposed by the gentleman from Pennsylvania for two reasons. To continue the preparation of a geological map of the United States is one thing; gauging streams and determining water supply is another thing, and the Chair thinks that that portion of the amendment which has reference to the gauging of streams and the determining of the water supply is subject to the point of order for two reasons: First, because the gentleman does not limit it to the national domain, and clearly, if the holdings of the Chair a year ago are to be sustained and followed here, it must be at all events and under all circumstances confined to the national domain.

Thereupon Mr. Dalzell offered an amendment, to insert the words:

To continue the preparation of a geological map of the United States.

Mr. Tawney made the point of order that there was no law authorizing this.

The Chairman held:

A year ago the point of order was made on a clause contained in the sundry civil bill at that time providing for the preparation of a geological map. Afterwards, when the whole thing had been carefully debated on the floor, the gentleman from Indiana [Mr. Crumpacker] withdrew the point of order, so that precise question was not presented to the Chair at that time; but the point of order against the making of a topographical map was presented to the Chair at that time, and the Chair thinks that the preparation of a geological map is on all fours with the case presented then of the preparation of a topographical map. The Chair at that time, in a decision of some length, held that, while there had been no statutory authorization for the preparation of topographical maps, yet, inasmuch as that work had been carried in successive appropriation bills, it became within the meaning of the rules of this House a continuing work in progress, and held it in order. Therefore the Chair overrules at this time that point of order. The question is on the amendment offered by the gentleman from Pennsylvania.

Thereupon Mr. Frank W. Mondell, of Wyoming, proposed to insert after the words "mineral resources" the words "including water."

Mr. Tawney made the point of order.

The Chairman held:

The Chair thinks this is obnoxious to the rule and that the point of order should be sustained. When the statute creating the office of the Geological Survey was passed, it had this language, and the Chair assumes if the Geological Survey of the United States has any power it was conferred upon it by the express language of the statute which created the Geological Survey, and that aside from it it has no power. This is the language:

"*Provided,* That this officer shall have the direction of the Geological Survey, the classification of the public lands, and the examination of the geological structure, mineral resources, and products of the national domain."

Now, it occurs to the Chair that the word "water" is included in the term "mineral resources," and if water is not a mineral, in its relation to agriculture, therefore it is not included in the term "mineral resources," and can not be included in any of the powers conferred by statute upon the Geological Survey. * * * The committee in formulating this bill has followed precisely the language of the statute, which the Chair has just read, creating the Geological Survey.

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[1] James E. Watson, of Indiana, Chairman.

"Classification of the public lands, the examination of the geological structure, and the mineral resources and products of the national domain," etc.

Now, the Chair calls the attention of Members to the fact that the committee specifically follow the language of the statute. The Chair supposes that the gentleman from Wyoming is seeking to change that language, because if he were not seeking to change it it is already included in the bill; and if he is seeking to change it, it is a change of existing law, entirely outside of the authority conferred on the Geological Survey by that statute, and therefore the Chair sustains the point of order.

Mr. Mondell thereupon moved to insert the words "especially water."

Mr. Tawney having made the point of order, the Chairman sustained it.

Mr. Mondell then moved to insert the words:

Water resources and products of the national domain.

Mr. Tawney having made a point of order, the Chairman sustained it, saying:

The Chair again calls attention to the fact that in the language of the bill pending the committee in formulating the bill have followed precisely the language of the statute, and all the powers conveyed on the Geological Survey are conferred by that statute. Now, if the examination of those things suggested by this amendment now rests with the Geological Survey, then the appropriation is provided in the bill; if it is not, then it is in contravention of the statute, and is therefore new legislation, and the Chair sustains the point of order. It is clearly obnoxious to the rule.

3796. The continuing of a topographical survey was held to be the continuation of a public work.—On June 13, 1906,[1] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

For topographical surveys in various portions of the United States, $300,000, to be immediately available.

Mr. William H. Stafford, of Wisconsin, made the point of order that there was no law authorizing the expenditure.

After debate, the Chairman[2] held:

The Chair thinks it is not subject to a point of order, and will give his reasons very briefly. The Chair desires to distinguish between this item and the one last ruled out by the Chair. In the opinion of the Chair there is no law in existence now authorizing the gauging of streams, nor is there any law in existence now authorizing the topographical survey of any portion of the United States. The Chair desires, however, to say that in the act creating the Geological Survey there is no positive inhibition or prohibition as against the language contemplated in the section now under consideration. * * * There is nothing in the organic act which prohibits the gauging of streams, and the Chair is about to distinguish between the two cases. There is nothing in the organic act which prohibits either, and either having once been begun by a provision on an appropriation bill would be a work in progress, provided it came within the meaning of "a public work in progress" as set forth by our rule.

Now, any act or any building or any public work can be begun whether there is authorization in law for it or not, provided no point of order is made on the appropriation. And when once begun it may be a public work in progress and may be continued by subsequent appropriations. For instance, the House can put in an appropriation bill a provision to spend $100,000 to erect a public building without any previous authorization of law, provided no point of order be raised against it; but once having been begun under that act of appropriating, all other appropriations necessary to complete the object would be in order.

Now, the Chair thinks the only difference between this pending proposition and the one last ruled on by the Chair rests in the fact that this is a definite, specific something that can be concluded and

[1] First session Fifty-ninth Congress, Record, pp. 8432–8438.

[2] James E. Watson, of Indiana, Chairman.

completed, while the other was not. The gauging of streams is something that might continue forever; you might gauge the same stream over and over again, and as the water supply decreased or increased the gauging could be carried on. What is meant by topography? The Chair will read:

"A detailed description of particular places, especially the art of representing on a map the physical features of any locality."

Now, having once taken the topography of a county or of a State, it remains the same, so that this is a continuing work in progress, in the opinion of the Chair, which distinguishes it clearly from the gauging of streams and the determining of the water supply of the United States; and therefore the Chair overrules the point of order.

3797. On February 23, 1907,[1] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

For topographical surveys in various portions of the national domain, $250,000, to be immediately available.

Mr. Marlin E. Olmsted, of Pennsylvania, offered an amendment to strike out the words "national domain" and insert "United States."

Mr. Walter I. Smith, of Iowa, made the point of order that there was no authorization for a topographical map of the United States.

The Chairman[2] held:

The Chair overruled the point of order following the rule of the occupant of the chair, whose place he but temporarily took. * * * The Chair anticipated this point being raised, and before temporarily taking the place of the former occupant of the chair asked him as to his ruling, and the Chair is simply following what would have been the ruling of the regular occupant of the chair had he been here. * * * The Chair understands that the permanent occupant of the chair held this proposition to be in order upon the theory that it was a continuance of the work in progress.

3798. An appropriation for repair of an existing Government road to a national cemetery is in order on a general appropriation bill as in continuance of a public work.

An appropriation to build a new road to a national cemetery was ruled out of a general appropriation bill as not being a legitimate continuation of the cemetery as a public work.

On February 23, 1907,[3] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

Road to national cemetery, Pensacola, Fla.: For completing the construction of the Government roadway to the Barrancas, Fla., National Cemetery, near Pensacola, Fla., $32,000.

Mr. John A. T. Hull, of Iowa, made the point of order that there was no legislation authorizing the appropriation.

Mr. James A. Tawney, of Minnesota, explained that the roadway was owned by the Government.

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[1] Second session Fifty-ninth Congress, Record, pp. 3806, 3807.

[2] James S. Sherman, of New York, temporarily called to the chair by Chairman James E. Watson, of Indiana

[3] Second session Fifty-ninth Congress, Record, pp. 3765, 3768, 3770.

The Chairman[1] held:

From the reading of the paragraph itself and from the statement of the gentleman from Minnesota, this seems to be an appropriation for the continuation of a Government work in progress, and therefore the Chair overrules the point of order.

Very soon thereafter the Clerk read:

Road to the national cemetery, Port Hudson, La.: For repairing the bridge, culvert, and roadway from Port Hickey, La., to the Port Hudson, La., National Cemetery, $10,000.

Mr. Richard Wayne Parker, of New Jersey, made the point of order.

Mr. Tawney explained that the road referred to was a Government road in all those portions which were to be repaired.

The Chairman held:

The Chair learns from the statement of the gentleman from Minnesota that this is a Government road, and as the appropriation is for the repair of that road the Chair overrules the point of order.

The Clerk read as follows:

"Road to national cemetery, Keokuk, Iowa: For repairs to the approach roadway to the Keokuk, Iowa, National Cemetery, $1,500: *Provided*, That the city of Keokuk deeds to the United States, free of charge, the land over which the road extends: *And provided further*, That the city of Keokuk improve and agree to maintain in proper repair the road leading south from the main driveway of the city cemetery to the point where the Government road begins, $1,500."

Mr. Parker made a point of order.

After debate, during which Mr. Hull contended that the proposed appropriation was similar to that for the road at Barrancas, and Mr. Walter I. Smith, of Iowa, urged that this road was an appurtenance to or enlargement of the cemetery the Chairman held:

The Chair thinks there is a very clear line of demarcation between the ruling referred to by the gentleman from Iowa and the present case. As the gentleman from Illinois has said, the proposition embodied in the language from lines 15 to 18 is clearly in order, and the very language of the proposition made it in order, besides the statement made by the chairman of the committee that it was for the improvement of a Government road, a road now owned by the Government. It was therefore clearly within the rule of a Government work in progress.

Here is a proposition to build a road over land that does not now belong to the Government, and the mere fact that a proviso is put in does not change the rule.

Neither can the Chair coincide with the view expressed by the gentleman from Iowa, [Mr. Smith,] on the ground that the road is necessary to get to the cemetery and therefore is essential to the cemetery. * * * For years the construction[2] of these roads has gone to the Committee on Military Affairs. Never before, as far as the present occupant of the chair knows, has a proposition of this kind been added to an appropriation bill. * * * The Chair is of opinion that unless the bill itself said that it was for a Government road or for the improvement of a road already owned by the Government the Comptroller of the Treasury would not be authorized in paying any money out for this improvement. * * * The present occupant of the chair will state that under the only ruling on this proposition heretofore made not only was that language in the bill, but the chairman of the committee stated that the Government owned the roadway. That seems to be entirely sufficient. If this language had been different from what it is, and a limitation on an appropriation had been sought, the ruling of the Chair might have been different, but under the circumstances it is very clear to the Chair that it is obnoxious to the rule, and the Chair therefore sustains the point of order.

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[1] James E. Watson, of Indiana, Chairman.

[2] Meaning that legislation to authorize the construction of these roads is within the jurisdiction of the Committee on Military Affairs.

3799. The building of a road on land not owned by the Government was held not to be in continuation of certain Government works on a battlefield.—On February 19, 1901,[1] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. George A. Pearre, of Maryland, offered this amendment:

For the construction of a road from the intersection of Mill street and the United States Government road in the town of Sharpsburg, Washington County, Md., to the Eleventh Connecticut monument over Burnside Bridge, within the limits of the battlefield of Antietam, the sum of $10,000: *Provided*, That no part of such sum shall be expended until the title to said roadway shall be vested in the United States.

Mr. Joseph G. Cannon, of Illinois, made a point of order against the amendment, urging that it could not be for a purpose in continuation of a public work, since the title to the roadway was not vested in the United States Government.

The Chairman[2] sustained the point of order.

3800. An appropriation to man and equip vessels already possessed by the Coast Survey was held to be in order.—On May 4, 1900,[3] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and under the head of "Coast and Geodetic Survey" this paragraph was read:

Pay and subsistence of enlisted men: For pay and subsistence of engineers, surgeons, captains' clerks, ships' draftsmen, cadets, and enlisted petty officers and seamen of all classes, including the advance purchase of clothing and small stores for issue, to be reimbursed from the wages of the person to whom issued, in accordance with regulations established by the Secretary of the Treasury, $182,745.

Mr. Alston G. Dayton, of West Virginia, made a point of order against the paragraph that it was new legislation.

After debate, the Chairman[4] held, reading from the Revised Statutes:

Section 4686 provides that—

"The President is authorized, for any of the purposes of surveying the coasts of the United States, to cause to be employed such of the public vessels in actual service as he deems it expedient to employ, and to give such instructions for regulating their conduct as he deems proper, according to the tenor of this title."

And section 4684 provides:

"The President shall carry into effect the plan of the board, as agreed upon by a majority of its members, and shall cause to be employed as many officers of the Army and Navy of the United States as will be compatible with the successful prosecution of the work."

And so on.

Now, it seems very apparent that it was the intent of the law that the President should detail the vessels and their crews from the Navy Department. It was not contemplated that the President should detail public vessels in service unless they were provided with crews. It is impossible to separate the vessel and the crew, so far as any purposes of the Coast and Geodetic Survey are concerned, and therefore the Chair thinks that the point of order should be sustained.

Mr. Cannon thereupon offered the following amendment in place of the paragraph ruled out:

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[1] Second session Fifty-sixth Congress, Record, pp. 2678, 2679.

[2] Albert J. Hopkins, of Illinois, Chairman.

[3] First session Fifty-sixth Congress, Record, pp. 5168–5172.

[4] John Dalzell, of Pennsylvania, Chairman.

For all necessary employees to man and equip the vessels of the Coast and Geodetic Survey to execute the work of the Survey herein provided for and authorized by law, $182,745.

Mr. Dayton having made a point of order, Mr. Cannon stated that there were at least fourteen vessels of the Coast Survey that had never had any connection with the Navy, and urged that an appropriation for their operation must be in order.

After debate, the Chairman [1] held:

Upon the statement of the gentleman from Illinois that there are now in the Coast and Geodetic Survey and have been vessels and seamen, the Chair assumes, outside of those detailed by the Navy Department; and in view of the fact that if the Chair be wrong the committee can correct it by its vote upon this amendment, the Chair overrules the point of order on the amendment; and the question is on agreeing to the amendment offered by the gentleman from Illinois.

The question was taken, and the amendment was agreed to, ayes 61, noes 11.

3801. An appropriation for operating and repairing a sawmill already constructed by the Government was held to be in continuation of a public work.—On December 20, 1900,[2] the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk read this section:

For operating one portable sawmill for the Klamath Agency, Oreg., and for necessary repairs to same, $1,500.

Mr. Joseph G. Cannon, of Illinois, having made a point of order, Mr. James S. Sherman, of New York, stated that in the last Indian appropriation bill provision had been made for the construction of the mill.

The Chairman [3] held:

This appropriation having been contained in the last bill, the Chair is inclined to rule that this must be regarded as a continuing public work, and the point of order will be overruled.

3802. On December 20, 1900,[4] the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and this paragraph had been read:

To pay Lieut. Col. James F. Randlett, retired from the Army, while serving as agent at the Uintah and Ouray Agency, Utah (as provided in 27 U. S. Stat., p. 120), for six months and twenty-three days, at the rate of $1,800 per annum, the sum of $1,015.

Mr. Joseph G. Cannon, having reserved a point of order, an amendment was offered to provide for payment for certain supplies furnished under provisions of the Indian appropriation act of 1896.

Mr. Cannon insisted upon his point of order, both as against the paragraph and the amendment.

The Chairman [3] said:

The point of order being made, the Chair will hold that the amendment is clearly out of order, being an amendment which should be carried on a deficiency bill or a separate bill; and so the point of order is sustained.

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[1] John Dalzell, of Pennsylvania, Chairman.

[2] Second session Fifty-sixth Congress, Record, p. 477.

[3] Henry S. Boutell, of Illinois, Chairman.

[4] Second session Fifty-sixth Congress, Record, p. 479.

3803. An appropriation to repair a bridge built by the Government was held in order as for continuation of a public work.—On January 28, 1897,[1] the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Frank W. Mondell, of Wyoming, moved an amendment making an appropriation for the repair of the bridge across Big Wind River, on the Shoshone Reservation in Wyoming.

Mr. Joseph G. Cannon having made a point of order against the amendment, on the ground that it was not such a public work as was contemplated by the rule, Mr. Mondell stated that the bridge was originally built by the Government.

The Chairman[2] overruled the point of order.

3804. The continuation of special facilities for mail service on trunk lines of railroad has been held to be such public work or object as would justify provision on an appropriation bill.

Propositions to create "necessary and special facilities" for transporting the mails on railroads are subject to the point of order that they involve change of existing law.

On February 2, 1905,[3] the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the following paragraph was read:

For continuing necessary and special facilities on trunk lines from Kansas City, Mo., to Newton, Kans., $25,000, or so much thereof as may be necessary: *Provided*, That no part of this appropriation shall be expended unless the Postmaster-General shall deem such expenditure necessary in order to promote the interest of the postal service.

Mr. Jack Beall, of Texas, made the point of order that the appropriation was not authorized by law.

After debate the Chairman[4] held:

The Chair finds that the question of order raised against this paragraph has been more than once directly ruled upon by previous occupants of the chair in Committee of the Whole.

On several occasions the point of order has been made against this special provision that it was contrary to existing law, and the Chair finds that the rulings of former occupants of the Chair have been—the Chair reads from Parliamentary Precedents, by Mr. Hinds—that "the continuation of special facilities for mail service on trunk lines of railroad has been held to be such public work or object as would justify provision on an appropriation bill."

It has been held on several occasions that an appropriation for special facilities for mail service on trunk lines was in order because it was in continuation of a public work in progress.

The present occupant of the chair, while feeling that the ruling goes to the extreme limit as to what may be included as a continuing work, does not feel that he is authorized to upset a precedent so well established, and upon which Congress has acted again and again in making appropriations. The Chair therefore overrules the point of order.

Mr. George W. Norris, of Nebraska, proposed to amend the paragraph by striking out, in line 14, page 18, the words "Kansas City, Mo., to Newton, Kans.," and insert in lieu thereof the words "Orleans, Nebr., to St. Francis, Kans."

Mr. William S. Cowherd, of Missouri, made a point of order against an amendment.

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[1] Second session Fifty-fourth Congress, Record, pp. 1261, 1268.

[2] Albert J. Hopkins, of Illinois, Chairman.

[3] Third session Fifty-eighth Congress, Record, pp 1793, 1794, 1795.

[4] George P. Lawrence, of Massachusetts, Chairman.

The Chairman ruled:

The gentleman from Missouri makes the point of order that the amendment is contrary to existing law. The Chair will state that the provision in the preceding paragraph was held to be in order because it was a continuation of a public work now in progress. This amendment provides for a new service which is not in progress, and consequently the Chair sustains the point of order.

3805. On February 18, 1893,[1] the House was in Committee of the Whole House on the state of the Union, considering the post-office appropriation bill.

Mr. Nelson Dingley, Jr., of Maine, having made a point of order against this paragraph of the bill—

For necessary and special facilities on trunk lines from Springfield, Mass., via New York and Washington, to Atlanta and New Orleans, $196,614.22—

The Chairman,[2] after debate, ruled as follows:

While there is no general law authorizing appropriations for special facilities on trunk lines of railroads, the Chair finds in his investigation of this question that appropriations for this purpose have been made for the last fifteen or sixteen years. The Chair further finds that the question of order raised against this paragraph has been more than once directly ruled upon by previous occupants of the chair in Committee of the Whole. On the 21st of February, 1891, the then Chairman of the Committee of the Whole on the post-office appropriation bill ruled as follows upon the point of order made that there was no law authorizing this appropriation:[3]

"The language of the paragraph 'necessary and special facilities on trunk lines' has been in annual appropriation bills for the last ten years; and, at all events, the expenditure proposed is in continuation of appropriations for such public objects as are already in progress. The proviso simply gives the Postmaster-General a discretionary power that changes no existing law and is not obnoxious to the rule."

That seems to be a decision directly on the point that while there is no general law authorizing an appropriation for special mail facilities, nevertheless an appropriation for that purpose is not obnoxious to the point of order on that ground, for the reason that the first part of clause 2 of Rule XXI authorizes an appropriation to be reported in any general appropriation bill or to be in order as an amendment thereto for any expenditure not previously authorized by law, provided it is in continuation of appropriations for such public works and objects as are already in progress.

Now, the transportation of the mails is certainly a public object already in progress; and inasmuch as appropriations for special mail facilities have been made for the last fifteen or sixteen years upon post-office appropriation bills, the Chair is constrained to rule that such appropriation in the present bill is not obnoxious to the point of order made against it.

It is further objected to this paragraph that if there be existing law authorizing special mail facilities, this is a change of such law in that it departs from the law of 1892 in specifying certain cities of the United States between which these special mail facilities are to be had. The Chair finds that in the post-office appropriation bill of 1892, approved July 13 of that year, this language is used:

"For necessary and special facilities on trunk lines, $196,614.22."

It will be observed that this paragraph of the bill of 1892 is not a general continuing law. It has operation merely for the fiscal year for which the bill was passed. It is not "an existing law" in the sense that the pending paragraph in the bill, against which the point of order is made, is a change of existing law.

The words "from Springfield, Mass., via New York, Washington, and Atlanta, to New Orleans," in the pending proposition are especially objected to, and it is urged strenuously that they make the paragraph obnoxious to the point of order. The Chair thinks that those words are merely a limitation upon the expenditure of the money appropriated by the bill. The expenditure itself, coming under the head of an appropriation "for such public objects as are already in progress," the Chair thinks that

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[1] Second session Fifty-second Congress, Record, pp. 1807, 1813.

[2] Newton C. Blanchard, of Louisiana, Chairman.

[3] Chairman Allen, of Michigan. (See Congressional Record, First session Fifty-first Congress, p. 3092.) The full ruling is quoted by Chairman Blanchard.

it is in order under the rule to place a limitation upon that expenditure, and that the words indicating the principal cities between which these special mail facilities are to be conducted are merely such a limitation.

The Chair finds, in the post-office appropriation bill approved May 4, 1882, this language:

"For necessary and special facilities on trunk lines, $600,000, said facilities to be extended as far as practicable to the principal cities in the United States."

Now, that language did not indicate what particular cities these special mail facilities should apply to, but it did indicate that this system was to be in operation between "the principal cities of the United States." The paragraph in the pending bill goes only a little further, by indicating the particular cities between which these special facilities are to be had.

The Chair thinks the use of these words, being a mere limitation upon the expenditure of the money, do not make the paragraph obnoxious to the rule. The Postmaster-General under the present current appropriation could do just what this paragraph directs, and this addition to it is simply a limitation upon his discretion and upon the distribution and expenditure of the money.

The Chair finds abundant authority to sustain this position. It was ruled by the gentleman from West Virginia [Mr. Wilson], as Chairman of the Committee of the Whole, in the first session of the present Congress, on March 21, 1892, that an amendment provided that no money appropriated in the pending bill should be applied in a certain lawful way—that is to say, in the transportation of troops on certain railroads—was in order, as being merely a limitation of expenditure and not a change of the existing law. In his decision he used this language:

"The Chair has no doubt that the committee, acting under the rules in making an appropriation, may so limit that appropriation as to direct who shall and who shall not be its beneficiaries."

The language used in the pending paragraph contemplates that the railroads connecting the cities from Springfield, Mass., by way of New York and Washington, to Atlanta and New Orleans, shall be the beneficiaries of this fund, and that this is permissible, the Chair submits, was directly ruled by the gentleman from West Virginia in the language just quoted.

In the Journal, first session Fifty-second Congress, page 22 (Mr. Speaker pro tempore McMillin presiding), the Chair finds this ruling:

"An amendment to an appropriation bill expressing the sense of the Government as to the manner in which funds appropriated should be distributed is not subject to the point of order that it is not germane to the bill."

The Chair feels constrained to overrule the point of order, holding that the paragraph is not obnoxious to the rule, in that it is for a public object already in progress, and the words indicating the cities between which the special mail facilities are to be had are a mere limitation upon the discretion of the Postmaster-General in the distribution and expenditure of the fund.

Mr. W. W. Dickerson, of Kentucky, having appealed, the decision of the Chair was affirmed by a vote of 98 ayes to 23 noes.

3806. On March 10, 1896,[1] the post-office appropriation bill being under consideration in Committee of the Whole House on the state of the Union, Mr. Eugene F. Loud, of California, raised a point of order against this paragraph of the bill:

For necessary and special facilities on trunk lines from Boston, Mass., by way of New York and Washington, to Atlanta and New Orleans, $196,614.22: *Provided*, That no part of the appropriation made by this paragraph shall be expended unless the Postmaster-General shall deem such expenditure necessary in order to promote the interest of the postal service.

After debate the Chairman[2] ruled:

The point of order is raised upon this provision of clause 2 of Rule XXI, which contains two propositions:

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

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[1] First session Fifty-fourth Congress, Record, p. 2664.

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

On the last proposition in that clause of the rule the Chair would be in no doubt whatever but that the point of order was well taken, because the Chair finds that the general law upon the subject is that the pay per annum per mile shall not exceed the following rates, which are specified, and this appropriation is in excess of the amount provided by the general law. Now, this appropriation has been in the appropriation bills for the last seventeen years, an excess over the amount limited by the general law, for substantially this route—for this exact route for two years, and substantially this route for a large portion of the time—but the general proposition has been in the bill for seventeen years.

Now, it has been claimed heretofore—perhaps not so strenuously to-day—that placing that item in the appropriation bill for the year changed the existing law not only for the time the appropriation took effect, but for all time thereafter. The present occupant of the chair has expressed himself upon that question before, that such appropriation only changes the law for the year for which the appropriation is made; that it does change the law as to that year, but for no subsequent year; and if this was the only clause in the rule the Chair would feel constrained, notwithstanding the decisions of previous Congresses—so plain is the law and the rule in that regard—to sustain the point of order upon this second proposition.

But there is another provision in the rule to which the Chair will call attention:

"2. No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress."

The Chair has examined the decisions made upon this question in former Congresses. There are three or four distinct rulings, and generally the ruling of the Chair has been based upon the first proposition in this second clause of Rule XXI, that this was in continuation of objects already appropriated for. That may be a strained construction of that clause of the rule. If it was an original proposition, and there never had been any decision by any previous House, the present occupant of the chair would be inclined to view the second clause of that rule as applying to all cases:

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

The Chair would be inclined to hold that that second clause covered every case; but after consideration by different Members of the House who have occupied the chair, and the reasons that have been given after full debate, and also in view of the fact that the committee has on one occasion at least, by a large majority, sustained the Chair in that ruling, the Chair is inclined to follow the precedent thus set and to hold that this paragraph is in order under the first proposition of the second clause of Rule XXI, as being in continuation of an object already appropriated for and authorized by law, although that authorization is limited to the present fiscal year. The Chair therefore overrules the point of order upon that ground.

3807. The recoinage of uncurrent fractional silver coins in the Treasury was held to be in continuation of a public work or object already in progress.—On May 18, 1892,[1] the House was in Committee of the Whole House on the state of the Union, considering the sundry civil appropriation bill.

A section having been reached relating to the recoinage of silver coins, on May 16, Mr. Charles Tracey, of New York, raised a point of order that the section would constitute a change of law.

After examination and consideration the Chairman[2] ruled as follows:

The point of order is made upon the paragraph which the Chair will read:

"Recoinage of silver coins: For recoinage of the uncurrent fractional silver coins abraded below the limit of tolerance in the Treasury, to be expended under the direction of the Secretary of the Treasury, $100,000."

The rule invoked in connection with this paragraph provides that—

No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress.

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[1] First session Fifty-second Congress, Record, pp. 4294, 4385.

[2] Rufus E. Lester, of Georgia, Chairman.

As the Chair understands, the act of 1875, called the Resumption act, provided that the fractional currency of the country shall be redeemed in coin, and that the silver coin for the purpose of this exchange of resumption should be the subsidiary coinage—50-cent pieces, 25-cent pieces, and 10-cent pieces. That act does not prescribe how the silver to be thus coined shall come into the Treasury. The Chair inclines to the opinion that, under a proper construction of that law, any silver in the Treasury not pledged for some other use, any silver in the shape of unuseful coins, coins brought by abrasion below their nominal value, and therefore uncurrent, could really be regarded by the Secretary of the Treasury as silver bullion, and that under the act referred to, authorizing him to coin money for the redemption of the fractional currency, he would have the right to apply this silver for that purpose.

So far as the Chair is informed, no other silver is in the Treasury to be used for this purpose, and hence it would appear that under the authority to issue coin in redemption of fractional notes these abraded coins might properly be used.

There is now outstanding $15,000,000 of fractional currency unredeemed, something over $8,000,000 being estimated to be lost and about $6,000,000 outstanding, according to the debt statement of the Government. Still the authority exists for the coinage of silver for the redemption of this currency, and, as already intimated, the Chair regards these abraded coins, reduced below tolerance, to be nothing else practically than silver bullion in the Treasury. While the use of this silver in this way may be in one sense called recoinage, it is actually coinage. This silver, although it may have been coin once, is no longer coin when it passes below the rate of tolerance; it is nothing more than silver bullion.

Besides, under the provision already quoted from the rule, the Chair thinks it reasonable to hold that the coinage or recoinage of the uncurrent silver in the Treasury has been in progress under authority of Congress for a number of years, that it is a thing necessary to be done; so that this may be considered as an "object of progress." Upon this ground, together with the other already stated, the Chair thinks that this paragraph may be retained. The point of order is overruled.[1]

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[1] On May 18, 1892 (First session Fifty-second Congress, Record, pp. 4292, 4384, 4385), the House was in Committee of the Whole House on the state of the Union considering the sundry civil appropriation bill, and a point of order had been made in reference to two paragraphs, the first of which was:

"The Secretary of the Treasury is authorized to transfer to the United States mint at Philadelphia, for cleaning and reissue, any minor coins now in, or which may be hereafter received at, the subtreasury offices in excess of the requirement for the current business of said offices; and the sum of $500 is hereby appropriated for the expense of transportation for such reissue."

The Chairman (Rufus E. Lester, of Georgia) ruled:

"It is claimed that that paragraph is obnoxious to the second clause of Rule XXI of the House.

"Upon examination of the law the Chair finds that by paragraph 2 of the general appropriation act of 1888 the following enactment was made:

"'The Secretary of the Treasury is authorized to transfer to the United States mints, for cleaning and reissue, any minor coins now in, or which may be hereafter received at, the subtreasury offices in excess of the requirements of the current business at said offices.'

"It will be observed that this enactment was applicable not only to the then current year but was to apply also to 'any minor coins now in, or which may be hereafter received at, the subtreasury offices.' Consequently, there is existing law by which this appropriation is authorized, and therefore the Chair overrules the point of order as to that clause of the paragraph.

"The second clause reads as follows:

"'And the Secretary of the Treasury is also authorized to recoin any and all the uncurrent minor coins now in the Treasury; and the sum of $1,000, or so much thereof as may be necessary, is hereby appropriated to reimburse the Treasury for the loss on such recoinage; in all, $1,500.'

"As to this, the Chair finds that it provides for the recoining of all the uncurrent minor coins. That provision includes, of course, coins which are not silver as well as silver minor coins. The Chair can find no existing express law, and no law in which it is implied or from which it can be inferred that this provision is authorized by any existing law; and it appears from the language that this paragraph itself gives the 'authority' to do this thing, making the law, and thereby implying that it is not authorized by existing law. The Chair therefore holds that this clause of the paragraph is obnoxious to the rule, and therefore sustains the point of order as to it."

Mr. Horace F. Bartine, of Nevada, having appealed, the decision of the Chair was sustained.

3808. A proposition to continue an extra compensation for an ordinary facility for carrying the mails is not the continuation of a public work.—On February 2, 1905,[1] the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read the following paragraph:

For transportation of foreign mails, $2,725,000, including additional compensation to the Oceanic Steamship Company for transporting by its steamer sailing from San Francisco to Tahiti all mails made up in the United States destined for the island of Tahiti, $45,000: *Provided,* That the sum paid the Oceanic Steamship Company shall not exceed $1 per mile, as authorized by act of March 3, 1891, entitled "An act to provide for ocean mail service between the United States and foreign ports, and to promote commerce:" *And provided further,* That hereafter the Postmaster-General shall be authorized to expend such sums as may be necessary, not exceeding $55,000, to cover one-half of the cost of transportation, compensation, and expense of clerks to be employed in assorting and pouching mails in transit on steamships between the United States and other postal administrations in the International Postal Union, and not exceeding $40,000 for transferring the foreign mail from incoming steamships in New York Bay to the several steamship and railway piers, and for transferring the foreign mail from incoming steamships in San Francisco Bay to the piers.

Mr. James M. Robinson, of Indiana, made a point of order against the paragraph as involving an expenditure not authorized by law. He stated the point of order as follows:

Point of order on the portion of section on page 18 relating to the additional compensation to the Oceanic Steamship Company for transporting by its steamers sailing from San Francisco to Tahiti, specifically stated, the words in lines 21, 22, 23, 24, and 25, on page 18, to wit: "Including additional compensation to the Oceanic Steamship Company for transporting by its steamers sailing from San Francisco to Tahiti all mails made up in the United States destined for the island of Tahiti, $45,000;" and separately, the words: "*Provided,* That the sum paid the Oceanic Steamship Company shall not exceed $1 per mile, as authorized by act of March 3, 1891, entitled 'An act to provide for ocean mail service between the United States and foreign ports, and to promote commerce,"' as contrary to existing law and not a continuing appropriation.

Mr. Jesse Overstreet, of Indiana, argued that the work was a continuing work, and subject to the same rule as the special facilities on railroads. Furthermore, he said:

The law of March 3, 1901, known as the act to provide for ocean mail service between the United States and foreign ports and to promote commerce, customarily known as the "ocean mail act," fixes certain rates which may be paid by way of compensation. This provision against which this point is now made cites that law providing that the amount of pay shall not exceed the amount fixed by the law of March 3, 1891. In addition, therefore, Mr. Chairman, to the security of this provision from the point of order under the recent ruling of the Chair there is this additional security that it is linked with the law of March 3, 1891, and is therefore existing law, and this appropriation can not be contrary to existing law.

After further debate the Chairman[2] said:

The Chair would like to refer the chairman of the committee to section 4009 of the Revised Statutes, which reads:

"For transporting the mail between the United States and any foreign port, or between ports of the United States touching at a foreign port, the Postmaster-General may allow as compensation, if by a United States steamship, any sum not exceeding the sea and United States inland postage; and if by a foreign steamship or by a sailing vessel, any sum not exceeding the sea postage, on the mail so transported."

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[1] Third session Fifty-eighth Congress, Record, pp. 1795–1798.

[2] George P. Lawrence, of Massachusetts, Chairman.

The Chair understands that to be the general law. Now, is this provision in violation of that general law?

And after additional debate the Chairman ruled:

The Chair desires especially to call the attention of the committee to the language of the law of 1891, which says:

"That the Postmaster-General is hereby authorized and empowered to enter into contracts for a term not less than five nor more than ten years in duration with American citizens for the carrying of mails on American steamships between ports of the United States and such ports of foreign countries, the Dominion of Canada excepted, as in his judgment will best subserve and promote the postal and commercial interests of the United States; the mail service on such lines to be equitably distributed among the Atlantic, Mexican, Gulf, and Pacific ports. Said contracts shall be made with the lowest responsible bidder for the performance of said service on each route, and the Postmaster-General shall have the right to reject all bids not in his opinion reasonable for the obtaining of the purposes named"

This law specifies clearly that said contracts shall be made, after advertisement, with the lowest responsible bidder for the performance of said service; and it seems to the Chair that the provisions of this paragraph to which objection is made are in conflict with the law of 1891.

The only way in which the appropriation can be justified is by construing it to be for a continuing work now in progress. It does not seem to the Chair that it is on the same plane with the appropriations authorized in the two preceding sections.

The two preceding sections authorize appropriations for special facilities on trunk lines. This is not an appropriation for a special facility; it is simply an appropriation for additional compensation which, so far as the Chair can see, is not authorized by law.

The Chair therefore feels that he must sustain the point of order.

Mr. Theodore A. Bell, of California, then proposed to add to the portion of the paragraph not ruled out the following:

Page 18, line 21, after the word "dollars," insert "of which sum $45,000, or so much thereof as may be necessary, shall be available for contracts for carrying mails from San Francisco to Tahiti, in accordance with the act of March 3, 1891, entitled 'An act to provide for ocean mail service between the United States and foreign ports, and to promote commerce.'"

Mr. Robinson renewed the point of order for the same reason.

The Chairman said:

In the opinion of the Chair that amendment is not in conflict with the law of 1891, referred to by the Chair in its former ruling, and the Chair will overrule the point of order. The question then is on the amendment offered by the gentleman from California.

3809. An appropriation for the support and civilization of a tribe of Indians was held not to be in continuation of the work of the Indian service.—On December 20, 1900,[1] the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read this paragraph:

For the support and civilization of the Shebits, Muddy, and other Indians in southern Utah, $2,500.

Mr. Joseph G. Cannon, of Illinois, made a point of order against the paragraph. After debate the Chairman[2] said:

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[1] Second session Fifty-sixth Congress, Record, pp. 473, 474.

[2] James A. Tawney, of Minnesota, Chairman.

Section 2 of Rule XXI expressly provides:

"No appropriation shall be reported on any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriation for such public works and objects as are already in progress."

The Chair does not understand the claim is made that this appropriation comes within the provisions of either one of those two clauses of section 2 of Rule XXI. It is not claimed that it is made in accordance with any treaty stipulation or existing law; and the latter clause of the paragraph is so general in its terms it might include other tribes of Indians. The language is, "and other Indians in southern Utah." Not being in accordance with treaty stipulations, therefore, and not coming within the other provision of section 2 of the rule, the Chair sustains the point of order. * * * The gentleman did not understand the Chair correctly if he understood that its decision is based on the words "other Indians of southern Utah." The Chair does not think there is anything in the point of this appropriation being a "continuation of appropriations for public works and objects already in progress." There was no appropriation made at the last session for the purposes or anything in relation thereto. It is entirely a new appropriation and is not authorized by existing law.

Chapter XCVII.

LEGISLATION IN GENERAL APPROPRIATION BILLS.

1. **Provisions of the rule. Section 3810.**[1]
2. **Early practice. Section 3811.**
3. **Enactment of new law forbidden by the rule. Sections 3812–3818.**
4. **Change of a rule of the House not in order. Sections 3819–3822.**
5. **Amendments to paragraphs proposing legislation. Sections 3823–3838.**[2]
6. **Legislation authorized by formal action of House. Sections 3839–3845.**
7. **Directions to executive officers not in order. Sections 3846–3864.**
8. **Limit of cost of a work not to be made or changed. Sections 386–867.**[3]
9. **Contracts may not be authorized. Sections 3868–3870.**
10. **Affirmative provisions regulating the public service not in order. Sections 3871–3884.**
11. **Practice under the old form of "rider rule." Sections 3885–3892.**
12. **General decisions. Sections 3893–3896.**
13. **Legislation in order on river and harbor bill. Sections 3897–3903.**[4]
14. **Respective duties of the two Houses as to. Sections 3904–3908.**
15. **Amending Senate amendments proposing legislation. Sections 3909–3916.**

3810. A provision changing existing law is not in order in any general appropriation bill.—Section 2 of Rule XXI[5] provides:

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

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

On February 18,[7] in Committee of the Whole, a question was raised as to the execution of the order, and the Chairman[8] said that the bill would be read by

[1] Reserving points of order as to legislation. Sections 6921–6926 of Vol. V.
[2] See also section 3862 of this volume.
[3] See also section 3761 of this volume.
[4] See also section 5230 of Vol. V.
[5] For full form and history of this rule see section 3578 of this volume.
[6] Second session Twenty-seventh Congress, Journal, p. 404; Globe, p. 239.
[7] Globe, p. 251.
[8] George N. Briggs, of Massachusetts, Chairman.

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

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

The Speaker[3] overruled the point of order made by Mr. Clifford.

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

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

> For the support and medical treatment of medical and surgical patients who are destitute in the city of Washington, under a contract to be made with the Providence Hospital by the Surgeon-General of the Army, $15,000.
>
> For Garfield Memorial Hospital—for maintenance to enable it to provide medical and surgical treatment to persons unable to pay therefor, $15,000.

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

After debate the Chairman[5] ruled:

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

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

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[1] Journal, p. 725; Globe, p. 433.

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

[3] John White, of Kentucky, Speaker.

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

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

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

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

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

It was argued that the amendment was simply a limitation upon expenditures; but the Chairman[2] ruled:

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

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

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

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

After debate, the Chairman[4] said:

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

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

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

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

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

[2] Rufus E. Lester, of Georgia, Chairman.

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

[4] Llewellyn Powers, of Maine, Chairman.

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

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

Mr. Crumpacker said:

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

The Chairman [1] said:

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

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

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

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

After debate, the Chairman [3] held:

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

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

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

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

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

[3] John F. Lacey, of Iowa, Chairman.

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

The point of order being made, and the debate having developed the fact that the language of the paragraph was precisely the language of the existing statute, the Chairman [1] sustained the point of order.

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

PENALTY FOR COUNTERFEITING FORECASTS.

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

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

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

After debate, the motion was agreed to.

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

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

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

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

And also the following:

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

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

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[1] Julius C. Burrows, of Michigan, Chairman.

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

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

After debate, the Chairman[1] said:

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

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

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

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

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

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

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

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

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

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

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

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

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

[1] James H. Blount, of Georgia, Chairman.

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

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

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

After debate the Chairman [1] held:

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

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

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

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

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

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

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

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

The Speaker [3] sustained the point of order.

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

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

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

[3] John G. Carlisle, of Kentucky, Speaker.

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

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

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

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

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

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

The Chairman [1] said:

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

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

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

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

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

After debate, the Chairman [3] ruled:

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

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

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

[3] John Dalzell, of Pennsylvania, Chairman.

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

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

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

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

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

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

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

After debate, the Chairman[3] held:

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

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

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

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

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

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

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

[3] John A. T. Hull, of Iowa, Chairman.

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

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

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

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

After debate as to the terms of section 3709 of the Revised Statutes, the Chairman[1] held:

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

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

Amend section 3 by adding:

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

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

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

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

After debate the Chairman[3] said:

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

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

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

[1] William H. Moody, of Massachusetts, Chairman.

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

[3] Eugene F. Loud, of California, Chairman.

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

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

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

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

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

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

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

The Chairman [1] held:

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

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

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

[1] William F. Hepburn, of Iowa, Chairman.

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

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

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

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

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

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

After debate the Chairman [1] said:

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

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

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

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

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

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

Mr. Jesse Overstreet, of Indiana, made a point of order against the amendment. The Chairman [3] held:

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

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[1] Marlin E. Olmsted, of Pennsylvania, Chairman.

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

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

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

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

Mr. Irving P. Wanger, of Pennsylvania, proposed an amendment to insert after the word "exceed" the words "by more than 33⅓ per cent."

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

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

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

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

The Chairman said:

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

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

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

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

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

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

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

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

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

The Chairman [1] held:

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

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

Insert after line 8, page 1, the following:

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

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

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

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

The Chairman [3] ruled:

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

3832. On March 29, 1906 [4] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union when, to a paragraph appropriating for a law clerk in one of the departments, Mr. Charles L. Bartlett, of Georgia, proposed this amendment:

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

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

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

The Chairman [5] held:

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

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[1] John Dalzell, of Pennsylvania, Chairman.

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

[3] George P. Lawrence, of Massachusetts, Chairman.

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

[5] Marlin E. Olmsted, of Pennsylvania, Chairman.

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

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

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

The Chairman[2] held:

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

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

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

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

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

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

[2] Edgar D. Crumpacker, of Indiana, Chairman.

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

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

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

The Chairman [1] said:

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

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

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

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

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

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

Mr. James R. Mann, of Illinois, made a point of order against the amendment. The Chairman [3] held:

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

[1] Edgar D. Crumpacker, of Indiana, Chairman.

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

[3] Marlin E. Olmsted, of Pennsylvania, Chairman.

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

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

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

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

Mr. Mann made a point of order.

After debate the Chairman held:

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

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

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

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

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

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

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

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

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

At the conclusion of the debate the Chairman [1] held:

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

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

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

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

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

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

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

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

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

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

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

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

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[1] Theodore E. Burton, of Ohio, Chairman.

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

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

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

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

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

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

At conclusion of the debate, the Chairman [1] said:

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

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

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

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

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

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

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

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

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

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

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

The Chairman[2] held:

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

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

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

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

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

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

[2] John Dalzell, of Pennsylvania, Chairman.

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

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

Mr. John A. Pickler, of South Dakota, having made a point of order against this paragraph, the Chairman[2] ruled:

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

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

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

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

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

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

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

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

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

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

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

[2] James D. Richardson, of Tennessee, Chairman.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[1] Record, pp. 1609, 1610.

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

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

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

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

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

On February 20, 1907,[1] the bill (H. R. 25483) making appropriation for the service of the Post-Office Department had passed the House when Mr. Jesse Overstreet, of Indiana, moved to suspend the rules[2] and agree to the following:

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

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

The rules were suspended and the order was made.

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

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

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

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

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

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

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

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

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

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

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

The Chairman [1] ruled—

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

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

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

Mr. Eugene F. Loud, of California, having made a point of order, the Chairman [4] held:

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

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

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

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

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

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

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

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

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

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

[4] John Dalzell, of Pennsylvania, Chairman.

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

The Chairman[1] ruled:

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

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

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

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

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

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

Mr. Jesse Overstreet, of Indiana, having made a point of order, the Chairman[3] said:

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

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

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

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

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

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

After debate the Chairman[3] held:

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

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[1] William H. Moody, of Massachusetts, Chairman.

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

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

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

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

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

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

The Chairman[2] held:

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

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

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

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

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

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

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

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

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

After debate the Chairman[2] held:

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

3853. Although a law may give an executive officer authority to do a certain thing, a provision directing him so to do is legislative in nature and not in order on a general appropriation bill.—On February 12, 1907[4] the naval appropriation bill was under consideration in Committee of the Whole House

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

[2] Henry S. Boutell, of Illinois, Chairman.

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

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

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

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

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

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

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

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

The Chairman[2] held:

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

3864. A proposition to establish affirmative directions for an executive officer constitutes legislation, and is not in order on a general appropriation bill.—On December 12, 1906,[3] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union when Mr. Edgar D. Crumpacker, of Indiana, raised a question of order against a portion of the bill appropriating for the service in the Government Printing Office. After debate the Chairman[4] stated the question and ruled as follows:

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

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

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

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

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

[1] Record, p, 2901.

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

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

[4] William P. Hepburn, of Iowa, Chairman.

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

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

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

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

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

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

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

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

After debate the Chairman[2] ruled:

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

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

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

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

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

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

[2] Marlin E. Olmsted, of Pennsylvania, Chairman.

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

The Chairman [1] sustained the point of order.

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

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

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

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

After debate, the Chairman [3] held:

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

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

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

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

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

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

[1] Edgar D. Crumpacker, of Indiana, Chairman.

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

[3] Henry S. Boutell, of Illinois, Chairman.

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

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

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

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

The Chairman[2] ruled:

The Chair finds, in section 531 of the Parliamentary Precedents, the general principle thus stated:

"It has generally been held that provisions giving a new construction of law or limiting the discretion which has been exercised by officers charged with the duties of administration are changes of law within the meaning of the rule."

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

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

In the course of his ruling Mr. Carlisle said:

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

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

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

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

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

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

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

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

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

[2] Marlin E. Olmsted, of Pennsylvania, Chairman.

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

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

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

The Chairman[2] held:

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

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

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

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

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

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

After debate the Chairman[4] ruled:

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

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

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

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

[2] George P. Lawrence, of Massachusetts, Chairman.

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

[4] Albert J. Hopkins, of Illinois, Chairman.

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

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

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

Mr. Joseph G. Cannon, of Illinois, having made a point of order, after debate the Chairman[3] ruled:

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

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

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

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

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

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

Mr. Nelson Dingley, of Maine, made the point of order against the amendment. After debate the Chairman[5] ruled:

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

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

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

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

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

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

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

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

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

Mr. George E. Foss, of Illinois, made a point of order against this amendment. After debate the Chairman[2] said:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Olmsted said:

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

At the conclusion of the debate the Chairman [1] said:

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

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

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

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

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

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

[1] James R. Mann, of Illinois, Chairman.

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

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

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

As to the contention that the act of 1902 did not make permanent law the Chairman [1] held:

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

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

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

Therefore the point of order was sustained.

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

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

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

Mr. Joseph D. Sayers, of Texas, having made a point of order, the Chairman [3] inquired:

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

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

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

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

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[1] John F. Lacey, of Iowa, Chairman.

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

[3] Rufus E. Lester, of Georgia, Chairman.

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

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

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

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

Mr. Joseph G. Cannon, of Illinois, having made a point of order, the Chairman [1] held:

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

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

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

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

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

Mr. Charles A. Boutelle, of Maine, having made a point of order against the amendment, after debate the Chairman [3] ruled:

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

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[1] George P. Lawrence, of Massachusetts, Chairman.

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

[3] Benjamin Butterworth, of Ohio, Chairman.

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

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

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

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

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

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

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

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

After debate the Chairman[2] held:

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

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

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

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

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

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

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

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

[2] James E. Watson, of Indiana, Chairman.

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

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

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

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

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

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

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

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

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

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

Now, Mr. Chairman, from that time down, for twenty-two years, the precedents are all one way upon this question of whether you can authorize a battle ship, authorize the making of a contract for a battle ship, fix the limit of cost upon it, and yet not appropriate a single dollar. That has been decided time and time again. I can call special attention to two decisions, one by Mr. Butterworth, as Chairman of the Committee of the Whole in the first session of the Fifty-first Congress[2] on page 3221, volume

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

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

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

At the conclusion of the debate the Chairman [1] ruled:

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

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

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

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

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

Then section 5503 of the Revised Statutes provides that—

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

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

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

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

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[1] Edgar D. Crumpacker, of Indiana, Chairman.

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

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

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

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

The Chairman[2] held:

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

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

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

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

[2] Albert J. Hopkins, of Illinois, Chairman.

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

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

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

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

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

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

Mr. John S. Little, of Arkansas, having made a point of order that the proviso changed existing law, the Chairman [1] ruled:

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

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

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

Mr. James S. Sherman having raised the point or order. after debate the Chairman [1] sustained it.

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

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

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

After debate the Chairman [4] said:

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

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

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

[1] Albert J. Hopkins, of Illinois, Chairman.

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

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

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

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

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

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

After debate, the Chairman [1] held:

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

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

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

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

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

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

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

The Chairman [2] said:

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

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[1] William H. Moody, of Massachusetts, Chairman.

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

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

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

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

Mr. Joseph G. Cannon, of Illinois, made a point of order against the paragraph. The Chairman[2] ruled:

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

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

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

After debate, during which the act of 1897, in which the invitation of the French Government was accepted and a special commissioner was authorized to make report on the subject, was referred to as authority for the provisions of the section, the Chairman[4] ruled:

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

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

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

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

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

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

Therefore the Chair sustained the point of order.

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

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

After debate, and on the succeeding day, the Chairman[2] held:

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

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

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

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

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

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

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

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

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

The Chairman[1] sustained the point of order.

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

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

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

After debate, the Chairman[3] held:

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

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

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

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

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

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

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

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

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

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

[3] Joseph G. Cannon, of Illinois, Chairman.

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

[5] Albert J. Hopkins, of Illinois, Chairman.

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

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

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

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

A point of order having been made, the Chairman [1] ruled:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

After debate, during which the point was made by Mr. William H. Moody, of Massachusetts, that the statute cited was intended not to regulate appropriations, but to regulate their expenditure after they were made, the Chairman [1] held:

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

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

After debate the Speaker [3] ruled, saying:

In the first place, to what considerations in the making of a ruling has the Chair a right to look? Can he go outside of this bill and inquire generally, as it is the right and duty of a Member on the floor of this House to do, what will be the effect of this fourth section; or is it his duty to limit his inquiries to the face of the bill, to the specific terms of the section in question, the law of the land so far applicable, and the parliamentary rules and practices of this House? In the judgment of the Chair the range of his investigation is the latter, and he can not properly go beyond these three considerations. The language of the amended rule [4] is:

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

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

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[1] Albert J. Hopkins, of Illinois, Chairman.

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

[3] Michael C. Kerr, of Indiana, Speaker.

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

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

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

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

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

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

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

The Chairman[2] ruled:

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

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

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

[2] Alexander B. Montgomery, of Kentucky, Chairman.

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

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

Various points of order having been made on these amendments. after debate, on February 16, the Chairman [1] ruled:

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

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

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

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

By which I understand he meant to admit an amendment.

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

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

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

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

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

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

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

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

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

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

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

The next amendment is as follows:

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

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

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

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

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

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

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

Mr. Joseph D. Sayers, of Texas, having made the point of order, the Chairman[2] ruled:

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

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

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

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

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

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

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

[2] Rufus E. Lester, of Georgia, Chairman.

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

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

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

Mr. Benjamin A. Enloe, of Tennessee, having made the point of order that the amendment changed existing law and did not reduce expenditures, the Chairman[2] ruled:

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

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

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

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

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

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

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

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

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

[2] James D. Richardson, of Tennessee, Chairman.

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

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

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

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

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

Mr. Julius C. Burrows, of Michigan, having made the point of order, the Chairman[2] ruled:

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

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

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

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

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

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

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

[2] Rufus E. Lester, of Georgia, Chairman.

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

[4] Alexander M. Dockery, of Missouri, Chairman.

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

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

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

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

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

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

After debate the Chairman[3] said:

Although the meaning of the words "necessary and special facilities for postal service" is not very clear, yet the Chair held yesterday, after giving the subject some consideration, that the effect of such an amendment would be to change existing law. The Chair still adheres to that opinion. But under the third clause of Rule XXI an individual Member upon the floor may offer an amendment changing existing law provided it retrenches expenditures in one of three modes: First, by reducing the number and salaries of the officers of the United States; or, secondly, by reducing the compensation of persons paid out of the Treasury of the United States; or, thirdly, by reducing the amounts covered by the bill. The amendment offered by the gentleman from Massachusetts does not propose to add an appropriation of $150,000 to the bill; but it provides that of the amount appropriated by the bill the sum of $150,000 may be used for certain purposes, and it diminishes the amount covered by the bill by striking out "19,500,0000" and inserting "$9,490,000." So that the Chair is bound to hold that the amendment conforms strictly to the language of the rule. Whether the language actually used in this rule accomplishes the exact purpose which the House had in view in adopting it is not a question for the Chair to decide; but taking the language of the rule as it stands and putting upon it the construction which ordinarily would be put upon such language in a statute or in a rule of the House, the Chair is compelled to hold that the amendment comes within the rule, and is in order.

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

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

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

[2] See section 3578 of this volume.

[3] John G. Carlisle, of Kentucky, Chairman.

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

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

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

After debate the Chairman [1] said:

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

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

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

The third proviso is—

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

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

The final proviso is—

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

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

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

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

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[1] George P. Lawrence, of Massachusetts, Chairman.

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

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

The Chairman [1] sustained the point of order.

3895. The Committee of the Whole, overruling its chairman, decided that a provision for the purchase and distribution of rare and valuable seeds was in order on the agricultural appropriation bill.—On January 29, 1907,[2] the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union when, to a paragraph providing for the purchase of rare and valuable seeds and their distribution through the Department of Agriculture, Mr. Ezekiel S. Candler, jr., of Mississippi, proposed an amendment [3] as follows:

Strike out the paragraph and insert:

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

[1] William P. Hepburn, of Iowa, Chairman.

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

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

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

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

The Chairman [1] held:

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

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

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

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

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

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

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

After debate the Chairman [3] held:

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

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

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[1] David J. Foster, of Vermont, Chairman.

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

[3] Llewellyn Powers, of Maine, Chairman.

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

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

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

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

Mr. John Lind, of Minnesota, made the point of order that the amendment was a change of existing law, the section of the Revised Statutes already quoted.

The Chairman ruled:

As the Chair stated at first, this is a somewhat difficult question to decide, but in the opinion of the Chair the point of order raised by the gentleman from Minnesota against this amendment is not well taken, as a careful reading of the whole section of the statute will show. The Chair will read for the instruction of the House the whole of the section of the statute of which the gentleman from Minnesota read only a part. It is as follows:

"SEC. 527. The purchase and distribution of seeds by the Department of Agriculture shall be confined to such seeds as are rare and uncommon to the country, or such as can be made more profitable by frequent changes from one part of our own country to another; and the purchase or propagation and distribution of trees, plants, shrubs, vines, and cuttings shall be confined to such as are adapted to general cultivation and to promote the general interests of horticulture and agriculture throughout the United States."

So the committee will see that the statute is somewhat broader than that part of it which was read by the gentleman from Minnesota. Now, the provisions here in the proposed amendment, the Chair think, are not necessarily in conflict with the statute when all of it is considered and its scope and purpose considered. The amendment reads:

"And the Secretary of Agriculture is hereby directed to expend the said sum as nearly as practicable in the purchase, testing, and distribution of such valuable seeds, bulbs, shrubs, vines, cuttings, and plants, the best he can obtain at public or private sale, and such as shall be suitable for the respective localities to which the same are to be apportioned."

The Chair does not think there is anything in that portion of the amendment which I have read which necessarily changes the original statute, or is it a change of existing law; and the Chair therefore overrules the point of order.

A similar question of order arose on May 1, 1906,[2] and was debated at length; but was not decided, the point of order being withdrawn.

3897. The river and harbor bill not being one of the general appropriation bills, the rule relating to legislation on such bills does not apply to it.—On February 7, 1907,[3] the river and harbor appropriation bill was under

[1] A law making a similar but not identical provision was in existence, but was not cited. (32 Stat. L., p. 741.)

[2] First session Fifty-ninth Congress, Record, pp. 6211, 6222–6224.

[3] Second session Fifty-ninth Congress, Record, pp. 2469, 2470.

consideration in Committee of the Whole House on the state of the Union, when Mr. J. Warren Keifer, of Ohio, offered an amendment providing legislation to establish a board of inspection for river and harbor work.

Mr. David E. Finley, of South Carolina, made the point of order that the amendment proposed legislation.

The Chairman [1] said:

But the gentleman must recollect that the river and harbor bill is not a general appropriation bill within the meaning of clause 2, Rule XXI. Legislation is proper on a river and harbor bill, and the chair overrules the point of order.

3898. On February 7, 1907,[2] the river and harbor appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Edward De V. Morrell, of Pennsylvania, proposed this amendment:

Add as an additional section the following:

SEC. 7. That it is the sense and desire of this Congress that hereafter the appropriation bill for the rivers and harbors shall be given the same consideration and shall be on the same scale as those for the Army, Navy, and other large appropriation bills, and constant large appropriations being necessary to enable the United States to keep pace with the other nations of the world, and being for the good of the country at large, that this appropriation shall hereafter be an annual one."

Mr. Theodore E. Burton, of Ohio, made the point of order that the amendment was not in order.

After debate, the Chairman [1] held:

This is a proposition which is germane to the river and harbor bill. The only question is a question of germaneness or a question of jurisdiction. On the river and harbor bill there is a perfect right to legislate on any question germane to the bill, and the Chair overrules the point of order and recognizes the gentleman from Pennsylvania to discuss his amendment.

3899. On May 27, 1890,[3] in Committee of the Whole House on the state of the Union, Mr. James B. McCreary, of Kentucky, made a point of order against a section of the river and harbor bill providing a penalty of fine and imprisonment for the offense of having a bridge obstructing free navigable waters of the United States. Mr. McCreary urged that under Rule XI the jurisdiction of the Committee on Rivers and Harbors was confined to the subject of the "improvement of rivers and harbors," and that under Rule XXI this was legislation not authorized on a general appropriation bill.

The Chairman,[4] having called attention to the fact that the river and harbor bill was not a general appropriation bill, overruled the point of order.

3900. On February 15, 1881,[5] the House was in Committee of the Whole House on the state of the Union considering the river and harbor appropriation bill.

The Clerk had read the paragraph—

Improving harbor at Olcott, N. Y., $3,000—

When Mr. William A. J. Sparks, of Illinois, made the point of order that this was not an appropriation authorized by law. and therefore not in order on a general appropriation bill.

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[1] Frank D. Currier, of New Hampshire, Chairman.

[2] Second session Fifty-ninth Congress, Record, p. 2470.

[3] First session Fifty-first Congress, Record, pp. 5362, 5397.

[4] Julius C. Burrows, of Michigan, Chairman.

[5] Third session Forty-sixth Congress, Record, pp. 1618–1624.

In response to this point of order Mr. William Lounsbery, of New York, claimed that the river and harbor bill was not "a general appropriation bill."

After debate the Chairman [1] ruled:

The Chair is ready to decide this question. At first he was very much disposed to entertain the opinion that this bill was to be included among the general appropriation bills, and treated as such under the rules of the House; but subsequent investigation of the subject has satisfied the Chair that such a decision would not have been correct. Of course, if it were not for the express provision of the rules, there would be no difference between a general appropriation bill and any other bill brought into the House, so far as parliamentary law would be applicable; in other words, all bills would be governed by precisely the same rules and the same principles under general parliamentary law. Therefore this question depends entirely upon the provisions of the rules.

Now, it is true that the Committee on Rules, in making its report to the House as the last session of Congress, said in one part of the report that the bill for the improvement of rivers and harbors had become by long usage one of the general appropriation bills. But in another part of that report the committee used this language: "The river and harbor appropriation bill, although not one of the general appropriation bills (see Rule 77)"—the Chair will in a moment refer to Rule 77—"has for many years past been one of the regular annual appropriation bills and has been reported by the Committee on Commerce."

Then follows a concise history of the river and harbor bills in the past.

The House determined that this river and harbor bill should not be reported by the Committee on Appropriations, as the Committee on Rules had recommended in its first report, but should be reported by the Committee on Commerce. Of course that fact alone would not prevent it from being a general appropriation bill if it were in substance such. But the whole matter depending, as the Chair has said, upon the rules, the Chair looks at the rules and finds that there is a distinction recognized all the way through between the general appropriation bills and the river and harbor bill. That distinction is recognized twice in Rule XI; it is recognized distinctly in the sixth clause of Rule XXI, and again distinctly in the fourth clause of Rule XXIII, where these various bills are spoken of. The Chair is therefore compelled to hold that the river and harbor bill is not, under the new revision of the rules, as it was not under the old Rule No. 77, a general appropriation bill. The Clerk will read Rule 77 of the old code of rules.

"It shall also be the duty of the Committee on Appropriations, within thirty days after their appointment, at every session of Congress, commencing on the first Monday of December, to report the general appropriation bills for legislative, executive, and judicial expenses; for sundry civil expenses; for consular and diplomatic expenses; for the Army; for the Navy; for the expenses of the Indian Department; for the payment of invalid and other pensions; for the support of the Military Academy; for fortifications; for the service of the Post-Office Department, and for mail transportation by ocean steamers; or, in failure thereof, the reasons of such failure."

It will be observed that there is a specific enumeration in the rule itself of all the general appropriation bills, and that the bill appropriating money for public works upon rivers and harbors is not included. Now, whatever may be the consequences of this ruling, the Chair, of course, is not responsible for them. He feels that in making this decision he is governed by the express provisions of the rules themselves, which he can not fail to observe.

3901. On January 16, 1901,[2] the river and harbor bill (H. R. 13189) was under consideration in Committee of the Whole House on the state of the Union, when a paragraph was read providing for the organization of a board of engineer officers in the War Department to pass upon projects of improvement. The paragraph specified the size and qualifications of the board, and its duties.

Mr. Oscar W. Underwood, of Alabama, made the point of order that the paragraph involved legislation, and was therefore not in order on the bill.

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[1] John G. Carlisle, of Kentucky, Chairman.

[2] Second session Fifty-sixth Congress, Record, p. 1091.

The Chairman [1] said:

The Chair will state to the gentleman that that point will not lie to a river and harbor bill. There is a distinction made between a general appropriation bill and the river and harbor bill. Under the rules any new legislation is obnoxious to the point of order raised by the gentleman; but that does not apply to a river and harbor appropriation bill.

3902. On January 16, 1901,[2] the river and harbor bill (H. R. 13189) was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read a paragraph providing for the creation of a board of engineers in the War Department to pass upon projects of improvement for rivers and harbors.

Mr. William H. King, of Utah, made the point of order that the paragraph contained legislation not germane to the bill, and infringing on the jurisdiction of the Committee on Levees and Improvements of the Mississippi River.

After debate the Chairman I said:

The Chair will state that the rule with reference to appropriations that there shall be no new legislation does not apply to the river and harbor bill, and has been so decided again and again by gentlemen who have presided at the time the bill was considered in Committee of the Whole. The Chair thinks, also, that the section against which the point of order has been made does not infringe upon any of the rights of the Committee on Levees and Improvements of the Mississippi River. At the time of the revision of the rules, in 1880, it was sought to give this committee on the levees the authority that is now claimed by it by the gentleman from Utah, but by an express vote of the House the authority was denied the committee and, inferentially, was given to the Committee on Rivers and Harbors. The Chair thinks the provision against which the point of order has been made is in harmony with the general objects and purposes of the bill, that it is within the jurisdiction of the Committee on Rivers and Harbors, and, therefore, overrules the point of order.

3903. On February 23, 1905,[3] the river and harbor appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a paragraph was read providing for certain locks and dams and the granting of a franchise to private parties.

Mr. John W. Gaines, of Tennessee, raised a question of order that the paragraph involved legislation.

The Chairman [4] held:

The Chair will state to the gentleman from Tennessee that as this is not a general appropriation bill the point does not lie. * * * The rule which the gentleman invokes would apply only to a general appropriation bill, and this is not so regarded under the rule.

3904. In 1898 a Senate committee reported against a proposition to add to a general appropriation bill legislation on an important public question, holding it not proper to attempt thus to coerce the House of Representatives.—On February 14, 1898,[5] in the Senate, Mr. John T. Morgan, of Alabama, from the Committee on Foreign Relations, submitted this report:

The Senate referred to the Committee on Foreign Relations an amendment intended to be proposed to the consular and diplomatic appropriation bill, passed by the House of Representatives and now under consideration by the Senate Committee on Appropriations, in these words:

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[1] Albert J. Hopkins, of Illinois, Chairman.

[2] Second session Fifty-sixth Congress, Record, pp. 1094, 1095.

[3] Third session Fifty-eighth Congress, Record, p. 3202.

[4] William A. Smith, of Michigan, Chairman.

[5] Second session Fifty-fifth Congress, Senate Report, No. 577.

"That a condition of public war exists between the Government of Spain and the government proclaimed and for some time maintained by force of arms by the people of Cuba, and that the United States of America shall maintain a strict neutrality between the contending powers, according to each all the rights of belligerents in the ports and territory of the United States."

In terms this proposed amendment is identical with a joint resolution which passed the Senate on the 20th day of May, 1897, was sent to the House of Representatives and referred to a standing committee of that body, where it is still pending.

In the adoption of that joint resolution the Senate, after full debate and mature consideration, performed what it conceived to be a solemn duty to our country that was demanded by a proper regard for the rights and welfare of our own people. Their love of justice, humanity, liberty, and independence of foreign oppression constrained our people to regard the persecuted native people of Cuba with earnest sympathy, and caused them to admire and applaud their heroism in the defense of their homes and family against the most atrocious violence. In this demonstration of sympathy with the cause of the Republic of Cuba our people, almost with one accord, admitted their obedience to the obligations and duties of Christian civilization, and demanded the intervention of our Government against their cruel abuse and abandonment by Spain in the war of extermination now being conducted against the Cuban people.

The committee has found no reason for suggesting the modification of the action of the Senate on that resolution in any part of the history of the war in Cuba. The necessity for that action has been made more manifest, since the passage of this resolution by the terrible and unexampled wrongs to humanity in process of perpetration by Spain against her former subjects, and now more fully realized in the extermination of noncombatants by tens of thousands, and their starvation, by military orders, in groups of hundreds of thousands, who, lingering, still live.

The Senate has nothing to regret or to modify as to the action that was taken in the adoption of the resolution now again presented for its action, and still hopefully invites the concurrence of the House of Representatives. In all parliamentary usage, and in accord with the spirit of our institutions, the Houses, in their action upon all questions presented to them, are entirely free and independent in their deliberations and votes. It is needless to say that any attempt to coerce one of the Houses of Congress by the action of the other is derogatory to the welfare of the country; and it is a high duty of each House to avoid giving to the other any reasonable ground of complaint or apprehension of such a purpose.

It is, on the contrary, an imperative duty that such a suspicion should be made fairly impossible. The Government must be supported, and the necessary appropriations for the consular and diplomatic service are of vital importance. Under existing conditions it is not an unreasonable supposition that it will be in the nature of compulsion or coercion of the House of Representatives if the Senate should place upon that bill an amendment in the same terms with the joint resolution heretofore adopted by the Senate, which is still pending in the House of Representatives.

It is more clearly a reasonable inference that such would be the purpose of the Senate, because the same effort was made in the House of Representatives, on the passage of the consular and diplomatic appropriation bill, to place this proposed amendment upon that bill, and the motion was lost through the action of that body.

The desire of the committee that the joint resolution adopted by the Senate should be adopted by the House of Representatives is earnest and unanimous, but they do not recommend that any action should be taken in the Senate that will or can in any way be considered by that honorable body as an interference with their perfect freedom and independence in their deliberations upon any measure.[1]

The committee recommends that the proposed amendment be laid upon the table.[2]

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[1] This question was fully discussed in 1876 (first session Forty-fourth Congress, Record, pp. 4343, 4345, 4423) when the Senate refused to permit certain legislation intended to retrench the expenditures of the Government to be placed on an appropriation bill. In the discussion at that time reference was made to the precedent of 1856. Also on March 27, 1879 (first session Forty-ninth Congress, Record, p. 77) the subject was brought up in the Senate by Mr. George F. Hoar, of Massachusetts.

[2] On February 9, 1885, the subject of legislation on appropriation bills was debated at length in the Senate. (Second session Forty-eighth Congress, Record, pp. 1464–1474.)

The subject of legislation on appropriation bills, especially when the object thereof is to coerce the other branch of Congress or the Executive, was elaborately debated in 1879 when the party in control of the House and Senate strove to obtain an alleged redress of grievances as to certain Federal laws relating

3905. It was very early insisted on as a principle that, where one House proposes to an appropriation bill an amendment firmly resisted by the other, the proposing House should recede.

In the early practice of the House conference committees did not make identical reports to the two Houses, and the reports were not signed.

On February 6, 1818,[1] the House insisted on their disagreement to the first amendment of the Senate to the bill "making appropriations for the military service of the United States, for the year 1818." A conference was asked with the Senate, and Messrs. William Lowndes, of South Carolina; Samuel Smith, of Maryland, and Timothy Pitkin, of Connecticut, were appointed managers on the part of the House. On the same day the Senate agreed to the conference, and Messrs. George W. Campbell, of Tennessee; John Williams, of Tennessee, and James Barbour, of Virginia, were appointed conferees on the part of the Senate.

On February 12 the managers reported in their respective Houses that the conference, after being continued as long as there was any prospect of arriving at a favorable result, terminated without the conferees of the two Houses being able to come to any agreement on the subject thereof. Both Senate and House conferees made to their respective Houses long written reports, but these reports were not identical, and were not signed even by the conferees of the one House.

The House conferees in their report state their ground for disagreeing to the Senate amendment, which proposed to appropriate for pay to brevet officers on a basis that the House could not agree to.

The committee of the House of Representatives,

says their report,

consider it necessary to a fair and free legislation, that appropriations, in regard to the propriety or extent of which the two Houses find, after deliberation that they still differ, should be separated from those which both consider necessary to the public service. If either branch of the Legislature determine that it will

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to juries, elections, etc., by legislation on the appropriation bills, which were vetoed. The Congressional Record, first session Forty-sixth Congress, has these debates, speeches being made by J. R. Tucker (Va.), p. 238; J. A. Logan (Ill.), p. 435; J. A. Beck (Ky.), p. 471; H. M. Teller (Colo.), p. 512; J. G. Carlisle (Ky.), p. 527; W. M. Springer (Ill.), p. 938 (citing precedents); W. D. Kelley (Pa.), p. 527.

Also Hoar's resolution, pp. 64, 162, 372. Also page 266 for reference to Benton's protest on the California bill.

President Hayes in veto messages discussed subject, pp. 994, 1709.

Henry Clay in 1819 had proposed coercion by rider, second session Fifteenth Congress, Congressional Annals, p. 471.

The Wilmot proviso was also a rider (1946), Globe, first session Twenty-ninth Congress, p. 1217.

On August 21, 1856, Mr. Speaker Banks ruled that the provision in the army appropriation bill just reported from the Ways and Means Committee providing in relation to the use of troops in the Kansas troubles, was not a violation of the rule prohibiting change of law on an appropriation bill, but this ruling was evidently an act of force, at the end of a long contest. (Second session Thirty-fourth Congress, Journal, pp. 1555–1557; Globe, p. 6.)

[1] First session Fifteenth Congress, Journal, pp. 220, 238, 246, 249; Annals, pp. 172, 188, 883, 894.

not make the great mass of necessary appropriations while there remains one unprovided for, which it considers to be proper it throws upon the other branch the necessity of concurring in an appropriation which it may believe that neither the law nor the public interest requires, or of endangering all the appropriations of the Government.

As the conferees of the Senate thought the objections urged by the House of Representatives to the course pursued by the Senate, that it made the passage of the large number of appropriations in which both Houses concur, depend upon that of one in respect to which they differ—an objection inapplicable to the subject—the committees were obliged to separate without agreeing on the subject of the Senate's amendment.

The Senate conferees in their report admitted that generally it would not be the most correct course to amend a law establishing salaries or authorizing an expenditure by a provision in a general appropriation law, though they believed that there was no constitutional or legal objection to it. They also admitted, as stated by the House conferees, that it would not be advisable generally to embarrass a measure embracing the mass of appropriations deemed necessary by insisting on one of a doubtful nature, but they did not consider that the amendment under consideration came within the scope of this principle.

On February 13, after considering the report of their conferees the House voted to adhere to their disagreement to the first amendment of the Senate.[1] On February 16 a message from the Senate announced that they had receded from their amendment. Thereupon the bill was enrolled and duly signed.

3906. The principle seems to be generally accepted that the House proposing legislation on a general appropriation bill should recede if the other House persist in its objection.—On June 10, 1896,[2] a condition of prolonged disagreement between the House and Senate was existing as to certain Senate amendments to the sundry civil appropriation bill. These amendments were legislative in their nature, proposing an increase in the limit of cost of certain public buildings already authorized by prior law.

In the House, when this disagreement was under discussion, Mr. Joseph G. Cannon, of Illinois, chairman of the Committee on Appropriations, and the Member in charge of the bill, said:

Under all parliamentary precedents the body proposing legislation, when the other body will not assent, recedes; and if the Senate, proposing legislation in this case, lets this bill fail because the House will not assent to the legislation, then let the responsibility be upon the Senate. * * * The man who has read the history of his country understandingly in the parliamentary contests in 1878, 1879, and 1880 understands—and this contest began before the breaking out of the late war—that the rule is unvarying that the body proposing legislation as a rider upon a money bill must recede if the other body will not assent.

In the Senate, in the discussion of the same disagreement, Mr. John Sherman, of Ohio, said:

It has always been, so far as I know, the custom in the Senate, and also in the House of Representatives as well, where there is a disagreement between the two Houses threatening to defeat the passage

[1] The practice in this respect should be noted. Had there been an agreement the papers should have been left with the Senate conferees (see sections 6571–6585 of Vol. V of this work) as the Senate agreed to the conference. Thus the first action should have been in the Senate where the papers might be supposed to be. But there is evidently a distinction in case a conference breaks up without result, and may not the asking House with propriety keep the papers? For as they have taken the last positive action on the papers they may with propriety be expected to have the opportunity at once to say whether they adhere to or recede from that action.

[2] First session Fifty-fourth Congress, Record, pp. 6379, 6417, 6422.

of an important appropriation bill—and it is the only true rule that can be applied to such a case—that the House proposing the amendment which is firmly resisted by the other House ought to recede from the amendment. No provision ought to be ingrafted in a law by Congress which has not been assented to by both Houses. Therefore, if there is a particular proposition—for instance, the erection of a public building at any place—the Senate proposing the amendment and the House saying firmly that they will not agree to it, the Senate ought to recede, and the amendment be stricken out. That is the established rule. The two Houses of Congress can only legislate upon the firm rule, adopted by the Houses, that no proposition whatever shall be forced upon the House by the Senate or upon the Senate by the House.

In the British Parliament the House of Commons will not allow the House of Lords to propose amendments upon the question of appropriating money. That is the right of the Commons, the representatives of the people there, and the House of Lords have never been allowed in any case to say whether or not an appropriation should be made for any purpose whatever. Whatever appropriations may be proposed by the House of Commons go to the House of Lords, and are accepted as a matter of course; but here such is not the case. We have equal power with the House of Representatives; we have the power to propose amendments to their bills; we have the power to originate appropriation bills, for they are not in any constitutional sense bills for raising revenue. They are simply bills appropriating money supposed to be in the Treasury.

I remember one striking case where the two Houses were at outs with each other and there was a condition somewhat similar to that which now exists, only at that time public feeling was much more heated than it is now. In 1860 the House of Representatives undertook to reduce as much as possible the appropriations for the support of the Government. Then the war, with the difficulties that came after, was foreseen and everybody was very anxious to prevent any large appropriations of public money, the House of Representatives especially taking the lead. During that session when an appropriation bill came to the Senate the Senate attached an appropriation for the expenditure of half a million dollars for a public building at New Orleans and a half million dollars for a public building at Charleston.

When the bill was returned to the other House with the amendment, the House struck out the amendment and insisted upon its action. When a gentleman who I might say is known to you all, by reputation at least, who was then a Senator from Georgia and was a very positive man, met the committee of conference and said to them distinctly that unless the appropriation was made for these two public buildings in the South the appropriation bill could not pass at all, that was promptly resented by the House of Representatives; and upon the meeting of the conferees again the Senate of its own accord receded and took the position, upon the ground that I have stated, that it had no right to force the House to agree to that to which the House was opposed. That was put upon broad national grounds. That is this case. Wherever the Senate of the United States undertakes to force upon the House of Representatives an appropriation it goes beyond the limits of its power. It may insist; it may hold on and continue debating until probably the House will be wearied; but, after all, if the House of Representatives says "No" definitely, the appropriation ought not to be made; and it is equally true that if the House should insist upon an appropriation to which the Senate is opposed, and the Senate says, "We will not agree to that; we are opposed to it; it is wrong," or "It should not be appropriated at this time," as a matter of course the House would have to recede.

It is only by the adoption by the two Houses of such a rule that we can get along at all with our appropriations. We may insist and insist, but when the time comes when we must choose between the passage or the defeat of an appropriation bill, then, as a matter of course, the House proposing the disputed proposition must withdraw it.

The Senate, however, voted to insist on its amendments, and the House, by a vote of yeas 100, nays, 88, voted to recede from its disagreement and concur in the amendments.

3907. On June 29, 1898,[1] a condition of disagreement was in existence between the House and Senate over certain amendments of the Senate to the sundry civil appropriation bill. These amendments proposed the construction of several public buildings and a soldiers' home at Hot Springs, S. Dak.

[1] Second session Fifty-fifth Congress, Record, pp. 6490–6492.

After several futile conferences the House voted, ayes 117, noes, 0, to insist further on its disagreement to the Senate amendments, and did not ask another conference.

On June 30[1] the message stating the action of the House was considered at length in the Senate. Mr. Arthur P. Gorman, of Maryland, criticized the system of partial instead of complete conference reports, and then urged that the House's demand that the Senate recede from its position was not respectful to the Senate.

On the other hand, Mr. George F. Hoar, of Massachusetts, said:

Contrary to the custom in Great Britain at the time when we established our Constitution, these appropriation bills are made up of a number of different items absolutely independent of one another. The House having originated the bill, if the Senate has a different opinion in regard to the amount or in regard to the method of accomplishing the purpose of any one item, the two Houses stand, and ought to stand, on an equality, and there is no more reason why we should yield our judgment to them than that they should yield their judgment to us. But when an entirely new, distinct subject of legislation, as is the case here, is inserted in one of these bills, either originally or by way of amendment, if either House do not assent to it the other ought, of course, to yield. Otherwise you have legislation by one House and not by two.

We have nothing to do with the reasonableness or the unreasonableness of the opinion of the House of Representatives. That is their affair. They are responsible only to themselves and their constituents. If they do not approve it, we have no business to press it by saying that the legislation which both Houses agree is necessary for the country shall fail. That is coercion; that is logrolling; that is utterly indefensible as a matter of principle.

So, after we have in conference brought again and again to the attention of the House of Representatives our reasons, if they fail to convince that body, we ought to yield to the point; and in the same way with regard to items put in by the House of Representatives and sent here, if they fail to convince this body, they ought to yield the point, whether they originate them or whether we originate them.

The Constitution requires two bodies—not one body—selected in different ways and representing different constituencies, to assent to all legislation. That is for the protection of the people. So, whatever we may think of the wisdom or the unwisdom of the opinion of the House of Representatives, unless we can change that opinion, we have no right to put constraint upon that body by saying that the public interests shall suffer in some way if you do not yield your conscientious convictions.

The Senate voted to recede from its amendments.

3908. On June 27, 1906,[2] in the Senate, a discussion arose as to the respective duties of House and Senate as to receding from legislative amendments to appropriation bills.

Mr. James A. Hemenway, of Indiana, said:

I desire to put this question to the Senator from Maine [Mr. Hale], who has had long experience on conference committees: Is it not the rule of conferences that where legislation is placed upon an appropriation bill the body seeking to legislate must recede if the other body dissent? There is no place upon an appropriation bill, as a rule, for legislation. We talk about things getting through the Congress of the United States without notice. They get through sometimes by putting them into a bill of perhaps 300-odd pages, and driving them through. I am not in sympathy with the idea that legislation can be placed upon an appropriation bill as this legislation was, whether it be good or bad, without discussion.

Mr. Eugene Hale, of Maine, said:

Mr. President, as I have been appealed to by the Senator from Indiana [Mr. Hemenway] to state what is my experience, I will state that when either House puts in an appropriation bill legislation it

[1] Record, pp. 6536–6544.

[2] Second session Fifty-ninth Congress, Record, p. 9378.

can not force the other House to agree, but it must in the end recede if the proposition is one that the other House will not at all agree to. In this case it seems to me, from the very clear and guarded statement of the Senator from Vermont, that it is not a question of the House resisting absolutely and declaring that nothing shall go on the bill, but it is a question of agreeing between the two bodies as to what legislation shall be adopted different from what the Senate has put on. I do not think we take any profit by further inflaming the situation. To test the sense of the Senate that for the present this matter shall stand, I move that the Senate adjourn.

3909. A proposition germane but involving legislation has sometimes been admitted as an amendment to a Senate amendment to an appropriation bill and sometimes ruled out.—On January 9, 1855,[1] the House was considering the following Senate amendment to the pension appropriation bill:

SEC. 3. *And be it further enacted,* That the widows of the officers, noncommissioned officers, marines, or mariners, who served in the Navy of the United States during the Revolutionary war, and who were married since the 1st day of January, 1800, shall be entitled to pensions in the same manner, and to the same extent, as the widows of the officers and soldiers of the Army of the Revolution, under the second section of the act of February 3, 1853; and the pensions granted by this act and those under the said second section of the act of February 3, 1853, shall commence on the 4th day of March, 1848.

To this Mr. Reuben E. Fenton, of New York, offered the following amendment:

And be it further enacted, That any woman who was the wife or widow of an officer, noncommissioned officer, musician, private, seaman, or marine, who served in the Army or Navy of the United States in the Revolutionary war or any subsequent war, or has since died in the land or naval service of the United States, shall also be entitled to the benefits of the pension laws, or of this act, but no woman shall receive a pension for any time during which her husband received one.

Mr. George S. Houston, of Alabama, made the point of order that this amendment proposed a change of existing law.

The Speaker[2] held:

The rule to which the gentleman refers is couched in the following language:

"No appropriation shall be reported in such general appropriation bills, or be in order as an amendment thereto, for any expenditure not previously authorized by law."

That rule would certainly control in an original bill, and in an amendment proposed to an original bill of this body; but the amendment offered by the gentleman from New York being consistent with the amendment of the Senate, the Chair considers it to be in order, governed as he must be by the action of the Senate in relation to the amendment passed by that body.

3910. On March 2, 1855,[3] during consideration of the Senate amendments to the post-office appropriation bill in Committee of the Whole House on the state of the Union, an amendment providing for the payment of a private claim was offered to a Senate amendment.

Mr. George S. Houston, of Alabama, raised a question of order.

The Chairman[4] said:

The Chair states that the amendment of the Senate would not have been in order under the rules of the House as an original proposition. If such a proposition had been offered, the present occupant of the chair would have ruled it to be out of order. Now, the same rules apply in reference to amendments to the Senate amendments that would apply when the bill was originally before the House.

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[1] Second session Thirty-third Congress, Globe, p. 218.

[2] Linn Boyd, of Kentucky, Speaker.

[3] Second session Thirty-third Congress, Globe, p. 1077.

[4] James L. Orr, of South Carolina, Chairman.

And, therefore, although the amendment of the gentleman from Kentucky as far as language is concerned is germane to the Senate amendment, yet the Chair decides that it is a private claim, that it proposes to change the existing law, and that, according to the eighty-first rule of the House, it is not in order.

An appeal being taken, the decision was sustained, ayes 94, noes 30.

3911. On April 30, 1864,[1] the House was considering a Senate amendment to the army appropriation bill providing for the rate of emolument of colored troops in the service of the United States, and allowing the payment of bounties to them at the discretion of the President.

Mr. William S. Holman, of Indiana, proposed to amend the Senate amendment by adding thereto a provision raising the pay of the white soldiers in the service of the United States.

Mr. Thaddeus Stevens, of Pennsylvania, having raised a point of order that the amendment proposed a change of existing law, Mr. Holman urged that the Senate amendment changed existing law, and that a modification of it was in order.

The Speaker[2] decided that the proposed modification was not in order, on the ground that it changed an existing law, which by the rules of the House was prohibited in an amendment to an appropriation bill, and was not germane to the Senate amendment.

Mr. Holman having appealed, the appeal was laid on the table, yeas 95, nays 25.

3912. 0n June 4, 1900,[3] the House had agreed to a partial conference report on the sundry civil appropriation bill and was considering the amendment making appropriation for the work of the Mississippi River Commission.

Mr. Theodore E. Burton, of Ohio, moved to recede and concur, with an amendment directing the Commission to prepare and report a comprehensive plan of improvement of Mississippi River.

Mr. Thaddeus M. Mahon, of Pennsylvania, made the point of order that the amendment proposed new legislation and was not germane.

The Speaker[4] said:

The point of order is overruled. If the point were to be sustained, it would entirely disarm the House from the treatment of amendments of the Senate. The Senate amendment has reference to the Mississippi River and its improvements and the Mississippi River Commission, and the amendment offered by the gentleman from Ohio [Mr. Burton] treats of the same matter. The question is on the motion of the gentleman from Ohio [Mr. Burton] to recede and concur, with an amendment.[5]

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[1] First session Thirty-eighth Congress, Journal, p. 598; Globe, p. 1998.

[2] Schuyler Colfax, of Indiana, Speaker.

[3] First session Fifty-sixth Congress, Record, pp. 6565–6568; Journal, pp. 669, 670.

[4] David B. Henderson, of Iowa, Speaker.

[5] On December 4, 1873, Mr. James A. Garfield, of Ohio, proposed the following rule, which was referred to the Committee on Rules:

Resolved, That the rules be so amended as to provide that when a House bill returns to the House with Senate amendments points of order may be made in the House against any such amendments whenever the same are not germane to the subject-matter of the bill or when such amendment contains an appropriation not authorized by law. (First session Forty-third Congress, Journal, p. 56; Record, p. 69.)

On January 24, 1883, in the Senate, Mr. Benjamin Harrison, of Indiana, proposed in the Senate a joint rule to prevent legislation on appropriation bills. (Second session Forty-seventh Congress, Record, p. 1525.)

3913. Where a Senate amendment proposes on a general appropriation bill an expenditure not authorized by law or legislation, it is in order in the House to perfect it by germane amendments.—On June 14, 1884,[1] the House was considering Senate amendments to the post-office appropriation bill, among which was the following: "For special facilities in trunk lines, $185,000."

It was moved to recede and concur in this amendment, with an amendment making the sum $250,000.

Mr. William S. Holman, of Indiana, made the point of order that this amendment was not in order.

The Speaker[2] held:

While the Chair supposes there is no permanent provision of law authorizing this expenditure, still the proposition to expend a certain amount of money for that purpose is now properly before the House, and the Chair thinks that the proposition, being properly before the House, is amendable, without regard to the rule applying to an original amendment proposed in the House. In other words, as an illustration, if the Committee on Appropriations should report a bill containing within it a provision not directly authorized by law, amendments proposed to such a provision should not be ruled out upon the point of order, because the subject upon which they are predicated, being virtually before the House, is a legitimate subject of amendment, either by increasing or diminishing the amount of the appropriation. The Chair therefore overrules the point of order.

3914. On February 28, 1889,[3] in connection with a conference report on the District of Columbia appropriation bill, the House was considering an amendment of the Senate relating to the Zoological Park. An amendment having been offered to this Senate amendment, Mr. John J. Hemphill, of South Carolina, proposed as an amendment in the second degree a provision appropriating $1,000,000 for a national park in the District, adjacent property holders to be charged for betterments.

Mr. Samuel J. Randall, of Pennsylvania, made a point of order against the amendment of Mr. Hemphill.

The Speaker[2] said:

The gentleman from Pennsylvania makes a point of order against this amendment. The Chair thinks that while no point of order can be made in the House against any provision inserted in a conference report, except upon the ground that it changes or strikes out some provision previously agreed to by both Houses, yet when the House itself comes to adopt amendments to Senate amendments the amendments offered here must be germane and are governed by the rules which govern the ordinary proceedings of the House in the consideration of appropriation bills. * * * This is a proposition to agree to a Senate amendment with an amendment which the Chair thinks is not germane to the Senate amendment. * * * Anything relating to the Zoological Park, which is the subject of the Senate amendment, would be in order if germane to the provisions of that amendment, which the Chair has not yet read.

Thereupon Mr. Hemphill proposed to amend his amendment by inserting the words "zoological park" instead of "national park."

Mr. James Buchanan, of New Jersey, made the point of order that the amendment changed existing law, and Mr. Randall suggested that the amendment would not have been in order if offered to the bill before it went to the Senate.

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[1] First session Forty-eighth Congress, Record, p. 5146; Journal, p. 1450.

[2] John G. Carlisle, of Kentucky, Speaker.

[3] Second session Fiftieth Congress, Journal, p. 667; Record, p. 2454.

The Speaker said:

That is the very point which the Chair is examining, for the Chair thinks, as he has already stated, that if the committee of conference should embrace in its report to the House an agreement upon some proposition which would not have been in order in the House originally a point of order could not be made against it; but when it is proposed that the House shall concur in a Senate amendment with an amendment, the latter must be of such a character that it would have been in order if the original proposition were before the House. Upon this ground the Chair thinks that the amendment offered by the gentleman from South Carolina is not in order; * * * and it is not in order simply as an amendment to the Senate amendment, because it proposes to change existing law in regard to the payment for this property. The law now provides that the expenditures in connection with the District shall be borne one-half by the United States and one-half by the District of Columbia.

3915. On March 2, 1885,[1] the House was considering certain Senate amendments to the legislative, executive, and judicial appropriation bill, one of which was as follows:

For clerks to Senators who are not chairmen of committees, at $6 per day, $39,432.

Mr. J. Warren Keifer, of Ohio, moved to concur in this Senate amendment with an amendment which would make it read as follows:

For clerks to Senators and Representatives who are not chairmen of committees, at the rate of $100 per month during the session, $209,300.

Mr. William M. Springer, of Illinois, made the point of order that the proposed amendment of Mr. Keifer was a change of existing law and did not retrench expenditures.

The Speaker[2] said:

The question was presented at the last session of Congress and the Chair made a ruling upon it then, but has never been entirely satisfied that it was altogether correct. The Chair will cause the Journal entry to be read:

"The House then proceeded as the regular order of business (as a privileged question) to the consideration of the bill of the House (H. R. 5459) making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1885, and for other purposes, and amendments of the Senate thereto, pending when the House took a recess on yesterday, the pending question being on the following amendment of the Senate, namely: 'Page 74, after line 27, insert: "For necessary and special facilities on trunk lines, one hundred and eighty-five."' Pending which Mr. Horr moved that the House recede from its disagreement to the said amendment and agree to the same with the following amendment:

"'Strike out the words "one hundred and eighty-five" and insert in lieu thereof "two hundred and fifty.'"

"Pending which Mr. Holman made the point of order that the said amendment, under clause 3 of Rule XXI, was not in order, for the reason that said appropriation was for a purpose not authorized or specified by law or for work already in progress."

"The Speaker overruled the said point of order on the ground that the appropriation to which the amendment was offered was properly before the House and was amendable without regard to the rule applicable to an original amendment proposed in the House."

It will be observed that the question presented in that case was on an amendment which proposed simply to increase the amount appropriated by the Senate amendment for the same purpose provided for in the Senate amendment. The gentleman from Ohio now submits a proposition which is to make an appropriation for a different purpose from that provided for in the Senate amendment. * * *

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[1] Second session Forty-eighth Congress, Record, pp. 2421, 2422.

[2] John G. Carlisle, of Kentucky, Speaker.

The Speaker went on to say that the amendment was, however, germane, and that the Chair had held during the last session that when a Senate amendment providing for an appropriation not authorized by existing law came to the House it was in order for the House to amend it by adding other appropriations relevant to it, although not authorized by existing law, because otherwise the House would have no power to amend a Senate amendment which proposed to appropriate money for purposes not previously authorized by law.[1]

3916. On June 17, 1898,[2] the House having under consideration a Senate amendment (No. 74) to the District of Columbia appropriation bill relating to electric lighting in the District, Mr. Mahlon Pitney, of New Jersey, moved to recede and concur in the Senate amendment with an amendment relating to a conduit system for electric-light wires.

Mr. William H. King, of Utah, having made a point of order, the Speaker pro tempore[3] held:

The gentleman from New Jersey [Mr. Pitney] moves to recede from the House disagreement to the amendment No. 74 and to agree with an amendment. The gentleman from Utah [Mr. King] makes the point of order that the amendment offered by the gentleman from New Jersey is new legislation. The Chair is very clearly of opinion that the point of order is not well taken. It is conceded that the amendment offered by the gentleman from New Jersey is germane to the Senate amendment, and the point that it is new legislation can not be raised at this stage of the proceeding, inasmuch as the new legislation originated in the Senate. If that was not the rule, it would be in the power of the Senate at any time to originate new legislation and deprive the House of any judgment with reference to it. If new legislation originates in the Senate, the House has the right to agree or disagree or to agree with an amendment, and the point of order is therefore overruled.

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[1] On March 3, 1887 (second session Forty-ninth Congress, Record, p. 2736), Mr. Speaker Carlisle made a similar decision.

[2] Second session Fifty-fifth Congress, Record, p. 6098.

[3] John Dalzell, of Pennsylvania, Speaker pro tempore.

Chapter XCVIII.

LIMITATIONS IN GENERAL APPROPRIATION BILLS.

1. Forms of limitations. Sections 3917–3926.
2. Attach only to money of appropriation. Sections 3927–3930.
3. Legislation not in order in. Sections 3931–3935.
4. Existing law may not be construed by. Sections $936–3938.
5. May withhold appropriation from certain objects. Sections 3939–3954.
6. May not make affirmative rules for executive officers. Sections 3955–3967.
7. Executive discretion negatively restricted. Sections 3968–3975.[1]
8. Possible construction as well as technical form to be considered. Sections 3976–3984.
9. General decisions. Sections 3985–4018.

3917. The House may by limitation on a general appropriation bill provide that no part of an appropriation shall be used for a certain purpose.—On January 20, 1906,[2] the urgent deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

To enable the President to meet unforseen emergencies arising in the diplomatic and consular service, and to extend the commercial and other interests of the United States, to be expended pursuant to the requirement of section 291 of the Revised Statutes, $50,000, or so much thereof as may be necessary, no part of which sum shall be disbursed for services rendered or expenses incurred within the District of Columbia.

To this Mr. Lucius N. Littauer, of New York, proposed this amendment:

After the word "Columbia," insert "except for the entertainment of foreign dignitaries."

Mr. John S. Williams, of Mississippi, having made a point of order, the Chairman[3] held:

This is a limitation on the appropriation which the amendment attempts to perfect. The Chair overrules the point of order. The question is on agreeing to the amendment.

3918. On January 20, 1906,[4] the urgent deficiency bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

Collecting the revenue from customs: To defay the expenses of collecting the revenue from customs, being additional to the permanent appropriation for this purpose, for the fiscal year ending June 30, 1906, $1,500,000.

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[1] See also section 3641 of this volume.
[2] First session Fifty-ninth Congress, Record, pp. 1320, 1321.
[3] James S. Sherman, of New York, Chairman.
[4] First session Fifty-ninth Congress, Record, p. 1323.

Mr. Robert B. Macon, of Arkansas, proposed to this an amendment:

Amend by adding the following: "*Provided,* That no part of the sum herein appropriated shall be used for the payment of expenses of a customs office where the expenses of said office are in excess of the revenue receipts therefrom."

Mr. James A. Tawney, of Minnesota, made a point of order against the amendment.

The Chairman [1] held:

It is apparent to the Chair that the amendment proposed is a limitation on the appropriation, and is not obnoxious to the rule; therefore the Chair overrules the point of order. Now, the Chair will recognize the gentleman from Massachusetts to discuss the merits of the amendment.

3919. On May 15, 1906,[2] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read the paragraph providing salaries for the staff of instructors at the Naval Academy.

To this paragraph Mr. John J. Fitzgerald, of New York, offered an amendment:

Provided, That no part of the appropriations herein made for the support of the Naval Academy or for buildings and grounds of the Naval Academy shall be expended for compensation of clerks or clerical service of any nature except as herein provided for, unless the clerks and clerical service are specifically authorized and appropriations therefor specifically made.

After debate the Chairman [3] held:

The Chair is of opinion that the amendment is clearly a limitation upon the appropriation contained in the paragraph to which it refers. It does not repeal any provision of law and does not purport to. It is within the power of the House to so amend appropriation bills as to limit appropriations to one particular line of objects and exclude another particular line of objects, even though they be authorized by law, and the Chair therefore overrules the point of order.

3920. On June 15, 1906 [4] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

To continue the construction of the Isthmian Canal, to be expended under the direction of the President in accordance with an act entitled "An act to provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans," approved June 28, 1902, as follows.

Mr. Lucius N. Littauer, of New York, thereupon offered an amendment as follows:

Provided, That no part of the sum herein appropriated shall be used for the construction of a canal of the so-called "sea-level type."

Mr. Charles L. Bartlett, of Georgia, made the point of order that as discretion was vested in the President by the act of 1902 this provision would restrict that discretion. Mr. Bartlett cited this provision of that act:

The President shall then, through the Isthmian Canal Commission hereinafter authorized, cause to be excavated, constructed, and completed, utilizing to that end, as far as practicable, the work heretofore done by the New Panama Canal Company, of France, and its predecessor company, a ship

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[1] James S. Sherman, of New York, Chairman.

[2] First session Fifty-ninth Congress, Record, p. 6913.

[3] Edgar D. Crumpacker, of Indiana, Chairman.

[4] First session Fifty-ninth Congress, Record, pp. 8581, 8597.

canal from the Caribbean Sea to the Pacific Ocean. Such canal shall be of sufficient capacity and depth as shall afford convenient passage for vessels of the largest tonnage and greatest draft now in use, and such as may be reasonably anticipated, and shall be supplied with all necessary locks and other appliances to meet the necessities of vessels passing through the same from ocean to ocean, and he shall also cause to be constructed such safe and commodious harbors at the termini of said canal and make such provisions for same as may be necessary for the safety and protection of said canal and harbors.

After further debate the Chairman [1] held:

The Chair is clearly of the opinion that the words of the amendment constitute a limitation on the appropriation, and not a change of existing law. The precedents are so numerous and the rule is so well established and clearly defined that the Chair does not feel obliged to cite a ruling at length or cite the precedents. The Chair therefore overrules the point of order.

3921. On May 17, 1902,[2] the naval appropriation bill being under consideration in Committee of the Whole House on the state of the Union, Mr. Sidney E. Mudd, of Maryland, offered this amendment:

Provided, however, That no part of the money appropriated in this paragraph or elsewhere in this bill, or to be hereafter appropriated, shall be expended in the purchase of any history of the Spanish-American war written by Edgar Stanton Maclay, for use at the Naval Academy, in ships' libraries, or in any other part of the naval establishment of the United States.

Mr. Alston G. Dayton, of West Virginia, made a point of order against the amendment.

The Chairman [3] said:

The amendment is clearly obnoxious to the rule. The Chair sustains the point of order.

Thereupon Mr. Mudd offered the following amendment:

On page 62, after line 14, add as follows:

"Provided, however, That no part of the money appropriated in this paragraph or elsewhere in this bill shall be expended in the purchase of any history of the Spanish-American war written by Edgar Stanton Maclay, for use at the Naval Academy, in ships' libraries, or in any other part of the naval establishment of the United States."

Mr. Dayton made a point of order.

The Chairman said:

It is perfectly clear to the Chair that the amendment is a limitation and not legislation, and that the amendment is in order. The point of order is overruled.

3922. On January 21, 1905,[4] the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union, a paragraph relating to schools being under consideration.

Mr. John J. Fitzgerald, of New York, proposed this amendment:

After line 15, page 50, insert:

"Provided, That no part of the moneys hereby appropriated shall be expended for the transportation of any pupil or pupils to any Indian school located without the boundaries of the reservation wherein such child resides, without the consent of the parents or guardians of such child or children being first had in writing."

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[1] James E. Watson, of Indiana, Chairman.

[2] First session Fifty-seventh Congress, Record, p. 5607.

[3] James S. Sherman, of New York, Chairman.

[4] Third session Fifty-eighth Congress, Record, p. 1194.

Mr. James S. Sherman, of New York, raised a point of order against the amendment, but afterwards, in the course of debate, conceded that it was a limitation.

The Chairman [1] overruled the point of order.

3923. On January 19, 1905,[2] the army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, the paragraph providing for the transportation of the Army having been read.

Mr. John A. T. Hull, of Iowa, offered this amendment:

Provided, That no part of the $12,000,000 hereby appropriated shall be paid to any steamship company for the transportation of supplies or enlisted men or officers of the United States from the Philippine Islands to the United States or from the United States to the Philippine Islands.

Mr. William E. Humphrey, of Washington, made a point of order against the amendment.

The Chairman [3] held:

The Chair is quite clear that this is simply a limitation of an appropriation made in this section, and therefore overrules the point of order. The question is on agreeing to the amendment offered by the gentleman from Iowa [Mr. Hull].

3924. On February 18, 1904,[4] the fortifications appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. James M. Robinson, of Indiana, proposed the following amendment:

On page 10, after the word "Government," in line 19, insert:

"No money herein appropriated shall be expended in the construction or test of the Langley aerodrome."

Mr. Lucius N. Littauer, of New York, made a point of order, saying:

The duties of the Board of Ordnance and Fortification are specified by existing law:

"To enable the Board of Ordnance and Fortification to make all needful purchases of whatever, in the judgment of the board, may be necessary in the proper discharge of the duties devolved upon it by the act approved September 22, 1888."

The duties of this board are thus provided for by statute.

The Chairman [5] said:

The Chair begs to call the attention of the gentleman from New York to the fact that the House of Representatives is not compelled to appropriate for every lawful purpose. It may appropriate or not as it sees fit; and it may in making any appropriation place a limitation upon the expenditure of that appropriation. In the opinion of the Chair the amendment of the gentleman from Indiana [Mr. Robinson] is purely a limitation upon this appropriation, and in the opinion of the Chair is in order. The Chair overrules the point of order.

3925. On March 30, 1904,[6] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

California Débris Commission: For defraying the expenses of the Commission in carrying on the work authorized by the act of Congress approved March 1, 1893, $15,000.

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[1] Frank D. Currier, of New Hampshire, Chairman.

[2] Third session Fifty-eighth Congress, Record, pp. 1094, 1095.

[3] H. S. Boutell, of Illinois, Chairman.

[4] Second session Fifty-eighth Congress, Record, p. 2052.

[5] James S. Sherman, of New York, Chairman.

[6] Second session Fifty-eighth Congress, Record, p. 4016.

To this Mr. Marlin E. Olmsted, of Pennsylvania, offered as an amendment the following:

Amend by adding at the end of line 22, page 114, the following words, viz:

"No part of the said sum shall be expended except in the reimbursement of the Commission or members thereof for expenses actually incurred in the performance of their duties in carrying on said work, which said expenses shall not have been paid nor be payable from any other fund."

Mr. James A. Hemenway, of Indiana, made the point of order that the amendment was in violation of law.

After debate, the Chairman [1] held:

The amendment seems to provide, first, that nothing shall be paid from this appropriation except the expenses of the Commission or members thereof; second, that no expenses shall be paid except those which have not been paid or provided for from some other fund. Both these branches of the amendment would seem to be a limitation on the appropriation, and the point of order is overruled.

3926. On March 24, 1904,[2] the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

For compensation to twenty-five rural agents, at $1,600 each; fifteen rural agents, at $1,500 each; fifteen rural agents, at $1,400 each; nineteen rural agents, at $1,300 each; sixty-five rural agents, at $1,200 each; and ten rural agents, at $1,000 each, $196,200.

To this Mr. William W. Kitchin, of North Carolina, offered the following as an amendment:

Insert, in line 18, page 24, after the word "dollars," "*Provided,* That no part of this appropriation shall be paid to any rural agent who after the 1st day of July, 1904, shall make a recommendation against the establishment of any route on account of the condition of the road over which said route extends or is proposed to extend."

Mr. Jesse Overstreet, of Indiana, made a point of order against the amendment.

After debate, the Chairman [3] held:

The Chair has not been referred to any law prescribing the duties of these agents or to any law directing the Postmaster-General to designate the duties of these agents so employed. The Chair can only consider the general law conferring upon the Postmaster-General the power to distribute the duties of his Department where these duties are not distributed by law, and this amendment, * * * although vague in its terms and although it might seem to contain provisions which in the mind of the Chair would be difficult of enforcement, still, as the Chair understands those questions they should be submitted to the discretion of the committee, the Chair can not see that this amendment is anything else but an appropriation for certain agents, omitting others, a discrimination which Congress has of course the right to make, and the Chair, therefore, is constrained to overrule the point of order.

3927. A limitation may be attached only to the money of the appropriation under consideration, and may not be made applicable to moneys to be appropriated in other acts.

A ruling in which are discussed the principles of the former rule admitting to appropriation bills legislative provisions reducing expenditures.

On March 21, 1892,[4] the House was in Committee of the Whole House on the

[1] Theodore E. Burton, of Ohio, Chairman.

[2] Second session Fifty-eighth Congress, Record, pp. 3646, 3647.

[3] H. S. Boutell, of Illinois, Chairman.

[4] First session Fifty-second Congress, Record, p. 2282.

state of the Union, considering the Army appropriation bill, when the Chairman[1] ruled as follows on a point of order made by Mr. William H. Crain, of Texas:

The point of order made by the gentleman from Texas [Mr. Crain] is against the second proviso on page 16 of the bill, which declares—

"That hereafter no money appropriated for army transportation shall be used in payment of the transportation of troops and supplies of the Army over any of the nonbonded lines owned, controlled, or operated by the Union Pacific Railway Company (including the lines of the Oregon Short Line and Utah Northern Railway Company), or by the Southern Pacific Company over lines embraced in its Pacific system."

Under the view taken by the Chair, the relations between the Government and these railroad companies, as determined by the Supreme Court, or otherwise, can not affect the decision of this point of order.

The gentleman from Indiana [Mr. Holman] contends that this proposed new legislation is in order in an appropriation bill under the proviso of the second section of Rule XXI, which says:

"It shall be in order further to amend such bill upon the report of the committee having jurisdiction of the subject-matter of such amendment, which amendment, being germane to the subject-matter of the bill, shall retrench expenditures."[2]

The Chair is of opinion that a motion of that kind should come officially from the committee having jurisdiction, and can not be brought before the Committee of the Whole House on the state of the Union as an integral part of an appropriation bill reported by the regular Committee on Appropriations.

The question then arises, Is this proviso in order under the previous paragraph of section 2, which allows legislation on appropriation bills changing existing law in three cases, first, such as, being germane to the subject-matter of the bill, retrench expenditures by the reduction of the number and salary of the officers of the United States?

It is admitted that this provision does not apply, nor, on the other hand, does this proviso "reduce the compensation of persons paid out of the Treasury of the United States," as contemplated in the second case, but the point is made with considerable force—and upon that point the Chair confesses that his mind is not as clear as he would like it to be—that this is legislation coming under the third exception, in that it reduces the amount of money covered by the bill.

If it is such a provision, it is in order., and it is asserted by the chairman of the committee that that would be the effect of the provision. But the Chair is inclined to the opinion that such effect should not be inferred by way of argument, but should appear from the face of the bill itself. Now, the Chair has no doubt that the committee, acting under the rules, in making an appropriation, can so limit that appropriation as to direct who shall and who shall not be its beneficiaries; that in making appropriations for the transportation of the Army for the next fiscal year it can fail or refuse to make appropriations for its transportation over the particular lines mentioned in the bill; just as it might fail or refuse, in its judgment, to make appropriations for the transportation of the artillery, or of the cavalry, or of the infantry branch of the service.

But on examining the proviso in the bill the Chair finds that it is something more than a limitation upon the appropriation made in this appropriation bill, for it proposes to make a permanent law, the language of the proviso being:

"Provided, That hereafter no money appropriated for army transportation shall be used in payment of transportation of troops and supplies."

And because it proposes a permanent provision of law, and not a limitation upon the present appropriation, the Chair feels constrained to sustain the point of order.

3928. On February 21, 1899,[1] the House was considering the naval appropriation bill in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

Armor and armament: Toward the armament and armor of domestic manufacture for the vessels authorized by the act of July 26, 1894, of the vessels authorized under the act of March 2, 1895, of those

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[1] William L. Wilson, of West Virginia, Chairman.

[2] The form of rule in use at the present time does not have this provision. See section 3578 of this volume.

[3] Third session Fifty-fifth Congress, Record, pp. 2164, 2165.

authorized by the act of June 10, 1896, of those authorized by the act of March 3, 1897, of those authorized by the act of May 4, 1898, and of those authorized by this act, $4,000,000. In all future contracts for armor for any of the vessels above mentioned, the Secretary of the Navy is hereby authorized and directed to procure armor of the best obtainable quality at an average cost not exceeding $545 a ton of 2,240 pounds, including all royalties.

Against the last sentence of this paragraph, beginning with the words "In all future contracts," Mr. Albert J. Hopkins, of Illinois, made a point of order.

The Chairman [1] said:

The Chair, rather than to rule, desires to make a suggestion. It seems to the Chair perfectly clear that it is in order to put a limitation upon the appropriation contained in this bill only; but this appropriation provides:

"Toward the armament and armor"—and so forth, indicating that it is expected that a future appropriation must be necessary in order to complete this armament. And in reference to this future appropriation, it is not proper to put a limitation in this bill.

The Chair suggests that if the gentleman from Illinois [Mr. Hopkins] would withdraw his point of order the wording might be changed, so that, in line 12, the words "all future" be stricken out, and after the word "armor," in line 13, the words "herein appropriated for" be inserted , and that would bring the provision where it would not be obnoxious to the rule. It would be a limitation upon the appropriation and would be admissible under the rule.

Mr. Hopkins having declined to withdraw the point of order, the Chairman said:

If the gentleman from Illinois declines to withdraw his point of order, the Chair, for the reasons that he has stated, will sustain the point of order.

3929. A limitation must apply solely to the present appropriation, and may not be made as a permanent provision of law.—On March 20, 1906,[2] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a paragraph was read including appropriations for pay of janitors to certain committees, and also the following provision:

And said janitors shall be appointed by the chairmen, respectively, of said committees, and shall perform, under the direction of the Doorkeeper, all of the duties heretofore required of messengers detailed to said committees by the Doorkeeper, and shall be subject to removal by the Doorkeeper at any time after the termination of the Congress during which they were appointed.

Mr. George W. Prince, of Illinois, made a point of order against the words which would make the janitors subject to removal by the Doorkeeper.

Mr. Lucius N. Littauer, of New York, urged that this was simply a limitation.

After debate the Chairman [3] ruled:

This paragraph appropriates the money absolutely, and then follows the provision "and shall be subject to removal by the Doorkeeper at any time after the termination of the Congress during which they were appointed."

It seems to the Chair that it is not a condition of the appropriation, or a limitation upon it, but a provision of law which is intended to be continuing even beyond the term of the present Congress or after the expiration of the year for which the appropriation is made. It seems to the Chair that it is in violation of the rule, and the Chair therefore sustains the point of order.

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[1] James S. Sherman, of New York, Chairman.

[2] First session Fifty-ninth Congress, Record, pp. 4046, 4047.

[3] Marlin E. Olmsted, of Pennsylvania, Chairman.

3930. As to the line of distinction between limitations applying only to the appropriation for the year and a permanent provision of law.—On January 26, 1907,[1] the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

For meat inspection: That hereafter, for the purpose of preventing the use in interstate or foreign commerce, as hereinafter provided, of meat and meat food products which are unsound, unhealthful, unwholesome, or otherwise unfit for human food, the Secretary of Agriculture, at his discretion, may cause to be made, by inspectors appointed for that purpose, an examination and inspection of all cattle, sheep, swine, and goats before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment, in which they are to be slaughtered and the meat and meat food products thereof are to be used in interstate or foreign commerce; and all cattle, swine, sheep, and goats found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine, or goats, and when so slaughtered the carcasses of said cattle, sheep, swine, or goats shall be subject to a careful examination and inspection, all as provided by the rules and regulations to be prescribed by the Secretary of Agriculture, as herein provided for.

Mr. James R. Mann, of Illinois, made a point of order that the insertion of the word "hereafter" in the first line, brought the paragraph within the rule as to legislation, although with the exception of that word the paragraph was a verbatim repetition of an existing law. Mr. Mann said:

If the old existing law is permanent legislation, then there is no necessity for the provision in this bill. I understand it to be the position of the distinguished gentleman from New York in charge of the bill that the old law, in fact, is permanent legislation, and that this item had been inserted in the bill at this time not because he believed, and probably not because the committee believed, that there is any doubt of it, but because a gentleman now in the position of Solicitor to the Department of Agriculture has had some doubts about the matter. Now, Mr. Chairman, I have no doubt myself, not the slightest, and I do not believe that any lawyer wherever he may be placed will have any doubt, that the legislation of last year is permanent legislation, although it appeared in an appropriation act.

The legislation of last year provides not for something in connection with appropriations of that year, but it provides legislation in the form not as a proviso, but as a positive enactment and follows it up with the statement that there is permanently appropriated for each year $3,000,000. * * * The word "hereafter" does not appear, and it is not necessary. I call the attention of the Chairman to the decision of the Comptroller, found in 6 Comptroller's Decisions, page 904, where there was a proviso reading like this, after an appropriation of $1,900,000 had been made for certain expenses in connection with the collection of revenue:

"Provided, That the compensation of the chief of the internal-revenue agents should not exceed $10 per day and all the other agents not exceeding $7 per day, etc."

The question raised was whether that proviso was a limitation upon that appropriation or whether it was permanent legislation. The word "hereafter"did not occur in the provision. The Comptroller said:

"By necessary implication these provisos repeal and abrogate what was then existing law. They appear to be permanent and general in their scope and not intended to affect only the expenditure of this particular appropriation. I therefore conclude that this provision of law is general and permanent in its nature."

In a case where the Comptroller held that, the word "hereafter" not being inserted, it was not permanent legislation, he expressly held that if it appeared to be the intention of Congress to make permanent legislation, it was or would be permanent legislation although in an appropriation act. This decision made in reference to the word "hereafter" was a decision arising in reference to the Light-House Board and light-house expenditures. In the act of Congress it was provided in the expenditures of the Light-House Board in the sundry civil appropriation bill as follows:

"Provided, That lenses and lense glass for the use of the Light-House Establishment may be imported free of duty."

[1] Second session Fifty-ninth Congress, Record, pp. 1768, 1769.

The question arose whether that was a limitation on that appropriation or whether that was a permanent enactment of lawmaking free lenses and lense glass. The question was as to whether this proviso and it was in the nature of a proviso, was permanent legislation affecting the tariff laws or whether it simply applied to that appropriation, and it is worth while to read what the Comptroller said and decided in respect to the matter. I read from volume 7, Decisions of the Comptroller of the Treasury, at page 839:

"But the practice of Congress of inserting general and permanent legislation in annual appropriation acts in the form of a proviso has become so extensive that it is frequently difficult to determine whether a particular proviso in such an act is intended to apply only to the appropriation for the fiscal year to which it is attached or is intended to be permanent legislation and apply to future appropriations for the same object. In view of this practice it would not be permissible to presume that a proviso in such an act is limited in its application to the particular fiscal year for which the appropriation is made merely because the provision is in the form of a proviso. In general, I think a proviso in such an act, which is itself limited in its duration, should not be construed as permanent legislation unless the language used in the proviso or the nature of the provision renders it clear that such was the intention of Congress.

"Usually the word 'hereafter,' when used in a proviso in such an act, indicates an intention to extend the application of the proviso to future appropriations. The absence of this word and of other words indicating futurity from the language of this proviso is to be observed. Where, however, the provision is in its nature general, and bean no particular relation to the object of the appropriation to which the proviso is attached, it may clearly indicate an intention of general and permanent legislation. For example, if this proviso had excepted from duty all articles imported for the use of the Government, I think I should infer that such a provision was intended to be general and permanent legislation, although included in a particular annual appropriation, and although it did not use the word 'hereafter.' But the proviso under consideration is limited to a few articles pertaining to the branch of the service for which the particular appropriation to which the proviso is attached was made.

"I am therefore of opinion that neither the language nor the nature of this proviso indicates an intention to enact general and permanent legislation, and that it must be construed to be limited in its operation to the particular appropriation of which it forms a part."

The Chairman [1] held:

The Chair is clearly of the opinion that the introduction of the word "hereafter" is new legislation, and therefore sustains the point of order to the whole paragraph.

3931. Legislation may not be proposed under the form of a limitation.—On January 8, 1890,[2] the House was in Committee of the Whole House on the state of the Union, considering the District of Columbia appropriation bill. The House was at this time proceeding under general parliamentary law; but by special order this bill was considered under the rules of the Fiftieth Congress.[3]

The Clerk having read the paragraph providing for lighting the streets of Washington, Mr. Louis E. Atkinson, of Pennsylvania, made the point of order against so much of the section as the following words included:

And no overhead wires for public or private electric lighting shall be permitted on or over any of the streets or avenues of the cities of Washington or Georgetown after September 30, 1890.

The point he made was, first, that the Committee on Appropriations had no jurisdiction over the subject-matter, and, second, that this changed the existing law.

The Chair [4] sustained the point of order, and the portion objected to was stricken out.

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[1] David J. Foster, of Vermont, Chairman.

[2] First session Fifty-first Congress, Record, pp. 433, 467, 468.

[3] The rule was the same in the Fiftieth Congress as at present.

[4] Julius C. Burrows, of Michigan, Chairman.

Thereupon Mr. Louis E. McComas, of Maryland, offered the following amendment:

And no overhead wires for public electric lighting shall be permitted on or over any of the streets or avenues of the cities of Washington or Georgetown after September 30, 1890.

Mr. Atkinson having made the same point of order, the Chairman ruled that the amendment was something more than a limitation upon the expenditure of public money, and sustained the point of order.

Then Mr. McComas offered the following amendment, upon which no point of order was made:

Provided, That no more than 60 cents per night shall be paid for any light burning from sunset to sunrise, and no more than 40 cents per night shall be paid for any light burning from sunset to sunrise and operated wholly or in part by overheard wires, and each arc light shall be of not less than 1,000 actual candlepower; and no part of this appropriation shall be used for electric lighting after September 30, 1890, by means of wires that may exist on or over any of the streets or avenues of the cities of Washington and Georgetown.

3932. On February 1, 1896,[1] the District of Columbia appropriation bill being under consideration in Committee of the Whole House on the state of the Union, and the paragraph relating to street lighting having been read, the Chairman[2] ruled as follows on a point of order made against a proviso by Mr. Henry M. Baker, of New Hampshire:

The proviso is: "That in case such lowest responsible bidder be not provided with an underground system of wires and conduits in the streets and other places covered by such service the Commissioners of the District of Columbia may, under such reasonable conditions as they may prescribe, authorize such bidder to lay down an approved system of underground conduits and wires for electric lighting in and along such streets and other public places as may be necessary for said service, such privilege as may be granted hereunder to be revocable at the will of Congress without compensation."

This proviso does not materially differ from the provision that was ruled out on the point of order yesterday. In order to carry it out the same disturbance of the streets would be required, the same digging and interference with public travel, and in that respect it does not differ substantially from the paragraph that was ruled out. The Chair does not understand that any provision of law has been cited which makes it lawful for any electric-lighting company to dig up the streets of the city of Washington, especially any company which may happen to be the lowest bidder-a new company organized for that purpose. Any such interference with the streets and any authorization of such an interference with the streets of the city would be, in the opinion of the Chair, a change of existing law.

The Chair quoted yesterday a decision made in the Fifty-first Congress which has been criticized this morning. On returning to that question the Chairs recollection is confirmed. In the first place, the bill upon which the question rose was considered under the rules of the Fiftieth Congress, and the rule of the Fiftieth Congress upon that subject is in these words:

"Nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto."

The particular clause in that bill to which the point of order was directed was this:

"And no overhead wires for public or private electric lighting shall be permitted on or over any of the streets or avenues of the cities of Washington and Georgetown after September 30, 1890."

That was confined exclusively to wires for public or private electric lighting and did not apply to telegraph or telephone wires or to any other wires than those belonging to this special class. The point of order was made against that provision that it was a change of existing law. The Chair yesterday cited that case, not upon that particular ground, but because it was contended here that the provision then under consideration was in order because it was simply a limitation upon the expenditure

[1] First session Fifty-fourth Congress, Record, p. 1224.

[2] Sereno E. Payne, of New York, Chairman.

of public money, a limitation of the appropriation made in the bill to a particular object. It was upon that point that the Chair quoted the decision made in the Fifty-first Congress.

In the Fifty-first Congress the point was made by those who contended in favor of the provision in the bill that it was simply a limitation upon the expenditures of the Government. But at that time, notwithstanding the objection, it was directly held by the occupant of the chair that it was not merely a limitation upon the expenditure of the public money and was therefore out of order as being in contravention of the existing law and as changing existing law. The Chair sustains the point of order.

3933. On March 18, 1898,[1] the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and a paragraph relating to transportation of mails being reached, Mr. C. A. Barlow, of California, offered this amendment, as a limitation:

Provided, That all contracts for the transportation of mail required by the service in the future may be paid for at a price not to exceed the rates charged individuals or corporations for performing a similar service; such rates to be ascertained from sworn statements to be furnished by the managers of the transportation companies.

Mr. John J. Gardner, of New Jersey, made a point of order against the amendment.

The Chairman[2] sustained the point of order.

3934. On January 23, 1901,[3] the bill (H. R. 13575), the District of Columbia appropriation bill, was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read this paragraph:

For board and care of all children committed to the guardianship of said board by the courts of the District, and for the temporary care of children pending investigation or while being transferred from place to place, $30,000.

At this point Mr. John F. Fitzgerald, of Massachusetts, offered this as an amendment:

That the children in the care or control of the Board of Children's Guardians may be placed in private families: *Provided*, *however*, That in case of illness, or change of place, or while awaiting trial, they may be placed in any suitable institution: *And provided also*, That every child in the care of the Board of Children's Guardians shall, as far as practicable, be placed only in such family as is of the same religious denomination or faith as the parents of last surviving parent of the child.

Mr. William W. Grout, of Vermont, made a point of order against the amendment.

After debate the Chairman[4] held:

The point of order is made against the amendment proposed by the gentleman from Massachusetts that it is new legislation, and the gentleman answers it by saying that it is a limitation upon the legislation here proposed in the matter of the appropriation of money.

The distinction between the limitation and enlargement of appropriations has been the subject of a great deal of discussion in the Committee of the Whole. The question arose in the Fifty-fourth Congress, when a very able and exhaustive opinion[5] was rendered by Mr. Dingley, of Maine, then chairman of the Committee of the Whole House on the state of the Union. One paragraph of that opinion seems to the present occupant of the chair to be pertinent here:

"The Chair is aware that in a few exceptional cases this principle of limitation has been improperly construed to include an enlargement of the objects for which an appropriation may be used; but the

[1] Second session Fifty-fifth Congress, Record, p. 2979.

[2] John A. T. Hull, of Iowa, Chairman.

[3] Second session Fifty-sixth Congress, Record, pp. 1349, 1350.

[4] Charles H. Grosvenor, of Ohio, Chairman.

[5] See section 3936 of this chapter.

exceptions have so clearly disregarded the theory on which limitations rest that they only serve to prove the correct rule."

Now, here is an appropriation for the board and care of children committed to the guardianship of the Board of Children's Guardians by the courts. Is the proposition of the gentleman from Massachusetts a limitation or is it an enlargement? It does not lessen the directions in which these children may be sent, but it does enlarge the provision by providing that they may be sent to private families, and then proceeds to the very questionable kind of legislation that they shall be sent to the families of the same religious type.

If the objection had been made upon the ground of the indefiniteness of the proposition, the Chair thinks it would have had to be sustained on that ground. It is difficult in this age and day to institute comparisons about religions so as to segregate one belief from another on some occasions; but that is unnecessary for the Chair to decide here. On the question as to whether this is new legislation, it was introduced in the House of Representatives as an original bill, proposing to pass an act, and it is entitled here "to place children in the care or control of the Board of Children's Guardians in private families." Therefore, in the estimation of the author of the bill, it was intended to be recognized as new legislation. The Chair is of opinion that the result of all this would be to enlarge and not to limit, to enlarge the scope of the provision of the existing law, and in effect to make new legislation. The point of order is therefore sustained.

3935. On June 16, 1906,[1] the House had passed the sundry civil appropriation bill to be engrossed, and the bill had been read a third time, when Mr. John A. Sullivan, of Massachusetts, moved to recommit with instructions to insert the following as to the construction of the Panama Canal:

Provided, That no part of this appropriation shall be expended for materials and supplies which are manufactured or produced in the United States unless said articles are sold to the Isthmian Canal Commission at export prices whenever such export prices are lower than the price charged consumers in the United States.

Mr. James A. Tawney, of Minnesota, made the point of order that the instructions proposed legislation.

Debate arising, Mr. Marlin E. Olmsted, of Pennsylvania, distinguished between this proposition and the one offered the previous day and held in order in Committee of the Whole, saying:

While the amendment which he offered yesterday was merely a limitation upon the appropriation itself, this amendment, if I correctly heard it as read by the Clerk, imposes upon the Isthmian Canal Commission, or those who purchase these supplies, an additional duty. The amendment yesterday which the gentleman offered provided that no part of the appropriation should be expended except as the result of bids advertised in the manner now established by the Isthmian Canal Commission under existing law—that is to say, it imposed upon them no duties except those already existing under present law.

At the conclusion of the debate the Speaker[2] held:

It is conceded that under the law as it is at this time these supplies may be bought anywhere, without regard to where they may be produced, whether in the United States or elsewhere in the world. Now, this is an appropriation for supplies and equipment for the construction and engineering and administration departments of the Isthmus of Panama, $9,000,000. The motion to recommit made by the gentleman from Massachusetts is as follows:

"To recommit the bill with instructions to report the same back with the following provision: After line 2 of page 165:

"*Provided*, That no part of this appropriation shall be expended for materials and supplies which are manufactured or produced in the United States unless said articles are sold to the Isthmian Canal

[1] First session Fifty-ninth Congress, Record, pp. 8652–8654.

[2] Joseph G. Cannon, of Illinois, Speaker.

Commission at export prices whenever such export prices are lower than the prices charged consumers in the United States."

Gentlemen say this fixes a standard. It is not necessary for the Chair to discuss the merits of the measure." Consumer in the United States." If the Chair was to discuss them, and it was a question of fixing a standard, would it be consumers by retail or wholesale?

The merits of the proposition are not involved in the point of order. What is the object of the motion and of the instruction? If it does not change existing law, then it is not necessary. If it does change existing law, then it is subject to the point of order. Much has been said about limitation; and the doctrine of limitation is sustained upon the proposition under the rule that, as Congress has the power to withhold every appropriation, it may withhold the appropriation upon limitation. Now, that is correct. But there is another rule, another phase of that question. If the limitation, whether it be affirmative or negative, operates to change the law or to enact new law in effect, then it is subject to the rule that prohibits legislation upon a general appropriation bill; and the Chair, in view of the fact that the amendment would impose upon officials new duties as to purchasing canal supplies, has no difficulty in arriving at the conclusion that the instructions are subject to the point of order for the reasons stated.

Mr. John S. Williams, of Mississippi, having appealed from the decision of the Chair, the appeal was, on motion of Mr. Tawney, laid on the table, yeas, 156, nays, 69.

3936. A provision proposing to construe existing law is in itself a proposition of legislation, and therefore not in order on an appropriation bill as a limitation.

The fact that a paragraph on an appropriation bill would constitute legislation for only a year does not make it admissible as a limitation.

As an appropriation bill may deny an appropriation for a purpose authorized by law, so it may by limitation prohibit the use of money for part of the purpose, while appropriating for the remainder of it.

On January 17, 1896,[1] the House was considering the general pension appropriation bill in Committee of the Whole House on the state of the Union, when this section was read:

During the fiscal year 1897, in expending this appropriation, it shall not be necessary for a widow, in establishing her claim to a pension under the provisions of the act of June 27, 1890, to prove that she is without other means of support than her daily labor: *Provided,* That before she shall be entitled to a pension under the provisions of said law she shall prove that her net income does not exceed $500 per annum.

Mr. Franklin Bartlett, of New York, raised the point of order against the section.

After debate the Chairman[2] ruled:

The question of order which has been raised assumes special importance because of the fact that, if there should be any variation from the construction of the rule as it has always governed in Committee of the Whole on account of the sympathy that we may have for the particular legislation proposed, it would be a precedent that would rise to trouble us in all subsequent propositions looking to legislation in appropriation bills. The Chair will endeavor, therefore, to consider the question from the parliamentary point of view, and endeavor to follow what he believes to be the almost uniform practice of the House.

The gentleman from New York [Mr. Bartlett] raises the point of order that the pending paragraph is in violation of clause 2 of Rule XXI, the last paragraph of which—that bearing on the point of order that has been raised—reads as follows:

"Nor shall any provision changing existing law be in order on any general appropriation bill or in any amendment thereto."

That has been the rule in the consideration of a general appropriation bill in the Committee of the Whole for many years. The rule has been modified several times with a view to reducing expenditures,

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[1] First session Fifty-fourth Congress, Record, pp. 764–769.

[2] Nelson Dingley, of Maine, Chairman.

but never so far as this particular point is concerned. The grounds of public policy on § 3936 which this rule rests are—

First. That inasmuch as general appropriation bills carry the appropriations necessary to maintain the Government, and only appropriations already authorized by existing law, it is of the highest importance that they should not be impeded or jeopardized by differences in the House, or differences between the House and Senate, or differences between the two Houses and the Executive over any legislative propositions that may be proposed as amendments to such bills, each of which should be tried out on its own merits in separate bills.

Secondly. That in view of the fact that the Committee on Appropriations can only consider the question of appropriations—the subject committed to them by the rules—and that each particular subject of legislation is required to be considered by a standing committee which has jurisdiction of that subject, each committee should be held to attend to its particular work. If general legislation on the subject of pensions is proposed, the rule requires that such proposition of legislation shall go to the Committee on Invalid Pensions, and that committee, having the right to report at any time, may on any day bring in any amendment of the pension laws and present it for the consideration of the House, after due consideration as to the effect of such legislation. It is supposed that a special committee having in charge that particular subject has given special attention to such legislation, has looked into all its parts, and is able to bring in a bill of a comprehensive character, which when brought into the House may then be subject to amendments in the ordinary way. It has been found by experience that legislation on appropriation bills is usually exceedingly narrow and unsatisfactory, because of the fact that it had not been considered by the committee having the special subject in charge.

Thirdly, another ground of objection to legislation on an appropriation bill lies in the fact that even if an amendment should be admitted here which is in the nature of general legislation, changing existing law, our rules would so restrict amendments to it that it would be almost impossible to perfect it.

For these three reasons this rule, controlling the action of the Committee of the Whole with reference to proposed new legislation, has been found necessary not only to prevent the delay or failure of general appropriation bills, but also to secure good legislation, and only legislation in which there was general concurrence has as a rule, been included in such bills. Having stated the grounds on which this rule rests, the question arises whether the pending provision is, as a matter of fact, a change of existing law.

There has been more or less discussion of that point, but there is one vital fact to which I desire to call the attention of the committee, because it presents in a nutshell the whole question at issue. The pension act of 1890, which this paragraph proposes to either amend or construe—whichever view is adopted—does not provide that the widow of an enlisted man who served ninety days in the Army or Navy shall receive a pension simply upon proof of her husband's death, without proving his death to have been the result of his service. That act requires something more. That something more is the occasion of the legislation proposed by this paragraph, and the occasion of the deserved complaint which has been made against the administration of the Pension Office with reference to its construction of the law. This additional condition or fact, which must be shown by competent proof in order to entitle such a widow to a pension, is expressed in the law of 1890 in these words: "Leaving a widow without other means of support than her daily labor."

Now, that provision means something. It was intended to mean something when the act of 1890 was passed. I think the Commissioner of Pensions has not given that language the construction which the Congress that enacted the law intended it should bear, but nevertheless it means something. It is certainly a limitation of law to some extent and a restriction or condition of law which must be met by some proof. And as the Pension Office can not be expected to furnish proof to show that any applicant is entitled to a pension, it necessarily follows that the law of 1890 contemplates that the widow should present the proof required by law.

Now, what does the paragraph under consideration propose? It proposes to give a pension to any widow of a soldier who has died from a cause not originating in his service without requiring any kind of proof with respect to her having other means of support than her daily labor, and by a proviso to establish a new rule, namely, that when a widow shall have shown that her net annual income does not exceed $500 she shall be entitled to a pension.

While I have great sympathy with that amendment, it does seem to me to be clearly a change of existing law. It is a change in the right direction, but nevertheless it is a change of existing law.

It has been contended that the pending paragraph is merely a construction of existing law, and that a construction of the meaning and intent of a law which has been heretofore enacted is not the "new legislation" prohibited by the rule. Everyone knows that no legislative construction can be given to a law that is upon the statute book without a legislative enactment. A construction of an existing law by an act of Congress must be itself a piece of legislation that has been passed by the two Houses of Congress and received the approval of the President. In fact, it is new legislation in every sense, because if it should be held that any act of legislation could be put upon an appropriation bill simply because it professed to construe anterior law, any gentleman could propose an amendment giving any kind of construction to an anterior law, whether right or wrong, thus opening up in the consideration of an appropriation bill in Committee of the Whole any proposition for new legislation under the guise of construing the law.[1]

It does not seem to me that there can be any distinction made in this respect between different legislative acts. If an act is in fact new legislation, it seems to the Chair that it is subject to the point

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[1] Two rulings in opposition to this undoubtedly sound principle are to be noted:

On April 6, 1894 (second session Fifty-third Congress, Record, pp. 3507–3512), the House was in Committee of the Whole House on the state of the Union considering the post-office appropriation bill.

Mr. William M. Springer, of Illinois, offered an amendment providing that the publications of benevolent or fraternal societies, trades unions, and professional and scientific societies should, under certain conditions, be admitted to the mails as second-class matter.

Mr. John S. Henderson, of North Carolina, having made a point of order, the Chairman (William H. Hatch, of Missouri), ruled:

"In the mind of the Chair there is but a single question to be determined in passing upon this point of order, and that is as to whether the amendment offered by the gentleman from Illinois does in fact and in effect change an existing law, or whether it simply declares what the existing law is; in other words, whether it makes a change of existing law or merely a change of the interpretation and construction of that law by the Post-Office Department.

"The Postmaster-General, as the executive officer of that Department, having the responsibility of the execution of all laws relating to the Department, has, in the judgment of the Chair, the same right of interpretation and construction of an existing statute that a court of competent jurisdiction has in passing upon a law, and that construction or interpretation becomes a part of the law until the law is repealed, modified, changed, or declared to be otherwise by the one power that has the right to overrule a construction or interpretation made by an Executive Department—the Congress of the United States. The House having jurisdiction of this appropriation bill, and this amendment being, in the judgment of the Chair, germane to the bill, it seeks, in the opinion of the Chair, to declare what the existing statute is. It is simply declaratory in its terms, and it differs, of course, from the construction and interpretation placed upon the statute by the Postmaster-General. Holding this view, the Chair overrules the point of order, and will submit the amendment upon its merits to the committee."

On May 21, 1894 (second session Fifty-third Congress, Record, p. 5049), the House was in Committee of the whole House on the state of the Union considering the legislative, executive, and judicial appropriation bill, Mr. Walter I. Hayes, of Iowa, having submitted the following amendment:

"And it is hereby declared that section 6 of the act approved August 16, 1856, and section 40 of the Revised Statutes have been heretofore repealed."

A point of order having been made, the Chairman (James D. Richardson, of Tennessee), ruled:

"The Chair thinks that the point of order against this amendment ought to be sustained, for the reason that if, as a fact, section 6 of the act of 1856, which is brought forward and has become section 40 of the Revised Statutes, has not been repealed, then this amendment would operate to repeal those sections, and would be a change of existing law without complying with the rules of the House as to an appropriation bill. If, however, the declaration of the amendment is true, and section 6 and section 40 of the Revised Statutes have been repealed, then this amendment would not be germane to this bill, and it maybe added, unnecessary. Therefore the Chair thinks the point of order must be sustained, regardless of the merits of the proposition."

Mr. Hayes having appealed from the decision of the Chair, and the question "Shall the decision of the Chair stand as the judgment of the Committee?" being put, the ayes were 99 and nays 113. So the decision of the Chair was reversed.

of order under the rule that it is new legislation or (what is the same thing) a change of existing law as construed by the authority that can alone construe it, subject to appeal to the courts, unless Congress shall step in and construe it by a new law.

Another point has been raised—and it is a point of importance—that this legislation is only a limitation or restriction on the expenditure of the money appropriated by the pending bill during the fiscal year in which it will be operative.

Before considering this point the Chair desires to say that the fact that this legislation is limited in operation to one year does not change its character at all. It is still new legislation for one year, a change of existing law for one year, or, if you please to style it an act suspending existing legislation for one year, the fact still remains that it is, pro tanto, a change of existing law.

There can be no doubt about that. Otherwise the tariff law which passed the House the other day might be proposed as an amendment to the sundry civil appropriation bill, to the paragraph providing for customs, on the ground that it did not propose to change permanently the existing law-only to suspend it-and was limited in its operation to two and a half years. If an act of the legislative power changes a law upon the statute book for a single year or a single month, or for any period longer or shorter, it seems to the Chair that it must be a change of existing law.

The argument so strongly urged that this paragraph proposes merely a limitation or restriction on the use of the appropriation for pensions, and that it comes, therefore, under a well-settled practice of the House in Committee of the Whole seems to the Chair to not be well founded. The gentleman from Pennsylvania [Mr. William A. Stone) has quoted what may, perhaps, be said to be a precedent which practically establishes the principle of limitation; that is the proviso which was ruled to be in order on an appropriation bill, and which was in this language:

"*Provided,* That the Secretary of the Treasury shall not use any of the money appropriated by this paragraph for the printing of greenbacks of a larger denomination than those that are canceled."

Now, look for a moment at the principle of limitation or restriction as established by that proviso. In that case the law authorized the printing of greenbacks of any denomination in the discretion of the Secretary of the Treasury. The proviso limited the use of the money which was appropriated for that single year to the printing of denominations which should not be smaller than those that were canceled. Now, observe that the limitation was simply this: The appropriation could not be used for a purpose authorized by law; that is all the limitation there was to it. The proviso did not undertake to say that the appropriation could be used for printing or doing something not already authorized by law. In order to be considered as a limitation or restriction, a provision must prohibit the use of the money for some purpose already authorized by law.

The reason for that rule of limitation is simply this: The House in Committee of the Whole has the right to refuse to appropriate for any object which it may deem improper, although that object may be authorized by law; and it has been contended, and on various occasions sustained by the Committee of the Whole, that if the committee has the right to refuse to appropriate anything for a particular purpose authorized by law it can appropriate for only a part of that purpose and prohibit the use of the money for the rest of the purpose authorized by law. That principle of limitation has been sustained so repeatedly that it may be regarded as a part of the parliamentary law of the Committee of the Whole.[1]

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[1] This is the correct principle, although it was not taken into consideration when the following ruling was made:

On April 24, 1890 (first session Fifty-first Congress, Record, p. 3790), the House was in Committee of the Whole House on the state on the Union considering the legislative, executive, and judicial appropriation bill. The paragraph relating to the Civil Service Commission having been reached, Mr. George W. E. Dorsey, of Nebraska, offered an amendment to strike out the words "for three commissioners, at $3,500 each" and insert "one commissioner, $3,500."

Mr. Louis E. McComas, of Maryland, made the point of order against the amendment.

After debate, the Chairman (Lewis E. Payson, of Illinois) ruled:

"The Civil Service Commission is provided for by statute, and that it shall be composed of three members. The rules of this House provide that no provision changing existing law shall be in order in any general appropriation bill or in any amendment thereto. The amendment proposed by the gentleman from Nebraska changes the general statutes of the United States, which is obnoxious to the point of order under the rules, in the judgment of the Chair, and the point of order is sustained."

But observe that the provision now under consideration is not a limitation or restriction; it is an extension. It provides not that the money herein appropriated shall not be used for a purpose authorized by law, but that it may be used for a purpose not already authorized by law. It is an extension, not a limitation. If it should be held that propositions of this character could be presented and entertained as in order on the ground that they are limitations, there is no possible legislation that might not be presented on an appropriation bill and be held to be in order, thus obstructing the passage of appropriation bills.

The Chair is aware that in a few exceptional cases this principle of limitation has been improperly construed to include an enlargement of the objects for which an appropriation may be used; but the exceptions have so clearly disregarded the theory on which limitations rest that they only serve to prove the correct rule.

So, from every point of view, it seems to the Chair, if this question is to be decided on sound principles of parliamentary law, if a practice that will be safe in the handling of appropriation bills hereafter is to be established, it is exceedingly important that we should start at the beginning of this Congress by laying down correctly the rule with reference to new legislation on appropriation bills.

The Chair confesses that he might have been somewhat embarrassed from the fact that he is in favor of substantially the legislation proposed; but in view of the fact that the Committee on Invalid Pensions can report at any time legislation broadening the operation of the existing laws—legislation going to the extent that legislation ought to go—all embarrassment is removed; for without violating the rules of this House and still maintaining correct principles with reference to the conduct of business in the Committee of the Whole, and without obstructing the passage of general appropriation bills, it is possible to accomplish in other ways much more than what is proposed to be accomplished here.

The Chair is therefore constrained to sustain the point of order against this provision.

3937. On March 18,1880,[1] the House was in Committee of the Whole House on the state of the Union considering the deficiency appropriation bill.

Mr. George G. Dibrell, of Tennessee, proposed the following amendment:

Provided, That the Commissioner of Pensions shall not withhold a pension from any soldier or pensioner of the war of 1812 who was granted a pension under the act of Congress of 1871, and was dropped for charges of disloyalty and reinstated under act of 9th March, 1878, and their pensions shall be paid from 9th March, 1878.

Against this amendment Mr. Frank Hiscock, of New York, made the point of order.

The Chairman[2] ruled:

The fifth section of the act of 1878, after providing for the restoration to the pension rolls of the soldiers of the war of 1812 who had been dropped for disloyalty, goes on to provide—

"That the joint resolution entitled 'Joint resolution prohibiting payment by any officer of the Government to any person not known to have been opposed to the rebellion and in favor of its suppression,' approved March 2, 1867, and section 4716 of the Revised Statutes of the United States, shall not apply to the persons provided for by this act: Provided, That no money shall be paid to anyone on account of pensions for the time during which his name remained stricken from the rolls."

Now, as the Chair understands it, the Commissioner of Pensions holds that if a person who otherwise would have been dropped from the rolls under the previous acts of Congress wrongfully received any part of his pension during the time he should have been so dropped, and is now restored to the rolls by reason of this act, then under the act the Commissioner is authorized to withhold or deduct from his pension the amount which he wrongfully received during the time he should have been dropped. Whether that is a correct construction of the statute or not, the Chair is not prepared to give a positive opinion. At any rate, it is the construction which has been put upon it by the officer designated by the law to administer it.

The effect of the amendment of the gentleman from Tennessee [Mr. Dibrell], if adopted, will be to change that law, or perhaps, to state it properly, it will change the construction of that law so as to

[1] Second session Forty-sixth Congress, Record, pp. 1674, 1675.

[2] John G. Carlisle, of Kentucky, Chairman.

prevent the Commissioner of Pensions from charging to these persons who have been restored such money as they may have wrongfully received during the period when they should have been dropped.

The Chair has been informed by the Commissioner of Pensions that this amendment, if adopted, would affect but five or six persons; still, it would change the law as respects a number of persons, whether five or six or more. The Chair therefore thinks that it will change the law within the meaning of the rule, because undoubtedly if the amendment be adopted the Commissioner of Pensions will hereafter be required by the express letter of the law to do what he has not been heretofore required to do by the express letter of the law.

Then this amendment is not offered by the instruction of a committee,[1] nor does it retrench expenditures in any one of the three ways provided by the new clause of the rule; that is, it does not retrench expenditures by "the reduction of the number and salaries of the officers of the United States;" it does not retrench expenditures by "the reduction of the compensation of any person paid out of the Treasury of the United States;" and it does not retrench expenditures by "the reduction of amounts of money covered by this bill." It is not, therefore, such an amendment as an individual member can offer, except upon the instruction of his committee. The Chair thinks it does change the law, because without this amendment the proviso of the act of 1878 is a prohibition upon the Commissioner of Pensions paying to any person who has been restored to the pension rolls his pension during the time when he ought to have been dropped from the roll. Under the law as it now stands, when the Commissioner of Pensions discovers that he has paid to a person his pension during the time when he otherwise would have been dropped from the rolls, he simply charges it up to that person and puts him upon identically the same footing as all other persons who did not receive pension during such time as they were dropped from the rolls, which the Chair understands is the general practice, not only in reference to this class of pensioners, but to all pensioners under the law. The Chair therefore sustains the point of order.

3938. On February 24, 1896,[2] during the consideration of the Indian appropriation bill in Committee of the Whole House on the state of the Union, the following paragraph was reached:

That all children born of a marriage between a white man and an Indian woman shall have the same rights and privileges to the property and annuities of the tribe to which the mother belongs, by blood, as any other member of the tribe; and no prior act of Congress shall be so construed as to debar such child of such right: *Provided,* That nothing herein shall conflict with the provisions of existing treaties.

Mr. Samuel W. McCall, of Massachusetts, made the point of order that the paragraph changed existing law.

It was urged that the paragraph merely placed a construction upon the existing law, which might be done with propriety under the ruling made on the Post-Office bill.[3]

The Chairman[4] ruled:

The Chair remembers the case of two years ago, to which attention has been called, in reference to the Post-Office bill and the ruling then made. * * * The Chair recollects the occasion; that it had reference to the transmission through the mails of certain published matter. The present occupant of the chair never had any sympathy with that ruling; but, aside from that, this pending proposition, on which the point of order is made, appears clearly to the Chair to be new legislation. It is a positive enactment by law where at best it is only claimed that none now exists, and the Chair, for that reason, sustains the point of order.

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[1] The present rule does not have the provisions referred to in this portion of the ruling. (See sec. 3578 of this volume.)

[2] First session Fifty-fourth Congress, Record, p. 2079.

[3] See section 3936 (footnote) of this chapter.

[4] Sereno E. Payne, of New York, Chairman.

3939. In appropriating for a general service of charity, a limitation withholding the appropriation from institutions not meeting a specified requirement was held in order.—On February 4, 1896,[1] the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read:

Board of children's guardians: For the board of children's guardians, created under the act approved July 26, 1892, namely: For administrative expenses, including salary of agent, not to exceed $1,600, expenses in placing and visiting children, and all office and sundry expenses, $4,000.

For care of feeble-minded children; care of children under 3 years of age, white and colored; board and care of all children over 3 years of age, and for the temporary care of children pending investigation or while being transferred from place to place, $23,400; in all, $27,400.

Mr. Eugene J. Hainer, of Nebraska, proposed to strike out all after the words "place to place" in the last line and insert the following:

Sixty-three thousand two hundred dollars; in all, $67,500: *Provided,* That the institutions for children, including industrial and reformatory, namely, the Church Orphanage of St. John's parish; the German Orphan Asylum; the National Association for the Relief of Destitute Colored Women and Children, including its care of colored foundlings; the St. Ann's Infant Asylum; the St. Joseph Asylum; the House of the Good Shepherd; the Association for Works of Mercy, and St. Rose's Industrial School, heretofore receiving aid by specific appropriation, are hereby remitted, except as herein specifically appropriated for, to the appropriation herein made, and to the said act of July 26, 1892, to provide for the care of dependent children in the District of Columbia, and to create a board of children's guardians for all rights and benefits which they may have under the provisions of the said act.

Mr. William W. Grout, of Vermont, having made a point of order against the amendment, the Chairman[2] ruled:

The amendment of the gentleman from Nebraska proposes to remit the several institutions named in the bill, except those specifically appropriated for, to the general appropriation under this bill and to the act of July 26, 1892, to the terms of which act these several institutions must conform. This provision is a limitation upon the appropriations, but is in conformity with existing law—the law of July 26, 1892. Though the provision, if adopted, may result, as the gentleman from Texas [Mr. Crain] argues, in cutting off certain institutions from the benefit of the appropriation, still it is a limitation which may properly be made in conformity with existing law. The Chair therefore overrules the point of order. The amendment is before the Committee of the Whole.

3940. On February 4, 1897,[3] the District of Columbia appropriation bill being under consideration in Committee of the Whole House on the state of the Union, Mr. William W. Grout, of Vermont, offered this amendment:

That no part of any money appropriated by this act for charities or charitable institutions shall be paid to any institution named in this act until the charter or articles of incorporation thereof shall be so amended as to accord to the Commissioners of the District of Columbia, or to their designated agents, authority to visit and inspect such institutions, and to control and supervise the expenditure therein of all public funds paid out of appropriations made by Congress.

Mr. Franklin Bartlett, of New York, made the point of order that this would be a change of law.

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[1] First session Fifty-fourth Congress, Record, p. 1307.

[2] Sereno E. Payne, of New York, Chairman.

[3] First session Fifty-fourth Congress, Record, p. 1309.

The Chairman[1] held:

This amendment simply provides that "no part of any money appropriated by this act for charities or charitable institutions shall be paid to any institution named in this act until the charter or articles of incorporation thereof shall be so amended," and so on. It does not purport to amend any charter, but simply provides that the money here appropriated shall not be paid to any institution until its charter is amended as specified here. The amendment is simply a limitation upon the appropriation. The Chair overrules the point of order.

3941. On February 24, 1896,[2] the Committee of the Whole House on the state of the Union was considering a paragraph of the Indian appropriation bill providing for the support of Indian schools, when Mr. William S. Linton, of Michigan, offered this amendment:

And it is hereby declared that it is the intention of this act that no money herein appropriated shall be paid for education in sectarian schools; and the Secretary of the Interior is hereby charged with the duty of so using and administering said appropriation as to carry out said object; and he is hereby authorized and required to make all needful rules and regulations necessary to prevent the use of any part of said fund for education in sectarian schools.

A point of order having been reserved against the amendment, the Chairman ruled as follows:

The point is made that the amendment is simply a limitation on the appropriation in the pending paragraph. The Chair is somewhat in doubt whether the latter portion of the amendment, providing for the making of rules and regulations, does not go further than simply limiting the appropriation. But construing the whole of the amendment together, the Chair is of opinion that the amendment simply limits the use of the appropriation, and is not obnoxious to the point of order. The Chair therefore overrules the point of order. The question is on the adoption of the amendment.

3942. While it is not in order to legislate as to qualifications of the recipients of an appropriation, the House may specify that no part of the appropriation shall go to recipients lacking certain qualifications.—On January 30, 1901,[3] the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read the paragraph relating to agricultural colleges, when Mr. Charles B. Landis, of Indiana proposed this amendment:

Provided, That no part of the appropriation shall be available for the agricultural college of Utah until the Secretary of Agriculture shall be satisfied, and shall so certify to the Secretary of the Treasury, that no trustee, officer, instructor, or employee of said college is engaged in the practice of polygamy or polygamous relations.

Some debate having taken place, and Mr. William H. King, of Utah, having suggested a point of order, the Chairman[1] said:

There are two reasons why the Chair would be inclined to overrule the point. In the first place it comes rather late, and in the second place the amendment seems to be a limitation upon this appropriation.

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[1] Sereno E. Payne, of New York, Chairman.

[2] First session Fifty-fourth Congress, Record, pp. 2082–2088.

[3] Second session Fifty-sixth Congress, Record, pp. 1696–1698.

The amendment having been agreed to, Mr. King offered the following amendment:

And that no person shall be appointed a teacher or trustee in any of said colleges who has been engaged in any lynching and until proof shall have been furnished, to the satisfaction of the Secretary of Agriculture, that such teacher or trustee has not been guilty of adultery or fornication.

Mr. Charles H. Grosvenor, of Ohio, made the point of order that the amendment was not in order.

The Chairman said:

Let the Chair state to the gentleman that the ruling on the other amendment was that that was a limitation upon the appropriation—providing that no part of this appropriation shall be paid to the agricultural college, in general terms, until it was ascertained that no teacher or trustee was a polygamist. That is a general statement of that amendment. That was a limitation upon the appropriation. Then comes this independent proposition, involving legislation. * * * The Chair sustains the point of order.

Thereupon Mr. King offered the following:

Provided, That no part of this appropriation shall be available for the agricultural college of Indiana or any other State or Territory until the Secretary of Agriculture shall be satisfied, and shall so certify to the Secretary of the Treasury, that no trustee, officer, instructor, or employee of said college is engaged in the practice of polygamy or polygamous relations or is guilty of adultery or fornication.

Mr. Grosvenor made the point of order against the amendment.

The Chairman overruled the point of order and held that the amendment was in order.

3943. On February 23, 1907,[1] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union when the following amendment was offered to the paragraph providing appropriation for the National Homes for Disabled Volunteer Soldiers:

Add the following:

"And provided further, That no part of this appropriation shall be apportioned to any National Home for Disabled Volunteers that contains a bar or canteen where intoxicating liquors are sold."

Mr. Richard Bartholdt, of Missouri, made the point of order that the amendment proposed legislation:

In the course of the debate Mr. James R. Mann, of Illinois, argued:

Here is a situation now proposed where Congress by law is creating Soldiers' Homes. It has by law provided for the government of Soldiers' Homes. At Soldiers' Homes it has vested the government in a Board of Managers in accordance with the provisions of the statute. It is true that Congress can refuse to appropriate, but, Mr. Chairman, it is also true that the Chair has frequently ruled that Congress can not, against a point of order, by a limitation change the organic law. Here is a provision that although Congress has created these Soldiers' Homes by an organic law, although it has provided for the government of the Soldiers' Homes by a Board of Managers, a proposition through the form of a limitation to take away the control of the Board of Managers and by affirmative legislation in the guise of a limitation to change the statute upon that subject. While limitations are usually favored by the Chair, properly, still it is true that the Chair might well rule, it seems to me, that a limitation in this guise, changing the law, giving the Board of Managers the discretion over the management of the Homes, is positive affirmative legislation, as it undoubtedly would be construed by the Comptroller of the Treasury, and therefore subject to a point of order. It is perfectly manifest that an item of this kind in the bill is construed by the Comptroller of the Treasury as positive legislation, although it be in the form of a limitation.

[1] Second session Fifty-ninth Congress, Record, pp. 3811, 3812.

After further debate the Chairman, ruled:

The language used in the amendment offered by the gentleman from Kansas is as follows:

"And provided further, That no part of this appropriation shall be apportioned to any National Home for Disabled Volunteers that contains a bar or canteen wherein intoxicating liquors are sold."

This very proposition was presented in regard to the State Soldiers' Homes in 1904, and the Chair at that time overruled the point of order and held it in order as a limitation. If the Chair were only following the precedent, he would be constrained to overrule the point of order in this case. One year ago this whole question, as most of the Members will remember, was taken up and discussed thoroughly and elaborately, and at that time the gentleman from Kansas offered this proviso:

"That this appropriation shall be available only under the condition that no bar or canteen shall be maintained at said Homes for the sale of beer, wine, or other intoxicating liquors."

In legislation we look to the substance, and not to the form; and unless there is an affirmative attempt to restrict the administrative power or departmental function, it has always been held that a limitation in negative language is in order.

The present occupant of the chair went fully into the authorities and quoted a large number of decisions by Mr. Hemenway, of Indiana; Mr. Burton, of Ohio; Mr. Payne, of New York, and other eminent parliamentarians who had occupied this chair when questions of similar import had been raised, all sustaining the theory that limitations of this character are clearly in order.

The Chair does not care to go fully into this line of decisions again, because the Chair believes that the ruling at that time was acquiesced in and believed to be the proper ruling under the circumstances. Therefore the Chair overrules the point of order.

3944. On June 12, 1906,[2] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the paragraph appropriating for the National Home for Disabled Volunteer Soldiers was read.

Mr. Justin D. Bowersock, of Kansas, moved to amend by adding:

Provided, That this appropriation shall be available only under the condition that no bar or canteen shall be maintained at said Homes for the sale of beer, wine, or other intoxicating liquors.

Mr. James A. Tawney, of Minnesota, made the point of order that the amendment proposed legislation, arguing that the law gave the Board of Managers authority to make regulations, under which regulations the canteens were permitted.

After debate the Chairman [1] held:

The Chair is of the opinion that the amendment offered by the gentleman from Kansas is not subject to the point of order, but is in order. It is very clear that the mere fact that it seeks to impose a limitation upon the appropriation is not a valid objection to it, It has been repeatedly held in this House, and is an invariable precedent, that the House may provide that no part of an appropriation shall be used except in a certain way, even though Executive discretion be thereby restricted. Whatever may have been the opinion of the Chair had this proposition been presented to the present occupant of the chair originally, the precedents limit the present occupant of the chair to this decision. The idea of limitation on an appropriation bill has been, according to the opinion of the present occupant of the chair, carried to extremes in some instances, but precedents on this point are well established, and the Chair will cite one instance that seems to show conclusively that this amendment or any other amendment of a negative character upon an appropriation bill is not subject to the point of order. On the 31st of March, 1904, the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, and this amendment was offered:

"That all carriages and other vehicles used in the public service other than for personal purposes, as authorized in section 2 of the legislative, executive, and judicial appropriation act for the fiscal year

[1] James E. Watson, of Indiana, Chairman.

[2] First session Fifty-ninth Congress, Record, pp. 8354–8356.

1905, the expense for purchase or maintaining, driving or operating of which are paid for by money appropriated by this act, shall have conspicuously painted thereon at all times the full name of the executive department or other branch of the public service for which the same belong and in the service of which the same are used."

The Chair desires to call attention to the fact that this is an affirmative provision. Mr. James W. Mann, of Illinois, thereupon made the point of order that the paragraph was new legislation. The Chairman sustained the point of order. Thereupon Mr. James A. Hemenway, from Indiana, proposed a new paragraph, and the Chair will call attention to the fact that it is in the negative form, in this language:

"No part of any money appropriated by this act shall be used for purchase, maintenance, driving, or operating of any carriage or other vehicle other than authorized for personal purposes in section 2 of the legislative, executive, and judicial appropriation act for the fiscal year 1905, unless the same shall have conspicuously painted thereon at all times the full name of the Executive Department or other branch of public service to which the same belong and in the service of which the same are used."

And after much discussion the Chair held that this did not change existing law, but was merely a limitation.

"It would seem that this legislative body was very much lacking in power if there could not be a provision in the way of a limitation that carriages used for public purposes should have a designation upon them to that effect. The Chair is not led to think that any parliamentary rule makes that other than a limitation"

But the question under consideration has been squarely presented in this body and has been directly decided. On the 31st of March, 1904, the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union and this amendment was proposed by Mr. Bell, of California:

"That no part of this appropriation shall be apportioned to any State or Territorial Home until its laws, rules, or regulations respecting the pensions of its immates be made to conform to the provisions of section 4 of an act approved March 3, 1893, entitled 'An act prescribing regulations for the Soldiers' Home located at Washington, in the District of Columbia, and for other purposes;' but the above proviso shall not apply to any State or Territorial Home into which the wives or widows of soldiers are admitted and maintained: *And provided further,* That no part of this appropriation shall be apportioned to any State or Territorial Home that maintains a bar or canteen where intoxicating liquors are sold."

Which is, in substance, the same provision as that now proposed by the gentleman from Kansas. Mr. James A. Hemenway made the point of order that the proposed amendment would change existing law, and thereupon the Chairman, Mr. Burton, of Ohio, rendered an elaborate decision. The Chair will not take time to read it, but the substance of it is in this paragraph:

"The question arises as to whether this is a limitation merely. If so, the amendment is in order. If not, it is out of order. It is maintained that this amendment changes existing law. In a sense, every limitation changes existing law. If any specific condition is mentioned under which an appropriation is to be withheld, that is, pro tanto, a change of existing law, at least to the extent that the whole or a part of the appropriation can not be expended unless the condition is complied with."

And after other suggestions of like character the Chair overruled the point of order.

Directly in point on this proposition the Chair desires to call the attention of the committee to a decision made on the 30th day of January, 1901, when the agricultural appropriation bill was under discussion in the House—a decision rendered by the Hon. Sereno E. Payne, sitting as chairman of the Committee of the Whole House on the state of the Union. An amendment was offered by Mr. Charles B. Landis, of Indiana, of the following tenor:

"*Provided,* That no part of the appropriation shall be available for the Agricultural College of Utah until the Secretary of Agriculture shall be satisfied, and shall so certify to the Secretary of the Treasury, that no trustee, officer, instructor, or employee of such college is engaged in the practice of polygamy or polygamous relations."

After much discussion on this amendment, Mr. Payne held that it was a limitation of an appropriation, which the House bad the right to make and Congress had the right to make, and was not new legislation.

Under these holdings, the precedents pointing clearly, in the opinion of the Chair, to the fact that this is not obnoxious to the rule, the Chair overrules the point of order.

3945. On March 22, 1904,[1] the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

For necessary miscellaneous and incidental items directly connected with first and second class post-offices, including furniture, cleaning, and all other matters not specifically provided for in other appropriations, $225,000: *Provided,* That the Postmaster-General, in his discretion, under such regulations as he shall prescribe, may authorize any of the postmasters of said offices to expend the funds he may allow them for such purposes without the written consent of the Postmaster-General.

Mr. James A. Tawney, of Minnesota, proposed this amendment:

At the end of line 12 on page 12 insert:

"*Provided further,* That no part of this appropriation shall be expended for telephone service in any post-office where the postmaster is required, by order of the Postmaster-General or otherwise, to use no other telephone service than that of the Bell Telephone Company or any of the telephone companies connected with or controlled, in whole or in part, by said Bell Telephone Company."

Mr. Jesse Overstreet, of Indiana, made a point of order that the amendment was destructive of the discretion of the Postmaster-General in this matter, and therefore legislation.

After debate the Chairman[2] held:

The paragraph under consideration contains an appropriation of $225,000 "for necessary miscellaneous and incidental items directly connected with first and second class post-offices." The Chair understands that under the statutes a part of this money may be expended for telephone service. The amendment offered by the gentleman from Minnesota provides that no part of the appropriation shall be expended for telephone service in any post-office where the postmaster is required, by order of the Postmaster-General or otherwise, to use only one kind of telephone.

Now, the Chair would call the attention of the gentleman from Indiana, chairman of the Post-Office and Post-Roads Committee, to the fact that this amendment is not put in as a limitation upon the use of the entire sum appropriated in this paragraph of $225,000. This limitation is merely a limitation upon the amount which the Postmaster-General may use for telephone services authorized by law, and this amendment simply says in effect, in order that this amount may be available, the Postmaster-General must refrain from saying to the postmaster that he must use one single telephone. The Chair therefore is of opinion that this amendment comes within the rule, and it is simply a limitation upon the expenditure of a part authorized by this paragraph for telephone services, and therefore the Chair overrules the point of order.

3946. On March 23, 1904,[3] the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

For railway post-office car service, $5,736,000.

To this Mr. James A. Tawney, of Minnesota, offered this amendment:

At the end of line 21, page 15, insert:

"*Provided,* That no part of the amount hereby appropriated shall be expended for the use of cars in the railway postal service that have been used in said service for a period of more than fifteen years."

Mr. Jesse Overstreet, of Indiana, raised a question of order, and said:

I want to call the attention of the Chair first to a statute which I think would control relative to the point of order. It is the statute of March 3, 1879, to be found in the Postal Laws and Regulations, section 1177, which reads as follows:

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[1] Second session Fifty eighth Congress, Record, pp. 3517–3520.

[2] Henry S. Boutell, of Illinois, Chairman.

[3] Second session Fifty-eighth Congress, Record, pp. 3578–3581, 3582.

"All cars or parts of cars used by the Railway Mail Service shall be of such style, length, and character, and furnished in such manner as shall be required by the Postmaster-General, and shall be constructed, fitted up, maintained, heated, and lighted by and at the expense of the railroad company."

I submit to the Chair that under that statute the Department is now operating relative to the character and condition of cars, and while Congress clearly would have the right to legislate in a different way, making different directions, fixing limitations of length and size of the cars and the period of time in which they might be used, yet such legislation can not be had upon an appropriation bill. I direct that to the attention of the Chair.

After further debate, the Chairman[1] said:

The amendment offered by the gentleman from Minnesota is an amendment to the paragraph contained in lines 20 and 21 on page 15 of the bill. That paragraph is as follows:

"For railway post-office car service, $5,736, 000."

The amendment is as follows:

"Provided, That no part of the amount hereby appropriated shall be expended for the use of cars in the railway postal service that have been in said service for a period of more than fifteen years."

The Chair has not had his attention called to any provision in the statutes of which the language of this proviso would be a violation if it were a positive enactment, so, without raising the question, and merely the question of limitation, the Chair overrules the point of order. The question now is on the amendment offered by the gentleman from Minnesota.

3947. On the same day, and very soon thereafter, Mr. John S. Williams, of Mississippi, offered this amendment:

Add at the end of the last word of the amendment just adopted:

"Provided further, That the annual pay for the use of any postal car shall not exceed 50 per cent of the cost of manufacturing the same."

Mr. Jesse Overstreet, of Indiana, made a point of order that the proposition involved legislation, and cited the existing law, as follows:

Additional pay may be allowed for every line comprising a daily trip each way of railway post-office cars, at a rate not exceeding $25 per mile per annum for cars 40 feet in length, and $30 per mile per annum for 45-foot cars, and $40 per mile per annum for 50-foot cars, and $50 per mile per annum for 55 to 60 foot cars.

After debate, the Chairman held:

The amendment offered by the gentleman from Mississippi is to follow the amendment which has just been adopted. This paragraph appropriates for the railway post-office car service $5,726,000. The amendment offered by the gentleman from Mississippi is as follows:

"Provided further, That the annual rental paid for the use of any postal car shall not exceed 50 per cent of the cost of manufacturing the same."

The Chair will call special attention to the precise language of this amendment. It is not in the form of a limitation upon this annual appropriation, but is in the form of permanent limitation upon the discretion of the Postmaster-General. The Chair therefore sustains the point of order.

3948. On January 20, 1903,[2] while the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, this paragraph was read:

For chief engineer, who shall have had at least five years' actual experience as a member of some organized municipal fire department, $2,000; 3 assistant chief engineers, at $1,200 each.

Mr. Sidney E. Mudd, of Maryland, made a point of order against the line "who shall have had at least five years' actual experience," etc.

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[1] Henry S. Boutell, of Illinois, Chairman.

[2] Second session Fifty-seventh Congress, Record, p. 1016.

The Chairman[1] sustained the point of order.

Then Mr. James T. McCleary, of Minnesota, proposed this amendment:

On page 40, line 8, insert, after the word "dollars, "the following: "This sum shall not be available to pay a chief engineer who has not had at least five years' experience as a member of some organized municipal fire department."

Mr. Mudd made the point of order against this point of order.

The Chairman ruled:

The Chair is of opinion that the effect of this language proposed in this amendment is the same as that which, by consent, was ruled out on a point of order. Going back as far as the able opinions delivered on this particular question by Chairman Dingley, the object sought is the real question, and the form of words is unimportant. In their form, in the opinion of the Chair, this language is a limitation upon the expenditure of money and legitimately proper.

3949. It is in order to provide by a limitation that a certain proportion of an appropriation shall be withheld from recipients lacking certain qualifications.—On March 30, 1904[2] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

State or Territorial Homes for disabled soldiers and sailors: For continuing aid to State or Territorial Homes for the support of disabled volunteer soldiers, in conformity with the act approved August 27, 1888, including all classes of soldiers admissible to the National Rome for Disabled Volunteer Soldiers, $950,000: *Provided,* That one-half of any sum or sums retained by State Homes on account of pensions received from inmates shall be deducted from the aid herein provided for.

Mr. Edgar D. Crumpacker, of Indiana, raised the question of order that the proviso would change existing law.

After debate, the Chairman[3] said:

As stated by the gentleman from Indiana, this statute was passed in 1888. It provided that payment be made to the respective States and Territories having Soldiers' Homes at the rate of $100 per annum for each soldier who was an inmate. There is a limitation, however, that "the number of such persons for whose care any State or Territory shall receive the said payment under this act shall be ascertained by the Board of Managers of the National Home for Disabled Volunteer Soldiers, under such regulations as they may prescribe." Several years later an amendment was made in the appropriation as it appeared in the sundry civil bill, providing for payment under this statute with the limitation which appears as a proviso:

"Provided, That one-half of any sum or sums retained by State Homes on account of pensions received from inmates shall be deducted from the aid herein provided for."

That proviso has appeared in every sundry civil bill for now more than ten years. That act, however, it must be conceded, is only effective as a change of law for the year for which the appropriation is made.

The question arises, Is this a limitation? It will be admitted that the appropriation bill could create a limitation by refusing the whole amount or a part of it. The question which then arises is, Can a limitation be effected by means of a classification of any kind?

Perhaps there might be a classification that $100 should be given to a soldier who was 70 years old, or more, and a sliding scale granting lower amounts for those of lesser age. Possibly a classification might be made in accordance with the service of each inmate of the Home.

But it is unnecessary to decide these questions in order to reach a decision in this case. It is perfectly evident that this $100 was specified because that was regarded as a proper compensation, or donation—for it is more a donation than a compensation—to the State for the care of each soldier.

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[1] Charles H. Grosvenor, of Ohio, Chairman.

[2] Second session Fifty-eighth Congress, Record, pp. 4017, 4018.

[3] Theodore E. Burton, of Ohio, Chairman.

Now, certain of the States—twenty-one out of twenty-seven, it is stated by the gentleman from Indiana—reserve a share of any pension of a soldier who is an inmate of one of these State Soldiers' Homes; and in view of the fact that it was thought that $100 for each was fixed by the statute as a fair amount to be assigned to these respective States, it was considered equitable to make a distinction. If any State received a part of that $100 from any other source—namely, a pension paid by the United States Government—at least a part of the amount received might be deducted.

It seems to the Chair that this furnishes ground for a proper classification, and that it is a proper ground for a classification which creates a limitation under the rule. It would seem to be hardly fair to pay the full amount of $100 to States which reserve a very considerable share of the pension, and pay only the same amount to those States which reserve no share of the pension. They are certainly on a different footing, and if no other ground existed the fact would afford a reason why this is a proper limitation.

The Chair overrules the point of order.

3950. On February 13, 1903,[1] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the following paragraph was read:

State or Territorial Homes: For continuing aid to State or Territorial Homes for the support of disabled volunteer soldiers, in conformity with the act approved August 27, 1888, including all classes of soldiers admissible to the National Home for Disabled Volunteer Soldiers, $950,000: *Provided,* That one-half of any sum or sums retained by State Homes on account of pensions received from inmates shall be deducted from the aid herein provided for.

Mr. Edgar D. Crumpacker, of Indiana, made a point of order against the paragraph.

After debate, the Chairman[2] said:

The Chair will say that this paragraph appropriates or authorizes the payment of a certain sum of money in continuing aid to State or Territorial Homes for the support of disabled volunteer soldiers, in conformity with the act approved August 27, 1888, which is now the law. This proviso, in the judgment of the Chair, is clearly a limitation upon that appropriation. It says that "one-half of any sum or sums retained by State Homes on account of pensions received from inmates shall be deducted from the aid herein provided for." This, in the judgment of the Chair, is clearly a limitation in the paragraph on the appropriation which precedes the proviso. Under the rule of the House, and uniformly followed—and, as has been said, this rule has become the parliamentary law of the Committee of the Whole—this proviso being a limitation, it is clearly in order. In view of the statement of the gentleman from Indiana [Mr. Crumpacker], in which he invokes the legal distinction between limitations and conditions, I will read from the precedents an opinion given by the late Mr. Dingley, as Chairman of the Committee of the Whole, in which he says that "in order to be considered as a limitation or restriction a provision must prohibit the use of the money for some purpose already authorized by law." This proviso in effect prohibits the payment of so much of the appropriation as may be equivalent to the amount deducted by these State institutions from the pensions received by inmates thereof. The Chair therefore thinks that the point of order is not well taken, and overrules the same.

3951. On March 31, 1904,[3] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the pending question was a motion to strike out the following:

Provided, That one-half of any sum or sums retained by State Homes on account of pensions received from inmates shall be deducted from the aid herein provided for.

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[1] Second session Fifty-seventh Congress, Record, pp. 2163, 2164.

[2] James A. Tawney, of Minnesota, Chairman.

[2] Second session Fifty-eighth Congress, Record, pp. 4050–4054.

Mr. Theodore A. Bell, of California, proposed the following amendment to perfect the text:

Amend by striking out all after the word "*Provided*," line 12, page 127, down to and including the word "for," line 14, and insert:

"That no part of this appropriation shall be apportioned to any State or Territorial Home until its laws, rules, or regulations respecting the pensions of its inmates be made to conform to the provisions of section 4 of an act approved March 3, 1883, entitled 'An act prescribing regulations for the Soldiers' Home located at Washington, in the District of Columbia, and for other purposes;' but the above proviso shall not apply to any State or Territorial Home into which the wives or widows of soldiers are admitted and maintained: *And provided further,* That no part of this appropriation shall be apportioned to any State or Territorial Home that maintains a bar or canteen where intoxicating liquors are sold."

Mr. James A. Hemenway, of Indiana, made the point of order that the proposed amendment would change existing law.

After debate, the Chairman [1] held:

The appropriation in the paragraph to which this amendment is offered grants to States maintaining Soldiers' Homes $100 per capita for each inmate. A proviso at the end of the paragraph (which is not of importance, except that a ruling has been made upon it) has been carried for ten years or more in provisions of appropriation bills granting amounts to these State Soldiers' Homes to this effect:

"That one-half of any sum or sums retained by the State Homes on account of pensions received from inmates shall be deducted from the aid herein provided."

On that proviso a point of order was raised yesterday by the gentleman from Indiana [Mr. Crumpacker]. It was overruled on the ground that this proviso was a limitation. An amendment to the paragraph is presented to the committee to-day, to strike out all after the word "*Provided*," in line 12, page 127, down to and including the word "for," in line 14, and insert the following proviso, which would be a substitute for the one considered yesterday:

"That no part of this appropriation shall be apportioned to any State or Territorial Home until its laws, rules, or regulations respecting the pensions of its inmates be made to conform to the provisions of section 4 of an act approved March 3, 1883, entitled 'An act prescribing regulations for the Soldiers' Home located at Washington, in the District of Columbia, and for other purposes.' But the above proviso shall not apply to any State or Territorial Home into which the wives or widows of soldiers are admitted or maintained."

The last clause just read limits the operation of the proviso to that extent. There is a further limitation (if it may be called such) in this proviso:

"*And provided further,* That no part of this appropriation shall be apportioned to any State or Territorial Home that maintains a bar or canteen where intoxicating liquors are sold."

There are two conditions-first, that the regulations of the State or Territorial Home must conform to the provisions of section 4 of an act relating to the National Home at Washington; and second, that no part of the appropriation shall be apportioned to any State or Territorial Home that maintains a bar or canteen where intoxicating liquors are sold.

The question arises whether these are limitations merely. If so, the amendment is in order; if not, it is out of order. It is maintained that this amendment changes existing law. In a sense every limitation changes existing law. If any specific condition is mentioned under which an appropriation is to be withheld, that is pro tanto a change of existing law, at least to the extent that the whole or a part of the appropriation can not be expended unless the condition is complied with.

The Chair has some hesitancy in ruling upon this subject, because of an opinion that in accordance with some precedents observed in Committee of the Whole, affirmative law has been credited under the form of negative limitations or provisions. The question is, What is a proper limitation. There have been numerous rulings here on this subject. It has been held, for instance, that the following provisions were limitations merely and properly included in an appropriation bill by amendment or otherwise; that an appropriation shall not be available until title has been acquired to the land upon which a building is to be located or until the time for appeal shall have expired; that the cost of an

[1] Theodore E. Burton, of Ohio, Chairman.

article appropriated for shall not exceed a certain amount; or that an appropriation shall only be used for purchasing armor of a certain form and quality. It has been held to be a proper limitation, also, that no greater price should be paid than is paid by other governments. And it has been several times held that while it is not in order to legislate as to the qualifications of the recipient of an appropriation, the House may specify that no part of the appropriation shall go to a recipient lacking certain qualifications.

It would seem to the Chair that the language of this proposed amendment, specifying that this appropriation or any part of it shall not go to institutions failing to comply with certain conditions, is within the principle of the rule last stated—namely, that while the House may not legislate as to the qualifications of the recipients of an appropriation, it may specify that no part of the appropriation shall go to recipients lacking certain qualifications.

On one occasion an amendment was proposed by the present Speaker of this House that no part of a sum for hospitals should be expended in the further maintenance of the Army and Navy Hospital at Hot Springs, Ark. The amendment afterwards appeared in this form: That the appropriation shall be available "except at the hospitals at Hot Springs, Ark.," so that the appropriation would go to all the hospitals except that one. On that occasion the Chair sustained a point of order, but the Committee of the Whole by a vote of 84 to 57 overruled the Chairman and decided that such an amendment was in order.

But there is another precedent in a ruling made by the gentleman from New York [Mr. Payne] in the Fifty-sixth Congress, second session, which would seem to the present occupant of the chair to be entirely conclusive (if it is accepted) of the question which is now before the committee. An amendment was offered in this form:

"Provided, That no part of this appropriation shall be available for the agricultural college of any State or Territory until the Secretary of Agriculture shall be satisfied, and shall so certify to the Secretary of the Treasury, that no trustee, officer, or employee of said college is engaged in the practice of polygamy or polygamous relations, etc."

To that amendment a point of order was made, and the gentleman from New York [Mr. Payne], occupying the chair, overruled the point of order.

Now, this was an amendment to a law providing appropriations for agricultural colleges, a well-established line of expenditure by the National Government. It was proposed that no part of that appropriation should be available for an agricultural college unless there was an affirmative certificate made to the Secretary of the Treasury that no trustee, officer, inspector, or employee of said college was engaged in the practice of polygamy. That was held to be a proper limitation.

Clearly, if the Committee of the Whole accepted that as parliamentary law, this amendment is in order; and without relying upon this as a precedent solely, but upon the general principles and precedents relating to this subject, it would seem to the Chair that this pending amendment is a proper limitation, and the point of order is overruled.

3952. On June 8, 1906,[1] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

For maintenance of marine-hospital stations, including subsistence, and for all other necessary miscellaneous expenses which are not included under special heads, $240,000.

Mr. Swagar Sherley, of Kentucky, proposed to add the following:

Provided, That of this sum such portion equal in amount to the cost of maintenance and subsistence of any given marine-hospital station during the current fiscal year shall not be expended in case the said hospital station be closed during any part of the fiscal year ending June 30, 1907.

Mr. James A. Tawney, of Minnesota, made a point of order against the amendment.

[1] First session Fifty-ninth Congress, Record, pp. 8130, 8131.

After debate, the Chairman[1] held:

The Chair would like to ask the gentleman from Minnesota if he thinks an amendment limiting the Secretary of the Treasury to the expenditure of only $230,000, for example, in case the hospital at Louisville, Ky., should be closed, would be a limitation? The Chair confesses to a great deal of doubt as to this amendment, and, although it is expressed in language more or less circuitous, it would seem to the Chair that the effect of it is such as indicated in the illustration which the Chair has just made. * * * From a careful reading of the amendment itself the Chair is of the opinion that it expresses a mere limitation or a bar upon the expenditure of the amount carried in that paragraph, and therefore the Chair overrules the point of order. The question is on agreeing to the amendment offered by the gentleman from Kentucky.

3953. While it is not in order on an appropriation bill to require lettering on public vehicles, it is in order to withhold the appropriation from all not lettered.—On March 31, 1904,[2] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read a paragraph, which, after modification by unanimous consent, was presented in this form:

SEC. 3. That all carriages and other vehicles used in the public service, other than for personal purposes, as authorized in section 2 of the legislative, executive, and judicial appropriation act for the fiscal year 1905, the expenses for purchase, or maintaining, driving, or operating of which are paid from money appropriated by this act, shall have conspicuously painted thereon at all times the full name of the Executive Department or other branch of the public service to which the same belong and in the service of which the same are used.

Mr. James R. Mann, of Illinois, made the point of order that the paragraph proposed legislation.

The Chairman sustained the point of order.

Thereupon Mr. James A. Hemenway, of Indiana, proposed as a new paragraph the following:

SEC. 3. No part of any money appropriated by this act shall be used for purchase, maintaining, driving, or operating any carriage or other vehicle other than those authorized for personal purposes in section 2 of the legislative, executive, and judicial appropriation act for the fiscal year 1905, unless the same shall have conspicuously painted thereon at all times the full name of the Executive Department or other branch of the public service to which the same belong and in the service of which the same are used.

Mr. Mann having made the same point of order, the Chairman[3] held:

The Chair thinks that this does not change existing law, that it is merely a limitation. It would seem that this legislative body was very much lacking in power if there could not be a provision in the way of a limitation that carriages used for public purposes shall have a designation upon them to that effect. The Chair is not ready to think that any parliamentary rule makes this other than a limitation. The Chair overrules the point of order.

3954. A provision that no part of an appropriation for pay of retired army officers should go to one receiving pay for services as a civil employee was held to be a limitation.—On January 25, 1904,[4] the army appropriation bill was under consideration in Committee of the Whole House on

[1] H. S. Boutell, of Illinois, Chairman.

[2] Second session Fifty-eighth Congress, Record, p. 4068.

[3] Theodore E. Burton, of Ohio, Chairman.

[4] Second session Fifty-eighth Congress, Record, p. 1142.

the state of the Union, when Mr. William P. Hepburn, of Iowa, offered the following as an amendment:

Provided, That no part of the money appropriated by this act shall be expended in payment to any retired officer of the Army who receives payment for services as clerk or other civil employee in any of the Departments of the Government.

Mr. John A. T. Hull, of Iowa, raised a question of order against the amendment. The Chairman [1] held:

The Chair is of opinion that as it is in the power of Congress to refuse to appropriate at all for this purpose it is within its power under the rules of the House to limit the appropriation in the manner provided by this amendment, and therefore overrules the point of order.

3955. A limitation is negative in its nature and may not include positive enactments establishing rules for executive officers.—On February 14, 1903,[2] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. James D. Richardson, of Tennessee, proposed the following amendment:

After line 15 on page 153 insert the following:

"In expending the sum herein appropriated for printing and binding the following restrictions and limitations shall be enforced:

"Whenever any document or report containing illustrations shall be ordered printed by Congress, such illustrations shall not be printed unless the order to print so specifies; and the heads of the Executive Departments, and the heads of bureaus, not connected with the Departments, before transmitting their annual reports to Congress, shall cause the same to be carefully examined, and shall exclude therefrom all matters, including engravings, maps, drawings, and illustrations, except such as they shall certify in their letters transmitting such reports to be necessary and relate entirely to the transaction of public business; and in no case shall the Public Printer permit the insertion in any document, report, or other Government publication, except those emanating from the Patent Office, of any diagram, photogravures, half-tone, or other picture or illustration, unless express authorization has been given in writing, with the reason therefor, by the head of the Executive Department by which such document, report, or publication is issued; and if the same is issued by any bureau or division not immediately under and a part of any Executive Department, then such authorization therefor must be first given by the Secretary of the Interior."

Mr. James R. Mann, of Illinois, made the point of order that the proposed amendment involved legislation, and could not be considered a limitation.

After debate, the Chairman [3] said:

In the opinion of the Chair the amendment is not necessarily a limitation upon the appropriation for public printing. If the heads of the Departments certify the necessity for printing the matter which is now published, concerning which the gentleman from Tennessee objects, it would be published as now, and in that case there would be no limitation. The same publications could be made under this amendment, if it is adopted, that are now made. It proposes to give authority to the heads of Departments to restrict the expenditure of this money by eliminating or not printing certain things specified in the amendment, but it is discretionary with the heads of Departments whether these things shall be printed or not. Therefore the amendment proposed would be only a conditional limitation, and, in the opinion of the Chair, that is not sufficient. The limitation must be an absolute limitation, not a conditional one, to take the amendment out of the rule which is invoked. The Chair is also of the opinion that the latter part of the amendment is new legislation, changing existing law; and it not being such a limitation as the rule contemplates, the Chair thinks the amendment in the modified form is not in order, and sustains the point of order.

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[1] Marlin E. Olmsted, of Pennsylvania, Chairman.

[2] Second session Fifty-seventh Congress, Record, pp. 2197, 2198, 2200.

[3] James A. Tawney, of Minnesota, Chairman.

Later Mr. Frederick H. Gillett, of Massachusetts, proposed the following:

Provided, That no part of the appropriation herein made for printing and binding shall be used for any illustrations or any engravings in any document or report ordered printed by Congress unless the order to print expressly authorizes the same; nor in any document or report of any executive department or Government establishment until the head of the executive department or Government establishment shall certify in the letter transmitting such report that the illustration is necessary and relates entirely to the transaction of the public business.

Mr. Mann having made the point of order, the Chairman held:

The Chair overrules the point of order. In the opinion of the Chair this amendment as drawn is a limitation upon the appropriation made by this bill for the printing of public documents. It certainly limits the appropriation in so far as the appropriation can be used for the publication of documents that are published by authority of Congress.

3956. On February 19, 1903,[1] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Sydney E. Mudd, of Maryland, made a point of order against a portion of the paragraph providing for increase of the Navy, as follows:

And in the construction of all of said vessels the provisions of the act of August 3, 1886, entitled "An act to increase the naval establishment," as to material for said vessels, their engines, boilers, and machinery, the contracts under which they are built, the notice of any proposals for the same, the plans, drawings, specifications therefor, and the method of executing said contracts shall be observed and followed, and, subject to the provisions of this act, all said vessels shall be built in compliance with the terms of said act, and in all their parts shall be of domestic machinery; and the steel material shall be of domestic manufacture, and of the quality and characteristics best adapted to the various purposes for which it may be used, in accordance with specifications approved by the Secretary of the Navy: *Provided further,* That the Secretary of the Navy may build any or all of the vessels herein authorized in such navy-yards as he may designate, should it reasonably appear that the persons, firms, or corporations, or the agents thereof, bidding for the construction of any of said vessels, have entered into any combination, agreement, or understanding, the effect, object, or purpose of which is to deprive the Government of fair, open, and unrestricted competition in letting contracts for the construction of any of said vessels.

The Chairman having ruled the portion objected to out of order, Mr. William W. Kitchin, of North Carolina, appealed.

After debate on the appeal, the Chairman[2] said, in submitting the question to the House:

Before submitting the question, the Chair would like to make a brief statement as to the meaning of his ruling, because it seems to the Chair, from the remarks made by the gentleman from North Carolina and the gentleman from Alabama, that there is a misapprehension of the basis of the Chair's opinion. If one part of a paragraph against which a point of order is made is out of order, it is the duty of the Chair to rule out the whole paragraph. So, of course, if one part of this clause against which the gentleman from Maryland raises the point of order is obnoxious to it, all goes out. But that does not prevent, afterwards, the germane portion being put in by way of amendment. And the Chair stated to the gentleman from Iowa, perhaps anticipating more than he ought to have, that in the opinion of the Chair it is not at all out of order to put in this appropriation bill a limitation on the manner in which the vessel shall be built and the materials, etc.—in other words, to describe the object to be appropriated for. But the gentleman from North Carolina and the gentleman from Alabama (the Chair does not intend to be controversial) stated, as the basis of their argument, that as there is no existing law for this appropriation it must be new legislation. Now, in the opinion of the Chair, that clearly and incontrovertibly establishes that this clause is out of order, because Rule XXI, under which this proceeds, provides that—

[1] Second session Fifty-seventh Congress, Record, pp. 2394–2398, 2399.

[2] Frederick H. Gillett, of Massachusetts, Chairman.

"No appropriation shall be reported in any general appropriation bill or be in order unless in continuation of an appropriation for such public works and objects as are already in progress."

It is upon this line for the past fifteen years that it has always been held that the building of ships can be provided for upon an appropriation bill, because they were in continuation of a public work in progress. It is a continuation of the building up of the Navy; but immediately after in that section the rule goes on to say:

"Nor shall any provision changing existing law be in order on any general appropriation bill."

We may continue the public work, building up the Navy, by building new battle ships. But the same section provides that no provision changing existing law shall be in the appropriation bill. In other words, you may provide to build new ships. That is an appropriation and does not change existing law; but in making that appropriation we shall not change existing law. We can describe the ships to be built; we can by limitations provide how the money shall be expended upon them, but we can not in that connection insert anything which amends any other law. To the Chair it seems perfectly clear that the provision in this section, that the Secretary of the Navy shall build the ships at certain navy-yards, is a change of existing law, because it limits the power which existing laws give him. It has been held again and again—the decisions are uniform upon the subject—that any restriction on the power of an executive officer is a change of existing law. This section clearly limits his discretion, and therefore changes existing law. And it seems to the Chair that the distinction which is not recognized by some gentlemen on the floor is the distinction between a limitation on appropriations and a limitation on the discretion of an executive officer. Appropriations can always be limited, and in an appropriation bill; but the discretion of an executive officer can never be limited in an appropriation bill. * * * The Chair will simply state this one sentence—that it has always been held that where there is no law the passage of a law is a change of existing law. They are synonymous terms and the very first heading of the Digest under that head says:

"The enactment of positive law where none exists is a change of existing law within the meaning of the rule." That is the line of rulings that has always been held.

The question being taken on the appeal, the decision of the Chair was sustained on a vote by tellers, ayes 109, noes 88.[1]

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[1] The theory of a limitation involves close distinctions in cases like the above.

The appropriation for a new ship for the Navy is admitted solely on the ground that it is in continuation of a public work already in progress.

Of course in appropriating for any object the House may describe the object. If it is a ship, the length, breadth, material, etc., may be specified with any degree of definiteness; provided that none of these specifications violates an existing law. If a law forbids the construction of ships over 300 feet long, an appropriation for a ship 400 feet long would violate existing law and be against the express words of the rule.

But having appropriated for a definitely described object, competency of the appropriation bill as a means of legislation ceases, except for the power to prescribe limitations.

What is the source of this power?

Chairman Dingley said (sec. 3936 of this chapter) that it arose from the undoubted power to refuse appropriations for any object, either in whole or in part, even though that object might be authorized by law.

Thus the power of limitation is solely a negative power, capable of setting up a barrier, and not a positive power, capable of creative functions.

When the appropriation bill describes the ship and grants the money, it has gone to the extent of its powers, and the remainder belongs to the Executive, acting within the legal limitations of his own sphere.

The appropriation may interfere with Executive discretion only in a negative way. It may decline to appropriate for ships to be built in a navy-yard by saying that no part of the appropriation shall be used for that purpose. These negative prohibitions are within the power of the appropriation bill. But they are in principle very different from positive, creative provisions directing the Secretary to build some ships by contract, others in navy-yards, others on the Pacific coast, others abroad, etc. There is substantially the same difference between the two propositions that there is between a veto and an enactment.

Mr. John J. Fitzgerald, of New York, then made the point of order against the words "by contract" in the first lines of the paragraph providing for the increase of the Navy.

increase of the navy.

That for the purpose of further increasing the naval establishment of the United States the President is hereby authorized to have constructed by contract three first-class battleships carrying the heaviest armor and most powerful ordnance for vessels of their class upon a trial displacement of not more than 16,000 tons, and to have the highest practicable speed and great radius of action, and to cost, exclusive of armor and armament, not exceeding $4,212,000 each; one first-class armored cruiser of not more than 14,500 tons trial displacement, carrying the heaviest armor and most powerful armament for vessels of its class, and to have the highest practicable speed and great radius of action, and to cost, exclusive of armor and armament, not exceeding $4,659,000; two steel ships, to be used in training landsmen and apprentices, to be propelled by sail, and to cost, exclusive of armament, not exceeding $370,000 each; one wooden brig, to be used for training landsmen and apprentices at stations, to be propelled by sail, and to cost, exclusive of armament, not exceeding $50,000; and the contract for the construction of each of said vessels shall be awarded by the Secretary of the Navy to the lowest best responsible bidder, having in view the best results and most expeditious delivery.

The Chairman sustained the point of order.

3957. The limitation must be upon the appropriation and not an affirmative limitation of official functions.—On April 24, 1900,[1] the post-office appropriation bill being under consideration in Committee of the Whole House on the state of the Union, Mr. W. T. Crawford, of North Carolina, offered to the paragraph appropriating for inland transportation by star routes the following amendment:

Of which sum $50,000 shall be used, under the direction of the Postmaster-General, in supplying temporary service to the newly established offices in cases where the establishment of star routes is contemplated.

Mr. Eugene F. Loud, of California, having raised a point of order, the Chairman[2] held:

It is not a limitation upon the appropriation; it is a limitation upon the functions of the Post-Office Department. It takes away from the Postmaster-General that discretion that he now has and is, therefore, in the opinion of the Chair, obnoxious to the point of order, and the Chair sustains the point of order.

3968. On April 24, 1900,[3] the post-office appropriation bill being under consideration in the Committee of the Whole House on the state of the Union, Mr. John W. Maddox, of Georgia, offered to the paragraph relating to "experimental rural free delivery" the following amendment:

Provided, That this service shall be equally distributed among the several Congressional districts in the United States.

Mr. Eugene F. Loud, of California, having made a point of order, the Chairman[2] said:

The amendment of the gentleman from Georgia [Mr. Maddox] proposes a limitation, not on the appropriation, but on the functions of the Post-Office Department. Under the existing law the

[1] First session Fifty-sixth Congress, Record, p. 4640.

[2] John Dalzell, of Pennsylvania, Chairman.

[3] First session Fifty-sixth Congress, Record, p. 4636.

Postmaster-General has a discretion to dispose of and apportion this free rural-delivery system as he may think best serves the public interest. To adopt the amendment offered by the gentleman from Georgia would be to take away that discretion, and it is, therefore, obnoxious to the rule. The Chair sustains the point of order.

3959. On May 19, 1902,[1] while the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, the paragraph providing for the increase of the Navy was read, whereupon Mr. Sidney E. Mudd, of Maryland, made a point of order against the following portion of the paragraph:

and not more than two of said battle ships and armored cruisers and not more than one of said gunboats herein provided for shall be built by one contracting party; and in the construction of all said vessels all the provisions of the act of June 7, 1900, entitled "An act making appropriations for the naval service for the fiscal year ending June 30, 1901, and for other purposes," shall be observed and followed; and subject to the provisions hereinafter made not more than one of said battle ships and not more than one of said armored cruisers and not more than one of said gunboats shall be built on or near the coast of the Pacific Ocean or in the waters connecting therewith: *Provided*, That if it shall appear to the satisfaction of the President from the biddings for such contracts when the same are opened and examined by him that said vessels or any of them can not be constructed on or near the coast of the Pacific Ocean at a cost not exceeding 4 per cent above the lowest accepted bid for the other vessels provided for in this act, he shall authorize the construction of said vessels, or any of them, elsewhere in the United States, subject to the limitations as to cost hereinbefore provided.

After debate on the point of order the Chairman[2] held:

The Chair thinks the gentleman from Massachusetts [Mr. Roberts] fails to make a distinction between a limitation upon an appropriation and a limitation upon an officer. It seems to the Chair that the limitation here is upon an officer, not upon an appropriation. Clearly this is a legislative provision. The present occupant of the chair made the ruling to which the gentleman from Maryland has referred in his argument, holding that legislation where none exists is a change of existing law. Still holding that same opinion, the Chair is constrained to sustain the point of order.

3960. On February 25, 1904,[3] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a paragraph was read providing for the construction of certain colliers.

Thereupon Mr. Theodore A. Bell, of California, proposed an amendment:

Amend by adding after the word "each," in line 4, page 71, the following:

"Said colliers shall be built in the navy-yards, one on the Pacific and the other on the Atlantic coast, and the same to be designated by the Secretary of the Navy."

Mr. Sydney E. Mudd, of Maryland, made the point of order that the amendment proposed a limitation on the discretion of the Secretary of the Navy.

After debate the Chairman[4] said:

The Chair understands that there is at present no law directing where vessels of this character shall be built. This proposed amendment makes law on that subject by directing that they shall be built in the places indicated in the amendment. It has been repeatedly held that a provision in an appropriation bill which makes law where none previously existed does change existing law in violation of the rule. There is some conflict of decision, as has appeared from the rulings cited, upon provisions of this kind. It was ruled in the Fifty-sixth Congress, the present Secretary of the Navy, Mr. Moody, then in the chair, that, there having been "no general law suggested to the Chair which would be

[1] First session Fifty-seventh Congress, Record, pp. 5640–5643.

[2] James S. Sherman, of New York, Chairman.

[3] Second session Fifty-eighth Congress, Record, pp. 2384, 2385.

[4] Marlin E. Olmsted, of Pennsylvania, Chairman.

altered by the amendment offered by the gentleman from New York, the Chair is compelled to think it is in order, in the absence of any such statute, and therefore overrules the point of order."

But that decision itself was in conflict with previous decisions that the making of law in an appropriation bill where none previously existed is itself a change of law, or is, as we say, legislation upon an appropriation bill. In the Fifty-seventh Congress, about one year ago, on February 19, 1903, the naval appropriation bill being then, as now, under consideration, an amendment was offered providing, among other things, that "the Secretary of the Navy may build any or all vessels herein authorized in such navy-yards as he may designate; and shall build the vessels herein authorized in such navy-yards as he may designate," etc. The gentleman from Massachusetts [Mr. Gillett] in the chair, ruled that the provision was out of order, saying: "To the Chair it seems perfectly clear that the provision in this section that the Secretary of the Navy shall build the ships at certain navy-yards is a change of existing law, because it limits the powers which existing laws give him." An appeal was taken from his ruling. Upon that appeal very exhaustive debate was had, at the conclusion of which the committee sustained the decision of the Chair by a vote of 109 to 88. That appears to be the last ruling upon this precise point.

The Chair will call attention to the distinction between a limitation upon an appropriation and a positive enactment which limits the powers of Government officers under existing laws. A mere limitation of the appropriation is in order. There is no obligation on the House to appropriate at all, and therefore it may provide that the money appropriated by it shall not be used in any except such manner as may be specified in the bill. A limitation is best expressed in the negative, as that the appropriation shall not be available unless used in a certain way. That leaves an option. The money can be used or not used, but if used it must be in the manner specified. No law is changed, because there is no obligation to expend the money at all. But where an amendment, or the bill itself, goes beyond that and places a limitation which would not otherwise exist upon the discretion of one of the Executive Departments of the Government, forcing the head of that Department to do certain things which otherwise he would not be required to do, that is more than a limitation upon an appropriation. It is substantially a positive enactment requiring him to spend the money, and to expend it as pointed out in the act, which takes away the discretionary power vested in him by previous authority of law. It is, in the opinion of the Chair, a change in existing law and new legislation, and, finding that in this amendment, the Chair is compelled to sustain the point of order.

Mr. Bell thereupon proposed to modify his amendment to read as follows:

Said colliers shall be built in the navy-yards.

Mr. Mudd made the point of order again.

The Chairman said:

In the opinion of the Chair the amendment just offered is open to the objection made by the gentleman from Maryland. This amendment is not a limitation upon the appropriation; it is in the nature of a law—a command to the Secretary of the Navy to build these vessels in a certain place. As the Chair has already attempted to make clear, it is within the power of the House to say, "We will appropriate money for a certain purpose, but no part of it shall be used unless in the way we direct." But under Rule XXI it is not within the power of the House, having appropriated the money, to accompany the appropriation with a command which is itself legislation changing existing law.

Thereupon Mr. Bell modified his amendment to read as follows:

and none of the appropriation for the foregoing purposes shall be used for any colliers not built in the yards owned by the United States Government.

No point of order was made against the amendment in this form.

3961. On March 29, 1904,[1] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

[1] Second session Fifty-eighth Congress, Record, pp. 3961, 3962.

Depredations on public timber, protecting public lands, and settlement of claims for swamp land and swamp-land indemnity: To meet the expenses of protecting timber on the public lands, and for the more efficient execution of the law and rules relating to the cutting thereof; of protecting public lands from illegal and fraudulent entry or appropriation, and of adjusting claims for swamp lands, and indemnity for swamp lands, $250,000: *Provided*, That agents and others employed under this appropriation shall be selected by the Secretary of the Interior, and allowed per diem, subject to such rules and regulations as he may prescribe, in lieu of subsistence, at a rate not exceeding $3 per day each and actual necessary expenses for transportation, including necessary sleeping-car fares.

Mr. James R. Mann, of Illinois, made a point of order against all of the paragraph after the word *"Provided."*

Mr. James A. Hemenway, of Indiana, urged that the proviso contained a limitation merely.

After debate, the Chairman [1] held:

The Chair would state that unless there can be something cited which would justify this provision he will be compelled to sustain the point of order. It is clearly creating a law that does not already exist. The point of order is sustained.

3962. On February 16, 1905,[2] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

Reserve guns for auxiliary cruisers: Toward the armament of modem guns for auxiliary cruisers mentioned in the act approved March 3, 1891, and in section 4 of the act approved May 10, 1892, $50,000.

To this Mr. Ebenezer J. Hill, of Connecticut, offered this amendment:

After the word "ninety-two," page 11, line 5, insert "to be purchased on competitive bids, after due advertisement."

Mr. John J. Fitzgerald, of New York, made the point of order against the amendment.

The Chairman [3] sustained the point of order.

3963. On April 13, 1906,[4] the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

For pay of letter carriers and clerks in charge of substations of rural delivery service, $28,200,000: *Provided*, That not to exceed $15,000 of the amount hereby appropriated may be used for compensation of clerks in charge of substations.

Mr. Martin L. Smyser, of Ohio, offered this amendment:

Amend on page 27, lines 17 and 18, by striking out the words "twenty-eight million two hundred thousand dollars" and inserting in lieu thereof the words "thirty-two million four hundred thousand dollars: *Provided*, That not to exceed $4,200,000 of said sum so appropriated shall be expended for horse hire and wagon equipment in the rural mail service."

Mr. Jesse Overstreet, of Indiana, made the point of order that the amendment involved legislation.

The Chairman [5] sustained the point of order.

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[1] Theodore E. Burton, of Ohio, Chairman.

[2] Third session Fifty-eighth Congress, Record, p. 2751.

[3] John Dalzell, of Pennsylvania, Chairman.

[4] First session Fifty-ninth Congress, Record, p. 5247.

[5] James S. Sherman, of New York, Chairman.

3964. On May 2, 1906,[1] the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

Irrigation and drainage investigations: To enable the Secretary of Agriculture to investigate and report upon the laws of the States and Territories as affecting irrigation and the rights of appropriators and of riparian proprietors and institutions relating to irrigation and upon the use of irrigation waters at home and abroad; with especial suggestions of the best methods for the utilization of irrigation waters in agriculture, and upon plans for the removal of seepage and surplus waters by drainage, and upon the use of different kinds of power and appliances for irrigation and drainage; and for the preparation, printing, and illustration of reports and bulletins on irrigation and drainage, including employment of labor in the city of Washington or elsewhere; and the agricultural experiment stations are hereby authorized and directed to cooperate with the Secretary of Agriculture in carrying out said investigations in such manner and to such extent as may be warranted by a due regard to the varying conditions and needs and laws of the respective States and Territories as may be mutually agreed upon, and all necessary expenses, $102,200, $5,000 of which amount, or so much thereof as may be necessary, shall be expended in making a drainage survey of the Neosho Valley, in the State of Kansas.

Mr. Thetus W. Sims, of Tennessee, made the point of order against the appropriation for the survey of Neosho Valley.

After debate, the Chairman[2] held that the point of order was well taken, since the language constituted not a limitation on the appropriation, but an affirmative limitation upon the judicial functions of the Secretary of Agriculture,

3965. On May 31, 1906,[3] the consular and diplomatic appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Paying for the feeding and keeping of prisoners in China, Korea, Siam, and Turkey, $9,000: *Provided*, That no more than 50 cents per day for the keeping and feeding of each prisoner while actually confined shall be allowed or paid for any such keeping and feeding. This is not to be understood as covering cost of medical attendance and medicines when required by such prisoners: *And provided further,* That no allowance shall be made for the keeping and feeding of any prisoner who is able to pay or does pay the above sum of 50 cents per day; and the consular officer shall certify to the fact of inability in every case.

Mr. Edgar D. Crumpacker, of Indiana, made the point of order that the last proviso involved legislation.

After debate, the Chairman[4] held:

The Chair holds that it is a limitation on the office, though not on the money, and sustains the point of order.

3966. On June 8,1906,[5] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

Transportation of notes, bonds, and other securities of the United States, of fractional silver coin, and of minor coin under each of the three foregoing appropriations shall, when practicable, be by registered mail and in such sums as the Secretary of the Treasury may determine and under such rules and conditions as may be agreed upon jointly by him and the Postmaster-General.

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[1] First session Fifty-ninth Congress, Record, pp. 6277, 6278.

[2] David J. Foster, of Vermont, Chairman.

[3] First session Fifty-ninth Congress, Record, pp. 7671, 7672.

[4] Charles Curtis, of Kansas, Chairman.

[5] First session Fifty-ninth Congress, Record, pp. 8126–8129.

Mr. Jesse Overstreet, of Indiana, made the point of order that the paragraph involved legislation.

After debate, the Chairman [1] sustained the point of order.

Thereupon Mr. James A. Tawney, of Minnesota, proposed an amendment to insert:

This sum and the appropriations for contingent expenses Independent Treasury and for transportation of fractional silver coin shall be available only for transportation of notes, bonds, and other securities of the United States, of silver coin and of minor coin, except when impracticable, by registered mail and not otherwise, and in such sums as the Secretary of the Treasury may determine, and under such rules and conditions as may be agreed upon jointly by him and the Postmaster-General.

Mr. Overstreet made the same point of order.

After debate, the Chairman [2] held:

A long line of decisions on the question of limitations holds that the limitation, to be in order, must be in effect simply a negative bar that is pressing upon the appropriation of the money, and that any amendment which directly or indirectly vests in any executive officer any discretion or imposes any duty upon the officer, directly or indirectly, in the expenditure of the money would be obnoxious to the point of order. This amendment seems to the Chair to come clearly within the latter class; and therefore the Chair sustains the point of order.

3967. A limitation is negative in its nature and may not include positive enactments establishing rules for executive officers.—On December 9, 1904,[3] the legislative appropriation bill for the fiscal year ending June 30, 1906, was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

During the fiscal year 1906 it shall not be lawful to detail clerks or other employees from the Executive Departments or other Government establishments in Washington, D. C., to the Civil Service Commission for the performance of duty in the District of Columbia.

Mr. Henry H. Bingham, of Pennsylvania, made a point of order against the paragraph that it proposed legislation.

Mr. James R. Mann, of Illinois, urged that the paragraph proposed simply a limitation.

The Chairman [4] said:

The Chair will say in answer to the gentleman from Illinois that this is clearly positive legislation. "That it shall not be lawful to detail clerks or other employees, etc.," which is now lawful under existing law, and the statement that it is merely a limitation does not strike the Chair at all.

3968. The House may provide that no part of an appropriation shall be used in a certain way, even though executive discretion be thereby negatively restricted.

Instance wherein a decision of a chairman of the Committee of the Whole was overruled.

On February 27, 1905,[5] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the

[1] James E. Watson, of Indiana, Chairman.

[2] Henry S. Boutell, of Illinois, Chairman.

[3] Third session Fifty-eighth Congress, Record, pp. 98, 99.

[4] John Dalzell, of Pennsylvania, Chairman.

[5] Third session Fifty-eighth Congress, Record, pp. 3577–3581.

paragraph providing for the construction of a public building at Cleveland, Ohio, was read, and Mr. Theodore E. Burton, of Ohio, offered this amendment:

Page 3, at the end of line 19, add the following:

"*Provided*, That no part of the money herein appropriated shall be used in the construction of the exterior or outer walls of a material other than granite."

Mr. James A. Hemenway, of Indiana, made the point of order that the amendment would change existing law.

Mr. Hemenway said:

Mr. Chairman, the law authorizing the construction of this building provides that it is to be constructed of material selected under the direction of the Secretary of the Treasury, under the Tarsney Act, as the building material is always selected by the Secretary of the Treasury. In fact, I have no recollection of any public-building bill ever passing that did not provide this. Now, here a bill has passed which provides that the selection of the material shall be under this law. The Secretary of the Treasury has taken action. I understand the contract has been let. Am I mistaken about that?

Mr. Burton replied:

I beg the gentleman's pardon. A contract has been made in which there is an option between granite and sandstone, an option still open and not yet exercised.

Mr. Hemenway continued:

The Secretary of the Treasury, acting under the law, is given the selection of this material. No one who will read this act will contend for a minute that the Secretary of the Treasury has not the power and is not directed by this act to select the material. Now, the gentleman proposes to amend this bill by limiting this appropriation to be expended for granite only. Does not that change the law? Why, it is not an open question. * * *

Mr. Robert W. Miers, of Indiana, said:

I shall refer to the law to which I called the Chair's attention a moment ago. At the close of the section—I will not read it all, and I shall be glad to pass it to the Chair in a moment—that law provides, among other things, as follows:

"To be subject at all times to modification and change relating to plans and arrangement of the building and selection of material thereof as may be directed by the Secretary of the Treasury."

The law of 1893 provides that the material shall be collected by the Supervising Architect, at the discretion and by the direction of the Secretary of the Treasury, and the law is not only that he has the right to select the material by reason of the enactment of the law that provided for the appropriation which gave him the option to select granite or sandstone, but the law of 1893, which binds not only the Secretary of the Treasury as it relates to this building, but all contracts for the erection of public buildings, and has been on the statute books for twelve years, gives the Secretary the right to select the material.

Then if the Secretary under the law has the right to select the material, can the gentleman under the guise of a limitation say that he shall not use the discretion which is given him in the act that provided for the appropriation, and that he shall not select the material, when existing law says he shall? I grant you the right to change the law, but not by an enactment in an appropriation bill. This amendment is a selection of the material by this House, thereby changing existing law. The law vests the Secretary with the right to select the material. If this House passes the amendment offered by the gentleman from Ohio [Mr. Burton] it would change the statute law. This House can not select the material without changing existing law, and this can not be done by enactment in an appropriation bill. I submit, therefore, Mr. Chairman, that this amendment is more than a limitation on an appropriation. It changes existing law.

The following colloquy occurred between Messrs. Burton and Charles H. Grosvenor, of Ohio:

Mr. BURTON. Is the gentleman not aware that there is a plain option outstanding between the two kinds of materials?

Mr. GROSVENOR. And the Secretary has the right to exercise that option.

Mr. BURTON. Under the contract.

Mr. GROSVENOR. If this bill is passed, is that right left to him?

Mr. BURTON. No.

Mr. Burton cited precedents to show that executive discretion might be limited by a provision on an appropriation bill.

The Chairman [1] ruled:

The impression of the Chair when the matter was first brought to his attention was that it was dearly a limitation. The Chair has since given the matter a great deal of attention, has examined the law, and listened as best he could to the arguments upon both sides of the proposition, and, without detaining the committee with an elaborate opinion which he has in his head, the Chair will sustain the point of order.

Mr. Burton having appealed, the decision of the Chair was overruled, by a vote of ayes 65, noes 89.

So the amendment was admitted.

3969. On April 12, 1906,[2] the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Jesse Overstreet, of Indiana, offered this amendment:

Page 15, strike out lines 6 to 16 and insert the following:

"For inland transportation by star routes, including temporary service to newly established offices, $7,100,000: *Provided*, That no part of this appropriation shall be expended for continuance of any star route service the patronage of which shall be served entirely by the extension of rural delivery service, nor shall any of said sum be expended for the establishment of new star route service for a patronage which is already entirely served by rural delivery service: *And provided further*, That out of this appropriation the Postmaster-General is authorized to provide difficult or emergency mail service in Alaska, including the establishment and equipment of relay stations, in such manner as he may think advisable, without advertising therefor."

Mr. John W. Gaines, of Tennessee, made a point of order against the amendment.

The Chairman [1] said:

It seems to the Chair that the language of the proviso is a proper limitation, but the language in reference to Alaska might be more happily chosen.

Mr. Overstreet said:

Will the Chair permit me before proceeding further to say I will modify the amendment by striking from the amendment I have sent to the Clerk's desk the language relative to Alaska?

The Chairman then said:

The Chair then overrules the point of order.

3970. On April 12, 1906,[3] the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

For railway post-office car service, $5,875,000.

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[1] James S. Sherman, of New York, Chairman.

[2] First session Fifty-ninth Congress, Record, pp. 5163, 5164.

[3] First session Fifty-ninth Congress, Record, p. 5176.

Mr. Robert B. Macon, of Arkansas, offered this amendment:

Page 18, in line 4, after "dollars," insert: "*Provided,* That no part of the sum herein appropriated shall be expended for the payment of rent of railway post-office cars not in actual use in the service of the transportation of the mail."

Mr. Jesse Overstreet, of Indiana, made a point of order against the amendment.

The Chairman [1] overruled the point of order.

3971. On March 27, 1906,[2] a deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk read as follows:

department of state.

To meet the actual and necessary expenses of the delegates of the United States to the Third International Conference of American States to be held at the city of Rio de Janeiro, beginning on the 21st day of July, 1906, and of their salaried clerical assistants, to be expended in the discretion of the Secretary of State, and to continue available during the fiscal year 1907, $60,000.

Mr. John A. Sullivan, of Massachusetts, offered the following amendment:

Page 2, after line 5, insert: "That said delegates of the United States are hereby instructed to advocate the establishment of reciprocal tariff relations between the United States and other American States."

Mr. Lucius H. Littauer, of New York, made the point of order that the amendment proposed legislation.

The Chairman [3] sustained the point of order.

After a time Mr. John Fitzgerald, of New York, proposed an amendment as follows:

Provided, That no part of the sum hereby appropriated shall be expended unless the programme for the conference contains provision for a discussion of reciprocal trade relations between the countries participating in the conference.

Mr. Littauer made a point of order.

The Chairman overruled the point of order, holding that the amendment was a limitation merely, and covered by the ruling of Chairman Burton on March 31, 1904.[4]

3972. On February 28, 1906,[5] the army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a paragraph relating to barracks and quarters for troops was read.

Thereupon Mr. James A. Tawney, of Minnesota, offered the following amendment:

On page 31, at the end of line 20, insert: "*And provided further,* That of the sum herein appropriated for 'Barracks and quarters' the amount expended for construction of any new building or buildings at any established military post shall not exceed, in the aggregate, the sum of $20,000, and from this appropriation only there shall be paid during the fiscal year 1907 all expenses of plumbing and sewer connections and other like expenses of interior finish or construction of buildings at military posts the construction or repairing of which is chargeable to this appropriation."

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[1] James S. Sherman, of New York, Chairman.

[2] First session Fifty-ninth Congress, Record, pp. 4355, 4356, 4357.

[3] J. Van Vechten Olcott, of New York, Chairman.

[4] See section 3953 of this volume.

[5] First session Fifty-ninth Congress, Record, p. 3177.

Mr. John A. T. Hull, of Iowa, made the point of order that the amendment proposed a change of existing law.

In the course of the debate the law was read providing that permanent barracks or quarters costing more than $20,000 should not be constructed without special authority of Congress.

The Chairman [1] ruled:

If this amendment said that hereafter no money should be expended except in this way, it might be considered a change of existing law; but this amendment, as it seems to the Chair, does not prescribe anything in reference to the number or character of the buildings, but is a limitation as to what buildings the money shall be used for and what other purposes the money shall be used for. It is a limit of the expenditure of the money, and the Chair so holds, and therefore overrules the point of order.

3973. While a limitation may provide that no part of an appropriation shall be used except in a certain way, yet the restriction of Executive discretion may not go to the extent of an imposition of new duties.—On June 15, 1906,[2] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. John A. Sullivan, of Massachusetts, offered to the paragraph relating to the Panama Canal the following:

Provided, That no part of this appropriation shall be expended for materials and supplies to be used in the construction of the canal or in connection therewith except as the result of bids advertised in the manner now established by the Isthmian Canal Commission under existing law.

Mr. James A. Tawney, of Minnesota, made the point of order that the amendment involved legislation.

After debate, the Chairman [3] held:

The Chair is of opinion that the amendment is only a limitation on the appropriation and not a change of existing law. Every limitation is, in effect, finally a limitation on the discretion of an officer. It is not permitted that this be affirmatively done, but it may be negatively done, and this amendment while not drawn in the usual form, and therefore because of its language making it a somewhat closer question, is yet in substance but a limitation, in the opinion of the Chair, on the appropriation, and therefore the Chair overrules the point of order.

3974. It has generally been held that provisions giving a new construction of law or limiting the discretion which has been exercised by officers charged with the duties of administration are changes of law within the meaning of the rule.—On April 13, 1906,[4] the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Walter I. Smith, of Iowa, proposed this amendment:

Add after the end of line 4, page 25, the following: "All regular periodical publications issued from a known place of publication at stated intervals and as frequently as twelve times a year, by or under the auspices of charitable, educational, or religious institutions, which institutions are not conducted for pecuniary profit, if such publications are made to further the objects and purposes of such institutions and are formed of printed paper sheets, without board, cloth, leather, or other substantial binding, such as distinguished printed books for preservation from periodical publications, are under

[1] Henry S. Boutell, of Illinois, Chairman.

[2] First session Fifty-ninth Congress, Record, pp. 8601, 8602.

[3] James E. Watson, of Indiana, Chairman.

[4] First session Fifty-ninth Congress, Record, p. 5246, 5247.

the true meaning of existing law entitled to be admitted to the mail as second-class matter and at the rate of postage fixed for second-class matter and no more, and the existing laws with reference to the second-class mail matter shall hereafter be so interpreted."

Mr. Jesse Overstreet, of Indiana, raised a question of order, holding that according to the ruling of Chairman Dingley on January 17, 1896, the amendment was out of order, although on April 6, 1894, Chairman Hatch had held a similar amendment in order.[1]

The Chairman,[2] following the ruling of Chairman Dingley, sustained the point of order.

Mr. Smith appealed, but after the affirmative vote had been taken withdrew the appeal, "the temper of the House evidently being in favor of sustaining the Chair."

3975. The limitation permitted on a general appropriation bill must be in effect a negative prohibition on the use of the money, not an affirmative direction to an executive officer.—On February 15, 1907,[3] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Edwin Y. Webb, of South Carolina, offered to the paragraph providing for new ships for the Navy, the following:

Add after the word "act," in line 14, page 81: "*Provided,* That before the construction of these vessels shall be begun a test shall be made with the service 12-inch projectile fired against a 12-inch Kruppized armor plate at a range of 5,000 yards to ascertain whether such projectile fired with service pressure will penetrate such armor plate."

Mr. Sydney E. Mudd, of Maryland, made a point of order against the amendment.

After debate, the Chairman[4] held:

The Chair is of opinion that in its present form the amendment would constitute legislation upon an appropriation bill and is in violation of the rule. The Chair, therefore, sustains the point of order.

Later Mr. Webb offered the following:

Add after "dollars," in line 17, page 83:

"*Provided*, That before said money shall be expended, in order to determine the least thickness of armor plate necessary to defeat penetration of armor-piercing shell at a minimum fighting range of 5,000 yards, a test shall be made at the earliest practicable date by the Ordnance Department of the Navy with the service 12-inch gun, employing service powder charges and projectiles, against a target composed of a 10-inch Kruppized armor plate, rigidly backed and located at an actual distance from the gun of 5,000 yards, and the results of such test reported to Congress."

Mr. John Dalzell, of Pennsylvania, having made a point of order, the Chairman held:

The Chair sustains the point of order. The paragraph itself, to which the amendment is offered, is a plain, straight appropriation of money. It does not change existing law. The amendment is new legislation, changing existing law, and violates the rule upon that subject. This is not the case of a germane amendment to a paragraph, itself out of order.

Mr. Webb then offered this form:

Provided, That no part of said money shall be expended until a test shall be made to ascertain whether said plate can be penetrated by a 12-inch service gun at a distance of 5,000 yards from the gun.

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[1] *See* section 3936 and footnote.

[2] James S. Sherman, of New York, Chairman.

[3] Second session Fifty-ninth Congress, Record, pp. 3062, 3068.

[4] Marlin E. Olmsted, of Pennsylvania, Chairman.

On Mr. Dalzell's point of order, the Chairman held:

The paragraph appropriates some money, and the amendment implies that the Secretary of the Navy must do certain things before he gets the money. The Chair sustains the point of order.

Then Mr. Webb offered this form:

Provided, That no part of said sum shall be expended for any armor plate that has not been subjected to a test showing said plate can not be penetrated by a 12-inch service gun at a distance of 5,000 yards from such gun.

Mr. Dalzell again made a point of order.

After inquiry by the Chair as to whether or not the armor to be purchased had been contracted for, the Chairman ruled:

In the absence of specific information that the armor appropriated for in this paragraph is under contract, and that this amendment would change existing law or a contract made under existing law, the Chair thinks the amendment is in the nature of a limitation upon the appropriation, and overrules the point or order.

3976. The language of limitation prescribing the conditions under which the appropriation may be used may not be such as, when fairly construed, would change existing law.—On March 22, 1904,[1] the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. E. J. Livernash, of California, proposed this amendment:

Amend by striking out of lines 8 and 9, page 23, the words "twenty million two hundred and fifty thousand dollars" and substitute the following:

"Twenty-three million two hundred and fifty thousand dollars: *Provided,* That no part of this appropriation shall be used for said purpose unless in the use thereof the carriers hereinafter mentioned shall be paid salaries as follows during the year beginning July 1, 1904, viz: In all cities which contain a population of 75,000 or more, carriers who have served more than three years, $1,200 per annum; in all cities containing a population of less than 75,000, carriers who have served more than two years, $1,000 per annum."

Mr. Jesse Overstreet, of Indiana, made a point of order that the amendment proposed legislation.

After debate, during which it was shown that the law provided fixed rates of compensation less than the rates proposed in the amendment, the Chairman[2] ruled:

The amendment offered by the gentleman from California is to strike out the phrase "twenty-two million two hundred and fifty thousand dollars," contained in the amendment offered by the gentleman from Pennsylvania, and substitute therefore the words "twenty-three million two hundred and fifty thousand dollars: *Provided,* That no part of the appropriation shall be used for said purpose unless in the use thereof the carriers hereinafter mentioned shall be paid salaries as follows, during the year beginning July 1, 1904, viz: In all cities which contain a population of 75,000 or more, carriers who have served more than three years, $1,200 per annum," etc.

The Chair reads only enough of the amendment to illustrate its character. The business of the House is conducted under rules adopted by the House; and it is within the power of the House to withhold an appropriation altogether or to make it and connect with it limitations, even to the extent of rendering the appropriation absolutely nugatory. The House has that power, and the Chair has no right to say the House can not exercise it. If the proposed amendment shall prevail, it will render the appropriation nugatory; the Postmaster-General will not be able to expend a dollar of it.

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[1] Second session Fifty-eighth Congress, Record, pp. 3528, 3529.

[2] Edgar D. Crumpacker, of Indiana, Chairman.

The amendment is a limitation upon the disbursement of the appropriation, and it can not operate to increase the salaries of letter carriers. If it had that effect it would be a change of existing law, and therefore subject to a point of order on that ground. It prevents the expenditure of the appropriation unless the salaries of letter carriers shall be raised. The Postmaster-General has no power to increase the salaries, and he can not disburse the appropriation unless that be done. Therefore, in the absence of further action by Congress along that line, under the proposed amendment the appropriation could not be expended at all.

The House has the undoubted right to impose limitations upon appropriations, and impose conditions by way of limitation that are impossible of performance and defeat the appropriation itself. The power to withhold appropriations altogether carries with it the power to make appropriations with all kinds of limitations. It is not for the Chair to criticize the action of the House, but simply to decide whether, under the rules, it has the right to adopt the proposed amendment. The Chair is of the opinion it has that right, and therefore overrules the point of order.

On March 24,[1] a similar question of order being before the Committee of the Whole, Mr. Crumpacker said in debate on the floor:

That ruling followed what I conceived to be a precedent made by the present occupant of the chair in relation to a rental of a station in the city of New York,[2] and the ruling was based upon a belief at that time that the amendment did not increase the salaries of the letter carriers in any respect. The law fixes the salaries of carriers, and the amendment was in the form of a limitation. And it occurred to me that in the form in which it was presented it did not increase the salaries of carriers or change existing law, and therefore it was held in order as a limitation.

But upon reflection and subsequent investigation of the provisions of that amendment I have no doubt that the Post-Office Department or any court would hold that it was clearly the intention of Congress to provide an increase of the pay of letter carriers in accordance with the provisions of the proposed amendment. I think any court would hold that to be the clear purpose and intention of Congress in adopting the amendment. And if that be true, of course it, was new legislation, of course it changed existing law, and the amendment was clearly subject to a point of order. I therefore believe that the decision I made on the day before yesterday while occupying the chair, in ruling upon this particular proposition, was erroneous.

3977. On February 20, 1905,[3] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. William Hughes, of New Jersey, offered the following amendment to the paragraph relating to the construction of battle ships:

Amend by striking out the period in line 11, page 67, substituting a colon, and adding immediately thereafter the following:

"Provided, That the authorization to have said battle ships constructed by contract is limited by this condition: No such contract is authorized by this act in which said contract the contractor shall not have covenanted with the United States as follows:

"That no laborer or mechanic doing any part of the work contemplated by the contract, in the employ of the contractor or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work, except upon permission granted by the Secretary of the Navy during time of war or a time when war is imminent or when any great national emergency exists; and that the contractor contracting with the United States shall, in the event of violation of said covenant as to hours of labor, forfeit to the United States the sum of $5 for each laborer or mechanic for every calendar day for which he shall have been required or permitted to labor more than eight hours upon the work under such contract."

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[1] Record, p. 3638.

[2] See footnote of section 3979.

[3] Third session Fifty-eighth Congress, Record, p. 2932.

Mr. Alston G. Dayton, of West Virginia, having made a point of order, the Chairman [1] held:

The Chair thinks that the amendment offered by the gentleman from New Jersey [Mr. Hughes] is not a limitation on an appropriation, but is attempted legislation. The Chair therefore sustains the point of order.

Later, on the same day,[2] Mr. Hughes offered the following:

Amend by striking out the period in line 2, page 69, substituting a colon, and adding immediately thereafter the following:

"Provided, That none of said sum be and none is appropriated on account of the hulls, outfits, or machinery of vessels heretofore authorized, for use, payment, or application under any contract hereafter made in which said contract the contractor shall not have covenanted with the United States as follows:

"THAT NO LABORER OR MECHANIC DOING ANY PART OF THE WORK OF THE WORK CONTEMPLATED BY THE CONTRACT, IN THE EMPLOY OF THE CONTRACTOR OR ANY SUBCONTRACTOR CONTRACTING FOR ANY PART OF SAID WORK CONTEMPLATED, SHALL BE REQUIRED OR PERMITTED TO WORK MORE THAN EIGHT HOURS IN ANY ONE CALENDAR DAY UPON SAID WORK, EXCEPT UPON PERMISSION GRANTED BY THE SECRETARY OF THE NAVY DURING TIME OF WAR OR A TIME WHEN WAR IS IMMINENT OR WHEN ANY GREAT NATIONAL EMERGENCY EXISTS; AND THAT THE CONTRACTOR CONTRACTING WITH THE UNITED STATES SHALL, IN THE EVENT OF VIOLATION OF SAID COVENANT AS TO HOURS OF LABOR, FORFEIT TO THE UNITED STATES THE SUM OF $5 FOR EACH LABORER OR MECHANIC FOR EVERY CALENDAR DAY FOR WHICH HE SHALL HAVE BEEN REQUIRED OR PERMITTED TO LABOR MORE THIN EIGHT HOURS UPON THE WORK UNDER SUCH CONTRACT."

Mr. George E. Foss, of Illinois, having made the point of order, and Mr. Hughes having referred to a ruling at the last session, the Chairman said:

The Chair is perfectly familiar with the ruling to which the gentleman is going to call his attention.[3] * * * The Chair is clearly of opinion that this legislation is subject to the point of order.

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[1] John Dalzell, of Pennsylvania, Chairman.

[2] Record, p. 2950.

[3] The ruling to which reference was made was as follows: On February 26, 1904 (second session Fifty-eighth Congress, Record, pp. 2434, 2438), the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union when the Clerk read this paragraph:

"Construction and machinery: On account of the hulls, outfits, and machinery of vessels, and steam machinery of vessels heretofore authorized, $19,826,860."

To this Mr. Edward J. Livernash, of California, proposed an amendment:

"Amend by striking out the period after the word 'dollars' in line 2, page 73, substituting a colon, and adding immediately thereafter the following:

'Provided, That none of said sum be and none is appropriated on account of any of the hulls, outfits, or machinery heretofore authorized for use, payment, or application under any contract for any vessel in which said contract the contractor shall not have covenanted with the United States as follows:

'That no laborer or mechanic doing any part of the work contemplated by the contract, in the employ of the contractor or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work, except upon permission granted by the Secretary of the Navy during time of war or a time when war is imminent or when any great national emergency exists; and that the contractor contracting with the United States shall, in the event of violation of said covenant as to hours of labor, forfeit to the United States the sum of $5 for each laborer or mechanic for every calendar day for which he shall have been required or permitted to labor more than eight hours upon the work under such contract.'"

Mr. George E. Foss, of Illinois, made the point of order that the amendment would be in violation of existing law, since contracts were already made and penalties provided for violation of contracts.

The Chairman (Marlin E. Olmsted, of Pennsylvania) held: The Chair understands that this paragraph as it stands is intended to appropriate for the construction of vessels or parts of vessels heretofore authorized, and learns from the statement of the gentleman from Illinois [Mr. Foss] that contracts have been made for such vessels. Nevertheless, it is within the power of Congress to appro-

3978. On April 12, 1906,[1] the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the paragraph appropriating for pay of certain clerks was read.

Mr. William S. Bennet, of New York, proposed an amendment, as follows:

After the word "dollars" add: *"Provided,* That such appropriation shall be available only when it shall have been provided that the leave of absence of clerks who have been thirty or more years in the service and have reached the age of 60 years, may, in the discretion of the Postmaster-General, be extended for such length of time as he may, in each instance, deem advisable, the service to be performed by a substitute, who shall be paid not more than $600 per annum, and all sums paid substitutes shall be deducted from the salaries, respectively, of the clerks given such leave."

Mr. Jesse Overstreet, of Indiana, made a point of order against the amendment.

Mr. Bennet urged that the amendment was simply a limitation, and said:

I want to call the attention of the Chairman to the ruling of the Chairman of the Committee of the Whole in the Fifty-eighth Congress, on the 22d of March, Mr. Crumpacker in the Chair. But I ought to say in all fairness to the Chair that a day or two after the matter again came up, and Mr. Crumpacker, not then in the Chair, stated that his former ruling was erroneous. The Chairman [Mr. Boutell] considered the question a very close one, and only decided it because the gentleman from California, Mr. Livernash, conceded that it was a change of existing law. That concession I do not make.

The Chairman[2] held:

The Chair is perfectly clear on the subject. Rulings upon the subject of limitation have not been consistent by any manner of means; they have gone through something of an evolution. The later

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priate or to withhold this appropriation. Having authority to refuse to make any appropriation at all it may impose limitations, even though they amount practically to a withholding of an appropriation. It does not change existing law for the House to refrain entirely from appropriating, and, of course, does not violate existing law if it makes an appropriation subject to such limitations as amount substantially to a failure to appropriate at all. The Chair is of opinion that this amendment proposes a limitation upon the appropriation and is in order. The point of order is overruled.

After the amendment had been disagreed to by the committee, Mr. Livernash proposed the following:

"Amend by adding the following paragraph after line 2 of page 73:

"'None of the contracts for the new vessels authorized by this bill may be awarded to any contractor who shall not have covenanted with the United States as follows:

"'That no laborer or mechanic doing any part of the work contemplated by the contract, in the employ of the contractor or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work, except upon permission granted by the Secretary of the Navy during time of war or a time when war is imminent or when any great national emergency exists, and the contractor contracting with the United States shall, in the event of violation of said covenant as to hours of labor, forfeit to the United States the sum of $5 for each laborer or mechanic for every calendar day for which he shall have been required or permitted to labor more than eight hours upon the work under such contract."

Mr. David J. Foster, of Vermont, made the point of order that the amendment proposed new legislation.

The Chairman held: The Chair has just ruled that an amendment denying an appropriation, except upon certain conditions, as expressed in a previous amendment offered by the gentleman from California, was in order. It being within the power of the House entirely to deny the appropriation if it saw fit to do so, it had the right to deny it except upon certain terms, even though they might amount practically to a withholding of the appropriation.

But this pending amendment is not a limitation upon the appropriation. It is clearly new legislation, and therefore in violation of Rule XXI. The Chair sustains the point of order.

[1] First session Fifty-ninth Congress, Record, pp. 5152, 5153, 5159–5162

[2] James S. Sherman, of New York, Chairman.

decisions have tended toward the point indicated, that where the proposed limitation might be construed by the executive or administrative officer as a modification of statute, a change of existing law, it could not be held to be a limitation. The Chair's belief is that the rulings along that line are correct, and so the Chair is constrained to sustain the point of order.

Later, on the same day, Mr. William Sulzer, of New York, offered this amendment:

Amend by striking out in lines 1 and 2, page 14, "$22,228,000" and substitute the following: "$24,500,000, or so much thereof as may be necessary: *Provided,* That no part of this appropriation shall be used for said purpose unless in the use thereof the carriers hereinafter mentioned shall be paid salaries as follows, to wit: That after June 30, 1906, the pay of letter carriers in cities of more than 75,000 population for the first year of service shall be $600; for the second year of service shall be $800; for the third year of service shall be $1,000; for the fourth year of service and thereafter shall be $1,200. And after June 30, 1906, the pay of letter carriers in cities of population under 75,000 for the first year of service shall be $600; for the second year of service $800; for the third year of service and thereafter, $1,000, and that all acts or parts of acts inconsistent herewith are hereby repealed."

Mr. Overstreet having made the point of order, after debate the Chairman held:

A moment ago, in deciding a point of order made by the gentleman from New York [Mr. Bennet], the Chair very briefly attempted to distinguish between the present condition and the condition that existed heretofore in reference to limitation. The same conditions are present now by the amendment offered by the gentleman from New York [Mr. Sulzer], and the Chair for the same reason sustains the point of order.

Mr. Sulzer having appealed from the decision of the Chair, after debate the Chairman said:

The Chair desires simply to call the attention of the House to the fact that the gentleman from New York bases his argument on a decision rendered by the gentleman from Indiana [Mr. Crumpacker] when he was in the chair. The same gentleman, in debate upon the floor two days after rendering the decision, in an explanation in reference to that decision, ended it in these words—I am simply reading his conclusion:

"I therefore believe the decision I made on day before yesterday, while occupying the chair, in ruling upon this particular proposition, was erroneous."

The question is, Shall the decision of the Chair stand as the judgment of the committee?

The question was taken on the appeal; and there were ayes 128, noes 14.

So the decision of the Chair stood as the judgment of the House.

Thereupon Mr. Bennet offered the following amendment:

On page 14 strike out lines 1 and 2 and substitute: "$23,228,000: *Provided,* That none of such sum so appropriated shall be expended in cities having a population of over 250,000, except to carriers as to whom it has been provided by statute that they shall be paid as follows: Carriers who have served more than three years, whose salaries shall be $1,200 per annum; carriers who have served more than two years, whose salaries shall be $1,000 per annum; carriers who have served more than one year, whose salaries shall be $800 per annum, and carriers who have served less thin one year, whose salaries shall be $600 per annum, and such substitutes as are now provided by law."

Mr. Overstreet having made a point of order, after debate the Chairman held:

The Chair begs to read a little more fully what was said by the gentleman from Indiana [Mr. Crumpacker] in explaining, two days after his decision, why he thought he was in error; and in that connection the Chair desires to say that that statement is found on page 3638 of the Record of the proceedings of the House in the second session of the Fifty-eighth Congress, and the Record discloses the fact that the gentleman from New York [Mr. Sulzer] was on the floor at the time. The distinguished gentleman from Indiana said:

"But upon reflection and subsequent investigation of the provisions of that amendment I have no doubt that the Post Office Department or any court would hold that it was clearly the intention of

Congress to provide an increase of the pay of letter carriers in accordance with the provisions of the proposed amendment. I think any court would hold that to be the clear purpose and intention of Congress in adopting the amendment. And if that be true, of course it was new legislation, of course it changed existing law, and the amendment was clearly subject to a point of order. I therefore believe that the decision I made on the day before yesterday while occupying the chair, in ruling upon this particular proposition, was erroneous."

The Chair sustains the point of order.

3979. On March 18, 1904,[1] the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

For rent, light, and fuel for first, second, and third class post-offices, $2,550,000: *Provided,* That there shall not be allowed for the use of any third-class post-office for rent a sum in excess of $400, nor more than $80 for fuel and light in any one year: *And provided further,* That the Postmaster-General may, in the disbursement of this appropriation, apply a part thereof to the purpose of leasing premises for the use of post-offices of the first, second, and third classes, at a reasonable annual rental, to be paid quarterly, for a term not exceeding ten years; and the Postmaster-General is hereby authorized to lease for post-office purposes for a period not exceeding fifty years a building to be erected over the tracks of the New York Central Railroad in the city of New York, State of New York, within the space bounded by Lexington avenue, Madison avenue, Forty-second street, and Forty-sixth street, at an annual rental not exceeding $90,000.

Mr. John S. Williams, of Mississippi, made the point of order against the portion of the paragraph relating to the post office building in New York City; and later Mr. John H. Stephens, of Texas, renewed the point.

After debate the Chairman[2] held:

The gentleman from Texas [Mr. Stephens] has raised the point of order against the paragraph in the bill which the Clerk will read, beginning in line 20 on page 11:

"And the Postmaster-General is hereby authorized to lease for post-office purposes for a period not exceeding fifty years a building to be erected over the tracks of the New York Central Railroad, in the city of New York, State of New York, within the space bounded by Lexington avenue, Madison avenue, Forty-second street, and Forty-sixth street, at an annual rental not exceeding $90,000."

The attention of the Chair has not been directed by any members of the committee favoring this item to any provision in the statutes which confers upon Congress the right to select sites for post-offices, and the Chair has been unable to find any such provision in the statutes. If this item can be sustained at all it must be under the provision of section 3829 of the Revised Statutes, a part of which relating to this subject the Chair will read:

"The Postmaster-General shall establish post-offices at all such places on post-roads established by law as he may deem expedient, and he shall promptly certify such establishment to the Sixth Auditor."

It is very clear from a mere cursory reading of this paragraph that entire and complete discretion has been lodged by Congress in the Postmaster-General to establish post-offices within his discretion. Without considering the other features of this item, it will be sufficient for the purposes of this ruling to call the attention of the House to the fact that this item specifies the exact site which the Postmaster General is directed to lease. This direction to the Postmaster General is of course an amendment or a change in the law which says he shall select the post-offices at such places as he shall deem expedient. It is very clear, therefore, that this one provision in this item makes the paragraph new legislation, or a change in existing law, and the Chair feels impelled to sustain the point of order.[3]

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[1] Second session Fifty-eighth Congress, Record, pp. 3441–3445.

[2] Henry S. Boutell, of Illinois, Chairman.

[3] After this decision, Mr. Jesse Overstreet, of Indiana, offered the following:

Add in lieu of that stricken out the following:

"For lease of post-office at New York City, $90,000: *Provided,* That no part of this appropriation shall be used for said purpose unless the Postmaster-General shall lease for post-office purposes for a period

3980. On March 24, 1904,[1] the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read the paragraph providing for the compensation of carriers in the rural free-delivery service.

Mr. John Lind, of Minnesota, offered this amendment:

After the word "substations," in line 25, page 25, insert:

"And provided further, That no money hereby appropriated shall be expended in the payment of salaries to rural free delivery carriers at a less sum for such services than $720 per annum."

Mr. Jesse Overstreet, of Indiana, made a point of order against the amendment. After debate the Chairman[2] held:

The general appropriation bill of April 21, 1902, which makes the present statute law regarding rural free-delivery service, prescribes that the salary of the rural carriers shall be $600 per annum. This law prescribes the statutory salary of rural carriers until the law has been changed. With this law in existence, the gentleman from Minnesota offers the following amendment, which the Chair will read:

"And provided further, That none of the money hereby appropriated shall be expended in the payment of salaries to rural free-delivery carriers at a less slim for such service than $720 per annum as a maximum Salary."

It is very clear that under clause 2 of Rule XXI, which has been read to the committee to-day, this amendment is not in order if it would change the existing law when incorporated into this act. Would this amendment change the existing law? If the amendment would not change existing law, and would therefore be in order, it would simply work a nonappropriation for the pay of rural carriers. Would this be considered the intention of Congress if this amendment should appear in the act? As the Chair has before said, the best evidence as to the meaning of an act is the intention of the legislature which passed it, and the Chair is justified in taking into consideration the opinion of the mover of the amendment as to its effect. It is the opinion of the Chair, based upon the statements of the gentleman from Minnesota and his admissions as to his object in offering the amendment, that it is the intent of this amendment to change the existing law. The Chair therefore sustains the point of order.

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not exceeding fifty years a building to be erected over the tracks of the New York Central Railroad, in the city of New York, State of New York, within the space bounded by Lexington avenue, Madison avenue, Forty-second street, and Forty-sixth street, at an annual rental not exceeding $90,000."

Mr. Stephens made the same point of order.

The Chairman held: "The amendment offered by the gentleman from Indiana appropriates $90,000, with the proviso that no part of this sum shall be available except upon certain conditions. This is one of those limitations with which members of the committee are all familiar. It does not take away from the Postmaster-General the discretion vested in him, for the reason that it does not direct him to use any of the money appropriated. This doctrine of limitation, as sustained in parliamentary rules, proceeds upon this theory, as the Chair understands it: That Congress may use arbitrary power in appropriating money, or in not appropriating money, for purposes specified by law. Congress may refuse to appropriate money for any purpose for which the law provides, either a salary or a definite annual payment. If Congress can refuse to appropriate money for any purpose, it is quite clear that Congress may appropriate money for a specific purpose, to be expended only upon certain conditions. In this case the amendment leaves it to the Postmaster-General to decline to use the money on the ground that the amendment makes the appropriation authorized by law with a limitation as to the mode of its expenditure. The Chair therefore overrules the point of order."

On further consideration, however, as is shown by other rulings given in this connection, it has been concluded that such a proviso would be in effect legislation, although clothed in the form of limitation.

[1] Second session Fifty-eighth Congress, Record, pp. 3650, 3651.

[2] Henry S. Boutell, of Illinois, Chairman.

3981. On March 24, 1904,[1] the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Free-delivery service: For pay of letter carriers in offices already established, and for substitute letter carriers, and for temporary carriers at summer resorts, holiday, election, and emergency service, $20,250,000.

To this Mr. E. J. Livernash, of California, proposed the following as an amendment:

Amend by striking out of lines 8 and 9, page 23, the words "twenty million two hundred and fifty thousand dollars" and substituting the following:

"Twenty-three million two hundred and fifty thousand dollars: *Provided*, That no part of this appropriation shall be used for said purpose unless in the use thereof the carriers hereinafter mentioned shall be paid salaries as follows during the year beginning July 1, 1904, viz: In all cities which contain a population of 75,000 or more, carriers who have served more than three years, $1,200 per annum; in all cities containing a population of less than 75,000, carriers who have served more than two years, $1,000 per annum."

Mr. Jesse Overstreet, of Indiana, made the point of order that the amendment would change existing law, as the salaries were fixed by law.

After debate the Chairman[2] said:

Against the amendment offered by the gentleman from California [Mr. Livernash] the gentleman from Indiana [Mr. Overstreet] makes the point of order that it is contrary to existing law or that it changes the existing statute law. Now in passing upon a very difficult question of this sort, on which there may very well be a division of opinion, it becomes the duty of the Chair, so far as possible, to place himself in the position of a judge who would be called upon to express an opinion upon a statute containing a provision such as the amendment offered by the gentleman from California. The Chair will call attention to the rule of the House governing amendments of this character, as found in clause 2 of Rule XXI:

"No appropriation shall be reported in any general appropriation bill, or be in order as in amendment thereto for any expenditure not previously authorized by law unless in continuation of appropriations for such public works and objects as are already in progress, nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto."

The language of the latter part of this rule is very clear and explicit—that on a general appropriation bill no amendment shall be in order that changes existing law. There have been numerous attempts to escape from this rule by placing limitations upon appropriations, and there is a long line of decisions to the effect that certain limitations upon appropriations are in order. But the question must always remain whether the amendment changes existing law or, if placed in the bill, simply renders nugatory the appropriation, or, in the third place, makes a limitation permitted under the present law.

Now, there might be grave doubt in the minds of able parliamentarians and learned judges as to what the effect of this provision would be; but the Chair takes it that in getting at the intention of the legislature the judge would have no better evidence and no surer ground upon which to form his decision than the opinion of the mover of the amendment; and the Chair, in endeavoring to act in a judicial and impartial manner, is not only entitled but bound to take into consideration the opinion of the mover of an amendment or the general consensus of opinion of the committee with reference thereto.

The gentleman from California [Mr. Livernash] has expressed it as his opinion that it is the intention of this amendment to change the salaries now fixed by statute law. Of course if this is the intention, and the court would hold that that intention governed in the interpretation of the statute, then this amendment necessarily would change the existing statute and be very clearly obnoxious to the last clause of this rule. Under the facts as disclosed in the debate as to the intention of this amendment to change the existing law, the present occupant of the chair is compelled to sustain the point of order.

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[1] Second session Fifty-eighth Congress,. Record, pp. 3638, 3639.

[2] Henry S. Boutell, of Illinois, Chairman.

Thereupon Mr. Livernash offered the following as an amendment:

Amend by striking out of lines 8 and 9, page 23, the words "twenty million two hundred and fifty thousand dollars" and substituting the following:

"Twenty-three million two hundred and fifty thousand dollars: *Provided,* That in the use of this appropriation the carriers hereinafter mentioned shall be paid, in lieu of salaries now fixed by law, salaries as follows during the year beginning July 1, 1904, viz: In all cities which contain a population of 75,000 or more, carriers who have served more than three years, $1,200 per annum; in all cities containing a population of less than 75,000, carriers who have served more than two years, $1,000 per annum: *And provided further,* That said salaries shall be paid such carriers after said year."

Mr. Overstreet, having made the point of order, the Chairman held:

The Chair understands that the salaries of letter carriers are now provided by law. The amendments offered by the gentleman from California were in the form of limitations; the present amendment alters the existing law by vesting in the Postmaster-General the discretion to pay increased salaries. No question as to a limitation arises. It is a positive enactment, changing the existing law prescribing the salaries and vesting in the Postmaster-General the discretion to increase them. The Chair therefore sustains the point of order.

3982. On January 23, 1906,[1] the urgent deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

BUREAU OF EQUIPMENT.

Coal and transportation: Purchase of coal and other fuel for steamers and ships' use, and other equipment purposes, including expenses of transportation, storage, and handling the same, and for the general maintenance of naval coaling depots and coaling plants for the fiscal year as follows:

"For the fiscal year 1906, $500,000."

Mr. John J. Fitzgerald, of New York, offered the following amendment:

Provided, That the amount hereby appropriated shall be expended without regard to the provisions of an act approved April 28, 1904, entitled "An act to require the employment of vessels of the United States for public purposes."

Mr. Lucius N. Littauer, of New York, made the point of order that the amendment would change existing law.

The Chairman[2] sustained the point of order.

Thereupon Mr. Robert B. Macon, of Arkansas, offered an amendment as follows:

Provided, That no part of said sum herein appropriated shall be used for the payment of transportation charges upon American vessels where said transportation charges are more than 20 per cent in excess of similar transportation charges upon foreign vessels.

Mr. Lucius N. Littauer, of New York, made the same point of order.

Mr. Macon argued that the amendment would be simply a limitation.

The Chairman held:

The Chair believes that the proviso offered by the gentleman from Arkansas may be a change of the statute of April 28, 1904, which is as follows:

"[Public—No. 198.]

"An act to require the employment of vessels of the United States for public purposes.

"*Be it enacted, etc.,* That vessels of the United States or belonging to the United States, and no others, shall be employed in the transportation by sea of coal, provisions, fodder, or supplies of any

[1] First session Fifty-ninth Congress, Record, pp. 1448–1450.

[2] James S. Sherman, of New York, Chairman.

description, purchased pursuant to law, for the use of the Army or Navy unless the President shall find that the rates of freight charges by said vessels are excessive and unreasonable, in which case contracts shall be made under the law as it now exists: *Provided,* That no greater charges be made by such vessels for transportation of articles for the use of the said Army and Navy than are made by such vessels for transportation of like goods for private parties or companies.

"SEC. 2. That this act shall take effect sixty days after its passage.

"Approved April 28, 1904."

Of course the Chair does not desire to become involved in a discussion of the question of fact as to whether American vessels charge more than 20 per cent in excess of the amount charged for like service by foreign vessels, but believing that the amendment offered by the gentleman may work a change in existing law, the Chair will sustain the point of order.[1]

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[1] There had been made two years previously a ruling which involves a like principle, wherein a different view was taken. On March 5, 1904 (second session Fifty-eighth Congress, Record, pp. 2876, 2877), the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

"SEC. 7. That no part of the moneys herein appropriated for fulfilling treaty stipulations shall be available or expended unless expended without regard to the attendance of any beneficiary at any school other than a Government school."

Mr. John H. Stephens, of Texas, made the point of order that this was in violation of the existing law which provided: "It is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian schools."

After debate the Chairman (Henry S. Boutell, of Illinois) held:

"The point of order made against this paragraph by the gentleman from Texas has been made upon two grounds. First, that the matter referred to in this paragraph is not germane to the bill. The gentleman from Texas did not press that point in his argument in favor of the point of order. * * * The Chair, however, deems it best to refer to that point made by the gentleman from Texas. It seems to the Chair that the matter referred to is clearly germane to the provisions of this bill, which is a bill dealing with the education of the Indians, with the whole subject of appropriations for the education and maintenance of the Indians.

The second point made by the gentleman from Texas is that the section is new legislation. It seems to the Chair that this section contains simply a limitation upon the appropriation referred to. A recent occupant of this chair, on the 25th of February last, reviewed all the decisions of the House relating to the distinction between limitations and new legislation. The Chair calls the attention of the committee to the summing up by Mr. Olmsted, of Pennsylvania, in his decision. Mr.Olmsted said:

"The Chair will call attention to the distinction between a limitation upon an appropriation and a positive enactment which limits the powers of Government officers under existing laws. A mere limitation of the appropriation is in order. There is no obligation on the House to appropriate at all, and therefore it may provide that the money appropriated by it shall not be used in any except such manner as may be specified in the bill. A limitation is best expressed in the negative, as that the appropriation shall not be available unless used in a certain way. That leaves an option. The money can be used or not used, but if used it must be in the manner specified. No law is changed, because there is no obligation to expend the money at all."

It appears therefore that the latest ruling by a chairman of the committee on this question, in summing up all the previous decisions on this point, makes it perfectly clear that an appropriation is subject to such limitation as that expressed in this paragraph. The Chair is of opinion that if this provision stood by itself and did not simply limit the expenditure of an appropriation made by this bill, it would be clearly new legislation and subject to the point of order. But Congress has the right to appropriate money for the purposes authorized by law in any sums it chooses. It has the right to refuse to appropriate any money. It has the right, in accordance with the line of these later decisions, to appropriate money for a specific purpose to be expended on certain conditions, and it is left with the officer having in charge such expenditure to determine himself whether or not the expenditure shall be made. In accordance with the line of decisions relating to limitations, which seem to be uniform, the Chair feels constrained to overrule the point of order.

A little later Mr. John J. Fitzgerald, of New York, proposed to the same paragraph the following amendment:

Provided That no part of the amount hereby appropriated shall be expended for transporting coal between New York, N. Y., and Manila, P. I., at a rate greater than $5 a ton.

Mr. Lucius N. Littauer, of New York, made a point of order against this amendment.

The Chairman said:

Can the gentleman from New York [Mr. Littauer] point me to any statute relating to this transportation other than the one to which he has referred? The Chair rather inclines to the opinion that this is a limitation.

No law being cited, the Chairman overruled the point of order.

3983. On March 31, 1904,[1] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

For salaries of United States district attorneys and expenses of United States district attorneys and their regular assistants, $440,000: *Provided,* That this appropriation shall be available for the payment of the salaries of regularly appointed clerks to United States district attorneys for services rendered during vacancy in the offices of the United States district attorney.

To this Mr. G. M. Hitchcock, of Nebraska, proposed this amendment:

Provided, That no money appropriated in this paragraph as salaries for United States district attorneys shall be paid to any of said attorneys who shall fail, after six months from the passage of this bill, to institute proceedings in equity to restrain and criminal proceedings to punish persons or corporations in his district whom one or more reputable citizens shall charge, in writing, to be violating the laws of the United States against trusts, trade conspiracies, or combinations in restraint of interstate commerce, or to monopolize the same, unless said United States district attorney shall on investigation find, and so report to the Department of Justice in writing, that there is no reasonable ground to believe that the complaint can be established by proof.

Mr. James A. Hemenway, of Indiana, made the point of order that the amendment proposed legislation.

After debate the Chairman[2] held:

The limitation ceases to be such when by its terms, whether expressed in affirmative or negative language, it necessarily changes existing law. When there is expressed in the amendment a prohibition, as here, and details as to the manner of the performance of the duties of the office, it clearly points out the intention of the provision to impose new duties upon the Government officials. It is evident that the provision would be purposeless unless the effect was to change existing law. Now, if it is the duty of the United States district attorney to act in the line directed by this amendment, the amendment is unnecessary. If it seeks to impose upon them other and further duties, it is contrary to existing law, and that is true whether it is expressed in affirmative or negative language. The Chair therefore sustains the point of order.

Thereupon Mr. Hitchcock proposed an amendment in form as follows:

Provided, however, That no money appropriated in this paragraph shall thereafter be paid to any United States, district attorney who shall for six months after the passage of this bill fail to proceed by suit in equity or criminal prosecution against any persons or corporations in his district engaged in the violation of any of the provisions of the laws of the United States against trusts, trade conspiracies, or combinations in restraint of interstate commerce.

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[1] Second session Fifty-eighth Congress, Record, pp. 4058, 4059.

[2] Theodore E. Burton, of Ohio, Chairman.

Mr. Hemenway having raised a question of order, the Chairman said:

The Chair thinks the amendment is open to the same objection as the preceding one, and therefore sustains the point of order.

3984. Where a proposition might be construed by the executive officer as a modification of a statute, it may not be held as such a limitation of appropriation as is permissible on a general appropriation bill.—On February 20, 1907,[1] the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Victor Murdock, of Kansas, offered this amendment:

Amend by adding, after the word "dollars, "in line 2, page 21:

"Provided, That no part of this sum shall be expended in payment for transportation of the mails by railroad routes where the average weight of mails per day has been computed by the use of a divisor less than the whole number of days such mails have been weighed."

Mr. Howard M. Snapp, of Illinois, made the point of order that the amendment proposed legislation.

After debate, the Chairman[2] held:

The existing law has received a construction by the officers charged with the duty of administering it, and that construction the Chair feels bound to follow. The proposed amendment changes existing law as construed by the proper officer, by changing the divisor. This is in the guise of a limitation; but it has been held over and over again here that a limitation is negative in its nature and may not include positive enactment establishing rules for executive officers. It has been held further that while limitation may provide that a part of an appropriation shall not be used except in a certain way, yet the restriction of executive discretion may not go to the extent of an imposition of new duties. And the limitation on the discretion exercised under the law by a bureau of the Government is a change of existing law. The decisions on the question of limitation, the attempt to draw a well-defined distinction between changes of existing law and a proper limitation, are among the most difficult questions that the Chair is ever called upon to decide.

In a decision rendered last year by the gentleman from New York [Mr. Sherman] on a matter very similar to this, he said:

"Where a proposed limitation might be construed by the executive or administering officer as a modification of a statute and change of existing law, it could not be held a limitation."

The Chair's belief is that the rulings along that line are correct, and the Chair sustains the point of order.

Mr. Murdock having appealed, the decision of the Chair was sustained, ayes 72, noes 14.

3985. The House may by limitation on a general appropriation bill forbid the use of any of the money for a specific service, but it may not grant the whole appropriation for the general service on condition that an executive officer shall take a certain course as to the specific service.—On December 12, 1906,[2] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the following amendment was proposed as a new paragraph by Mr. Henry H. Bingham, of Penn-

[1] Second session Fifty-ninth Congress, Record, pp. 3469–3471.

[2] Frank D. Currier, of New Hampshire, Chairman.

[3] Second session Fifty-ninth Congress, Record, p. 318.

sylvania, to the portion of the bill making provision for the Government Printing Office:

No money appropriated in this act shall be used in connection with the printing of documents authorized by law or ordered by Congress, or either branch thereof, unless the same shall conform to the orthography recognized and used by generally accepted dictionaries of the English language.

Mr. Edgar D. Crumpacker, of Indiana, made the point of order against the amendment that it changed existing law.

The Chairman [1] held:

The Chair has just ruled that the paragraph which was assailed by the point of order heretofore made by the gentleman from Indiana [Mr. Crumpacker] changed existing law. Here there is a proposition, not to change existing law, but to attach certain provisions to an appropriation of dollars made in this bill—in other words, a limitation as to the use of the money herein appropriated. Very many precedents can be found sustaining this kind of legislation, and the Chair holds that this is a limitation upon the appropriation in the bill.

Thereupon Mr. Marlin E. Olmsted, of Pennsylvania, offered an amendment in the nature of a substitute, providing:

No part of the compensation provided by this act shall be paid to the Public Printer unless he shall, in printing documents authorized by law or ordered by Congress or either branch thereof, conform in the spelling thereof to the rules of orthography recognized and used by accepted dictionaries of the English language.

Mr. John J. Fitzgerald, of New York, having made a point of order, the Chairman held:

An amendment proposing to make the payment of salaries of certain officials dependent upon contingencies was held to be a change of law and not a limitation. The Chair sustains the point of order.

3986. On January 21, 1907,[2] the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Henry S. Boutell, of Illinois, offered this amendment:

Strike out, in line 6, page 54, after the word "playgrounds," the word "one" and insert "seventy-six;" and at the end of line 6 add: "provided none of this sum shall be available unless $75,000 are spent in purchasing new sites for playgrounds."

Mr. Joseph T. Johnson, of South Carolina, made the point of order that the amendment involved legislation.

The Chairman [3] held:

Under the rule a limitation is in order. Under the rules, however, an amendment in the form of a limitation which is not a limitation of expenditure, but is an affirmative change of law, is not in order. The Chair thinks this is not a limitation upon expenditures of money, but a change of the law. The Chair therefore sustains the point of order.

3987. It is in order by a limitation on an appropriation bill to withhold the appropriation from a designated object, although contracts may be left unsatisfied thereby.—On June 3, 1892,[4] the House was in Committee of

[1] William P. Hepburn, of Iowa, Chairman.

[2] Second session Fifty-ninth Congress, Record, pp. 1470, 1471.

[3] James R. Mann, of Illinois, Chairman.

[4] First session Fifty-second Congress, Record, pp. 5003, 5004.

the Whole House on the state of the Union, considering the post-office appropriation bill, when Mr. William S. Holman, of Indiana, offered the following amendment:

Provided further, That no part of the money hereby appropriated shall be expended in the carrying out of any contract or contracts made hereafter under the provisions of the act entitled "An act to provide for ocean mail service between the United States and foreign ports, and to promote commerce," approved March 3, 1891.

Mr. Nelson Dingley, of Maine, having made a point of order against this amendment, the Chairman [1] ruled:

The Chair does not understand that the amendment offered by the gentleman from Indiana changes existing law, but simply that it attaches a limitation upon the expenditure of the money appropriated under this particular act. * * * The Chair rules that the amendment is in order.

3988. A provision withholding an appropriation from those portions of a service not covered in existing contracts was admitted as a limitation.—On March 18, 1898,[2] the House was in Committee of the Whole House on the state of the Union, considering the post-office appropriation bill. The paragraph making appropriations for the pneumatic-tube service for carrying mails being under consideration, Mr. William P. Hepburn, of Iowa, proposed this amendment:

Provided, That no part of this appropriation shall be used in extending such pneumatic service beyond the service for which contracts are already entered into.

Mr. Sydney E. Mudd, of Maryland, made a point of order against the amendment.

The Chairman [3] ruled:

The Chair will overrule that point of order. This is a limitation simply of what the appropriation is for.

3989. While Congress may decline to appropriate for a salary fixed and conditioned by law, yet it is not in order on an appropriation bill to make the payment conditional on certain contingencies which would change the lawful mode of payment.—On April 25, 1890,[4] the House was in Committee of the Whole House on the state of the Union, considering the legislative, executive, and judicial appropriation bill.

The paragraph relating to salaries in the office of the Director of the Mint having been read, Mr. W. C. P. Breckinridge, of Kentucky, offered the following amendment:

Provided, That no part of said sum of $28,960 shall be available until all laws limiting the free and unrestricted coinage of silver or making any distinction between the coinage of gold and silver are repealed.

Mr. Benjamin Butterworth, of Ohio, having made the point of order, after debate, the Chairman [5] ruled:

The Chair is prepared to rule upon the point of order. The paragraph to which the amendment is moved provides for the payment of the salaries of officers connected with the Mint. These officers are provided for by statute, and under the statutes of the United States each officer connected with the Mint service of the United States is entitled to the salary provided for him by law, and at stated periods, provided the appropriations are made.

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[1] John A. Buchanan, of Virginia, Chairman.

[2] Second session Fifty-fifth Congress, Record, p. 2974.

[3] John A. T. Hull, of Iowa, Chairman.

[4] First session Fifty-first Congress, Record, pp. 3830–3832.

[5] Lewis E. Payson, of Illinois, Chairman.

Of course it is within the power of Congress to refuse to make an appropriation; but in the judgment of the Chair, as a matter of statute law, the Director of the Mint or any other officer named in the paragraph, if an appropriation is made for the payment of his salary, is entitled to receive it at the period fixed by law. The amendment proposed by the gentleman from Kentucky, which would postpone the payment of these salaries until the happening of a contingency which may never occur, is, in the judgment of the Chair, such a change of existing law as brings the amendment within the inhibition of the rule. The point of order is sustained.

3990. On February 18, 1896,[1] the Committee of the Whole House on the state of the Union was considering the agricultural appropriation bill, and the paragraph relating to the division of seeds had been reached, when Mr. Robert G. Cousins, of Iowa, offered an amendment, of which the following proviso was a portion:

That no part of the $8,000 for compensation of the Secretary of Agriculture provided for in this bill shall be available or payable, except $25, until the said Secretary shall have expended for seeds the amount appropriated in said act approved March 2, 1895, and shall have purchased and distributed the seeds provided for in said act.

Mr. James W. Wadsworth, of New York, having made a point of order, the Chairman,[2] after having the rule read, held:

The Chair is therefore constrained to hold, under this rule, that the amendment is not in order.

There is a decision in the Fifty-first Congress covering precisely the same point. This amendment would, if adopted, change a salary, payable monthly, and make it contingent on the beneficiary doing something or refraining from doing something, and therefore the Chair holds that the amendment is not in order.

3991. On August 26, 1890,[3] the House was in Committee of the Whole House on the state of the Union, considering the legislative, executive, and judicial appropriation bill, when Mr. Daniel Kerr, of Iowa, offered at the proper place this amendment, which he contended was a mere limitation on the appropriation:

Provided, That no part of the money hereby appropriated shall be paid to any employee who, in the opinion of the chief of the division in which he is employed, is incompetent and inefficient for the work in which he is engaged, for more than one month after his inefficiency or incompetency is ascertained.

Mr. Benjamin Butterworth, of Ohio, made a point of order against the amendment.

The Chairman[4] sustained the point of order.

3992. On June 16, 1890,[5] the House was in Committee of the Whole House on the state of the Union, considering the sundry civil appropriation bill, the paragraphs relating to the Government Printing Office having been reached.

Mr. William D. Bynum, of Indiana, offered this amendment:

Provided, That no money appropriated by this or the preceding paragraph, or by this act, shall be paid to any person employed in the public Printing Office for or during any time such employee is on leave of absence with pay, under existing law, in excess of the pay allowed during such leave of absence; nor shall any such person receive pay for leave of absence during the time such person may be at work and receive pay therefor: *And provided further,* That no money appropriated under said paragraphs or under this act shall be paid to any person for work or labor performed in excess of eight hours a day, as prescribed by existing law.

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[1] First session Fifty-fourth Congress, Record, p. 1895.

[2] John A. T. Hull, of Iowa, Chairman.

[3] First session, Fifty-first Congress, Record, p. 3902.

[4] Lewis E. Payson, of Illinois, Chairman.

[5] First session Fifty-first Congress, Record, pp. 6155–6158, 6185.

Mr. Joseph G. Cannon, of Illinois, having made a point of order against the amendment, it was sustained by the Chairman.[1]

Upon an appeal taken by Mr. William M. Springer the decision of the Chair was sustained.

3993. To a provision appropriating for the support of army hospitals an amendment excepting a certain hospital was held to be a limitation. (Chairman overruled.)—On December 16, 1896,[2] the army appropriation bill was under consideration in Committee of the Whole House on the state of the Union. To a paragraph providing for the support of the medical and hospital department Mr. John A. T. Hull, of Iowa, offered this amendment:

Provided, That no part of this sum shall be expended in the further maintenance of the Army and Navy Hospital at Hot Springs, Ark.

Mr. John S. Little, of Arkansas, raised a point of order against the amendment.

After debate, the Chairman[3] ruled:

The Chair is very sorry to entertain different views from those entertained by the gentleman in charge of this bill, but as the Chair views this question, this being an appropriation for hospitals, a proposition to divert the money from that object is a change of existing law. The Chair therefore sustains the point of order.

Mr. Hull having appealed, the decision of the Chair was sustained by a vote of 69 ayes to 53 nays.

Mr. R. W. Parker, of New Jersey, immediately proposed the following words as an amendment: "except at the hospital at Hot Springs, Ark.," so that the appropriation should go to all the hospitals, except to that one.

Mr. Little having renewed his point of order, the Chairman sustained it.

Mr. John F. Lacey, of Iowa, appealed from the decision, and, after debate, there were on the question of sustaining the Chair 57 ayes and 84 nays.

So the decision of the Chair was overruled and the amendment was declared to be in order.

3994. A proviso that mail matter should be carried in cars run in a certain way was held to be legislation and not a proper limitation on the appropriation.—On March 19, 1898,[4] the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this amendment was proposed by Mr. Curtis H. Castle, of California, to the appropriate section:

Provided, That all mail matter transported by electric and cable cars shall be carried in specially designated cars, said cars to be run at regular hours and unconnected with passenger cars, and to be used for no other purpose than the transportation of the mails.

A point of order was made against the amendment by Messrs. Jacob H. Bromwell, of Ohio, and Nelson Dingley, of Maine.

After debate the Chairman[5] ruled:

The proposition as it first struck the Chair was that it was simply a limitation. * * * The same question that is involved in this amendment of the gentleman from California was decided by

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[1] Julius C. Burrows, of Michigan, Chairman.

[2] Second session Fifty-fourth Congress, Record, pp. 221–225.

[3] Albert J. Hopkins, of Illinois, Chairman.

[4] Second session Fifty-fifth Congress, Record, pp. 3000, 3001.

[5] John A. T. Hull, of Iowa, Chairman.

Mr. Carlisle in a case which came before the Committee of the Whole House on the state of the Union affecting the Pension Department, where Mr. Carlisle ruled that a change in existing law, in the meaning of the rule, was brought about wherever the law specifically overruled the construction of the officer charged with the duty of construing the law, and he ruled the amendment of order for that reason.[1] In this case the amendment goes further than overruling any construction by enacting absolute law which entirely changes the method of carrying the mails on street railways or electric cars.

It entirely changes the law in this, that it is not a limitation on the appropriation, but an absolute provision of law that the cars must be run at regular intervals, unconnected with passenger cars, and be used for no other purpose than the transportation of the mails. That is a positive new provision of law that never has been enacted by the Congress of the United States, and, in the judgment of the Chair, is clearly obnoxious to the rule which prohibits new legislation on an appropriation bill. The Chair sustains the point of order.[2]

3995. The Postmaster-General having general authority to transport the mails, a designation of a specific method of transportation was held to be a limitation of the appropriation.—On March 18, 1898,[3] the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union.

This paragraph having been read—

For transportation of mail by pneumatic tube or other similar devices, by purchase or otherwise, $225,000—

Mr. John A. Moon, of Tennessee, made a point of order that there was no law authorizing such an appropriation.

After debate, the Chairman[4] ruled:

The Chair understands that the Postmaster-General is given authority generally to transport the mail. If the Chair recollects correctly, a similar point of order was made against a clause in the bill authorizing an appropriation for bicycles. * * *

The Chair is right about the general statute authorizing the Postmaster-General to transport the mail, and the Chair thinks that this limits this appropriation to a particular way of transporting the mail and that the clause is in order, and the Chair therefore overrules the point of order.

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[1] See section 3938 of this chapter.

[2] A ruling in opposition to this theory is to be noted. On February 12, 1897 (second session Fifty-fourth Congress, Record, p. 1773), the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and this section had been reached:

"For incidental expenses, including letter boxes, package boxes, posts, satchels, repairs, marine free-delivery service at Detroit, etc., $60,000; in all, $13,274,000: *Provided,* That said marine free-delivery service at Detroit, shall be performed by the use of rowboats and not by the employment of a steam launch or boat."

Mr. Theodore E. Burton, of Ohio, made a point of order that the proviso was legislation, as the work was now performed by steam launches.

The Chairman (John A. T. Hull, of Iowa), after debate, held:

"The rule provides that no provision shall be placed on an appropriation bill which changes existing law or enacts any new legislation; but there has never been any difference of opinion in the rulings of the Chair on appropriation bills heretofore as to the right of a Committee of the Whole House on the state of the Union to place limitation on an appropriation. Under the present law there is no question but this mail service can be performed by rowboats or a steam launch. If the limitation was simply affecting the number of steam launches that could be employed, the Chair thinks there could be no question of its being in order. The only question connected with it is that it shall be performed by rowboats. This provision may be held to be more than a mere limitation. But as it is a very close question of fact whether that is new legislation or not, the Chair feels like allowing the Committee of the Whole to decide it on its merits, and therefore overrules the point of order."

[3] Second session Fifty-fifth-Congress, Record, p. 2964.

[4] Sereno E. Payne, of New York, Chairman.

3996. In appropriating for per diem employees whose compensation is fixed by law with no exception as to Sundays, the withholding of appropriation for Sunday pay is a limitation rather than a change of law.—On March 19, 1898,[1] the post-office appropriation bill being under consideration in Committee of the Whole House on the state of the Union, the Clerk read this paragraph of the bill:

For mail depredations and post-office inspectors, including salaries of inspectors, etc., and for per diem allowance to inspectors in the field while actually traveling on business of the Department, exclusive of Sundays excepting in cases of emergency, $430,000.

Mr. Charles H. Grosvenor, of Ohio, made a point of order against the words "exclusive of Sundays excepting in cases of emergency," on the ground that they involved a change of the existing law, which provided: "The post-office inspectors shall be allowed $4 a day in lieu of charges now permitted for personal expenses."

The Chairman[2] ruled:

In the opinion of the Chair, this is a limitation upon the appropriation. While it does not change the compensation already fixed, it is directory as to the manner in which that compensation shall be paid.

3997. A proviso that no part of an appropriation for a certain amount should be expended until estimates of the entire cost had been made was held to be a limitation.—On February 16, 1905,[3] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

Navy-yard, League Island, Pa.: To continue retaining wall about reserve basin, $100,000; grading and paving, to continue, $20,000; sewer system, extensions, $10,000; railroad system, extension, $12,000; dredging and filling in Delaware water front, to continue, $30,000; water system, extension, $5,000; fire protection system, extensions, $5,000; extension of reserve basin, to continue dredging, $75,000; locomotive crane track, extension, $25,000; underground conduit system, extension, $15,000; telephone system, improvements, $2,500; extension of building 24, $3,000; locomotive crane for yards and docks, $7,500; berth for receiving ship, $20,000; water-closets, additional, $5,000; pump and boiler for caisson, dry dock No. 1, $2,000; piers, extensions, $40,000; in all, navy-yard, League Island, $377,000.

Mr. John J. Fitzgerald, of New York, offered the following amendment:

Insert in page 29, line 16:

"Provided, That no part of the money herein appropriated for dredging, improving, and building retaining walls in and about the reserve basin shall be expended until there has been prepared ready for submission to Congress at its next session an estimate of the completed cost of such reserve basin."

Mr. Alston G. Dayton, of West Virginia, made a point of order.

The Chairman[4] held:

This seems to come within the definition of a limitation upon expenditure. The point of order is therefore overruled.

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[1] Second session Fifty-fifth Congress, Record, p. 3013.

[2] John A. T. Hull, of Iowa, Chairman.

[3] Third session Fifty-eighth Congress, Record, p. 2761.

[4] John Dalzell, of Pennsylvania, Chairman.

3998. A proviso that money for a bridge shall not be available until a corporation using it shall fulfill certain conditions was admitted as a limitation.

The question of admitting an amendment should be decided from the provisions of its text rather than from purposes which circumstances may suggest.

On March 3, 1904,[1] the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. James T. McCleary, of Minnesota, proposed the following amendment as a new section:

For the repair of the Anacostia Bridge under direction of the Commissioners of the District of Columbia, $100,000, and the said Commissioners are authorized to enter into a contract or contracts for the repair of said bridge, to be completed within two years from July 1, 1904, at a cost not to exceed $250,000, to be paid from time to time as appropriations therefor may be made by law: *Provided, however,* That before any part of this sum shall be used, the Anacostia and Potomac River Railroad Company pay to the collector of taxes of the District of Columbia the entire cost of the pavement lying between the exterior rails of the tracks and for a distance of 2 feet from the said exterior rails of said tracks on each side thereof and the entire floor system supporting said pavement, and said collector shall deposit one-half of same in the United States Treasury to the credit of the District of Columbia and one-half to the credit of the United States, nor shall said appropriation be available until said railroad company shall agree to assume one-half the cost of maintenance and repair of said new bridge to be collected in the same manner as the cost of laying pavements between the rails and tracks of street railways as provided for in section 5 of "An act providing a permanent form of government for the District of Columbia," approved June 11, 1878: *Provided further,* That this appropriation shall not be available until the Anacostia and Potomac River Railroad Company shall agree that any other railroad company now or hereafter authorized by Congress to use said bridge shall have the right to use the tracks of the Anacostia and Potomac River Railroad Company thereon upon such reciprocal trackage and such compensation as may be mutually agreed upon, and in cue of failure to reach such an agreement that the supreme court of the District of Columbia shall, upon petition filed by either party, fix and determine the same.

Mr. C. R. Davis, of Minnesota, made the point of order that the paragraph involved legislation, and declared that the intention was to authorize an entirely new bridge. Furthermore other paragraphs of the section involved legislation.

The Chairman[2] ruled:

The Chair will cite a ruling made in the first session of the Fifty-seventh Congress to the effect that "the admissibility of an amendment should be judged from the provisions of its face, rather than from the purposes which circumstances may suggest." This amendment states that the appropriation made thereby is for the repairing of a bridge. The Chair will, therefore, rule that it is an appropriation for a work now in progress; that it is an expenditure previously authorized by law. The amendment provides that the appropriation shall be withheld unless certain conditions are complied with. All the provisos are distinct limitations upon this appropriation. The Chair will overrule the point of order. The question is on the amendment offered by the gentleman from Minnesota.

3999. A proposition that no part of the appropriation should be paid until the passing of a title was held to be a limitation.—On February 14, 1901,[3] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read the paragraph

[1] Second session Fifty-eighth Congress, Record, p. 2759.

[2] George P. Lawrence, of Massachusetts, Chairman.

[3] Second session Fifty-sixth Congress, Record, p. 2434.

making appropriation for the payment of rent of quarters in the old custom-house in New York City, when Mr. James D. Richardson, of Tennessee, offered this amendment:

Provided, That no part of this appropriation shall be available or be paid to said bank until the title to the bank shall be completed and the title to the old custom-house property pawed under the laws of New York to the said bank.

Mr. Joseph G. Cannon, of Illinois, made the point of order that the amendment proposed legislation.

After debate, the Chairman [1] held:

The Chair is of the opinion that the amendment offered by the gentleman from Tennessee [Mr. Richardson] is not new legislation and does not repeal existing law. It is true that the act referred to vests a discretion in the Secretary of the Treasury in reference to the terms of the contract which he shall make, but the Chair does not understand that it affects in any way the obligation of Congress in reference to making appropriations, and in accordance with the established decisions of this House the Chair is obliged to rule that this is a limitation, and therefore the Chair overrules the point of order.

4000. On March 26, 1898,[2] the House was in Committee of the Whole House on the state of the Union, considering the naval appropriation bill, when the Clerk read the paragraph making appropriations for the naval station at Port Royal, S. C., with which was this proviso:

Provided, That none of the above amounts appropriated for the naval station at Port Royal shall be available or used until the United States shall have acquired all right and title to the land claimed by Agnes A. Niver adjacent to the land where the dry dock now is, and involved in litigation in the United States Court of Claims, except that $1,000 of the $15,000 appropriated for the quay wall may be used to preserve the same.

Mr. William Elliott, of South Carolina, made the point of order that the proviso involved a change of existing law.

After debate, the Chairman [3] ruled:

It seems to the Chair clearly that this is a limitation. Following the line of decisions that have been made in that respect and so regarding this proviso, the Chair overrules the point of order.

4001. A paragraph providing that an appropriation should be expended in the United States, an amendment providing for purchase in the world's markets on the best terms was held in order.—On January 23, 1906,[4] the urgent deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the following paragraph was read:

THE ISTHMIAN CANAL.

To continue the construction of the Isthmian Canal, to be expended under the direction of the President in accordance with an act entitled "An act to provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans," approved June 28, 1902, as follows:

For miscellaneous material purchases in the United States, $1,000,000.

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[1] Henry S. Boutell, of Illinois, Chairman.

[2] Second session Fifty-fifth Congress, Record, pp. 3256, 3257.

[3] James S. Sherman, of New York, Chairman.

[4] First session Fifty-ninth Congress, Record, p. 1439.

Mr. David A. De Armond offered an amendment to the proposition as to the place of purchase, as follows:

Amend by adding the following: "Said purchases shall not be confined to the United States, but the things purchased shall be bought upon the best terms that the world's markets afford."

Mr. James A. Tawney, of Minnesota, made the point of order that the amendment involved legislation.

The Chair[1] having asked if there was any existing law on the subject, and no law being cited, he ruled:

Unless the amendment of the gentleman from Missouri changes existing law, the Chair will rule the amendment to be in order.

4002. To a provision for payment of the expenses of certain judges a proviso that no part of the money should be expended except on an itemized statement was held in order.—On January 26,1906,[2] the urgent deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the following paragraph was read:

For pay of bailiffs and criers, not exceeding three bailiffs and one crier in each court, except in the southern district of New York: *Provided,* That all persons employed under section 715 of the Revised Statutes shall be deemed to be in actual attendance when they attend upon the order of the courts: *Provided further,* That no such person shall be employed during vacation; of reasonable expenses actually incurred for travel and attendance of district judges directed to hold court outside of their districts, not to exceed $10 per day each, to be paid on written certificates of the judges, and such payments shall be allowed the marshal in the settlement of his accounts with the United States of reasonable expenses actually incurred for travel and attendance of justices or judges who shall attend the circuit court of appeals held at any other place than where they reside, not to exceed $10 per day, the same to be paid upon written certificates of said judge, and such payments shall be allowed the marshal in the settlement of his accounts with the United States; of meals and lodgings for jurors in United States cases, and of bailiffs in attendance upon the same, when ordered by the court; and of compensation for jury commissioners, $5 per day, not exceeding three days for any one term of court, $85,000.

Mr. Robert B. Macon, of Arkansas, proposed this amendment:

After the word "States," insert: *"Provided,* That no part of said sum herein appropriated shall be used for the payment of the expenses of said district judges unless said certificates contain an itemized statement of said expenses."

Mr. Lucius N. Littauer, of New York, raised the question of order that the amendment involved legislation.

After debate, the Chairman[1] held:

The statute provides simply that "upon the written certificates of the judges" this money shall be paid. The amendment presented by the gentleman from Arkansas, in the form of a limitation, states what these certificates shall contain during the period that this appropriation shall be in effect. That is the view the Chair takes of it, and with that view the Chair must hold that it is a limitation upon this specific appropriation, and therefore overrule the point of order.

4003. A provision that no part of any appropriation for an article should be paid to any trust was held in order as a limitation.—On March 1, 1906,[1] the Army appropriation bill was under consideration in Committee of the

[1] James S. Sherman, of New York, Chairman.

[2] First session Fifty-Ninth Congress, Record, p. 1611.

[3] First session Fifty Ninth Congress, Record, p. 3235.

Whole House on the state of the Union, when the Clerk read a paragraph making appropriation for the purchase of powder.

Mr. Oscar W. Gillespie, of Texas, offered an amendment:

After the word "dollars," in line 22, page 43, insert: "*Provided,* That no part of the said $629,000 shall be paid to any trust or combination in restraint of trade nor to any corporation having a monopoly of the manufacture and supply of gunpowder in the United States, except in the event of an emergency."

Mr. H. Olin Young, of Michigan, made a point of order against the amendment.

The Chairman[1] held that it was a limitation on the appropriation contained in the paragraph, and in order.

4004. A provision that an appropriation for the pay of volunteer soldiers should not be available longer than a certain period after the ratification of a treaty of peace was held to be a limitation merely.—On December 8, 1898,[2] the House was in Committee of the Whole House on the state of the Union considering the urgent deficiency appropriation bill.

The paragraph relating to the pay of volunteer soldiers in the Army having been reached, Mr. John M. Allen, of Mississippi, proposed this amendment:

Provided, That the money appropriated by this bill for the pay of volunteers under act approved April 22, 1898, and subsequent acts authorizing the raising of volunteers shall not be available for the payment of the volunteer forces now in the service longer than three months after the ratification of a treaty of peace.

Mr. Joseph G. Cannon, of Illinois, made the point of order that this would be legislation on an appropriation bill.

The Chairman,[3] after debate, ruled:

In the opinion of the Chair, the amendment offered by the gentleman from Mississippi is a limitation, and, therefore, following the precedents on that point, the Chair overrules the point of order.

4005. An amendment that no part of the appropriation for the Army should be available for an army of over a certain size was held to be a limitation.—On January 11, 1905,[4] the Army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the first paragraph was read, as follows:

Be it enacted, etc., That the following sums be, and they are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, for the support of the Army for the year ending June 30, 1906.

To this paragraph Mr. John S. Little, of Arkansas, offered an amendment:

Add, after the word "six," in line 6, page 1, the following proviso:

"*Provided, however,* That no part of the moneys appropriated in this act shall be expended for the support and maintenance of more than 30,000 men, including officers and enlisted men."

Mr. John A. T. Hull, of Iowa, made the point of order that the amendment would change the existing law, in that it would reduce the size of the Army.

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[1] Henry S. Boutell, of Illinois, Chairman.

[2] Third session Fifty-fifth Congress, Record, pp. 84, 85.

[3] John Dalzell, of Pennsylvania, Chairman.

[4] Third session Fifty-eighth Congress, Record, pp. 715, 716.

After debate, the Chairman[1] held:

The Chair would state to the gentleman from Iowa that this amendment appears to be drawn in conformity with a number of precedents in the form of limitations. Careful examination discloses the fact that this amendment does not in terms cut down the number of officers or enlisted men in the Army, but simply limits the appropriation in this bill to a certain number of officers and men. It is quite clear to the Chair that the officers and enlisted men who are not provided for in this bill would have a clear claim against the United States Government for their services; but it also seems to the Chair that this amendment is in the form of such a limitation as has been held not to be subject to a point of order, and that the amendment therefore should be left to the vote of the committee. * * * As the Chair has said, it seems, from careful examination of the amendment, to be in strict conformity with several amendments on which points of order have been overruled, as it merely places a limitation upon the use of the money appropriated in this act, and the Chair therefore overrules the point of order.

4006. An amendment providing that no portion of an appropriation for manufacture of stamped envelopes should be expended in printing return cards on them was ruled out of order.—On January 19, 1899,[2] the Post Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and this paragraph of the bill had been reached:

For manufacture of stamped envelopes and newspaper wrappers, $694,000.

To this Mr. Champ Clark, of Missouri, offered the following amendment:

Add at end of line, after the word "dollars," the following:

Provided, That no portion of this sum shall be expended in printing return cards or any other words upon stamped envelopes.

Mr. Eugene F. Loud, of California, made a point of order against this amendment.

The Chairman[3] sustained the point of order.

4007. Provisions that bids for the construction of naval vessels should be limited to bidders having adequate plants and not having over a specified number of vessels under contract were held to be in the nature of legislation and not limitations.—On February 21, 1899,[4] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the paragraph appropriating for the construction of new war vessels was read.

Mr. Alexander M. Dockery, of Missouri, made a point of order against these lines in the paragraph:

Except that no proposals for any of these vessels shall be considered unless the bidder is already in possession of an adequate plant.

Mr. Albert J. Hopkins, of Illinois, made a point of order against this portion of the paragraph:

and not more than two armored cruisers and not more than two of said protected cruisers shall be built in any one yard or by one contracting party.

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[1] H. S. Boutell, of Illinois, Chairman.

[2] Third session Fifty-fifth Congress, Record, p. 823.

[3] Sereno E. Payne, of New York, Chairman.

[4] Third session Fifty-fifth Congress, Record, pp. 2158–2160.

After debate, the Chairman[1] held:

The Chair will then dispose of that raised by the gentleman from Missouri first.

It will hardly be contended, it seems to the Chair, that the provision in the bill to which exception is made is not a legislative provision in the face of Rule XXI, and therefore, unless a foundation can be raised for it in some previous bill, it must be ruled out on the point of order raised by the gentleman from Missouri.

The contention that the provision of the bill of last year will maintain this provision is not well taken, for that provided only for adding certain torpedo boats and complying with certain provisions of law then in force.

The Chair, therefore, is constrained to sustain the point of order raised by the gentleman from Missouri. * * * The Chair thinks the same reasoning applies to the point of order made by the gentleman from Illinois as to that made by the gentleman from Missouri, and therefore sustains his point of order.

4008. It is in order in appropriating for the construction of a building to provide by limitation that the money shall be used only for a building of certain dimensions.—On March 2, 1904,[2] the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

For continuing work on the municipal building, $300,000, which sum shall not be available except for constructing said building on plans that will provide for a building six stories high on all sides, with suitable accommodations therein for the offices of the register of wills, recorder of deeds, and the police court, in addition to the offices and departments now designed to be accommodated therein, and with a subbasement story of sufficient height of ceiling to afford suitable accommodations for heating and lighting plant and for a repair shop for the District of Columbia.

Mr. Samuel W. Smith, of Michigan, made the point of order that the provision as to the plans of the building constituted legislation.

After debate, the Chairman[3] held:

The pending paragraph appropriates $300,000 for continuing work on the municipal building. It specifies that that sum shall not be available except for constructing said building on plans that will provide for a building six stories high on all sides, with suitable accommodations therein for the offices of the register of wills, register of deeds, and the police court, in addition to the offices and departments now designed to be accommodated therein, and with a subbasement story of sufficient height of ceiling to afford suitable accommodations for heating and lighting plant and for a repair shop for the District of Columbia. To that provision the gentleman form Michigan [Mr. Samuel W. Smith] raises the point of order that it is new legislation; that it is in violation of Rule XXI, which is very familiar to the members of the committee, and especially to that clause of the rule which says:

"Nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto."

While the committee has no power to adopt a provision which changes existing law, it has been many times held that it has a right to limit an appropriation. It can withhold it altogether or it can make it subject to certain conditions. This paragraph provides that the appropriation of $300,000 shall not be available except under certain conditions which are named. It seems to the Chair that it is a distinct limitation on this appropriation. The Chair therefore overrules the point of order.

4009. A provision that no greater price should be paid for armor plate than was paid in this country by other Governments for the same article was held to be a limitation.—On February 23, 1899,[4] the naval appro-

[1] James S. Sherman, of New York, Chairman.

[2] Second session Fifty-eighth Congress, Record, pp. 2685, 2686.

[3] George P. Lawrence, of Massachusetts, Chairman.

[4] Third session Fifty-fifth Congress, Record, p. 2252.

priation bill was under consideration in Committee of the Whole House on the state of the Union, an amendment relating to the price to be paid for armor plate being before the House.

As an amendment to the amendment Mr. Joseph H. Walker, of Massachusetts, offered the following:

and in no case in excess of the price paid to any manufacturer in this country for such armor by any other government.

Mr. Charles A. Boutelle, of Maine, made a point of order against the amendment.

The Chairman [1] held:

The Chair overrules the point of order. The Chair thinks the amendment is a limitation to the amendment.

4010. On April 1, 1898,[2] the naval appropriation bill being under consideration in Committee of the Whole House on the state of the Union, the paragraph making appropriation for certain vessels was reached. To this paragraph there was the following proviso:

Provided, That the total cost of the armor, according to the plans and specifications already prepared, for the three battle ships authorized by the act of June 10, 1896, shall not exceed $3,210,000, including all cost of nickel in the same and exclusive of the cost of transportation, ballistic test plates, and tests, and no contract for armor plate shall be made at an average rate to exceed $400 per ton of 2,240 pounds, including nickel as aforesaid.

Mr. Thomas H. Ball, of Texas, made a point of order that the provision relating to the price of armor plate was a change of law.

After debate, the Chairman [1] ruled:

The provision in the naval appropriation bill of March last is identical in terms with the provision in the naval appropriation bill to which the gentleman now raises the point of order. It seems to the Chair perfectly clear that the provision in the last naval bill was a limitation which touched merely the appropriation therein provided for, and the provision here is a limitation upon the appropriation herein provided for. Therefore the Chair overrules the point of order.

4011. On February 21, 1899,[3] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union. The paragraph appropriating for the purchase of armor and armament having been reached, Mr. Charles A. Boutelle, of Maine, offered this amendment:

Provided, That no part of said sum shall be expended except in procuring armor of the best obtainable quality at an average cost not exceeding $545 a ton of 2,240 pounds, including royalties.

Mr. Albert J. Hopkins, of Illinois, made a point of order that this would involve a change of law, since section 2 of the naval appropriation act approved May 4, 1898, provided:

No contract for armor plate shall be made at an average rate to exceed $400 per ton.

After debate, and on February 22, the Chairman [1] ruled:

Undoubtedly, if the provision in the first portion of this section were applied to continuation of the work, the point of the gentleman from Illinois would be well taken. It would then be a statute, and the provision of this bill would "change existing law." The Chair finds that in the consideration

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[1] James S. Sherman, of New York, Chairman.

[2] Second session Fifty-fifth Congress, Record, p. 3482.

[3] Third session Fifty-fifth Congress, Record, p. 2165, 2190.

of the naval bill last year the point of order was raised against the amendment which the gentleman from Illinois contended to be a fixed statute, and the Chair then overruled the point of order (the present incumbent of the chair), basing his ruling upon the fact that that provision was a limitation which applied to the appropriation contained in that bill only. That being so, the Chair must rule that this amendment is a limitation applying to the appropriation provided in this bill only, and therefore must overrule the point of order. The Chair does so rule; and the question is on the amendment offered by the gentleman from Maine.

4012. A provision for the construction of an armor-plate factory was held not in order as part of a limitation on an appropriation for armor plate.—On February 25, 1904,[1] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Air. John F. Rixey, of Virginia, offered this amendment:

On page 71, at the end of line 4, insert:

"Provided, That the Secretary of the Navy shall not pay more than $398 per ton for armor plate of the best quality for the ships herein authorized; and in case he is unable to make contracts for armor plate under the above conditions, he is authorized and directed to erect, on land owned by the Government, a factory for the manufacture of armor plate, and the sum of $4,000,000 is hereby appropriated for that purpose."

Mr. Alston G. Dayton, of West Virginia, made a point of order against the amendment.

After debate the Chairman[2] said:

Rule XXI provides that—

"No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress; nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto."

Now, in regard to the decision to which the gentleman from Virginia referred, on page 345 of the Manual, the Chair has made investigation, and finds that the provision passed upon—it is found on page 296 of Parliamentary Precedents—was a proviso that—

"The total cost of the armor, according to the plans and specifications already prepared for three battleships authorized by the act of June 10, 1896, shall not exceed $3,210,000, including the cost of nickel in the same, and exclusive of the cost of transportation, ballistic test plates, and tests, and no contract for armor plates shall be made at an average rate to exceed $400 per ton of 2,240 pounds, including the nickel as aforesaid."

That amendment was ruled by the Chair to be a limitation merely upon the appropriation, and therefore to be in order; but the amendment offered by the gentleman from Virginia, after limiting the price to be paid for armor to $398 per ton, proceeds further and declares "that in case the Secretary of the Navy shall not be able to make contracts at that rate he is authorized and directed to erect on land owned by the Government a factory for the manufacture of armor, and the sum of $4,000,000 is hereby appropriated for that purpose." That seems to the Chair to be not a limitation upon the appropriation contained in the paragraph that has been read, but an authorization, to the Secretary of the Navy to do something which he was not previously authorized to do, and therefore it is an enactment of law and a change of existing law. It may furthermore be questioned whether, as the amendment attempts to limit the price to be paid for armor upon other vessels not mentioned in the paragraph to which it is offered, but provided for in paragraphs which have already been agreed to and passed, it is in order upon this paragraph, which relates merely to two colliers, and therefore whether it is germane to this particular paragraph, to which it is offered as a proviso. Finding that part of the amendment is out of order, the Chair is forced to sustain the point and rule out the entire amendment.

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[1] Second session Fifty-eighth Congress, Record, pp. 2382, 2383.

[2] Marlin E. Olmsted, of Pennsylvania, Chairman.

4013. On February 20, 1905,[11] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. William W. Kitchin, of North Carolina, offered this amendment:

Page 68, line 15, after the word "vessels," insert:

"That the Secretary of the Navy is hereby authorized to procure, by contract, armor of the best quality for the vessels herein authorized at prices not exceeding $398 per ton, and in case he is unable to provide such armor under such conditions he is hereby authorized and directed to erect an armor-plate factory for the manufacture of such armor, and the sum of $4,000,000 is hereby appropriated toward such purpose."

Mr. George E. Foss, of Illinois, having made a point of order, the Chairman[2] held:

The amendment offered by the gentleman from North Carolina provides for the erection of an armor-plate factory, and the Chair has no question in his mind at all that it is clearly legislation and not in order.

4014. A proposed amendment limiting the kinds of seeds to be purchased under the law was held to be a change of law and not a limitation.—On April 10, 1900,[3] the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read the paragraph providing for the purchase of seeds for distribution.

Mr. John B. Corliss, of Michigan, proposed an amendment limiting the purchase of seeds to "only such as are rare and uncommon seeds."

It was argued that this was a limitation merely upon the appropriation.

The Chairman[4] held:

The Chair is of the opinion that the point of order made by the gentleman from Arkansas [Mr. McRae] is well taken, for the reason that existing law provides that a certain kind or class of seeds shall be purchased and distributed, while the amendment would entirely change the character of the seeds now permitted by law; therefore the point of order is sustained.

4015. A provision that an emergency fund for maintenance of the Navy should be expended at the discretion of the President was held to be a limitation.—On April 18, 1900,[5] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. William W. Kitchin, of North Carolina, made a point of order against this paragraph of the bill:

EMERGENCY FUND, NAVY DEPARTMENT.

To meet unforeseen contingencies for the maintenance of the Navy constantly arising, to be expended at the discretion of the President, $500,000.

After debate the Chairman[6] held:

This bill is a bill making appropriation for the naval service for the next fiscal year. Of course, every appropriation in the bill is for the maintenance of the naval establishment. This appropriation is for "the maintenance of the Navy;" broadly speaking, that is what the object of the appropriation is. It is so stated in the appropriating words; "to meet unforeseen contingencies for the Navy constantly

[1] Third session Fifty-eighth Congress, Record, pp. 2945, 2946.

[2] John Dalzell, of Pennsylvania, Chairman.

[3] First session Fifty-sixth Congress, Record, pp. 3989, 3990.

[4] James M. E. O'Grady, of New York, Chairman.

[5] First session Fifty-sixth Congress, Record, p. 4381.

[6] Sereno E. Payne, of New York, Chairman.

arising," in the mind of the Chair, is simply a limitation on that appropriation. So that the Chair has no difficulty whatever on the first proposition. The appropriation is for the maintenance of the Navy, and is in order on this bill. The question is whether the language "to be expended at the discretion of the President" changes existing law.

The Chair finds a ruling made in the Fifty-fourth Congress on an appropriation—

"For the relief and care of the poor and destitute, and for such charitable and reformatory work and such care and medical and surgical treatment of poor and destitute patients in the District of Columbia as have been heretofore usually provided for by direct appropriations to private institutions and as the District Commissioners may deem necessary the sum of $94,700 to be expended under the direction of said Commissioners, either under contract with responsible and competent persons or institutions, or by employing for the purpose the public institutions or agencies of said District where practicable, etc."

The point of order was made against that amendment, and the Speaker of the House held—that being in the House—the point of order was not well taken, and that that amendment was in order. While the present occupant of the chair would hardly go so far as to hold that that particular amendment was in order, as at present advised, yet the question rises here whether it is any more than a limitation on this appropriation, to be used in the discretion of the President—when the President approves of it, in other words. That is the view the Chair takes of it, and so overrules the point of order.

Mr. Kitchin having appealed, the decision of the Chair was sustained, ayes 94, noes 89, on a vote by tellers.

4016. Formerly amendments establishing limitations were considered legislative in character.—On April 8, 1880,[1] a question of order arose in Committee of the Whole House on the state of the Union as to the following amendment which it was proposed to offer to the army appropriation bill:

That no money appropriated in this act is appropriated, or shall be paid, for the subsistence, equipment, transportation, or compensation of any portion of the Army of the United States to be used as a police force to keep the peace at the polls at any election held within any State.

The point of order was made that this amendment would be legislation, and not in order even under the exceptions specified by the rule as it existed at that time.

Mr. James A. Garfield, of Ohio, pointed out specifically that it was a limitation on an appropriation; but neither he nor anyone else claimed that it was admissible for that reason.

The Chairman[2] said of the amendment that it "of course changes existing law, but it retrenches, and the spirit and letter of the old and new rule requires the amendment to be received."

4017. A limitation applies only to an appropriation and not to Indian trust funds.—On January 21, 1905,[3] the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and a paragraph relating to schools had been read, when Mr. John H. Stephens, of Texas, proposed this amendment:

Amend by adding the following at the end of line 18, page 51:

"In the administration and disbursement of funds held in trust for the Indian tribes, by the United States, that portion of the act approved June 7, 1897 (30 Stat., p. 79), which provides: 'And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for

[1] Second session Forty-sixth Congress, Record, pp. 2231–2240.

[2] Mr. S. S. Cox, of New York, Chairman.

[3] Third session Fifty-eighth Congress, Record, pp. 1196–1201.

education in any sectarian school,' shall apply; and from such trust funds, or interest thereon, held for the benefit of Indian tribes by the United States, no funds shall be appropriated or used for purposes of education in any sectarian or denominational school."

Mr. James S. Sherman, of New York, raised a question of order against the amendment.

After debate, the Chairman [1] said:

The Chair understands that the amendment offered by the gentleman from Texas [Mr. Stephens] relates to trust funds and not to money appropriated in the bill. It is not a limitation, but it does change existing law, and for that reason it is not germane. Therefore the Chair sustains the point of order.

Thereupon Mr. Stephens offered the following:

On page 51, Indian appropriation bill (H. R. 17474), add the following:

"Provided, That no portion of Indian trust funds, nor the interest thereon, shall be expended for contract schools without the consent in writing of the Indians entitled to the same being first obtained."

As to this amendment, also, the Chairman sustained a point of order raised by Mr. Sherman.

4018. On March 8, 1906, [2] the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read the following paragraph:

That no part of the moneys herein appropriated for fulfilling treaty stipulations shall be available or expended unless expended without regard to the attendance of any beneficiary at any school other than a Government school.

Mr. John H. Stephens, of Texas, proposed an amendment:

Provided, That in the administration and disbursement of funds held in trust for the Indian tribes by the United States that part of the act of June 7, 1897 (30 Stat., p. 79), which provides "and it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school," shall apply to any trust fund or interest thereon held by this Government for the benefit of any Indian tribes by the United States, and no such trust funds nor any moneys appropriated by Congress shall be expended or used for the education or support of Indian children in any sectarian or denominational school.

Mr. James S. Sherman, of New York, having made a point of order against the amendment, Mr. Stephens said:

I desire to say that this is only a limitation on this appropriation and it construes existing law. The law in question is the act of Congress approved June 10, 1896, providing as follows:

"And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian schools."

After debate, the Chairman [1] said:

The amendment offered by the gentleman from Texas, while in the form of a limitation, is not confined to this particular appropriation, and it deals with funds which are not covered by the law to which the gentleman refers. The Chair sustains the point of order.

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[1] Frank D. Currier, of New Hampshire, Chairman.

[2] First session Fifty-ninth Congress, Record, pp. 3539–3541.

Chapter XCIX.

HISTORY AND JURISDICTION OF THE STANDING COMMITTEES.

1. Rule for reference to committees. Section 4019.
2. Committee on Ways and Means. Sections 4020–4031.[1]
3. Committee on Appropriations. Sections 4032–4053.
4. Committee on the Judiciary. Sections 4054–4081.[2]

4019. It is provided by rule that all proposed legislation shall be referred to the standing committees in accordance with the jurisdiction which the rules specify.

The rules give to the jurisdiction of the respective Committees on Elections subjects relating "to the election of Members."

The creation and history of the Committees on Elections, section 1 of Rule XI.

Section 1 of Rule XI is as follows:

All proposed legislation shall be referred to the committees[3] named in the preceding rule as follows, viz: Subjects relating—

1. To the election of members: to the respective Committees on Elections.

The first clause is exactly as reported and adopted in the revision of 1880.[4]

The Committee on Elections dates from the First Congress, having been first established April 13, 1789.[5] On November 13, 1794,[6] this rule was adopted:

Two standing committees shall be appointed at the commencement of each session, to consist of seven members each, to wit: A Committee of Elections and a Committee of Claims.

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[1] See also sections 4155, 4161 of this volume.

[2] See also section 4145 of this volume.

[3] Bills are referred to standing committees at the beginning of a session before the actual appointment of them. (See first session, Thirty-eighth Congressional Globe, p. 7; also Journals at beginning of recent Congresses.)

[4] Second session Forty-sixth Congress, Record, p. 205.

[5] First session First Congress, Journal, p. 13. Until established by rule the Committee on Elections was specially authorized from session to session by order of the House. (Second session First Congress, Journal, p. 150; first session Second Congress, Journal, p. 440.)

[6] Journal, p. 229 (Gales and Seaton ed.), Third and Fourth Congresses.

In 1895,[1] in order that the work might be disposed of more promptly, the Committee on Elections was divided into three committees, each to consist of nine Members.[2]

4020. The creation and history of the Committee on Ways and Means, section 2 of Rule XI.

The rules confer on the Ways and Means Committee the jurisdiction of subjects relating to the revenue and bonded debt of the United States.

Section 2 of Rule XI provides for the reference of subjects relating—

2. To the revenue and the bonded debt of the United States: to the Committee on Ways and Means.

This committee now consists of eighteen Members.

The rule in this form dates from the revision of 1880.[3]

A Select Committee on Ways and Means was one of the earliest appointed in the House, a resolution having been adopted on July 24, 1789,[4] instituting such a committee, to be composed of a Member from each State, and charged with investigating the question of supplies. Previous to 1800 the committee was spoken of as a standing committee;[5] but as a standing committee, as the term is understood now, the Ways and Means dates from January 7, 1802.[6] At that time there were only five standing committees. The jurisdiction of Ways and Means included the revenue and appropriation bills and general oversight of the debt and the departments of the Government.[7]

On March 2, 1865, the business of the committee having become too large, the jurisdiction was divided by giving the appropriation bills to the newly created Appropriations Committee and banking and currency bills to the newly created Committee on Banking and Currency.[8] Mr. Samuel S. Cox, then of Ohio, in reporting the amendment, said that it was the intention to preserve to the committee the "tariff, the internal revenue, the loan bills, legal-tender notes, and all other matters connected with supporting the credit and raising money." The undesirability of separating the revenue from the appropriation features of legislation were discussed at this time.[9]

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[1] First session Fifty-fourth Congress, Journal, p. 54; Record, pp. 202–216.

[2] The division of the Elections Committee, made necessary by the amount of work confronting it, was suggested as early as 1879 by Mr. Roger Q. Mills, of Texas, who stated that in the legislature of Texas the Judiciary Committee had been thus divided. (First session Forty-sixth Congress, Record, p. 41.)

[3] Second session Forty-sixth Congress, Record, p. 205.

[4] First session First Congress, Journal, p. 66.

[5] Fifth Congress, Journal, pp. 30, 96.

[6] First session Seventh Congress, Journal, p. 40; Annals, p. 412.

[7] The Committee on Ways and Means originally had as part of its duties the examination of the public departments, their expenditures and the economy of their management. This function dated from 1802; but in 1814 the Committee on Public Expenditures was created to attend to this duty. (Third session Twenty-seventh Congress, Journal, p. 739.)

[8] A discussion took place as to the respective jurisdictions of Ways and Means and Banking and Currency Committees on December 7, 1897. (Second session Fifty-fifth Congress, Record, pp. 26–33.)

[9] Second session Thirty-eighth Congress, Globe, pp. 1312–1317.

From 1865 to the revision of 1880 the jurisdiction of the committee was defined by the old rule No. 151, as follows:

It shall be the duty of the Committee on Ways and Means to take into consideration all reports of the Treasury Department, and such other propositions relative to raising revenue and providing ways and means for the support of the Government as shall be presented or shall come in question and be referred to them by the House, and to report their opinion thereon by bill or otherwise, as to them shall seem expedient; and said committee shall have leave to report for commitment at any time.[1]

4021. The Ways and Means Committee has exercised jurisdiction over the subjects of customs unions, reciprocity treaties, and conventions affecting the revenues.—On January 30, 1882,[2] the House considered the subject of the reference of two joint resolutions—the one in relation to the establishment by treaty of a customs union with the Hawaiian Islands, and the other referring to the establishment of a customs union with the Republic of Mexico. In the debate it was shown that the precedents varied, such matters having at different times gone to Ways and Means, Commerce, and Foreign Affairs. Finally the Speaker[3] expressed the opinion that the resolutions should be referred to the Committee on Ways and Means. Thereupon a motion was made that they be referred to the Committee on Foreign Affairs. On this question there appeared yeas 51, noes 75. Thereupon the resolutions were referred to the Committee on Ways and Means.[4]

And in general the Ways and Means Committee has reported on the subject of treaties and conventions affecting the revenue:

In 1884[5] the bill (H. R. 7366) to carry into operation the reciprocity treaty with Mexico.

In 1886[6] the joint resolution (H. Res. 74) giving notice to terminate the convention with the Hawaiian Islands in reference to commerce; also the bill (H. R. 1513) intending to give effect to the pending treaty with Mexico in regard to commercial matters.

In 1891,[7] again in reference to the Hawaiian treaty.

In 1896,[8] as to a general investigation of reciprocity and commercial treaties.

In 1899,[9] the bill (H. R. 1921) to carry into effect a convention between the United States and the Republic of Cuba.

The House has also recognized this jurisdiction when it has distributed to the various committees the various portions of the President's message:

On January 9, 1884,[10] subjects relating "to the revenue provisions of the reciprocity treaty with Hawaii, and the commercial relations with foreign countries

[1] See section 4621 for privilege of reporting at any time.

[2] First session Forty-seventh Congress, Record, pp. 735, 736.

[3] J. Warren Keifer, of Ohio, Speaker.

[4] See section 4174 of this volume for jurisdiction of this subject exercised by the Committee on Foreign Affairs.

[5] Second session Forty-eighth Congress, House Report No. 1848.

[6] First session Forty-ninth Congress, House Reports Nos. 1759, 2615.

[7] Second session Fifty-first Congress, Report No. 3422.

[8] First session Fifty-fourth Congress, House Report No. 2263.

[9] First session Fifty-eighth Congress, House Report No. 1.

[10] First session Forty-eighth Congress, Journal, p. 255; Record, p. 319.

having connection with revenue legislation;" and in other years similar action was taken.[1]

In 1906,[2] on the subject of tariff relations with Germany; and in 1904,[3] the legislation to carry into effect the reciprocity treaty with Cuba.

4022. While the Committee on Agriculture has jurisdiction of revenue legislation affecting oleomargarine, the Ways and Means Committee has retained jurisdiction as to revenue bills affecting tobacco, lard, cheese, etc.—On December 16, 1881,[4] Mr. William H. Hatch, of Missouri, introduced the bill (H. R. 897) to repeal so much of the sixth clause of section 3294 of the Revised Statutes of the United States as "prohibits farmers and planters from selling leaf tobacco at retail directly to consumers without the payment of a special tax," etc., and moved to refer the bill to the Committee on Agriculture, stating in support of his motion that a similar bill was referred to the Committee on Agriculture in the last Congress, and reported therefrom. The Speaker[5] expressed the opinion that the bill should go to the Ways and Means Committee. The question being taken, Mr. Hatch's motion was disagreed to, yeas 97, nays 135. Then the bill was referred to the Ways and Means Committee.

In 1892,[6] the bill imposing a tax on compound lard was referred to the Committee on Ways and Means, and the House sanctioned this reference later by directing that petitions on the subject be referred to the same committee.

In 1896[7] the Ways and Means Committee reported a bill imposing a tax on filled cheese.

On June 29, 1882,[8] the Committee on Ways and Means reported the bill (H. R. 6685) providing for the imposition of a tax and regulating the manufacture and sale of oleomargarine; but jurisdiction as to the subject of oleomargarine was at a later date conferred on the Committee on Agriculture.[9] In 1900,[10] however, the Ways and Means Committee reported a resolution of inquiry relating to the amount and character of material used by the various manufacturers of oleomargarine.

In 1884[11] the Ways and Means Committee reported the bill (H. R. 5678) to prevent the importation of adulterated and suspicious teas.

4023. While the Ways and Means Committee has jurisdiction as to the revenues and bonded debt of the United States, its claims as to the subject of "national finances" and "preservation of the Government credit" have been resisted successfully.—On December 3, 1896,[12] the resolutions distributing the President's message gave to the Committee on Ways and

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[1] Second session Fifty-fourth Congress, Record, p. 56; third session Fifty-fifth Congress, Record, p. 25; first session Fifty-seventh Congress, Journal, p. 94.

[2] First session Fifty-ninth Congress, Report No. 1833.

[3] First session Fifty-eighth Congress, Report No. 1.

[4] First session Forty-seventh Congress, Record, p. 158.

[5] J. Warren Keifer, of Ohio, Speaker.

[6] First session Fifty-second Congress, Record, p. 1682.

[7] First session Fifty-fourth Congress, House Report No. 1135.

[8] First session Forty-seventh Congress, House Report No. 1529.

[9] See section 4156 of this chapter.

[10] First session Fifty-sixth Congress, House Reports Nos. 29, 1174.

[11] First session Forty-eighth Congress, House Report No. 665.

[12] Second session Fifty-fourth Congress, Record, p. 56.

Means the portions referring to "the national finances, the public debt, including bond issues, to the public revenues, to our trade relations with foreign countries, and condition of the Treasury." But on December 7, 1897,[1] when the resolutions distributing the message proposed to refer to Ways and Means matters relating "to the revenue, the national finances, the public debt, the preservation of the Government credit, and to treaties affecting the revenue," there was opposition on the part of the Committee on Banking and Currency, which resulted in modifying the jurisdiction of Ways and Means "to the revenue and the bonded debt of the United States and to treaties affecting the revenue."

The committee has reported:

In 1895,[2] on revenues and deficiencies.

In 1896,[3] a resolution of inquiry as to bond sales under the resumption act; in 1896, a bill relating to sale of bonds to protect the coin redemption fund; also a bill to prevent further issuance of interest-bearing bonds; in 1896, an investigation as to invasion of American markets by products of cheap labor, and effect of exchange between gold and silver standard countries.

In 1898,[4] an adverse report on a concurrent resolution relating to the payment of the bonded obligations of the United States; and the bill (H. R. 6258) authorizing the redemption and to limit the right of conversion of refunding certificates issued under authority of the act of February 26, 1879.

4024. The revenue relations of the United States with Porto Rico and the Philippines are within the jurisdiction of the Committee on Ways and Means.—The Committee on Ways and Means has jurisdiction of revenue bills relating to the island possessions of the United States, and has reported bills as follows:

The bill (H. R. 8245) to provide revenue for Porto Rico,[5] the Philippine tariff bill,[6] the bill (H. R. 11191) to extend the customs laws over the Hawaiian Islands,[7] and in 1906 [8] the Philippine tariff bill.

4025. The Committee on Ways and Means has exercised jurisdiction as to the seal herds and other revenue-producing animals of Alaska.[9]—The Committee on Ways and Means has at various times exercised jurisdiction as to those fur-bearing animals of Alaska which have been a source of revenue, and has reported propositions for legislation:

In 1884,[10] a resolution for investigation of the relations existing between the Alaska Commercial Company and the United States, and whether the contract should be abrogated.

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[1] Second session Fifty-fifth Congress, Record, pp. 26, 33.

[2] Third session Fifty-third Congress, House Report No. 1605.

[3] First session Fifty-fourth Congress, House Reports Nos. 4, 406, 2246, 2279.

[4] Second session Fifty-fifth Congress, House Reports Nos. 127, 308.

[5] First session Fifty-sixth Congress, House Report No. 986.

[6] Third session Fifty-eighth Congress, House Report No. 4867.

[7] Third session Fifty-fifth Congress, House Report No. 1683.

[8] First session Fifty-ninth Congress, House Reports Nos. 20, 582.

[9] See also section 4170 of this volume.

[10] First session Forty-eighth Congress, House Report No. 2027.

In 1890 and 1895,[1] a bill to enable the Secretary of the Treasury to gather information as to the impending extinction of the fur seals and sea otter.

In 1895,[2] on fur-bearing animals in Alaska.

In 1896,[3] on the subject of Alaska fur seals; investigation of the seal fisheries, and legislation as to fur-bearing animals in Alaska.

On January 13, 1902,[4] House bill 4386, to amend an act entitled "An act to prevent the extermination of fur-bearing animals in Alaska," and for other purposes, was transferred from the Committee on the Territories to the Committee on Ways and Means.

4026. In the later practice of the House, subjects relating to transportation of dutiable goods, ports of entry and delivery, and customs collection districts have been reported by the Committee on Ways and Means.

The former jurisdiction of the Committee on Interstate and Foreign Commerce over customs matters related most closely to commerce has passed to the Committee on Ways and Means.

Bills relating to transportation of dutiable merchandise in bond, customs collection districts, and ports of entry and delivery have by practice been transferred from the Committee on Interstate and Foreign Commerce, to the Committee on Ways and Means. Thus, the former usage sanctioned reports as follows from the Committee on Interstate and Foreign Commerce, or the Committee on Commerce, as it was designated prior to 1892:

In 1887,[5] the bill (H. R. 8923) relating to the immediate transportation of dutiable goods; in 1890,[6] a similar bill, and in 1894,[7] a bill relating to merchandise passing through Canada.

In 1882,[8] several bills relating to customs districts; in 1888,[9] a bill relating to the customs collection district of Duluth.

In 1888,[10] also the bill (S. 2613) changing the boundaries of a collection district of Virginia (Report No. 2873); also the bill (H. R. 1890) relating to the boundaries of another collection district of the same State (Report No. 1325).

In 1894,[11] bills relating to the customs collection districts of Hartford and New York City.

In 1890,[12] the committee reported a bill relating to the customs collection district of North and South Dakota; also bills organizing customs service in Alaska and establishing various ports of delivery, Puget Sound collection district.

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[1] First session Fifty-first Congress, House Report No. 1161; third session Fifty-third Congress, Record, p. 1259.

[2] Third session Fifty-third Congress, House Report No. 1949.

[3] First session Fifty-fourth Congress, House Reports Nos. 451, 2095; also first session Fifty-seventh Congress, House Report No. 2303.

[4] First session Fifty-seventh Congress, Journal, p. 210.

[5] Second session Forty-ninth Congress, House Report No. 3483.

[6] First session Fifty-first Congress, House Report No. 2404.

[7] Second session Fifty-third Congress, House Report No. 435.

[8] First session Forty-seventh Congress, House Reports Nos. 393, 394, 652.

[9] First session Fiftieth Congress, House Report No. 1329.

[10] First session Fiftieth Congress.

[11] Second session Fifty-third Congress, House Reports Nos. 548, 626.

[12] First session Fifty-second Congress, House Reports Nos. 404, 444, 653, 1124, 1351, 1799.

In 1892,[1] a bill relating to compensation of collectors and surveyors of customs, and in 1906,[2] on the subject of deputy collectors of customs.

In 1893,[3] a bill making Council Bluffs, Iowa, a port of delivery.

In 1888,[4] however, the Ways and Means Committee had reported a bill for the consolidation of the customs collection districts; and after 1895 the whole jurisdiction as to customs districts, ports of entry and delivery, and transportation of dutiable goods passed to Ways and Means, that committee reporting:

In 1896[5] on Alaska customs collection districts.

In 1896[6] on ports of entry and delivery in various States.

In 1898[7] a bill designating Gladstone, Mich., as a subport of entry.

In 1899[8] the bill (H. R. 10459) to amend the law of 1880 governing the immediate transportation of dutiable goods without appraisement.

In 1900[9] the bill (H. R. 3334) amending section 3005 of the Revised Statutes relating to transportation of dutiable goods in bond between certain places in the United States and Canada and Mexico.

Also in 1900[10] the bill (S. 3296) making Worcester a port of delivery; also South Manchester.

The Ways and Means Committee also exercises a general jurisdiction over subjects relating to officers and employees in the customs service. On March 16, 1882,[11] the committee reported the bill (H.R. 5221) relating to the use of search warrants by officers seeking for smuggled goods.

In 1897[12] bills relating to appraisers at Philadelphia and Boston and customs inspectors at New York.

4027. Jurisdiction of Committees on Ways and Means and Interstate and Foreign Commerce over bills relating to ports of entry and delivery.—On February 7, 1893,[13] the bill (H. R. 10391) to amend an act "to provide for the establishment of a port of delivery at Council Bluffs, Iowa," was reported from the Committee on Commerce and referred to the House Calendar. The object of this bill was to extend to the port of Council Bluffs the privilege of immediate transportation of dutiable goods.

On February 24, 1890,[14] the bill (H.R. 3872) substituting Cheboygan for Duncan City as a port of delivery was reported from the Commerce Committee and referred to the House Calendar.

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[1] First session Fifty-second Congress, House Report No. 1233.

[2] First session Fifty-ninth Congress, House Report No. 4560; and No. 4652, as to solicitor for the customs department of the Treasury.

[3] Second session Fifty-second Congress, House Report No. 2432.

[4] First session Fiftieth Congress, House Report No. 650. Also in 1887 a similar bill was reported by Ways and Means. (Second session Forty-ninth Congress, House Report No. 3606.)

[5] First session Fifty-fourth Congress, House Report No. 157.

[6] Second session Fifty-fourth Congress, Reports Nos. 1035, 1609.

[7] Second session Fifty-fifth Congress, House Report No. 1584.

[8] Third session Fifty-fifth Congress, House Report No. 1689.

[9] First session Fifty-sixth Congress, House Report No. 36.

[10] First session Fifty-sixth Congress, House Report No. 701.

[11] First session Forty-seventh Congress, House Report No. 756.

[12] First session Fifty-seventh Congress, House Reports Nos. 2587, 2708.

[13] Second session Fifty-second Congress, Report No. 2432.

[14] First session Fifty-first Congress, Report No. 404.

Also on February 26, 1890,[1] the bill (H. R. 5682) to constitute Columbus, Ohio, a port of delivery was similarly reported and referred. Also on April 9, 1890,[2] a bill to establish a port of delivery at Cairo, Ill., was similarly reported and referred.

On April 1, 1896,[3] the bill (H. R. 1035) to provide for subports of entry and delivery in Florida was reported from Ways and Means.

On March 26, 1896,[4] the bill (S. 494) to constitute Stamford, Conn., a subport of entry was reported from Ways and Means and referred to the House Calendar.

On March 23, 1898,[5] the bill (H. R. 9402) to regulate salary of official at port of Des Moines, Iowa, was reported from Ways and Means and referred to Union Calendar.

On June 16, 1898,[6] the bill designating Gladstone, Mich., as a subport of entry and extending the privileges of immediate transportation was reported from Ways and Means and referred to the House Calendar.

On March 11, 1898,[7] the bill to repeal the law in reference to the Mexican Free Zone was reported from the Committee on Ways and Means and referred to the House Calendar.

On February 9, 1898,[8] the bill (H. R. 7559) to make Rockland, Me., a subport of entry, was reported from Ways and Means and referred to the House Calendar.

4028. The Committee on Ways and Means has jurisdiction of subjects relating to the Treasury of the United States and the deposit of the public moneys.—On February 4, 1890,[9] a question arose as to the reference of the bill (S. 3) to relieve the Treasurer of the United States from the amount charged to him and deposited with the several States.

Mr. Richard P. Bland, of Missouri, moved that the bill be referred to the Committee on Appropriations. There appeared on this motion yeas 9, nays 151, so the motion was disagreed to. A motion to refer the bill to the Committee on the Judiciary was also disagreed to, yeas 94, nays 134.

The bill was then referred to the Committee on Ways and Means on motion of Mr. William McKinley, of Ohio.

The Ways and Mean Committee have also reported on similar subjects:

In 1893 [10] on the subject of the condition of the Treasury.

In 1892 [11] on subtreasuries.

In 1901 [12] on the bill (H. R. 13195) relating to the deposit of public funds received from certain duties in national banks.

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[1] First session Fifty-first Congress, Report No. 444.

[2] Report No. 1351.

[3] First session Fifty-fourth Congress, Report No. 1035.

[4] First session Fifty-fourth Congress, Report No. 949.

[5] Second session Fifty-fifth Congress, Report No. 797.

[6] Second session Fifty-fifth Congress, Report No. 1594.

[7] Second session Fifty-fifth Congress, Report No. 702.

[8] Second session Fifty-fifth Congress, Report No. 412.

[9] First session Fifty-first Congress, Journal, p. 194; Record, p. 1054.

[10] Second session Fifty-second Congress, House Report No. 2621.

[11] First session Fifty-second Congress, House Report No. 2143.

[12] Second session Fifty-sixth Congress, House Report No. 2929.

In 1892[1] a bill to allow commissions of officers in the Treasury Department to be made out in that Department instead of in the State Department.

In 1906[2] this committee reported on the subject of deposits of public money in United States depositories; also on the subject of the checks of disbursing officers of the Treasury.[3]

4029. The jurisdiction of the Committee on Ways and Means over tariff matters being challenged on behalf of the Committee on the Revision of the Laws, the House affirmed the claim of the former committee.—On March 25, 1880,[4] the House, after long consideration, determined that a bill for revising the tariff laws in essential particulars, which had been referred to the Committee on the Revision of the Laws, had been incorrectly referred there, and changed the reference to the Committee on Ways and Means. This decision was made by a vote of yeas 140, nays 82.

4030. The resolutions distributing the President's annual message are within the jurisdiction of the Committee on Ways and Means.—The Ways and Means Committee reports the resolutions distributing the President's annual message, the practice being observable from instances in 1900,[5] 1890,[6] and 1887.[7]

4031. The resolutions for final adjournment of Congress and the adjournment for a recess are within the jurisdiction of the Committee on Ways and Means.

Forms of resolutions for adjournment of Congress sine die and for a recess. (Footnote.)

The Committee on Ways and Means exercises jurisdiction over the concurrent resolutions providing for the final adjournment of a session[8] and the adjournment for a recess.[9]

4032. The creation and history of the Committee on Appropriations, section 3 of Rule XI.

The Committee on Appropriations has jurisdiction of legislative, executive, judicial, and sundry civil expenses of the Government.

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[1] Second session Fifty-first Congress, House Report No. 3432.

[2] First session Fifty-ninth Congress, House Report No. 8.

[3] First session Fifty-ninth Congress, House Report No. 4435

[4] Second session Forty-sixth Congress, Record, pp. 1869–1882.

[5] First session Fifty-sixth Congress, House Report No. 4.

[6] Second session Fifty-first Congress, Record, p. 188.

[7] Second session Forty-ninth Congress, Record, p. 324; also second session Fifty-sixth Congress, House Report No. 2013.

[8] First session Fifty-seventh Congress, Record, p. 7777; first session Fifty-fourth Congress, House Report No. 157; first session Fifty-second Congress, Record, pp. 6412, 6897. The form of these resolutions is as follows:

"Resolved by the House of Representatives (the Senate concurring), That the President of the Senate and the Speaker of the House of Representatives be authorized to close the present session by adjourning their respective Houses on the —— day of ———, ——, at —— o'clock."

Second session Forty-eighth Congress, Record, p. 284; second session Forty-ninth Congress, Record, p. 316; second session Fifty-seventh Congress, House Report No. 2784. The form of these resolutions is as follows:

"Resolved by the House of Representatives (the Senate concurring), That when the two Houses adjourn on ——— ——— they stand adjourned until 12 o'clock meridian ——— ——, ——."

The Appropriations Committee reports the appropriations for fortifications and coast defenses, the District of Columbia, and pensions.

All appropriations for deficiencies are reported by the Committee on Appropriations.

Reference to President's protest against assumption by the House of the right to designate the officers who should disburse appropriations. (Footnote.)

Reference to the establishment of the system of specific appropriations. (Footnote.)

Section 3 of Rule XI provides for the reference of subjects relating—

3. To appropriation of the revenue for the support of the Government, as herein provided, viz: For legislative, executive, and judicial expenses; for sundry civil expenses, for fortifications and coast defenses; for the District of Columbia; for pensions; and for all deficiencies: to the Committee on Appropriations.

This committee consists of seventeen members.

The Appropriations Committee dates from March 2, 1865, when it was created to relieve the Ways and Means Committee, then burdened by the great amount of war legislation.[1] The duty of the new committee was designated to be the reporting of the general appropriation bills. In the revision of 1880[2] the jurisdiction was defined by this rule:

To appropriation of the revenue for the support of the Government: to the Committee on Appropriations.

In 1885, after an important and spirited contest, a portion of the appropriation bills was taken away from the Appropriations Committee[3] leaving to it only those mentioned in the rule.[4] In the revision of 1890 the words "and coast defenses" were added after fortifications.[5] This committee is privileged to report the general appropriation bills at any time.[6] These bills very generally are made up on the plan of specifying each item of appropriation, and as printed for the consideration of the House a large appropriation bill often contains more than 100 pages.[7]

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[1] Second session Thirty-eighth Congress, Globe, pp. 1312–1317. (See also section 4020 of this volume.)

[2] Second session Forty-sixth Congress, Record, pp. 200, 205.

[3] The army, Military Academy, naval, post-office, consular and diplomatic, and Indian bills were those taken away and distributed. The agricultural bill had been with the Committee on Agriculture since 1880. (See section 4149.) The river and harbor bill had not been reported from the Appropriations Committee for many years. (See section 4118 of this volume.)

[4] First session Forty-ninth Congress, Record, pp. 168, 196, 278. The report of the Committee on Rules at that time (Record, p. 170) gave a history of the development of the appropriation bills. The legislative bill dates from 1857, the sundry civil from 1862, the agricultural and District of Columbia from 1880. In 1847 there were nine separate bills: Army, civil and diplomatic, deficiency, fortifications, Indian, Military Academy, navy, pension, and post-office.

[5] See House Report No. 23, first session Fifty-first Congress, and Record, first session Fifty-first Congress, pp. 188, 190.

[6] See section 4621 of this volume.

[7] On March 12, 1828, Mr. J. S. Barbour, of Virginia, precipitated a discussion of a proposition that the appointment of the disbursing and accounting officers of the Treasury should be taken from the President and be lodged in the House. This discussion (first session Twentieth Congress, Journal, pp. 406, 436; Debates, pp. 1954, 1963, 1971, 1998) reviewed somewhat the usages of the Government and attributed the habit of making specific appropriations to a suggestion of President Jefferson. This suggestion was

4033. The jurisdiction of the Committee on Appropriations over appropriations as related to the jurisdiction of other committees having the power of reporting appropriation bills.

The services of the Departments in Washington, except the Agricultural Department, are appropriated for in the legislative, executive, and judicial bill, which is reported by the Committee on Appropriations.

While the Committee on Appropriations has jurisdiction to report appropriations, the power to report legislation authorizing appropriations belongs to other committees.

In general the Committee on Appropriations has jurisdiction of appropriations for all the offices and clerkships in the Departments of the Government in Washington. Thus, the legislative appropriation bill carries appropriations for bureaus and salaries in the State Department, War Department, Navy Department, Post Office Department, and Indian Office, although for other branches of those services the Committees on Foreign Affairs, Military Affairs, Naval Affairs, Post-Office and Post-Roads, and Indian Affairs report appropriation bills, in which are included employments and expenditures in offices outside the city of Washington, whether in the United States or abroad; but not including repairs of public buildings.[1]

The Committee on Agriculture, however, in the agricultural appropriation bill,[2] provide not only for the service outside of Washington but also for the service of the Department of Agriculture.

For services outside the diplomatic, Army, Navy, Post-Office, Indian, and Agriculture the appropriations are entirely within the jurisdiction of the Committee on Appropriations, whether within the Departments at Washington or in the country at large. Thus, appropriations for the Light-House Service, Coast and Geodetic Survey, Smithsonian Institution, Fish Commission, Interstate Commerce Commission, public, lands service, United States courts and their employees are carried in the sundry civil bill, which is reported by the Appropriations Committee. The customs service, as well as certain other services, are provided for by a permanent appropriation.[3]

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probably contained in the following paragraph of his first message, December 8, 1801. (See Vol. 1, p. 329, of Richardson's Messages and Papers):

"In our care, too, of the public contributions intrusted to our direction it would be prudent to multiply barriers against their dissipation by appropriating specific sums to every specific purpose susceptible of definition, by disallowing all applications of money varying from the appropriation in object or transcending it in amount; by reducing the undefined field of contingencies and thereby circumscribing discretionary powers over money, and by bringing back to a single Department all accountabilities for money, where the examinations may be prompt, efficacious, and uniform."

See Vol. V, p. 597, of Richardson's Messages and Papers, for President's protest against the naming of an agency for the expenditure of an appropriation.

On February 3, 1830, the Committee on Retrenchment made a report recommending that the useful practice of specific appropriations be applied to the contingent fund of the two Houses. (Report No. 150, first session Twenty-first Congress.)

[1] Buildings at Indian agencies are repaired by provisions on the Indian bill. So also all buildings in Agricultural Department, including offices in Washington, are repaired by provisions on the agricultural bill. Barracks and quarters for soldiers are repaired on the army bill and also are built when they cost less than $20,000. (Rev. Stat., sec. 1136.)

[2] See Statutes at Large for acts of appropriation.

[3] Revised Statutes, sections 3687–3689.

It is to be understood, however, that the legislation authorizing appropriations in these services is not within the jurisdiction of the Appropriations Committee, but is exercised by the Committees on Interstate and Foreign Commerce, Ways and Means, Merchant Marine and Fisheries, Public Lands, the Judiciary, etc. Also, the Committee on Public Buildings and Grounds authorizes the construction of public buildings, including post-office buildings in various cities, but the appropriations are made in the sundry civil bill by the Appropriations Committee.

The Committee on Rivers and Harbors appropriates outright for the improvement of rivers and harbors, and it also presents legislation authorizing continuing contracts of improvement. The money in payment of these continuing contracts, however, is appropriated for on the sundry civil bill, which is reported by the Committee on Appropriations.

While the Committee on Military Affairs reports the army appropriation bill and Military Academy appropriation bill, and also all legislation authorizing new military posts, military parks, new arsenals, soldiers' homes, etc., yet the Committee on Appropriations has jurisdiction of a range of appropriations relating to the military establishment. Thus, appropriations for machinery, care, preservation, improvements, etc., of armories and arsenals, for military posts, for military parks, and for the National Home for Disabled Volunteer Soldiers are provided by the Appropriations Committee. Fortifications are, by rule, within the jurisdiction of the Appropriations Committee.

But in respect of matters naturally within the jurisdiction of the Naval Affairs Committee the Committee on Appropriations has a less broad jurisdiction. It provides appropriations for the Navy Department in Washington; but aside from this the Naval Affairs Committee reports on all subjects relating to the Navy, including service at navy-yards, etc. The Naval Observatory and the Nautical Almanac office are considered attached to the Department at Washington, and are provided for by the legislative appropriation bill. But the Naval Committee have reported provisions for additional buildings at the Naval Observatory.

The Committees on Pensions authorize pension expenditures, but appropriations therefor are reported by the Committee on Appropriations in the pension appropriation bill.

Also the Committee on Appropriations reports the District of Columbia appropriation bill, while legislation for the District is reported by the Committee on the District of Columbia.

All appropriations for deficiencies, in whatever Department of the Government, are reported by the Appropriations Committee.

4034. Employment of clerks in the Indian Office is within the jurisdiction of the Committee on Appropriations, and not of the Committee on Indian Affairs.—On February 1, 1900,[1] the Indian appropriation bill was under consideration, when the Clerk read as follows:

For pay of one clerk to Superintendent of Indian Schools, $1,000.

Mr. J. A. Hemenway, of Indiana, moved that the paragraph be stricken out on the ground that the subject belonged to the legislative, executive, and judicial appropriation bill.

[1] First session Fifty-sixth Congress, Record, pp. 1418, 1461.

This paragraph was stricken out.

Again, on February 2, Mr. Hemenway raised a point of order against the following paragraph in the same bill:

For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for, including pay of an architect, a draftsman, and a laborer, to be employed in the office of the Commissioner of Indian Affairs, $1,200,000, of which amount the Secretary of the Interior may, in his discretion, use $5,000 for the education of Indians in Alaska.

The point of order was directed against so much of the paragraph as provides for the employees in the Indian Office.

After debate the Chairman[1] held:

The gentleman from New York made one statement that would have an important bearing. By a decision of the Speaker on an analogous point of order yesterday, that this had been carried from time whereof the memory of man runneth not to the contrary in this bill, if the Chair were to make a decision at this time would seem to the Chair that according to the division of jurisdiction made by the terms of the rule itself this item would belong to the legislative bill. But the Speaker, at the instance of the Committee on Appropriations, laid down a rule yesterday that in ascertaining the respective jurisdiction of the various committees the matter should be looked at historically, and that the indentity of the bills when they were parted from the jurisdiction of the Committee on Appropriations should be preserved.

Now, if it be true that this has always from that time to this been carried on the Indian appropriation bill, it seems to the Chair that the gentleman from Indiana would not contend, in view of yesterday's ruling, that his point of order was well taken. * * * The Chair understands this provision has been in the Indian bill since 1895, and there is no statement or evidence that it was in the bill before that time. Obviously it is within the scope of the legislative, executive, and judicial appropriation bill. The Chair is quite familiar with that bill. It provides for all the executive civil service in the Departments at Washington and appropriates for the pay of all the employees of the class to which these in question belong in the greatest detail. For instance, it provides the appropriation for the employees in the Post-Office Department, in the Interior Department, and all other Departments, although other committees have more immediate contact with those Departments, and make the larger part of their appropriations. * * * It seems perfectly clear that from its nature the appropriation belongs to the committee that has charge of other like appropriations, and that there has been no settled practice which would prevail against the words of the rule defining the jurisdiction of the two committees. The point of order is well taken.

4035. On December 17, 1898,[2] the House was considering the Indian appropriation bill in Committee of the Whole House on the state of the Union. This paragraph having been reached:

For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for, including pay of an architect, a draftsman, and a laborer, to be employed in the office of the Commissioner of Indian Affairs, $1,100,000, of which amount the Secretary of the Interior may, in his discretion, use $5,000 for the education of Indians in Alaska.

Mr. Joseph G. Cannon, of Illinois, made the point of order that the provision for the "pay of an architect, a draftsman, and a laborer, to be employed in the office of the Commissioner of Indian Affairs" was an appropriation belonging to the legislative, executive, and judicial appropriation bill and not to the Indian bill.

The Chairman[3] sustained the point of order.

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[1] William H. Moody, of Massachusetts, Chairman.

[2] Third session Fifty-fifth Congress, Record, pp. 281, 282,

[3] Sereno E. Payne, of New York, Chairman.

4036. The Appropriations Committee may report appropriations in fulfillment of contracts authorized by law for the improvement of rivers and harbors.—On February 1, 1893,[1] the House was in Committee of the Whole House on the state of the Union considering the sundry civil appropriation bill.

On the previous day the committee had reached paragraphs providing for continuing the improvement of certain rivers and harbors, and Mr. Walt H. Butler, of Iowa, had made the point of order that such subjects belonged to the Rivers and Harbors Committee, and were not properly in a bill reported by the Appropriations Committee.

The Chairman[2] ruled:

The gentleman from Iowa, Mr. Butler, makes a point of order against so much of this bill as proposes appropriations for work on certain rivers and harbors. It is claimed that the Appropriations Committee, which brings this bill before the House, has no jurisdiction to report such matter to the House.

That depends, in the opinion of the Chair, upon the question whether the Committee on Appropriations is limited or restricted by the rules of the House in such way as to destroy its authority, and the Chair thinks that all the limitation put on that committee in the matter of appropriations, so far as applicable to a question of this nature, is contained in the twenty-first rule of the House, paragraph 2, in the following language:

"No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress."

There is no restriction on the power of the committee beyond what is contained in that paragraph. The question is whether the Committee on Appropriations is prohibited from submitting this appropriation by virtue of that restriction.

This appropriation, called for by the provision of the bill under consideration, is made by virtue of law, passed in the last session of this Congress and by the previous Congress, authorizing the Government, or the Secretary of Wax on behalf of the Government of the United States, to enter into contracts for doing a certain work, which was specified and clearly pointed out in the bill embodying such provision of law; that is to say, certain works on rivers and harbors-particularly specified work-and the manner of making the contract and the limitations of the contract are all clearly expressed in the act; so that there is nothing in the rule referred to which restricts the Committee on Appropriations from reporting this appropriation.

It was suggested, I believe, that the act of Congress which authorized these contracts to be made was one which showed that the Government was under no obligation to appropriate money for these purposes. The provision of the contract—and all of them, I believe, contain a similar provision—is in the following words:

"Contracts may be entered into by the Secretary of War for such matters and work as may be necessary to complete the present project of improvement, etc., to be paid for as appropriated from time to time; improvement made by law not to exceed in the aggregate dollars, exclusive of the annual amount herein and hereinafter appropriated."

That is a specimen of the law applicable to these several items of appropriations mentioned in this bill. It has been suggested that inasmuch as they were to be paid for "as Congress from time to time my make the appropriations," that therefore the Government was under no obligation, and I suppose the idea is to imply that there was no law authorizing the contract.

Suffice it to say that here is the authority to make a contract for Government work, for Government objects, and the contracts having been made in all these cases the Government is under obligation to pay the money, notwithstanding the fact that the work may be paid for as appropriations are made by law.

But it is a contract and has to be met. Such is the expression of the law. Then it is a Government contract for a Government object, in pursuance of law and by virtue of law. There is, of course,

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[1] Second session Fifty-second Congress, Record, pp. 1023, 106–5.

[2] Rufus E. Lester, of Georgia, Chairman.

no power to compel the House of Representatives or the Congress to make appropriations for anything—no physical power; but here is the authority and the requirement to do it. It is an obligation so far as contracts can be binding. Then there is authority of law for doing this.

But it is said that the question here is that the Committee on Appropriations can not bring in such a bill as this, inasmuch as it has no jurisdiction by virtue of other rules of the House which take away that jurisdiction.

Rule XI provides that all proposed legislation shall be referred to the committees named in the preceding rule, as follows: "Subjects relating" to various matters—

"3. Appropriations of the revenue for the support of the Government as herein provided, viz, for legislative, executive, and judicial expenses, for sundry civil expenses, for fortifications and coast defenses, for the District of Columbia, for pensions, and for all deficiencies: to the Committee on Appropriations."

The eighth paragraph provides—"To the improvement of rivers and harbors: to the Committee on Rivers and Harbors."

Now, it is claimed that the giving of that jurisdiction to the Committee on Rivers and Harbors, as expressed here, deprives the Committee on Appropriations of the authority which it would otherwise have but for that provision.

In the opinion of the Chair, if that jurisdiction is given in the first place, as the Chair thinks it is, to the Committee on Appropriations, as it otherwise would be but for this eighth section, that that eighth section does not take away that jurisdiction. Whether it might be concurrent or not may be a question; but the Chair does not think it concurrent, because the nature of this appropriation is not one which, in the opinion of the Chair, the Committee on Rivers and Harbors have jurisdiction over, because it is an appropriation made, in pursuance of contract, for objects which the Government has provided for by law. Therefore it is a proper subject to come from the Appropriations Committee.

The Chair would say that if the Appropriations Committee should bring in a bill having an item or a paragraph declaring in the usual language of river and harbor bills that so much money shall be appropriated for improving a river or harbor, without a law previously made authorizing and requiring the appropriation, the Committee on Appropriations would not have jurisdiction unless the appropriation of money for that river or that harbor had been previously authorized by law and required to be met as an obligation of the Government.

The Chair overrules the point of order.

4037. Stationery, books of reference, etc., for the Navy Department are provided in the legislative bill, under jurisdiction of the Committee on Appropriations.—On April 18, 1900,[1] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read the paragraph for "transportation, recruiting, and contingent," in the Bureau of Navigation.

Mr. Joseph G. Cannon, of Illinois, raised a point of order against these words, "stationery, maps, railway guides, city directories, and necessary books of reference," holding that since 1876, and probably since 1870, this appropriation had been provided for in the legislative, etc., appropriation bill, which carried an appropriation as follows:

For stationery, furnishing newspapers, plans, drawings and drawing materials, horses and wagons to be used only for official purposes, for expressage, postage, and other absolutely necessary expenses of the Navy Department, and of the various bureaus and officers, $12,000.

After debate the Chairman[2] sustained the point of order that this appropriation did not belong to the naval bill.

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[1] First session Fifty-sixth Congress, Record, p. 4389.

[2] Sereno E. Payne, of New York, Chairman.

4038. Contingent expenses in the bureaus of the Navy Department are appropriated for in the legislative and not the naval bill.—On May 17, 1902,[1] while the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, the Clerk read:

Contingent, Bureau of Steam Engineering: For contingencies, drawing materials, and instruments for the drafting room, $1,000.

Mr. Joseph G. Cannon, of Illinois, made the point of order that this item did not belong on the naval bill.

After debate the Chairman[2] held:

The point of order is that it is not in order on the naval bill, but should be on the legislative bill, as the Chair understands. * * * The Chair is inclined to sustain the point of order, unless the chairman of the committee can point out some special reason why it should not be sustained. * * * In other words, it has been appropriated for on each annual appropriation bill? * * * That does not make it law. It seems very clear to the Chair that this item should be in the legislative bill. The Chair sustains the point of order.

4039. An appropriation for repairs and improvements of the House of Representatives was ruled to be in order on the sundry civil appropriation bill.—On February 18, 1901,[3] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read the following paragraph:

For improving the ventilation of the Hall of Representatives and the corridors adjacent thereto, including new floor for the Hall and the installation of new ventilating and heating apparatus, the ventilation of the House restaurant and kitchen, for materials, labor, appliances, etc., $51,200, to be immediately available.

Mr. Edgar D. Crumpacker, of Indiana, made the point of order that this subject belonged to the jurisdiction of the Committee on Ventilation and Acoustics, and that legislative sanction was necessary before an appropriation could be made.

After debate the Chairman[4] said:

If the Committee on Ventilation and Acoustics desired to make recommendations for a change of existing law, would it not be competent to do so; but is it not the duty of the Committee on Appropriations to make appropriations covering these very subjects, as it does for other public buildings, the White House, and others? * * * The Chair thinks the point of order is not well taken and will overrule it.

4040. Respective jurisdictions of Committees on Appropriations and Naval Affairs over appropriations for ocean and lake surveys.—On April 19, 1900,[5] the House was considering the naval appropriation bill in Committee of the Whole House on the state of the Union, this paragraph being before the committee:

Ocean and lake surveys: Ocean and lake surveys; the publication and care of the results thereof; the purchase of nautical books, charts, and sailing directions, and freight and express charges on the same; for the survey of the island of Guam, and continuing the surveys of the imperfectly known parts

[1] First session, Fifty-seventh Congress, Record, pp. 5606, 5607.

[2] James S. Sherman, of New York, Chairman.

[3] Second session Fifty-sixth Congress, Record, pp. 2609, 2610.

[4] Albert J. Hopkins, of Illinois, Chairman.

[5] First session Fifty-sixth Congress, Record, pp. 4391, 4427, 4443.

of the coasts and harbors of the Philippine Archipelago, of the Hawaiian group, and of the islands of Cuba and Porto Rico, with their bordering keys and waters and the minor outlying islands, deep-sea soundings, and other observations for the Survey of suboceanic telegraph cable routes; determinations of the magnetic variation, and other observations necessary for the construction of charts for the correction of the mariner's compass in oceanic navigation, and continuing the investigations and charting of reported obstructions to navigation in the United States waters of the Great Lakes, including the hire of vessels and the compensation, not otherwise appropriated for, of persons employed in the field work, under the authority of the Secretary of the Navy, and for every expenditure requisite for making hydrographic surveys that are required under the regulations for the government of the Navy, $100,000, and any unexpended balance of the appropriation for ocean and lake surveys for the fiscal year ending June 30, 1900, is hereby also appropriated.

On the previous day Mr. Joseph G. Cannon had reserved a point of order on this paragraph, but had announced that he should probably prefer to settle the question of jurisdiction involved by a motion to strike out.

Accordingly Mr. Cannon offered a motion to strike out the above and insert:

Ocean survey for special general service and the publication thereof, $10,000.

It was contended, in support of the amendment, that the Treasury Department should have control of the lake surveys and the surveys in the new possessions, the Coast Survey having been long organized for such purposes. Therefore the jurisdiction of the subject would be within the Appropriations Committee in the sundry civil bill.

After debate the amendment was agreed to—ayes 111, noes 40.

4041. On May 4, 1900,[1] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and a paragraph had been read, as follows:

COAST AND GEODETIC SURVEY.

For every expenditure requisite for and incident to the survey of the coasts of the United States and of coasts under the jurisdiction of the United States, including the survey of rivers to the head of tide water or ship navigation; deep-sea soundings, temperature and current observations along the coast and throughout the Gulf Stream and Japan Stream flowing off the said coasts, etc.

To this Mr. Alston G. Dayton, of West Virginia, offered an amendment to strike out the words—

and all coasts under the jurisdiction of the United States.

The controversy involved was as to whether the jurisdiction of the subject belonged to the Committee on Naval Affairs or the Committee on Appropriations.

After debate, the amendment was disagreed to.[2]

4042. The appropriations for field guns and their appurtenances belong within the jurisdiction of the Committee on Appropriations.

An appropriation for torpedoes for harbor defense is within the jurisdiction of the Committee on Appropriations. (Footnote.)

On March 31, 1890,[3] the House was in Committee of the Whole House on the state of the Union considering the army appropriation bill.

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[1] First session Fifty-sixth Congress, Record, pp. 5135–5167.

[2] In the conference on the naval bill the question again came up, and there was controversy over it. (See Record, pp. 6849, 6856, 6879–6885.) In the naval bill the final form of the wording was (31 Stat. L., p. 689): "Ocean and lake surveys: For hydrographic Surveys and for the purchase of nautical books," etc.

[3] First session Fifty-first Congress, Record, pp. 2857, 2862.

The paragraphs for metallic carriages for field-gun batteries, and for steel shell or shrapnel for field guns, having been reached, Mr. Mark S. Brewer, of Michigan, made the point of order that these items were improperly in the army bill, since, being generally classified under the subject of "Fortifications and coast defenses," they belonged within the jurisdiction of the Appropriations Committee.

After debate, the Chairman[2] decided:

The question presented is not without difficulty, and the discussion has not been sufficiently full to entirely satisfy the Chair, but he understands that the exigencies of the work before the House will not permit further delay.

The practice of the House for the last twenty years preceding the last six years in large part has obtained under different conditions as between committees from those which now exist, and the Chair will confine himself strictly to the rule as he understands it.

Rule XI provides as follows:

"All proposed legislation shall be referred to the committees named in the preceding rule as follows, namely: Subjects relating,

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"To appropriation of the revenue for the support of the Government, as herein provided, namely: * * * for fortifications and coast defenses * * * to the Committee on Appropriations."

All appropriations relating "to the military establishment and the public defense, including the appropriations for its support, etc—to the Committee on Military Affairs."

As the Chair understands this rule, the Committee on Appropriations in this matter is confined strictly to that which pertains to fortifications and coast defenses. The Chair holds that the provision of the bill before the committee providing for steel field guns and carriages for the same, not used in fortifications, nor made for fortifications, nor for coast defenses, properly goes to the Committee on Military Affairs, and he therefore overrules the point of order.

Immediately after, on motion of Mr. Joseph G. Cannon, of Illinois, the committee struck the paragraphs in question from the bill by a vote of 91 ayes to 57 noes.

On April 1 the Committee of the Whole House on the state of the Union were considering the fortifications appropriation bill.

The paragraphs for steel field guns, 3.2 caliber, metallic carriages for field-gun batteries, and steel shell or shrapnel for field guns having been reached, Mr. Byron M. Cutcheon, of Michigan, made the point of order that the jurisdiction of these items belonged properly to the Committee on Military Affairs, and therefore that they were out of order in a bill reported by the Appropriations Committee.

After debate, the Chairman[3] decided:

Without entering into a critical examination of the language of the rules as they now exist, as compared with the old rules and practice, it is enough, in the judgment of the Chair, to say that so far as the present occupant of the chair remembers or is advised the practice has been uniform and universal to have items of this character contained and considered in the fortifications bill. This has been the practice ever since the present occupant of the chair has been a Member of this House. The Chair

[1] In the course of this debate a decision of this question in favor of the Appropriations Committee was referred to in Congressional Record, second session Fiftieth Congress, pp. 1007, 1008. (See also second session Forty-ninth Congress, Journal, p. 546; Record, pp. 1546, 1547.) Also in the Fiftieth Congress an appropriation for torpedoes for harbor defense was held by Chairman Blount, of Georgia, to be in order on the fortifications bill, which is within the jurisdiction of the Appropriations Committee. (Second session Fiftieth Congress, Record, p. 1004.)

[2] Edward P. Allen, of Michigan, Chairman.

[3] Lewis E. Payson, of Illinois, Chairman.

thinks precedents so well established ought not to be overturned without serious reasons. These reasons do not exist in the judgment of the Chair, and so the Chair feels disposed to adhere to the precedents followed uniformly in the House, and always in the Committee of the Whole until the last legislative day, and therefore overrules the point of order.

4043. On February 5, 1898,[1] the fortifications appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

For steel field guns, $30,000.

Mr. John A. T. Hull, of Iowa, made the point of order against these and succeeding paragraphs that they belonged to the jurisdiction of the Committee on Military Affairs and not to that of the Appropriations Committee.

After debate, the Chairman[2] held:

The Chair will state that the gentleman from Iowa [Mr. Hull] notified the Chair the other day that he would raise the point of order on this question, and the Chair has accordingly taken occasion to examine some of the precedents bearing directly upon the question at issue.

Prior to the Forty-ninth Congress the Committee on Appropriations had jurisdiction over all appropriations relating to the Army. In that Congress appropriations relating to the Military Academy and such appropriations as are now carried by the military bill were given to the Committee on Military Affairs. That was the first distribution of the appropriations amongst the committees.

During all the history of the appropriation bills the items now challenged by the gentleman from Iowa, when the Committee on Appropriations had control of these various bills—for the several Departments of the Government—were always carried in the fortifications bill. After the division of the appropriations among the several committees of the House, the question was raised in the Fiftieth Congress as to whether the Military Committee or the Committee on Appropriations, in charge of the fortification bill, should control the items carried here.

An elaborate debate was had at that time, with Mr. Blount, of Georgia, in the chair, an experienced parlimentarian; and after a thorough and full discussion Mr. Blount held that the Committee on Appropriations had jurisdiction of these items, and that they did not belong to the Committee on Military Affairs. Mr. Springer, of Illinois, also held the same when the question was before him as Chairman of this committee.

In the Fifty-first Congress two bills were reported to the House with the items in question embodied in each—the military bill and the fortifications bill. The military bill was first considered. Mr. Allen, of Michigan, was then in the chair, and, as the Chair now remembers, the gentleman from Illinois [Mr. Cannon] was the chairman of the Committee on Appropriations and raised the point of order which is now raised as to the jurisdiction of the committee.

Mr. Allen held that the Military Committee had jurisdiction of the items in question. Mr. Cannon then moved to strike out the items, holding that the Committee on Appropriations had control of them, and that they were already provided for in the fortifications bill about to be considered; and the committee, by a decisive vote, struck them out of the military bill, and thus, negatively at least, held that the committee reporting the fortifications bill had jurisdiction of them.

When this bill, in the Fifty-first Congress, was being considered in Committee of the Whole, Mr. Payson, of Illinois, was in the chair, and Mr. Cutcheon, of Michigan, then chairman of the Committee on Military Affairs. He raised the identical point of order now submitted by the gentleman from Iowa, and at that time it was fully argued by leading Members of the House on both sides. The chairman of the committee held that this committee had jurisdiction of the items.

Now, without going into the question as an original proposition, the Chair finding as it does that this committee has always had jurisdiction of these items and that on three several occasions where the question has been challenged the Chairman of the Committee of the Whole House on the state of the Union has held that the Committee on Appropriations should exercise jurisdiction over the matter, the present occupant of the chair feels bound by the decisions of his predecessors, and will hold the point of order not well taken.

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[1] Second session Fifty-fifth Congress, Record, pp. 1479–1481.

[2] Albert J. Hopkins, of Illinois, Chairman.

4044. On January 10, 1907,[1] the army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

Converting muzzle-loading guns for saluting purposes: For converting muzzle-loading field guns to breech-loading guns for saluting purposes, and for necessary mounts for the same, $5,250.

Mr. Walter I. Smith, of Iowa, made the point of order that the item was not within the jurisdiction of the Committee on Military Affairs.

The Chairman[2] sustained the point of order.

4045. The maintenance and equipment of arsenals and armories are within the jurisdiction of the Appropriations Committee, while the Military Affairs Committee has charge of the manufacture of small arms, equipments, etc.—On February 1, 1900,[3] the Speaker[4] rendered the following decision:

The Chair submits the opinion which he will now give to the House, on a matter submitted to him by the House a few days ago.

On Monday, January 22, 1900, by the unanimous consent of the House, the following was submitted and agreed to:

"The SPEAKER. The gentleman from Iowa [Mr. Hull] asks unanimous consent of the House that all orders—

"Touching so much of House Document No. 291, first session Fifty-sixth Congress, as refers to the Rock Island Armory, Rock Island, Ill., and to Springfield Armory, Springfield, Mass.; and

"Touching so much of the estimate of $750,000 for infantry, cavalry, and artillery equipment, submitted on page 135 of the Book of Estimates for the fiscal year 1901, as includes machinery, tools, and fixtures for their manufacture at the arsenals; and

"Touching so much of the estimate of $1,100,000 for the manufacture of arms, submitted on page 136 of the Book of Estimates for the fiscal year 1901, as includes machinery, tools, and fixtures for their manufacture—

"be vacated, and the same shall be placed on the Speaker's table for reference under the rules, as though no orders had heretofore been taken by the House or the Speaker touching the reference of these items."

In order to consider intelligently the matter submitted, the Chair calls attention to the exact provisions covered by the above submission. In Document No. 291, first session Fifty-sixth Congress, the following is a detailed statement from said document of the matter submitted:

Rock Island Armory, Rock Island, Ill.:	
Completing the installation of the plant and the purchase of tools, fixtures, and other appliances for the manufacture of small arms in the armory shops at Rock Island Arsenal, to be available until expended or otherwise ordered by Congress (act of March 3, 1899, vol. 30, p. 1073, sec. 1)	$509,000.00
Springfield Armory, Springfield, Mass.:	
Addition to water shops (submitted)	95,598.71
Additional machinery for water shops (submitted)	90,680.70
Additional machinery for hill shops (submitted)	113,438.60
(To be available until expended or otherwise ordered by Congress.)	
Total	299,718.01

[1] Second session Fifty-ninth Congress, Record, p. 907.

[2] Frank D. Currier, of New Hampshire, Chairman.

[3] First session Fifty-sixth Congress, Record, p. 1397; Journal, pp. 219, 220.

[4] David B. Henderson, of Iowa, Speaker.

The parts submitted from the Book of Estimates for the year ending June 30, 1901, are to be found on pages 135 and 136 of said book, and are as follows:

"Ordnance, ordnance stores, and supplies: For manufacture of metallic ammunition for small arms and ammunition for reloading cartridges, including the cost of targets and material for target practice, ammunition for burials at the National Home for Disabled Volunteer Soldiers and its several branches, including National Soldiers' Home in Washington, DC.; marksmen's medals and insignia for all arms of the service"—

Now, mark—

"including machinery, tools, and fixtures for their manufacture at the arsenals.

"Manufacture of arms: Manufacture, repairing, procuring, and issuing arms at the national armories, including machinery, tools, and fixtures for their manufacture."

The part in dispute in the first item is in these words:

"Including machinery, tools, and fixtures for their manufacture at the arsenals."

The part submitted in the next item is as follows:

"Including machinery, tools, and fixtures for their manufacture."

It will be seen that the four items in controversy provide only for fitting the plants for the purpose of doing certain work, and provide no money for manufacturing articles after the plants are created. The Committee on Appropriations contends that it is entitled to appropriate money for establishing plants of the kind expressed in the items in controversy, and concedes to the Committee on Military Affairs the right to appropriate the money for the manufacture of the articles turned out by these plants. The Committee on Military Affairs contends that it is entitled not only to appropriate money for the manufacturing of the articles, but to make the appropriations for the installation and enlargement of the plants. In other words, the Committee on Military Affairs contends for the entire control through appropriations of the whole subject-matter embraced in these four items. It is to settle this controversy between these two committees that the matter, with the consent of the House, has been submitted to the Chair.

Let us first see what the rules provide in respect to these two committees. Rule XI, section 3, is as follows:

"To appropriation of the revenue for the support of the Government, as herein provided, viz, for legislative, executive, and judicial expenses; for sundry civil expenses; for fortifications and coast defenses; for the District of Columbia; for pensions; and for all deficiencies: to the Committee on Appropriations."

Rule XI, section 12, is as follows:

"To the military establishment and the public defense, including the appropriations for its support and for that of the Military Academy: to the Committee on Military Affairs."

Looking at these two sections together, and without considering any other matters, it would seem clear to the Chair that all matters pertaining to the military establishment and the public defense, excepting for fortifications and coast defenses, and excepting deficiencies for the military establishment and the public defense, should be considered by the Committee on Military Affairs. In other words, that the Committee on Appropriations should be limited in its consideration of appropriations to fortifications and coast defenses and to deficiences growing out of these, and also to deficiencies growing out of appropriations for the military establishment and the public defense.

The Chair, however, feels compelled to go beyond the clear declarations of these sections of Rule XI and see what precedents there are bearing upon the question in issue. The two committees have exhaustively investigated the precedents and submitted the results to the Chair. As stated by the Chair in a recent decision, precedents should be followed where possible. It is a great advantage to the Congress to have before it the decisions of previous Congresses on any question liable to come up. If the decisions of the past, carefully considered, made by Speakers, chairmen, and by the House itself, are to be disregarded, confusion and uncertainty would constantly prevail. The Chair has already indicated in another decision that he would prefer to follow a precedent clearly established, though the question if originally presented to him would receive different treatment.

Let us look, then, at the history of this class of legislation: Prior to December 18, 1885, with the single exception of the agricultural bill, all appropriation bills were given to the Committee on Appropriations.

In the second session of the Forty-sixth Congress, in 1880, the agricultural bill was given to the Committee on Agriculture. A careful examination of the Statutes at Large will show that during the last twenty years the sundry civil bill appropriated for buildings, roads, sewers, bridges, and machinery at the arsenals and armories. This, it will be observed, goes back of the segregation of the appropriation bills in 1885, and it brings the action of the House up to the current fiscal year, when the first exception is found. The military bill for the present year has made provision for such appropriations. During the same twenty years the army bill appropriated for the manufacture of small arms, equipments, ammunition, etc. It should be home in mind also, in this connection, that the very first appropriation bills brought in by these two great committees, immediately following the segregation of the appropriation bills, give all the matters in dispute which were then provided for to the Appropriations Committee and none of these to the Committee on Military Affairs.

This would indicate the first interpretation which the House put upon these bills when the segregation took place in the Forty-ninth Congress.

And it should also be borne in mind that the Rock Island Arsenal was provided for in the sundry civil bill, following the segregation, appropriation being made for machinery and shop fixtures. (See 24 Stat. L., p. 529.)

In the appropriation bill for the current year, all of the items in controversy, or most of them, will be found in the army appropriation bill. This is exceptional. Much stress is laid upon this fact by the Committee on Military Affairs, because objection was not made by the Committee on Appropriations.

On the contrary, the Committee on Appropriations claim that this was overlooked by them and grew out of the great pressure of work before the several committees during their excessive labors in the last Congress, and also because the Military Committee was given so much way and consideration incident to our wars. It is proper to state, in this connection, that the Book of Estimates invited this action by the Military Committee. That book adopted new phraseology in the estimates, differing from prior estimates, so that these items were before the Committee on Military Affairs when making up its bill and were not before the Committee on Appropriations so as to attract its attention, as they had done in the past. The Chair is of the opinion that this should in no way be considered as a precedent to govern his decision as against the uniform practice, long, well-considered discussions, and carefully rendered opinions prior thereto.

The Chair desires to say a word in regard to this Book of Estimates.

As the House is doubtless aware, the estimates of the several Departments are sent, as required by law,[1] to the Secretary of the Treasury, who compiles the Book of Estimates. It is then printed in a branch office of the Government Printing Office, under the supervision of the Public Printer, in the Treasury Department.

The Chair has investigated to see whether these Books of Estimates, or the several parts thereof have been referred to the several committees, and finds the practice to be that these Books of Estimates are sent in bulk to the document room, and there the several committees get the books. 'With one exception, the Chair is unable to find that they have ever been referred by the Speaker, although the Book of Estimates is addressed to the Speaker of the House of Representatives. Neither in the last Congress nor in this Congress have they come to him, and therefore they have not been referred by him to the several committees.

During this period many bitter contests have arisen between the two committees on this subject of jurisdiction, and each time the final decision of the matter has been in favor of the jurisdiction of the Committee on Appropriations.

These decisions were made in relation to subjects which the Appropriations Committee claimed were, and had been, properly part of the fortifications bill. In this case all the conditions are the same except that the items in dispute are claimed for the sundry civil bill.

While acting as Chairmen in the Committee of the Whole House on the state of the Union, decisions[2] favorable to the Committee on Appropriations have been made by Messrs. Blount, of Georgia; Payson, of Illinois; Hopkins, of Illinois, and Springer, of Illinois; Mr. Allen, of Michigan, while in the chair, made a different ruling, but the House promptly, on motion of Mr. Cannon, of Illinois, sustained

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[1] Rev. Stat., sections 3669, 3670, 3672; 23 Stat. L., p. 254.

[2] See sections 4042, 4043 of this volume.

the claim of the Committee on Appropriations by striking the paragraph in controversy from the army bill. Many days have been spent in discussions of the question, one struggle lasting for two entire days, and another struggle for three entire days, but always resulting in favor of the jurisdiction of the Committee on Appropriations, whether the decision was made by a Chairman, or by the Committee of the Whole House, or by the House itself.[1]

The several controversies that have taken place were for the purpose of maintaining the individuality of the fortifications bill, and also of the army bill. Each of the great appropriation bills has an individuality which it has retained for about thirty years[2] and which the House has shown itself reluctant to violate. For instance, the Appropriations Committee is given under the rule jurisdiction of the subject of "fortifications and coast defenses." Field guns for the use of the Army would scarcely seem to properly belong to this committee, but it has been decided repeatedly that the Appropriations Committee has jurisdiction of the subject of field guns, because their fabrication for a long term of years belonged to the fortifications appropriation bill. For the same reason the Committee on Appropriations has been given and held jurisdiction of Watervliet Arsenal, where heavy guns are made.

The Chair therefore holds that the appropriations for the manufacture of small arms and equipments for the infantry, cavalry, and artillery at the armories and arsenals are within the jurisdiction of the Committee on Military Affairs, and that the appropriations for buildings, installation of plant, machinery, tools, fixtures for manufacturing small arms and equipments belong to the Committee on Appropriations, and accordingly the Chair refers the four items in controversy to that committee, subject to the approval of the House.

If there is no objection, the reference will accordingly be made. [After a pause.] The Chair hears no objection.

4046. On January 10, 1907,[3] the army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

For range finders and other instruments for fire control in field batteries, and the machinery necessary for their manufacture at the arsenals, $30,000.

Mr. Walter I. Smith, of Iowa, said:

I make the point of order against the words in this paragraph, "and the machinery necessary for their manufacture at the arsenals." I make the point of order that it is not within the jurisdiction of the Committee on Military Affairs and was so ruled at the last session of this House.

The Chairman[4] sustained the point of order.

4047.—On March 1, 1906,[5] the army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

Ordnance stores—Ammunition: Manufacture or purchase of ammunition and materials therefor for small arms for reserve supply, and for the machinery necessary for its manufacture at arsenals; ammunition for burials at the National Soldiers' Home in Washington, D.C.; ammunition for firing the morning and evening gun at military posts prescribed by General Orders, No. 70, Headquarters of the Army, dated July 23, 1867, and at National Home for Disabled Volunteer Soldiers and its several Branches, including National Soldiers' Home in Washington, D. C., and Soldiers and Sailors' State Homes, $629,000.

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[1] See Congressional Record, second session, Fiftieth Congress, p. 1005; First session Fiftieth Congress, pp. 36, 53, 5342, 7095, 7311, 7505, 7581, 7895, 8266, 8473.

[2] In the Forty-first Congress, in 1871, Mr. Dawes, of Massachusetts, was Chairman of the Committee on Appropriations, which had jurisdiction of all the appropriations. He improved the classification of the bills, increasing the sundry civil bill from 11 to 22 pages. At that time arsenals and armories were transferred from the army bill to the sundry civil bill.

[3] Second session Fifty-ninth Congress, Record, p. 907.

[4] Frank D. Currier, of New Hampshire, Chairman.

[5] First session Fifty-ninth Congress, Record, p. 3231.

Mr. James A. Tawney, of Minnesota, made a point of order against the words, "and for the machinery necessary for its manufacture at arsenals," on the ground that it was not within the jurisdiction of the Committee on Military Affairs and was new legislation.

Mr. Tawney argued that this question had already been decided in the House; but Mr. John A. T. Hull, of Iowa, urged that the ruling heretofore made applied to the installation of a new plant, but not to the keeping up of repairs.

The Chairman [1] held:

The Chair will call attention to the decision of Speaker Henderson. The decision was not limited to installation and buildings or plants, but contained also exactly the language to which the point of order has just been made. I read from the original decision of the Speaker, "And that the appropriations for buildings, installation of plants, machinery, tools, fixtures for the manufacture of small arms and equipment therefor to the Committee on Appropriations." Therefore the Chair feels constrained to sustain the point of order.

4048. Appropriations for vessels for submarine mine and torpedo work in connection with coast defenses belong to the jurisdiction of the Committee on Appropriations.

The acts of the Executive Departments in submitting estimates are not of effect in determining questions of jurisdiction.

On March 1, 1906,[2] the Army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

For completing the equipment of military posts with the necessary lighters, launches, and yawls for submarine mine work, including the purchase of one torpedo planter for use on the Pacific coast, $150,000.

Mr. Walter I. Smith, of Iowa, raised the point of order that this paragraph was not authorized by existing law, that it changed the existing law, and that the matter was not a matter within the jurisdiction of the Committee on Military Affairs to report, but within the jurisdiction of the Committee on Appropriations.

After debate, the Chairman [1] held:

The point of order made by the gentleman from Iowa raises again the question of jurisdiction between the Committee on Appropriations and the Committee on Military Affairs. The Chair has again been referred to the Book of Estimates, furnished by the Executive Departments of Congress, as a ground for holding that these items should go to the Committee on Military Affairs. The present occupant of the chair must again express his emphatic dissent against this body being influenced in the interpretation of its rules by the Executive Departments.

I do not know of any place where the noninterference of the executive with the legislative departments should be more carefully or more jealously guarded than in this House; and whether the Book of Estimates calling for certain items from certain committees is based upon an ignorance of the rules of this House or upon a conscious intention to influence the course of appropriations contrary to the rules of the House, the present occupant of the chair believes that it would be the unanimous opinion of this body that such estimates sent in such way should not be construed is affecting in any way the rules of this body. The question, then, is whether the items in this paragraph come under the rules by which the Military Affairs Committee takes jurisdiction of all those matters relating to the military establishment and to public defense, including appropriation for its support, or whether they go to the Appropriations Committee, which has jurisdiction, among other things, of fortifications

[1] Henry S. Boutell, of Illinois, Chairman.

[2] First session Fifty-ninth Congress, Record, pp. 3227–3229.

and coast defenses. It is admitted in the argument that the submarine mines are for the defense of the coast, that the torpedo planting is for the purpose of planting torpedoes in the harbors on our coast line. So that it would seem from the debate quite clear to the Chair that these items belong exclusively to the fortification bill.

But there is another method of determining what the jurisdiction of the committee having charge of the fortification bill is in that particular measure, and the Chair has endeavored to examine the fortification bills prior to the division of the jurisdiction of the committee, and the Chair will read the items from the last fortification bill passed by Congress before the division of the jurisdiction as showing what was included in this bill when the division took place. In the bill making provision for the fortifications passed in the second session of the Forty-eighth Congress are these items:

"For the purchase of movable submarine torpedoes, propelled and controlled by power operated and transmitted from shore stations, as may be recommended by the Board of Engineers of the Army of the United States and approved by the Secretary of War, $50,000.

"For improvements, competitive test, and purchase of motors for movable torpedoes, $25,000.

"For purchase of appliances for submarine mines for harbor defense, $10,000.

"For continuation of torpedo experiments and for practical instruction of engineer troops in the details of the service, $20,000."

So that it seems clear to the Chair from the character of these instrumentalities, and principally from the fact that the same items, or exactly similar items, were uniformly carried in the fortifications bill for twenty years and were in the last bill when the division of jurisdiction took place, that these items belong to the fortifications bill; and the Chair so holds, and sustains the point of order.

For the same reason the Chairman ruled out this paragraph:

Construction of cable ship: For the construction of a seagoing cable ship of about 900 net tonnage for use in repairing and keeping in proper condition the fire-control submarine cables used in connection with the system of harbor defense on the Atlantic seaboard, $215,000.

4049. Appropriations for barracks and quarters for troops of the Seacoast Artillery are within the jurisdiction of the Committee on Appropriations and not of the Committee on Military Affairs.—On January 9, 1907,[1] during consideration of the army appropriation bill in Committee of the Whole House on the state of the Union, Mr. John A. T. Hull, of Iowa, proposed this amendment:

Insert after line 2, page 31, the following: "For barracks and quarters for troops of the Seacoast Artillery, $1,300,000."

Mr. James A. Tawney, of Minnesota, made the point of order that the subject belonged to the jurisdiction of the Committee on Appropriations.

After debate on this day and January 10, the Chairman[2] held:

It is unfortunate that the jurisdiction of these two committees is not clearly defined in the rules. As it is, the only guide the Chair has is the course pursued in regard to this particular appropriation in the past. The fact that before the army appropriation bill was taken away from the Committee on Appropriations and given to the Committee on Military Affairs it carried nothing except for the maintenance of the Army affords little light on this question, since it has been the invariable practice of the Military Committee, since given jurisdiction of the army appropriation bill, to appropriate for barracks and quarters. Had this item been carried in the fortifications bill there would probably have been little controversy about it, but if the Appropriations Committee has jurisdiction, then for the purposes of this case it matters not in what bill reported by that committee the item is carried. The rules provide that the Committee on Appropriations shall have jurisdiction of fortifications and coast

[1] Second session Fifty-ninth Congress, Record, pp. 854, 900.

[2] Frank D. Currier, of New Hampshire, Chairman.

defenses. The construction of seacoast fortifications is clearly the province of the Committee on Appropriations under this rule. Are not the barracks at the fortifications a part thereof? So far as the Chair is informed, the army appropriation bill has never, until the bill under consideration was presented, carried in specific term any appropriation for barracks for Seacoast Artillery. That has always been carried in a bill reported by the Committee on Appropriations. The fortifications appropriation bill approved March 3, 1896, which was after the adoption of the so-called "Endicott project," carried an appropriation for the erection of necessary buildings connected with the new fortifications. In the fortifications bill for the next year this provision was carried in the following language:

"That prior to any expenditure of money for the construction of necessary buildings connected with the new fortifications," etc.—Congress apparently recognizing the jurisdiction of the Committee on Appropriations over this subject. The next year the appropriation for this purpose was included in the sundry civil appropriation bill in the following language:

"For the erection of barracks and quarters for the artillery in connection with the adopted project for seacoast defense."

And it has been carried every year since in the sundry civil appropriation bill down to and including the first session of this Congress, when the language was as follows:

"For the erection of barracks and quarters for the artillery in connection with the adopted project for seacoast defense."

The fact that the War Department may have used some of the money carried in the army appropriation bill for barracks for seacoast artillery without any specific instruction from Congress so to do can not affect the question of jurisdiction under consideration. In an exhaustive and able opinion delivered by Mr. Speaker Henderson on February 1, 1900, involving a somewhat similar provision on the question of jurisdiction between the Committee on Military Affairs and the Committee on Appropriations, he said:

"During this period many bitter contests have arisen between the two committees on this subject of jurisdiction, and each time the final decision of the matter has been in favor of the jurisdiction of the Committee on Appropriations.

"These decisions were made in relation to subjects which the Appropriations Committee claimed were, and had been, properly part of the fortifications bill. In this case all the conditions are the same, except that the items in dispute are claimed for the sundry civil bill.

"While acting as Chairman in the Committee of the Whole House on the state of the Union, decisions favorable to the Committee on Appropriations have been made by Messrs. Blount, of Georgia; Payson, of Illinois; Hopkins, of Illinois, and Springer, of Illinois. Mr. Allen, of Michigan, while in the chair, made a different ruling, but the House promptly, on motion of Mr. Cannon, of Illinois, sustained the claim of the Committee on Appropriations by striking the paragraph in controversy from the army bill. Many days have been spent in discussions of the question, one struggle lasting for two entire days and another struggle for three entire days, but always resulting in favor of the jurisdiction of the Committee on Appropriations, whether the decision was made by a Chairman or by the Committee of the Whole House or by the House itself.

"The several controversies that have taken place were for the purpose of maintaining the individuality of the fortifications bill, and also of the army bill. Each of the great appropriation bills has an individuality which it has retained for about thirty years and which the House has shown itself reluctant to violate. For instance, the Appropriations Committee is given under the rule jurisdiction of the subject of 'fortifications and coast defenses.' Field guns for the use of the Army would scarcely seem to properly belong to this committee, but it has been decided repeatedly that the Appropriations Committee has jurisdiction of the subject of field guns, because their fabrication for a long term of years belonged to the fortifications appropriation bill. For the same reason the Committee on Appropriations has been given and held jurisdiction of Watervliet Arsenal, where heavy guns are made."

In view of the fact that up to this time the Committee on Appropriations has invariably claimed and exercised without objection the right to appropriate in express terms for the construction of barracks for seacoast fortifications, and until this bill was presented the Committee on Military Affairs has not attempted to so appropriate, the Chair is constrained to sustain the point of order.

4050. Awards of money to foreign nations in pursuance of treaties for the adjustment of claims or as acts of grace have been reported by the Committee on Appropriations.—Appropriations for the Exposition at Paris in 1900 and for the Centennial Anniversary of the Founding of City of Washington were referred to the Appropriations Committee.[1] Awards of money on account of the subjects of other governments who have sustained injury in this country are provided for in the general deficiency appropriation bill, and hence the jurisdiction belongs to the Appropriations Committee.[2]

Awards of money to foreign nations belong to the jurisdiction of the Committee on Appropriations. In 1879[3] the Halifax award was reported in the sundry civil bill. The Bering Sea award in 1898[4] was not reported from any committee, but was offered on the floor by the Chairman of the Appropriations Committee; and on February 17, 1899, the bills to pay the award to Spain under the treaty of peace were referred to the Appropriations Committee, and the appropriation was reported therefrom.[5]

4051. A bill authorizing a new Soldiers' Home is reported by the Committee on Military Affairs, but the appropriation therefor comes from the Committee on Appropriations.—A bill authorizing a new Branch Home for Disabled Volunteer Soldiers is considered by the Committee on Military Affairs, but the appropriation for building such a home is made through the Appropriations Committee.[6]

4052. The appointment of Managers for the National Home for Disabled Volunteer Soldiers being vested by law in Congress, a paragraph making such appointment was held in order on the sundry civil appropriation bill.—On June 16, 1890,[7] in Committee of the Whole House on the state of the Union, Mr. E. S. William, of Ohio, offered this amendment to the sundry civil appropriation bill:

> That the following-named persons be, and are hereby, appointed Managers of the National Home for Disabled Volunteer Soldiers, to wit: Edmund N. Morrill, of Kansas, for the unexpired term of office of John A. Martin, deceased; Alfred L. Pearson, of Pennsylvania, for the unexpired term of office of John F. Hartranit, deceased.

Mr. Mark S. Brewer, of Michigan, made a point of order against the amendment, which was later renewed by Mr. Joseph D. Sayers, of Texas, who held that the amendment would be new legislation.

After debate, the Chairman[8] held:

> The appointment of these officers, as the Chair understands, is vested by law in Congress. * * * The Chair overrules the point of order.[9]

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[1] Third session Fifty-fifth Congress, Record, p. 25.

[2] 29 Statutes at Large, p. 267.

[3] 20 Statutes at Large, p. 240.

[4] Second session Fifty-fifth Congress, Journal, p. 633.

[5] Third session Fifty-fifth Congress, Record, p. 2114; 31 Statutes at Large, p. 1010; also Record, p. 1944, appropriation of money in payment to Spain as provided in the treaty of peace.

[6] Second session Fifty-fourth Congress, House Report No. 2866; 30 Statutes at Large, p. 54.

[7] First session Fifty-first Congress, Record, p. 6144.

[8] Julius C. Burrows, of Michigan, Chairman.

[9] Joint resolutions making these appointments are usually reported from the Committee on Military Affairs. (See sec. 4185 of this volume.)

4053. Appropriations compensating heirs of foreigners killed by mobs have come within the jurisdiction of the Committee on Appropriations.

A message of the President is usually referred by direction of the Speaker, but a Member may move a reference.

On December 15, 1902,[1] the Speaker laid before the House a message from the President, recommending, as an act of grace, an appropriation for the heirs of certain Italians killed by a mob at Erwin, Miss.

The Speaker having announced that the message would be referred to the Committee on Appropriations, Mr. Robert R. Hitt, of Illinois, suggested that the reference should be to the Committee on Foreign Affairs.

The Speaker[2] said:

> The Chair has had that matter investigated, and is advised that claims of this character have usually gone to the Committee on Appropriations.

4054. The creation and history of the Committee on the Judiciary, section 4 of Rule XI.

The rule assigns to the Judiciary Committee jurisdiction of subjects relating to "judicial proceedings, civil and criminal law."

Section 4 of Rule XI provides for the reference of subjects relating—

> to judicial proceedings, civil and criminal law, to the Committee on the Judiciary.

This committee now has eighteen members.

The rule is the form adopted in the revision of 1880,[3] and was derived from the old rule No. 83, which dated from June 3, 1813, when Mr. J. G. Jackson, of Virginia, presented a resolution for the appointment at the beginning of each session of an additional standing committee, Committee on the Judiciary, to take into consideration matters "touching judicial proceedings." Mr. Jackson called attention to defects in the laws relating to the judiciary, and in order to remedy these and to render the decisions of the House more uniform on these subjects, he urged the establishment of the committee. It was voted unanimously, and the committee was composed of seven members.[4]

4055. The Committee on the Judiciary has reported bills prohibiting the desecration of the national flag, and dealing with refusal of public officers to execute acts of Congress.—The Committee on the Judiciary has reported on the following subjects:

In 1890[5] and 1894[6] on bills to prevent the desecration of the flag of the United States.

In 1896[7] on the refusal of public officers to execute acts of Congress.

4056. The Committee on the Judiciary has a general but not exclusive jurisdiction over joint resolutions proposing amendments to the Constitution of the United States.—Joint resolutions proposing amendments

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[1] Second session Fifty-seventh Congress, Record, p. 39.

[2] David B. Henderson, of Iowa, Speaker.

[3] Second session Forty-sixth Congress, Record, p. 205.

[4] First session Thirteenth Congress, Journal, p. 19 (Gales and Seaton ed.); Annals, Vol. I, p. 132.

[5] First session Fifty-first Congress, Report No. 2128.

[6] Second session Fifty-third Congress, Report No. 677.

[7] First session Fifty-fourth Congress, Report No. 105.

to the Constitution are usually[1] referred to the Committee on the Judiciary, and that committee has reported:

In 1888[2] a resolution relating to the term of office of the President.

In 1893[3] a resolution providing for a national currency.

In 1888[4] a resolution proposing an amendment to the Constitution relating to the hours of labor.

In 1884[5] the resolution (H. Res. 51) proposing a constitutional amendment for the election of postmasters by the people.

In 1888[6] the resolution (H. Res. 15) proposing a constitutional amendment prohibiting the sale and manufacture of intoxicating liquors.

In 1888[7] a resolution proposing a constitutional amendment to authorize national aid to common schools.

In 1900[8] the House by a change of reference conferred on Judiciary, instead of Way and Means, jurisdiction of a resolution for a constitutional amendment to authorize a tax on incomes.

4057. Bills of incorporation are often referred to the Committee on the Judiciary.—The Committee on the Judiciary has reported bills creating corporations, although it has not an exclusive jurisdiction[9] on this subject. It has reported:

In 1901[10] the bill (H. R. 13609) to incorporate the Society of American Florists and Ornamental Horticulturists.

In 1896[11] a bill to incorporate the Grand Lodge of Masons in Indian Territory.

In 1894[12] bill incorporating Supreme Lodge of Knights of Pythias in District of Columbia.

In 1894[13] a bill amending the act incorporating the Smithsonian Institution.

4058. Bills for the removal of political disabilities have been within the jurisdiction of the Committee on the Judiciary.—The Judiciary Committee has jurisdiction of subjects relating to the removal of disabilities imposed by the Constitution or laws of the United States, and has reported:

In 1884,[14] the bill (H. R. 4407) to remove the political disabilities of certain ex-Confederates.

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[1] Resolutions proposing the election of United States by the people, however, are reported by the Committee on Election of President, Vice-President, and Representatives in Congress (see sec. 4300 of this volume), although in 1887 the Judiciary reported this also. (Second session Forty-ninth Congress, Report No. 3796.) See also section 4247 of this volume.

[2] First session Fiftieth Congress, Report No. 1472.

[3] Second session Fifty-second Congress, Report No. 2614.

[4] First session Fiftieth Congress, Report No. 248.

[5] First session Forty-eighth Congress, Report No. 193.

[6] First session Fiftieth Congress, Report No. 249.

[7] First session Fiftieth Congress, Report No. 224.

[8] First session Fifty-sixth Congress, Record, p. 1621.

[9] Incorporation bills are distributed to a large extent to the committees respectively having jurisdiction of related subjects.

[10] Second session Fifty-sixth Congress, Report No. 2638.

[11] First session Fifty-fourth Congress, Report No. 320.

[12] Second session Fifty-third Congress, Report No. 934.

[13] Second session Fifty-third Congress, Report No. 269.

[14] First session Forty-eighth Congress, Report No. 1855.

In 1893,[1] the bill removing restrictions as to loyalty of persons in pension and bounty land claim cases.

In 1899[2] the bill (H. R. 11955) repealing the sections of the Revised Statutes disqualifying persons who had participated in the civil war on the Confederate side from holding public office.

In 1898[3] the bill (S. 4578) to remove all political disabilities imposed by the fourteenth article of the Constitution.

4059. The general subject of Federal control of corporations has been referred to the Committee on the Judiciary.—On December 13, 1905,[4] the House, in Committee of the Whole House on the state of the Union, proceeded to consideration of the resolution (H. Res. 42) for the distribution of the President's message, the first paragraph of which was as follows:

Resolved, That so much of the annual message of the President of the United States to the two Houses of Congress at the present session as relates to the revenue and the bonded debt of the United States be referred to the Committee on Ways and Means.

To this the Ways and Means Committee had recommended an amendment to insert after the words "United States," where they occur the second time, the words "and insurance."

In explanation Mr. Sereno E. Payne, of New York, said:

At the beginning of this session a number of bills were introduced regulating insurance and placing it under the control of the United States, or proposing to do so, in various ways. Most of those bills provided a tax upon insurance companies, the authors of them presumably believing that that was the only method by which Congress could deal with them under the Constitution of the United States. In this I think they were exactly right. I do not see what authority the Congress of the United States has over insurance companies, except under the clause of the Constitution giving the taxing power. I understand that the Supreme Court has decided that the United States can not get jurisdiction under the Constitution over insurance companies under the interstate-commerce clause in the Constitution, and it would seem that taxation was the only way in which the Constitution gave any jurisdiction whatever.

These bills were referred by the Speaker to the Committee on Ways and Means. It was done without any intimation from any member of that committee. The first I knew of it, at least, was that those bills had been go referred. Some of them did not involve the taxing power, * * * although most of them do involve the question of taxation. Those bills are there now. The Committee on Ways and Means was not anxious to take up this subject, but, of course, coming to us as it did, these bills, under the rules of the House, plainly going to that committee and to no other, because they involved the question of taxation, and having been placed there by the direction of the Speaker, the committee thought unanimously that that was where they belonged, and directed me to offer the amendment in the resolution, which is proposed in language and in terms strictly sending those bills to the Committee on Ways and Means.

It has been a rule, I am informed by the Clerk at the Speaker's desk, that whenever a class of bills comes in and the main feature compels the reference of a portion of those bills to a certain committee, for uniformity it is the custom to send all of those bills to that committee, whether they involve the particular question or not. But if I am right in the proposition that the only way Congress can deal with insurance companies is under the taxing clause of the Constitution, then no other committee would have jurisdiction of this subject-matter and it would belong to the Committee on Ways and Means.

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[1] First session Fifty-third Congress, Report No. 26.

[2] Third session Fifty-fifth Congress, Report No. 2016.

[3] Second session Fifty-fifth Congress, Report No. 1407.

[4] First session Fifty-ninth Congress, Record p. 349.

Messrs. William P. Hepburn, of Iowa, and James R. Mann, of Illinois, dissented from this view, Mr. Hepburn saying:

I do object to the amendment made in the fourth line, by inserting the words "and insurance." The effect of that is to carry all matters of legislation concerning the control of insurance to the Committee on Ways and Means; and the reason assigned for that is that in the opinion of the Chairman the only manner in which Congress can have jurisdiction over that subject is through the exercise of the taxing power.

Mr. Chairman, even if that were true, that would not indicate, necessarily, the direction which this class of business should take in assignment to committees. It is true that all matters of taxation, where taxation—the raising of revenue—is the object to be attained, should be considered by the Committee on Ways and Means; but where taxation is resorted to solely for the purpose of securing jurisdiction solely for the purpose of the exercise of a power, I submit that it is not the rule of this House to send matters of that kind to that committee—notably the legislation with reference to oleomargarine. A tax nominal was resorted to only to give power to the Congress, or justify it in the exercise of power. Yet you will remember that that matter was considered and reported by the Committee on Agriculture. They had jurisdiction of it, recognizing the fact that the assumption upon the part of the Committee on Ways and Means was a mere fiction. The object was not to secure revenue. The object was to secure the right to exercise a power. Therefore the taxing power was resorted to, or taxation was made the pretext. There are a number of instances that might be given where this rule has been observed and where jurisdiction of the Committee on Ways and Means has been denied, notwithstanding the fact that a nominal tax was provided for in the legislation sought.

Mr. Chairman, I am willing to concede that there is more than one decision of the Supreme Court in which it has been held, in a casual way, that insurance was not commerce; but I want to call attention to the fact that that was not the major proposition considered by the Supreme Court, that but little attention was paid to that question in the argument, that that was simply one of the incidents in the case; and it is the opinion of a great many men learned in the law that when the proposition is fairly made, when the attention of the Supreme Court is called to the fact of the immense interest there is in insurance, interwoven inextricably with trade, when it is remembered that the annihilation of insurance would well-nigh annihilate commerce, that thousands and tens of thousands of commercial enterprises would never for a moment be considered or undertaken but for the auxiliary of insurance; when it is shown how interwoven insurance is with all commercial transactions, with the millions of money invested in trade and commerce, that another view of that subject may be taken. And I want to call attention to the fact that I have in my possession a bill prepared by the secretary of the National Bar Association, and, as I understand, a bill that met with their approval, from which it is clear that, in their opinion—in the opinion of the National Bar Association of the United States—the regulation of insurance companies is a power given to Congress under the commerce clause of the Constitution. The language of these gentlemen, as used in the bill, declares that the writing of policies and other business of that character is commerce, and therefore it is a power conferred by the commerce clause of the Constitution.

On December 14 [1] the debate was continued and several days thereafter.

On January 4, 1906,[2] Mr. Payne announced that the amendment he had proposed would be withdrawn, and also that no amendment would be offered giving jurisdiction to the Committee on Interstate and Foreign Commerce.

Thereupon Mr. William P. Hepburn, of Iowa, chairman of the Committee on Interstate and Foreign Commerce, offered the following amendment, which was agreed to without division:

That so much of the President's message as relates to corporations be referred to the Committee on the Judiciary, with instructions to report fully at an early day their views as to the power of the Federal Government by legislation to regulate or control said corporations in the management or control of their business and businessmatters, and if said power exists then the extent of such power and under what provisions of the Constitution it is conferred upon the Congress.

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[1] Record, pp. 405–419.

[2] Record, pp. 693–694.

4060. Matters relating to the investigation and regulation of trusts and corporations are within the jurisdiction of the Judiciary Committee.—The general subject of trusts and corporations, even when interstate commerce features have been involved, has been within the jurisdiction of the Judiciary Committee, and it has reported:

In 1890 and succeeding years [1] on general matters relating to trusts.

In 1898 [2] on the bill (H. R. 10249) to regulate interstate transportation of property owned or manufactured by unlawful combinations.

In 1893 [3] on the subject of information in relation to sugar trust; also an investigation of character and operations of the whisky trust.

In 1892 [4] on information in relation to sugar trust.

In 1902 [5] on the subject of corporations engaged in interstate commerce.

In 1904 [6] on the subject of returns of corporations.

In 1884 [7] the bill (H. R. 3058) relative to general incorporation laws of the Territories.

In 1906 [8] on the subjects of corporation returns and regulation of corporations.

4061. Regulation of the traffic in intoxicating liquors, etc., through control of interstate-commerce relations, is within the jurisdiction of the Committee on the Judiciary.—The Judiciary Committee has exercised a jurisdiction relating to the territorial and interstate traffic in intoxicating liquors and other deleterious articles, reporting as follows:

In 1890 and succeeding years [9] on bills relating to the transportation of liquors in original packages.

In 1896 [10] and 1898 [11] on bills in relation to cigarettes and to limit the effect of the regulation of commerce between the several States and with foreign countries in certain cases.

In 1892 [12] on exclusion of intoxicants from Indian Territory.

4062. Charges against judges of the United States courts are usually investigated by the Committee on the Judiciary.—Charges against judges of

[1] First session Fifty-first Congress, Report No. 1707; first session Fifty-fourth Congress, Report No. 13; first session Fifty-sixth Congress, Reports Nos. 1501, 1506; second session Fifty-seventh Congress, Report No. 3375; second session Fifty-eighth Congress, Report No. 2694; third session Fifty-eighth Congress, Record, p. 600.

[2] Second session Fifty-fourth Congress, Report No. 3062.

[3] Second session Fifty-second Congress, Reports Nos. 2601, 2618.

[4] First session Fifty-second Congress, Report No. 1286.

[5] Second session Fifty-seventh Congress, Report No. 3375.

[6] Third session Fifty-eighth Congress, Report No. 4140.

[7] First session Forty-eighth Congress, Report No. 501.

[8] First session Fifty-ninth Congress, Reports Nos. 234, 2491.

[9] First session Fifty-first Congress, Report No. 2604; second session Fifty-fifth Congress, Report No. 667; second session Fifty-seventh Congress, Report No. 3377; second session Fifty-eighth Congress, Report No. 2337.

[10] First session Fifty-fourth Congress, Report No. 2289.

[11] First session Fifty-fifth Congress, Report No. 2324.

[12] First session Fifty-second Congress, Report No. 1866.

the courts of the United States have usually been investigated by the Committee on the Judiciary.[1] Instances of reports are:

In 1894[2] a resolution relating to charges against Judge Augustus J. Ricks, judge of the United States court for the northern district of Ohio.

In 1892[3] on charges against Judge Aleck Boarman.

4063. The Committee on the Judiciary often reports as to questions of law on subjects naturally within the jurisdiction of other committees.—The Judiciary Committee has reported on questions of law relating to subjects generally within the jurisdiction of other committees:

In 1892[4] on the subject of the rights of the Secretary of the Treasury under the specie-resumption law.

In 1894[5] a resolution of inquiry relating to payment of treasury notes under act of 1864.

4064. The settlement of boundary lines between States, or between a State and a Territory, is within the jurisdiction of the Committee on the Judiciary.—The Committee on the Judiciary has exercised jurisdiction over bills relating to the settlement of boundary lines between the States or between States and Territories, reporting—

In 1880[6] the bill to provide for settlement of the boundary between Texas and Indian Territory.

In 1882[7] the resolution (H. Res. 223) defining the boundary between Texas and Indian Territory.

In 1901[8] the resolution (S. Res. 158) ratifying an agreement between Tennessee and Virginia in relation to the boundary line of those States.

In 1904[9] a bill relating to the western boundary of Arkansas.

In 1906[10] on the boundary lines between Oklaloma, New Mexico, and Texas.

4065. The Committee on the Judiciary has jurisdiction of legislation relating to bankruptcy.—The Committee on the Judiciary has jurisdiction of the subject of bankruptcy, and has reported—

In 1882[11] the bill (H. R. 5994) for the repeal of the bankruptcy act.

In 1884[12] the bill (H. R. 5683) relating to a uniform system of bankruptcy.

In 1902[13] a bill on the subject of bankruptcy.

4066. The Committee on the Judiciary has reported bills relating to the rights and privileges of women.—The Committee on the Judiciary has

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[1] For general instances as to this jurisdiction see Chap. LXXIX, sect. 2486–2520 of Vol. III of this work under the subject of impeachments.

[2] Second session Fifty-third Congress, Report No. 1393.

[3] First session Fifty-second Congress, Report No. 1536

[4] First session Fifty-second Congress, Report No. 1780.

[5] Third session Fifty-third Congress, Reports Nos. 654, 1987.

[6] First session Fiftieth Congress, House Report No. 370.

[7] First session Forty-seventh Congress, Report No. 1282.

[8] Second session Fifty-sixth Congress, Report No. 2910.

[9] Third session Fifty-eighth Congress, Report No. 4141.

[10] First session Fifty-ninth Congress, Report No. 1186.

[11] First session Forty-seventh Congress, House Report No. 1401.

[12] First session Forty-eighth Congress, Report, No. 679.

[13] First session Fifty-seventh Congress, Report No. 1698.

jurisdiction of subjects relating to the rights and privileges of women under the Constitution and laws of the United States, and has reported—

In 1882,[1] 1884,[2] 1890,[3] and 1894[4] on resolutions relating to suffrage for women.

In 1888[5] on the subject of married women's rights in the Territories and District of Columbia.

4067. The Committee on the Judiciary reports legislative propositions relating to the service of the Department of Justice, and even of other Departments.—The Judiciary Committee has exercised jurisdiction over bills relating to the service of the Department of Justice, and in a few instances bills relating to the services of other Departments.

On December 6, 1888,[6] the resolutions distributing the President's message referred to the Committee on the Judiciary subjects "touching legislation affecting the Department of Justice."

The committee reported—

In 1890[7] a bill relating to salary of chief clerk of the Department of Justice.

In 1900[8] a bill relating to compensation of United States commissioners in Chinese deportation cases.

In 1896[9] on the subject of regulating the issuing and recording of comnmissions of officers in the Departments.

In 1884[10] the bill (H. R. 6865) relating to oaths to be administered to importers at custom-houses.

In 1889[11] the bill (S. 622) to allow customs oaths to be administered by notaries public.

In 1890[12] a bill relating to warrants, fees, etc., in cases arising under internal revenue laws.

4068. The Committee on the Judiciary has exercised jurisdiction of bills relating to local courts in the District of Columbia and Alaska, and the Territories.—The Committee on the Judiciary has exercised a jurisdiction relating not only to the Federal courts as organized within the United States, but also relating to local courts in districts and Territories.[13] Thus it reported—

At various times[14] bills relating to the court of appeals in the District of Columbia.

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[1] First session Forty-eighth Congress, Report No. 2289.

[2] First session Forty-eighth Congress, Report No. 1330.

[3] First session Fifty-first Congress, Report No. 2254.

[4] Second session Fifty-third Congress, Report No. 395.

[5] First session Fiftieth Congress, Report No. 1189.

[6] Second session Fiftieth Congress, Journal, p. 53.

[7] First session Fifty-first Congress, Report No. 245.

[8] First session Fifty-sixth Congress, Report No. 1096.

[9] First session Fifty-fourth Congress, Report No. 455.

[10] First session Forty-eighth Congress, Report No. 1673.

[11] Second session Fiftieth Congress, Report No. 3564.

[12] First session Fifty-first Congress, Report No. 1359.

[13] See, however, sections 4290, 4291, 4209 of this volume.

[14] Second session Fifty-first Congress, House Report No. 3667; first session Fifty-second Congress, Report No. 1172; second session Fifty-second Congress, House Report No. 2232; first session Fifty-fourth Congress, House Report No. 590; first session Fifty-seventh Congress, Report No. 2555.

Several bills [1] relating to the police court of the District of Columbia.[2]

In 1891 [3] the bill relating to Alaska recording and judicial divisions.

In 1898 [4] the bill (H. R. 10510) to authorize appeals from the United States district court of Alaska; also in 1903 [5] a bill relating to an additional district judge for Alaska.

In 1886 [6] the bill (H. R. 2880) providing for an additional judge in the Territory of Montana.

In 1887 [7] the bill (H. R. 11198) providing for an additional judge for the supreme court of the district of Dakota.

In 1888 [8] the bill (H. R. 1939) providing for an additional judge of the supreme court of Arizona.

In 1893 [9] on a subject relating to the supreme court of Oklahoma.

In 1888,[10] the bill (H. R. 1204) relating to the jurisdiction of courts in Indian Territory.

In 1886,[11] the bill (H. R. 5545) relating to United States courts in Indian Territory.

In 1903,[12] bills relating to judicial boundaries and districts in Indian Territory.

In 1898,[13] the bill (S. 3050) to validate the appointment, acts, and services of certain deputy United States marshals in Indian Territory.

In 1892,[14] on subject of tribal courts.

In 1885,[15] a bill. (H. R. 8173) relating to the jurisdiction of the probate courts of America.

4069. The subjects of criminals, crimes, penalties, and extradition are within the jurisdiction of the Committee on the Judiciary.—The Committee on the Judiciary has exercised a general jurisdiction on the subject of criminals and crimes. Thus it has reported:

In 1896,[16] a bill to reduce the cases in which the death penalty may be inflicted.

In 1882,[17] the bill (H. R. 1675) fixing a distinction between infamous and non-infamous crimes.

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[1] Second session Fifty-first Congress, Report No. 3505; first session Fifty-second Congress, Report No. 1926; second session Fifty-third Congress, Reports Nos. 259, 1469; first session Fifty-fourth Congress, Report No. 1664.

[2] See, however, section 4290 of this volume.

[3] First session Fifty-seventh Congress, Report No. 582.

[4] Second session Fifty-fifth Congress, Report No. 1459.

[5] Second session Fifty-eighth Congress, Report No. 2080.

[6] First session Forty-ninth Congress, Report No. 1454.

[7] Second session Forty-ninth Congress, Report No. 4096.

[8] First session Fiftieth Congress, Report No. 252.

[9] First session Fifty-third Congress, Report No. 150.

[10] First session Fiftieth Congress, House Report No. 57.

[11] First session Forty-ninth Congress, House Report No. 388.

[12] First session Fifty-seventh Congress, Reports Nos. 583, 789.

[13] Second session Fifty-fourth Congress, Report No. 2489.

[14] First session Fifty-second Congress, Report No. 1437.

[15] Second session Forty-eighth Congress, Report No. 2637.

[16] First session Fifty-fourth Congress, House Report No. 108.

[17] First session Forty-seventh Congress, House Report No. 250.

In 1904,[1] a bill relating to a laboratory for study of criminal and defective classes.

In 1903,[2] a bill relating to a national bureau of criminal identification.

In 1891,[3] a bill relating to pardons.

In 1900,[4] a bill amending the extradition laws.

In 1904,[5] a bill relating to extradition in Philippine Islands.[6]

In 1887 [7] and 1891,[8] bills relating to cruelty to animals.

In 1904,[9] a bill relating to train robberies; and in 1896 [10] on the subject of shooting at or throwing into railroad trains.

In 1898,[11] a bill (H. R. 4808) to enable post-office inspectors to arrest certain offenders without warrant upon reasonable suspicion.

In 1894,[12] a bill providing penalty for national bank embezzlers.

4070. The management of national penitentiaries and the authorization of buildings therefor are within the jurisdiction of the Committee on the Judiciary.—The Judiciary Committee has jurisdiction generally over bills relating to the construction and management of penitentiaries. Thus, it has reported:

In 1890,[13] on a bill authorizing the purchase of sites and erection of two prisons.

In 1896,[14] on the selection of a site for the erection of a penitentiary at Fort Leavenworth; also in 1900 [15] on the subject of penitentiaries.

In 1895,[16] on discipline in penal institutions; and in 1906 [17] on commitment of United States prisoners to State reformatories, and on commutation for good conduct of United States prisoners.

In 1901,[18] on the bill (H. R. 13396) to permit the removal of prisoners convicted in consular courts in foreign countries to prisons within the United States.

In 1905,[19] on the subject of the International Prison Congress.

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[1] Second session Fifty-seventh Congress, House Report No. 3172.
[2] First session Fifty-seventh Congress, House Report No. 429.
[3] Second session Fifty-first Congress, House Report No. 3373.
[4] First session Fifty-sixth Congress, House Report No. 1652.
[5] Third session Fifty-eighth Congress, House Report No. 3638.
[6] See, however, sections 4213, 4214 of this volume.
[7] Second session Forty-ninth Congress, House Report No. 3963.
[8] Second session, Fifty-first Congress, House Report No. 3411.
[9] First session Fifty-seventh Congress, House Report No. 952.
[10] First session Fifty-fourth Congress, House Report No. 225.
[11] Second session Fifty-fourth Congress, House Report No. 2723.
[12] Second session Fifty-third Congress, House Report No. 468.
[13] First session Fifty-first Congress, House Report No. 7.
[14] First session Fifty-fourth Congress, House Report No. 1443.
[15] First session Fifty-seventh Congress, House Report No. 2286.
[16] Third session Fifty-third Congress, House Report No. 1593.
[17] First session, Fifty-ninth Congress, House Reports Nos. 2566, 4921.
[18] Second session Fifty-sixth Congress, Report No. 2639.
[19] Third session Fifty-eighth Congress, Report No. 4135.

4071. The Committee on the Judiciary has jurisdiction of the general subject of counterfeiting.—The Committee on the Judiciary has exercised jurisdiction of the general subject of counterfeiting:

In 1884 [1] and 1888,[2] on the subject of counterfeiting money within the United States.

In 1882, [3] the bill (S. 1000) relating to counterfeiting within the United States of notes or bonds of foreign governments.

In 1890,[4] the general subject of counterfeiting; and also a bill relating to the counterfeiting of trade-marks.

4072. The Committee on the Judiciary has exercised jurisdiction over subjects related to the relations of laborers, especially organized laborers, to the courts and to corporations.[5]—The Committee on the Judiciary has at various times reported on subjects relating to the relations of organized labor to the courts and to corporations:

In 1901,[6] the bill (H. R. 8917) to define the word "conspiracy" and to regulate the use of restraining orders and injunctions.

In 1906,[7] on a bill relating to the liability of common carriers to their employees.

In 1892,[8] subject of investigation of Homestead riots.

In 1893,[9] investigation of employment of Pinkerton detectives by corporations engaged in carrying the mails and in interstate commerce at time of Homestead labor troubles.

4073. The subjects of holidays and celebrations have been reported by the Committee on the Judiciary.—The Committee on the Judiciary has reported on the subject of holidays and celebrations:

In 1892,[10] bill (H. R. 79) on subject of Labor Day.

In 1887,[11] the bill (H. R. 11122) to aid in the celebration of the Constitution of the United States.

4074. Bills relating to pensioners' oaths and fraudulent claims have been reported by the Judiciary Committee.—The Judiciary Committee has sometimes reported on subjects which generally are with jurisdiction of the Pension committees. Thus, it reported:

In 1889,[12] a bill relating to pensioners' oaths; also, in 1890,[13] on a similar bill.

In 1898,[14] a bill for the prevention of fraud in claims for pensions.

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[1] First session Forty-eighth Congress, House Report No. 1329.

[2] First session Fiftieth Congress, House Report No. 1501.

[3] Second session Forty-seventh Congress, House Report No. 1835.

[4] First session Fifty-first Congress, House Reports Nos. 2539, 3042.

[5] See also section 4245 of this volume.

[6] Second session Fifty-sixth Congress, House Report No. 2007.

[7] First session Fifty-ninth Congress, House Report No. 2335.

[8] First session Fifty-first Congress, House Report No. 1803.

[9] Second session Fifty-second Congress, House Report No. 2447.

[10] First session Fifty-second Congress, Record, p. 1683.

[11] Second session Forty-ninth Congress, House Report No. 4032.

[12] Second session Fiftieth Congress, House Report No. 3588.

[13] First session Fifty-first Congress, House Reports Nos. 8 and 280.

[14] Second session Fifty-fifth Congress, House Report No. 967.

4075. The Committee on the Judiciary has exercised jurisdiction over the subject of international copyright, although the clearest title seems to be with the Committee on Patents.

The subject of a court of patent appeals has been within the jurisdiction of the Committee on the Judiciary.

The Judiciary Committee has reported on bills relating to certain phases of subjects which belong generally to the Committee on Patents:

In 1884,[1] the bill (H. R. 2418) granting copyrights to citizens of foreign countries.

In 1888,[2] the bill (H. R. 8715) relating to international copyright; and also, in 1890,[3] a bill relating to the same subject (H. R. 6941), which was rejected by the House. The Committee on Patents, which had already reported the bill (H. R. 7213),[4] took the subject up after the rejection of the bill from the Judiciary Committee, and reported the bill (H. R. 10881),[5] which became a law.[6] However, in the distribution of the President's message in the next Congress, subjects relating to international copyright were referred to the Committee on the Judiciary.[7]

The Judiciary Committee has also reported:

In 1886,[8] the subject of the right of the United States to cancel patents.

In 1888,[9] a bill validating certain patents irregularly signed.

In 1890,[10] a bill relating to a court of patent appeals.

4076. The Committee on the Judiciary has exercised jurisdiction over legislative propositions related to marriage, divorce, and polygamy.—The general subjects of marriage, divorce, and polygamy, in those features which are within the provisions of the Constitution and laws of the United States, are within the jurisdiction of the Committee on the Judiciary.

In 1879 [11] the House amended the resolutions distributing the President's message so that the subject of polygamy should be referred to the Committee on the Judiciary instead of to Territories; and this jurisdiction was con-firmed in 1882.[12]

In 1886 [13] and 1888 [14] and 1890[15] the Judiciary Committee reported bills for the suppression of polygamy in the Territory of Utah.

In 1896 [16] the Committee on the Judiciary reported the joint resolution (H. Res. 96) distributing and restoring certain property held by the Government receiver of

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[1] First session Forty-eighth Congress, House Report No. 189.

[2] First session Fiftieth Congress, House Report No. 1875.

[3] First session Fifty-first Congress, House Report No. 65.

[4] House Report No. 290.

[5] House Report No. 2401.

[6] 26 Stat. L., p. 1106.

[7] First session Fifty-second Congress, Record, p. 977.

[8] First session Forty-ninth Congress, House Report No. 1003.

[9] First session Fiftieth Congress, House Report No. 357.

[10] First session Fifty-first Congress, House Report No. 30.

[11] Second session Forty-sixth Congress, Record, p. 27.

[12] First session Forty-seventh Congress, Journal, p. 297.

[13] First session Forty-ninth Congress, Report No. 2735.

[14] First session Fiftieth Congress, Report No. 553.

[15] First session Fifty-first Congress, Report No. 3200.

[16] First session Fifty-fourth Congress, Report No. 519.

the Church of Jesus Christ of Latter-day Saints. So also in 1893 [1] a similar measure was reported from this committee.

In 1882 [2] the committee reported the bill (H. R. 4436) to prevent polygamists holding civil offices in the Territories.

The Judiciary Committee has also reported:

In 1892 [3] on subject of marriage and divorce; also, in 1896,[4] the subject of divorce in the Territories.

In 1884,[5] the bill (H. R. 7371) relating to the collection of statistics concerning marriage and divorce.

In 1880,[6] the bill (S. 928) relating to marriages between white men and Indian women.

4077. The Committee on the Judiciary has reported bills relating to the meeting of Congress, the attendance of Members, and their appointment to incompatible offices.

Bills providing for the protection of the President and relating to the office and its duties have been reported by the Committee on the Judiciary.

The Committee on the Judiciary has reported on various subjects relating to Congress and the President of the United States:

In 1888,[7] the bill (H. R. 1200) relating to the regular meeting of Congress.

In 1892,[8] on the subject of the date of meeting of Congress.

In 1899,[9] on the appointment of Members of Congress to military and other offices.

In 1894,[10] on nonattendance of Members of Congress and effect of the law relating to.

In 1902,[11] a bill for the protection of the President of the United States.

In 1892,[12] a bill relating to performance of duties of the office of President in case of vacancy; also, in 1893,[13] bill in relation to the office of President.

4078. The Judiciary Committee has reported propositions of general legislation to regulate the adjudication of claims of various kinds against the Government.—While the jurisdiction of the claims of individuals against the Government of the United States belongs to the several claims committees, the

[1] First session Fifty-third Congress, Report No. 50.
[2] First session Forty-seventh Congress, Report No. 386.
[3] First session Fifty-second Congress, Reports Nos. 1290, 1291.
[4] First session Fifty-fourth Congress, Report No. 428.
[5] First session Forty-eighth Congress, Report No. 1857.
[6] First session Fiftieth Congress, Report No. 250.
[7] First session Fiftieth Congress, Report No. 1017.
[8] First session Fifty-second Congress, Report No. 810.
[9] Third session Fifty-fifth Congress, Report No. 2205.
[10] Second session Fifty-third Congress, Reports Nos. 704, 1218.
[11] First session Fifty-seventh Congress, Reports Nos. 433, 1422.
[12] First session Fifty-second Congress, Report No. 160.
[13] First session Fifty-third Congress, Report No. 32.

Judiciary Committee has exercised a broad jurisdiction over general—as distinguished from special—legislation [1] on the subject. Thus, it has reported:

In 1892,[2] a bill to facilitate disposition of cases in Court of Claims; also act to restrict jurisdiction of Court of Claims in relation to certain war claims.

In 1888,[3] a bill increasing the jurisdiction of the Court of Claims.

In 1890,[4] and 1892,[5] the subject of Court of Claims appeals.

In 1886,[6] the bill (H. R. 5281) relating to the barring of suits in relation to public accounts and claims.

In 1882,[7] 1884,[8] and 1886 [9] on bills relating to the payment of interest on judgments of the Court of Claims.

In 1882,[10] the resolution (H. Res. 76) restoring to the docket of the Court of Claims forty-three claims growing out of the destruction or appropriation of property by the military forces during the rebellion.

In 1894,[11] a bill relating to a private land claims court.

In 1894,[12] a bill relating to adjudication of Indian depredation claims.

4079. The Judiciary Committee has reported general legislation as to claims of laborers, Territorial and District claims, war claims, etc.—The Judiciary Committee has exercised jurisdiction over general legislation relating to adjustments of accounts of claims in various branches of the Government.

On February 22, 1906,[13] the Committee on Claims was discharged from the further consideration of the bill (H. R. 159) providing for the adjustment of accounts of laborers, workmen, and mechanics arising under the eight-hour law, and the same was referred to the Committee on the Judiciary.

On February 2, 1906,[14] on motion of the chairman of the Committee, on Claims, that committee was discharged from the further consideration of the bill (H. R. 12464) for the relief of laborers, mechanics, and other employees of the United States Government injured, and the families of those killed, without fault of their own, while in the discharge of their duties; and the same was referred to the Committee on the Judiciary.

On January 20, 1906,[15] reference of the bill (H. R. 11485) to permit the owners of certain vessels and the owners or underwriters of cargoes laden thereon to sue the

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[1] It can not be said, however, that the Judiciary Committee has exercised exclusive jurisdiction over these general bills, as the Committees on Claims, War Claims, and Private Land Claims have also reported general bills. (See secs. 4263, 4267, 4270, and 4275 of this volume.)

[2] First session Fifty-second Congress, Reports Nos. 366, 1259.

[3] First session Fiftieth Congress, Report No. 254.

[4] First session Fifty-first Congress, Report No. 869.

[5] First session Fifty-second Congress, Report No. 1825.

[6] First session Forty-ninth Congress, Report No. 1831.

[7] First session Forty-seventh Congress, Report No. 387.

[8] First session Forty-eighth Congress, Report No. 195.

[9] First session Forty-ninth Congress, Report No. 6.

[10] First session Forty-seventh Congress, Report No. 1073.

[11] Second session Fifty-third Congress, Report No. 1330.

[12] Second session Fifty-third Congress, Report No. 1390.

[13] First session Fifty-ninth Congress, Record, p. 2880.

[14] First session Fifty-ninth Congress, Record, pp. 1988, 1989.

[15] First session Fifty-ninth Congress, Record, p. 1332.

United States, and the bill (H. R. 11486) to authorize the maintenance of actions for an exigency causing death in maritime cases was changed from the Committee on the Merchant Marine and Fisheries to the Committee on the Judiciary.

The Committee on the Judiciary have also reported:

In 1894,[1] bill (H. R. 7453) on subject of claims against District of Columbia; also bills relating to Arizona funded debt and certain county claims.

In 1880,[2] the bill (H. R. 1346) relating to fixing a limit for claims for bounty and back pay.

In 1882,[3] the bill (H. R. 3555) relating to the payment of judgments against internal-revenue officers.

In 1888,[4] the bill (H. R. 11397) providing for the auditing and settlement of certain accounts of gaugers and other internal-revenue employees.

In 1887,[5] the joint resolution (H. Res. 224) to provide for the recovery of internal-revenue taxes and penalties erroneously assessed and paid in certain cases.

In 1893,[6] a bill to refund the cotton tax in case of a certain decision by the Supreme Court.

In 1888,[7] 1890,[8] and 1894,[9] bills relating to the distribution to claimants of the proceeds of captured and abandoned property.[10]

In 1899,[11] the bill (H. R. 10353) relating to the claim of the International Cotton Press Company of New Orleans. This, while a private claim, involved a question of constitutional law.

In 1896 [12] a bill prohibiting speculation in claims against the Federal Government.

In 1892 [13] a bill making it mandatory on officers of the Government to reopen accounts settled under a construction of law subsequently declared erroneous by the courts.

In 1884 [14] the bill (H. R. 5849) creating a limitation upon claims against the Government.

4080. Claims of States against the United States and the adjustment of accounts between the States and the United States have been considered by the Judiciary Committee.—The Judiciary Committee has exercised a general, but not exclusive,[15] jurisdiction over the claims of States against the United

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[1] Second session Fifty-third Congress, Record, p. 7860; Reports Nos. 678, 821.

[2] First session Fiftieth Congress, Report No. 11.

[3] First session Forty-seventh Congress, Report No. 1636.

[4] First session Fiftieth Congress, Report No. 3515.

[5] Second session Forty-ninth Congress, Report No. 3964.

[6] Second session Fifty-second Congress, Report No. 2528.

[7] First session Fiftieth Congress, Report No. 646.

[8] First session Fifty-first Congress, Report No. 784.

[9] Second session Fifty-third Congress, Report No. 181.

[10] This jurisdiction has also been exercised by the Committee on War Claims. (See sec. 4270 of this volume.)

[11] Third session Fifty-fifth Congress, Report No. 1676.

[12] First session Fifty-fourth Congress, House Reports, Nos. 671, 729.

[13] First session Fifty-second Congress, Report No. 1209.

[14] First session Forty-eighth Congress, Report No. 103.

[15] The Committee on War Claims has shared this jurisdiction to a certain extent. (See sec. 4271 of this volume.)

States, and the adjustment of accounts between States and the United States. It has reported:

In 1884[1] the bill (H. R. 5431) relating to the claim of certain States and the city of Baltimore on account of the war of 1812; also the bill (H. R. 4703) relating to payment of the Revolutionary claim of the State of Georgia.

In 1887[1] the bill (H. R. 10669) providing for the adjustment of accounts between the State of Vermont and the United States.

In 1889[2] the bill (H. R. 8028) to enable the State of Illinois to prosecute suits in the Supreme Court to settle certain claims against the United States.

In 1906[3] on the claim of the United States against the State of Michigan.

In 1884,[4] 1888,[5] 1890,[6] and 1898[7] on the claims of States against the United States for repayment of the direct tax of 1861.

4081. The jurisdiction of general legislation relating to international claims has been exercised frequently by the Committee on the Judiciary.—The Committee on the Judiciary has exercised a general, but not exclusive,[8] jurisdiction over general legislation as to international claims. Thus, it reported:

In 1882,[9] the bill (H. R. 4197) referring to the Court of Claims the division and distribution of the Alabama indemnity.

In 1884,[10] the bill (H. R. 6403), relating to the further adjustment of claims arising from the Geneva award in the Alabama and other cases.

In 1886[11] certain bills relating to the business of the court of commissioners of Alabama claims under the Geneva award.

In 1888[12] the bill (H. R. 1675) to provide for the relief of rejected claimants in the court of commissioners of Alabama claims.

In 1900[13] a bill (H. R. 5069) relating to claims against the United States for indemnity by subjects or citizens of a foreign State.

In 1887[14] the bill (S. 3052) to extend the time of filing French spoliation claims; also the bill (H. R. 11201) allowing an appeal to the Supreme Court in certain French Spoliation cases.

In 1902[15] on bills relating to the Spanish Treaty Claims Commission; also in 1906[16] on the same subject.

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[1] First session Forty-eighth Congress, Reports Nos. 752, 1670.

[2] Second session Fiftieth Congress, Report No. 3945.

[3] First session Fifty-ninth Congress, Report No. 3710.

[4] First session Forty-eighth Congress, Report No. 1658.

[5] First session Fiftieth Congress, Report No. 552.

[6] First session Fifty-first Congress, Report No. 683.

[7] Second session Fifty-fourth Congress, Report No. 3057.

[8] The Committee on Foreign Affairs, and also to a limited extent the Committee on Claims, have shared this jurisdiction. (See secs. 4168, 4263 of this volume.)

[9] First session Forty-seventh Congress, Report No. 307.

[10] First session Forty-eighth Congress, Report No. 1032.

[11] First session Forty-ninth Congress, Report No. 945.

[12] First session Fiftieth Congress, Report No. 223.

[13] First session Fifty-sixth Congress, Report No. 1176.

[14] Second session Forty-ninth Congress, Reports Nos. 3918, 4099.

[15] First session Fifty-seventh Congress, Report Nos. 313, 1941.

[16] First session Fifty-ninth Congress, Reports Nos. 2227, 2228, 2677, 2752.

Chapter C.

HISTORY AND JURISDICTION OF THE STANDING COMMITTEES—CONTINUED.

1. The Committee on Banking and Currency. Sections 4082–4089.
2. The Committee on Coinage, Weights, and Measures. Sections 4090–4095.
3. The Committee on Interstate and Foreign Commerce. Sections 4096–4117.[1]
4. The Committee on Rivers and Harbors. Sections 4118–4128.[2]
5. The Committee on Merchant Marine and Fisheries. Sections 4129–4148.
6. The Committee on Agriculture. Sections 4149–4161.
7. The Committee on Foreign Affairs. Sections 4162–4178.
8. The Committee on Military Affairs. Sections 4179–4188.
9. The Committee on Naval Affairs. Section 4189.
10. The Committee on Post-Office and Post-Roads. Sections 4190–4193.
11. The Committee on Public Lands. Sections 4194–4203.
12. The Committee on Indian Affairs. Sections 4204–4207.
13. The Committee on Territories. Sections 4208–4212.
14. The Committee on Insular Affairs. Sections 4213–4216.
15. The Committee on Railways and Canals. Sections 4217–4220.
16. The Committee on Manufactures. Sections 4221, 4222.

4082. The creation and history of the Committee on Banking and Currency, section 5 of Rule XI.

The rule assigns to the Committee on Banking and Currency jurisdiction of subjects relating to "banking and currency."

Section 5 of Rule XI provides for the reference of subjects relating—

to banking and currency: to the Committee on Banking and Currency.

This committee is composed of eighteen Members.

The form of rule dates from the revision of 1880,[3] but the committee itself was established on March 2, 1865,[4] to assume some of the burdens of the Ways and Means Committee.[5]

[1] See also sections 4135, 4137, 4144, 4146 of this volume.
[2] See also sections 4036, 4165, 4219 of this volume.
[3] Second session Forty-sixth Congress, Record, p. 205.
[4] Second session Thirty-eighth Congress, Globe, pp. 1312–1317.
[5] See also section 4020 of this volume.

4083. The Committee on Banking and Currency has reported generally on the subject of national banks, and also on the subject of current deposit of public moneys.—In 1906 [1] the Committee on Banking and Currency reported on the following subjects:

Current deposit of public moneys, national-bank loans, redemption of national bank notes, and verification of papers by national banks.

4084. The strengthening of public credit, issues of notes and taxation, redemption, etc., thereof, and authorization of bond issues in connection therewith have been considered by the Committee on Banking and Currency.—The Committee on Banking and Currency has reported on the following subjects:

In 1898,[2] the bill (H. R. 10289) to strengthen the public credit, relieve the United States Treasury, and to amend the national-banking laws.

In 1895,[3] the bill (H. R. 8705) to authorize the Secretary of the Treasury to issue bonds to maintain a sufficient gold reserve and to redeem and retire United States notes.

In 1888,[4] in relation to a limit to the issue of United States notes.

In 1893,[5] on State bank failures.

In 1891 [6] and 1894,[7] on State taxation of United States notes.

4085. The Committee on Banking and Currency has jurisdiction of subjects relating to the Freedman's Bank.—The Committee on Banking and Currency has reported bills as follows:

In 1888,[8] the bill (S. 1138) to reimburse the depositors of the Freedman's Savings and Trust Company.

In 1898,[9] the bill (H. R. 7343) authorizing the commissioner of the Freedman's Savings and Trust Company to pay certain dividends.

4086. A bill to incorporate an international bank was reported by the Committee on Banking and Currency.—The Committee on Banking and Currency in 1890,[10] and several succeeding years reported bills providing for the incorporation of an International American Bank.

4087. The jurisdiction of the subject of the issue of silver certificates as currency was given to the Committee on Banking and Currency.—On January 9, 1882,[11] the House was considering in Committee of the Whole the resolutions distributing the President's message, among which was the following:

> That so much as relates to refunding the public debt, to the national finances, to the abolition of internal-revenue taxes, and to the issue of silver certificates be referred to the Committee on Ways and Means.

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[1] First session Fifty-ninth Congress, Reports Nos. 1109, 1835, 2284, 3349, 3617, 5043.

[2] Second session Fifty-fifth Congress, Report No. 1575.

[3] Third session Fifty-third Congress, Report No. 1749.

[4] First session Fiftieth Congress, Report, No. 115.

[5] First session Fifty-third Congress, Report No. 147.

[6] Second session Fifty-first Congress, Report No. 3277.

[7] Second session Fifty-third Congress, Report No. 862.

[8] First session Fiftieth Congress, House Report No. 3139.

[9] Second session Fifty-fifth Congress, House Report No. 1641.

[10] First session Fifty-first Congress, Report No. 2561; second session Fifty-fourth Congress, Report No. 3054; second session Fifty-fifth Congress, Report No. 1627.

[11] First session Forty-seventh Congress, Journal, p. 247; Record, pp. 297–299.

Mr. James B. Belford, of Colorado, at once raised a question that the portions of the message relating to "the issue of silver certificates" should be referred to the Committee on Coinage, Weights, and Measures. Mr. Aylett H. Buckner, of Missouri, made the point that the subject more properly belonged to the Committee on Banking and Currency. During the debate the Ways and Means Committee abandoned all pretensions to jurisdiction, and the question was taken as between the Committee on Coinage, Weights, and Measures and the Committee on Banking and Currency. On the vote the Committee on Banking and Currency won the jurisdiction by a vote of ayes 106, noes 45. The resolution was agreed to by the House as amended.

4088. On December 6, 1882,[1] during the consideration of the resolutions distributing the President's message, Mr. Richard P. Bland, of Missouri, took exceptions to the resolution referring the subject of the "issue of silver certificates" to the Committee on Banking and Currency, and moved to substitute instead the Committee on Coinage, Weights, and Measures. The amendment was disagreed to, ayes 51, noes 92, on a vote by tellers.

In 1888[2] the Committee on Banking and Currency reported the bill (H. R. 8004) authorizing the issue of fractional silver certificates.[3]

4089. A legislative proposition to maintain the parity of the money of the United States was reported by the Committee on Banking and Currency.—On January 29, 1901,[4] the Committee on Banking and Currency reported the bill (H. R. 13769) "to maintain the parity of the money of the United States." This bill provided for the exchange of gold coin for standard silver dollars at the Treasury.

4090. The creation and history of the Committee on Coinage, Weights, and Measures, section 6 of Rule XI.

The rule gives to the Committee on Coinage, Weights, and Measures jurisdiction of the subject of "coinage, weights, and measures."

Section 6 of Rule XI provides for the reference of subjects relating—

to coinage, weights, and measures: to the Committee on Coinage, Weights, and Measures.

This committee consists of seventeen Members and one Delegate.

The form of the rule was made in the revision of 1880.[5] The committee was established[6] as a standing committee January 21, 1864,[7] when it was called "Com-

[1] Second session Forty-seventh Congress, Record, p. 58.

[2] First session Fiftieth Congress, Report No. 838.

[3] It is to be noted that in 1884 (first session Forty-eighth Congress, Report No. 1730) the Committee on Coinage, Weights, and Measures reported the bill (H. R. 7232) to retire the low denominations of Treasury notes and exchange the silver certificates of large denominations for ones of smaller denominations.

[4] Second session Fifty-sixth Congress, Report No. 2535.

[5] Second session Forty-sixth Congress, Record, p. 205.

[6] In earlier days the subject was considered by select committees. Thus, on December 7, 1825, a Select Committee on Weights and Measures was appointed. (First session Nineteenth Congress, Journal, p. 30.)

[7] First session Thirty-eighth Congress, Globe, p. 297.

mittee on a Uniform System of Coinage, Weights, and Measures." On March 2, 1867, on motion of Mr. John A. Kasson, of Iowa, the name was changed to the present form.[1]

4091. Bills for the establishment of a standardizing bureau and the adoption of the metric system have been reported by the Committee on Coinage, Weights, and Measures.—The Committee on Coinage, Weights, and Measures have reported:

In 1900[2] the bill (H. R. 11350) to establish a national standardizing bureau.

In 1898[3] a bill to fix the standard of weights and measures by the adoption of the metric system.

4092. A bill relating to Hawaiian coinage was reported by the Committee on Coinage, Weights, and Measures.—In 1892,[4] the Committee on) Coinage, Weights, and Measures reported a bill relating to Hawaiian silver coinage and silver certificates.

4093. Subjects relating to the coinage of silver and purchase of bullion have been within the jurisdiction of the Committee on Coinage, Weights, and Measures.—On November 3. 1877,[5] Mr. Aylett H. Buckner, of Missouri, introduced a bill (H. R. 905) to authorize the free coinage of the standard silver dollar and to restore its legal tender character. He moved that the bill be referred to the Committee on Banking and Currency. Mr. Alexander H. Stephens, of Georgia, raised the question of order that the bill should, under the rules, go to the Committee on Coinage, Weights, and Measures.

The Speaker[6] stated that when there was a dispute as to reference it was the custom of the Chair to submit the question to the House.

The House, after debate, in which the precedent of 1873 was cited as a case where the Committee on Coinage, Weights, and Measures reported a bill providing for the coinage of a special kind of silver dollar, the House voted, ayes 126, noes 34, that the bill should go to the Committee on Coinage, Weights, and Measures.

On February 12, 1884,[7] on motion of Mr. Richard P. Bland, of Missouri, and by a vote of ayes 84, noes 34, the House transferred from the Committee on Banking and Currency to the Committee on Coinage, Weights, and Measures the bill (H. R. 3356) to provide for the retirement of the trade dollar.

On December 10, 1890,[8] the resolutions distributing the President's message provided for the reference of so much as referred to the "purchase and coinage of silver" to the Committee on Coinage, Weights, and Measures.

This committee also have reported:

In 1886[9] (adversely), the bill (H. R. 5690) for the free coinage of silver.

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[1] Second session Thirty-ninth Congress, Journal, p. 601.

[2] First session Fifty-sixth Congress, Report No. 1452.

[3] Second session Fifty-fifth Congress, Report No. 1597.

[4] First session Fifty-seventh Congress, Reports Nos. 260, 1180.

[5] First session Forty-fifth Congress, Journal, p. 128; Record, pp. 232, 233.

[6] Samuel J. Randall, of Pennsylvania, Speaker.

[7] First session Forty-eighth Congress, Record, pp. 1057, 1058.

[8] Second session Fifty-first Congress, Journal, p. 43; Record, p. 303.

[9] First session Forty-ninth Congress, Report No. 524.

In 1892,[1] on the subject of the free coinage of silver.

In 1891,[2] on the subject of silver bullion deposits, the bill (H. R. 5381) authorizing the issue of Treasury notes on deposits of silver bullion.

In 1884,[3] the bill (H. R. 4976) to retire and recoin the trade dollar.

4094. Subjects relating to mints and assay offices are within the jurisdiction of the Committee on Coinage, Weights, and Measures.—On December 6, 1882,[4] the resolutions distributing the President's message referred to the Committee on Coinage, Weights, and Measures subjects relating to the mints of the United States.

The committee has reported:

In 1902,[5] on the subject of a branch mint at Omaha, Nebr.

In 1884,[6] the bill (H. R. 1689) to establish an assay office at Deadwood, S. Dak.

In 1898,[7] as to an assay office at Seattle, Wash.

4095. Bills for defining and fixing the standard of value and regulating coinage and exchange of coin are within the jurisdiction of the Committee on Coinage, Weights, and Measures.—In 1899,[8] the Committee on Coinage, Weights, and Measures reported the bill (H. R. 11917) to define and fix the standard of value and to regulate coinage and provide for redemption thereunder.

The committee also reported:

In 1891[9] and 1900[10] bills relating to exchange of gold coin for gold bars at the mints.

In 1888,[11] the bill (H. R. 7214) concerning the coinage of three-dollar gold pieces.

In 1888,[12] the bill (H. R. 7933) concerning the exchange of mutilated coin.

In 1887,[13] the bill (H. Res. 255) relating to supplies of subsidiary coin; and also the bill (H. R. 11107) relating to the issue and redemption of minor coin.

4096. The creation and history of the Committee on Interstate and Foreign Commerce, section 7 of Rule XI.

The rule gives to the Committee on Interstate and Foreign Commerce jurisdiction of subjects relating to "commerce, Life-Saving Service, and light-houses," but not including appropriations therefor.

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[1] First session Fifty-second Congress, Report Nos. 249, 1839.

[2] First session Fifty-first Congress, Report No. 1086.

[3] First session Forty-eighth Congress, Report No. 324.

[4] Second session Forty-seventh Congress, Journal, p. 40; Record, p. 56. Also in a later Congress similar action was taken. (Second session Fifty-fifth Congress, Record, p. 26.)

[5] First session Fifty-seventh Congress, Report No. 2703.

[6] First session Forty-eighth Congress, Report No. 969.

[7] Second session Fifty-fifth Congress, Report No. 1110.

[8] Third session Fifty-fifth Congress, Report No. 1876.

[9] Second session Fifty-first Congress, Report No. 3330.

[10] First session Fifty-sixth Congress, Report No. 1513.

[11] First session Fiftieth Congress, Report No. 781.

[12] First session Fiftieth Congress, Report No. 780.

[13] Second session Forty-ninth Congress, Reports Nos. 3968, 3969.

Section 7 of Rule XI provides for the reference of subjects relating—

to commerce, Life-Saving Service, and light-houses, other than appropriations for Life-Saving Service and light-houses, to the Committee on Interstate and Foreign Commerce.

This committee has eighteen members.

It dates from December 14, 1795, when the number of standing committees was increased from two to four, "Commerce and Manufactures" and "Revisal and Unfinished Business" being added to "Elections" and "Claims."[1] In 1819 the subjects of Commerce and Manufactures were separated.[2] In early times the committee was sometimes in conflict with the Ways and Means over the jurisdiction of subjects relating to duties.[3] In the revision of 1880 the Committee on Rules reported in favor of restoring to the Appropriations Committee the river and harbor bill, which had more recently been reported from the Committee on Commerce, allowing the Committee on Commerce to frame the bill, but requiring it to be reported to the Committee on Appropriations.[4]

The House dissented from this plan, and after long debate agreed to a rule[5] in this form:

To commerce, Life-Saving Service, and light-houses, other than appropriations for Life-Saving Service and light-houses: to the Committee on Commerce. And the Committee on Commerce shall have the same privileges in reporting bills making appropriations for the improvement of rivers and harbors as is accorded to the Committee on Appropriations in reporting general appropriation bills.

On December 19, 1883, the Committee on Rivers and Harbors was established, and took the jurisdiction of the river and harbor bill, with its privileges.[6] In 1892 the present name of "Interstate and Foreign Commerce"[7] was adopted.[8]

4097. The Committee on Interstate and Foreign Commerce has jurisdiction of bills affecting domestic and foreign commerce, except such as may affect the revenue.—The jurisdiction of the Committee on Interstate and Foreign Commerce includes "subjects relating to the commerce of the United States, domestic and foreign, except so far as it affects the revenue."[9]

4098. Bills establishing the Department of Commerce and Labor and relating to the Interstate Commerce Commission were reported by the Committee on Interstate and Foreign Commerce.—In 1903,[10] the Committee on Interstate and Foreign Commerce reported the bill establishing the Department of Commerce and Labor; and in 1906[11] on the Interstate Commerce Commission.

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[1] Third and Fourth Congress, Journal, p. 375 (Gales and Seaton ed.).

[2] See Journal, first session Sixteenth Congress, pp. 9, 22; Annals, pp. 708, 709. (See also sec. 4221 of this volume.)

[3] First session Seventeenth Congress, Annals of Congress, Vol. I, p. 530.

[4] Second session Forty-sixth Congress, Record, p. 200.

[5] Second session Forty-sixth Congress, Record, pp. 663, 1261.

[6] First session Forty-eighth Congress, Record, pp. 196, 214.

[7] On December 14, 1847 (First session Thirtieth Congress, Journal, pp. 76, 82; Globe, pp. 25, 27–30), a proposition was made to divide the old Committee on Commerce into two committees, one to have interstate commerce and the other foreign commerce; but it was not acted on at that time.

[8] First session Fifty-second Congress, Record, p. 653.

[9] Resolutions distributing the President's message (third session Fifty-fifth Congress, Record, p. 25).

[9] Second session Fifty-seventh Congress, Report No. 2970.

[10] First session Fifty-ninth Congress, Report No. 591.

[11] First session Fifty-ninth Congress, Report No. 591.

4099. Legislation relating to the construction of bridges over navigable waters belongs to the jurisdiction of the Committee on Interstate and Foreign Commerce.—On April 1, 1884,[1] the Committee on Commerce[2] reported the bill (H. R. 6100) making general provisions of law in regard to the erection of bridges over navigable waters; and the Committee on Interstate and Foreign Commerce has exercised continuously jurisdiction on this subject, both for general and special bills.[3]

In 1898[4] the committee reported a resolution of inquiry relating to obstructions in Niagara River which might have a bearing on a pending proposition for the authorization of a bridge.

4100. The Committee on Interstate and Foreign Commerce considers bills relating to dams in navigable streams unless they are related to improvements under jurisdiction of the Committee on Rivers and Harbors.—On April 15, 1884,[5] the Committee on Commerce[6] reported the bill (H. R. 6657) authorizing the construction of a dam across the Mississippi River at St. Cloud, Minn. And this general jurisdiction of the subject of dams across navigable rivers has remained with the Committee on Interstate and Foreign Commerce and has been exercised with great frequency.[7]

On December 11, 1902,[8] on motion of Mr. Theodore E. Burton, of Ohio, chairman of the Committee on Rivers and Harbors, the reference of House bills 15605 and 15606, providing, respectively, for the construction of a lock or locks and a dam in Bayou Vermilion and the Mermentau River, in the State of Louisiana, was changed from the Committee on Interstate and Foreign Commerce to the Committee on Rivers and Harbors. But Mr. William P. Hepburn, of Iowa, chairman of the Committee on Interstate and Foreign Commerce, said:

> I do not want to consent by this action to the idea that jurisdiction ordinarily in cases of this kind is lodged with the Committee on Rivers and Harbors, but in this instance, this stream being now in process of improvement and being the subject of appropriation, I think it would be better that the subject of this bill should be considered by that committee.

On May 22, 1906,[9] on motion of Mr. Frederick C. Stevens, of Minnesota, by direction of the Committee on Interstate and Foreign Commerce, the reference of the following bill was changed from that committee to the Committee on Rivers and Harbors:

> A bill (H. R. 17138) to provide for a commission to examine and report concerning the use by the United States of the waters of the Mississippi River going over the dams between St. Paul and Minneapolis, Minn.

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[1] First session Forty-eighth Congress, Report No. 1041.

[2] The name of the committee has been changed since that date.

[3] See index of Journal for first session Fifty-ninth Congress, p. 1366, for illustration of this.

[4] Second session Fifty-fifth Congress, Report No. 663.

[5] First session Forty-eighth Congress, Report No. 1303.

[6] This was before the change of name of the committee.

[7] See especially index of Journal, first session Fifty-ninth Congress, p. 1366. (Reports Nos. 337, 2177, 3396, etc.)

[8] Second session Fifty-seventh Congress, Record, p. 246.

[9] First session Fifty-ninth Congress, Record, p. 7236.

In 1906,[1] under the same principle of jurisdiction, the Committee on Rivers and Harbors reported the bill relating to a dam [2] across Rock River, Illinois.

4101. Bills declaring as to whether or not streams are navigable and for preventing hindrances to navigation are reported by the Committee on Interstate and Foreign Commerce.—On January 23, 1902,[3] the bill (H. R. 9213) declaring the St. Joseph River to be not a navigable stream was, by order of the House, referred from the Committee on Rivers and Harbors to the Committee on Interstate and Foreign Commerce.

The Committee on Interstate and Foreign Commerce reported in 1894 [4] on bill relating to licenses for persons residing on boats on navigable rivers.

4102. The regulation of harbors, and the placing of works likely to be obstructive to navigation, such as pipes and tunnels, are subjects within the jurisdiction of the Committee on Interstate and Foreign Commerce.—The Committee on Interstate and Foreign Commerce has reported as follows:

In 1888,[5] the bill (H. R. 3333) to enable the city of Chicago to construct a crib in the navigable waters of Lake Michigan in order to get a city water supply.

In 1891,[6] a bill relating to the crib work of Chicago water works in Lake Michigan.

In 1890,[7] on bills relating to a tunnel under the Detroit River; also bill relating to a tunnel under New York Harbor between Long Island and Staten Island.

In 1891,[8] a bill relating to pipes under navigable rivers.

In 1902 [9] and 1903,[10] on the tunnels under Chicago River; and in 1906 [11] on a tunnel under Lake Erie and Niagara River.

In 1900,[12] the bill (H. R. 8777) to confer certain powers on supervisor of New York Harbor.

In 1893,[13] a bill relating to anchorage of vessels in Chicago Harbor.

In 1906,[14] on movements and anchorage of vessels in Hampton Roads, Virginia.

4103. The subject of a canal between the Atlantic and Pacific, and to a limited extent the general subject of canals in the United States, have been considered by the Committee on Interstate and Foreign Com-

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[1] First session Fifty-ninth Congress, Report No. 692.

[2] Occasional instances are found where the Committee on Rivers and Harbors have reported bins which more properly belonged to the jurisdiction of the Interstate and Foreign Commerce Committee as to dams. See instances in 1892 and 1893. (First session Fifty-second Congress, Report No. 557; second session Fifty-second Congress, Report No. 2555.)

[3] First session Fifty-seventh Congress, Journal, p. 256.

[4] Second session Fifty-third Congress, Report No. 1211.

[5] First session Fiftieth Congress, Report No. 729.

[6] Second session Fifty-first Congress, Report No. 3659.

[7] First session Fifty-first Congress, Reports Nos. 786, 1977, 3221.

[8] Second session Fifty-first Congress, Report No. 3354.

[9] Second session Fifty-second Congress, Report No. 3746.

[10] Second session Fifty-eighth Congress, Report No. 1855.

[11] First session Fifty-ninth Congress, Report No. 4981.

[12] First session Fifty-sixth Congress, Report No. 478.

[13] Second session Fifty-second Congress, Report No. 2373.

[14] First session Fifty-ninth Congress, Report No. 5020.

merce.—In 1888 [1] and 1890,[2] the Committee on Interstate and Foreign Commerce reported generally on the subject of the proposed Nicaragua Canal, to connect the waters of the Atlantic and Pacific oceans. On April 28, 1894,[3] the reference of the bill (H. R. 6053) to amend the act incorporating the Maritime Canal Company of Nicaragua was changed from the Committee on Foreign Affairs to the Committee on Interstate and Foreign Commerce. In 1899,[4] in the resolutions distributing the President's message, the jurisdiction was confirmed, and in 1900 [5] the Committee on Interstate and Foreign Commerce reported on the Nicaragua and other oceanic canals.

In 1886,[6] this committee reported a resolution relating to progress on the Panama Canal, and in 1906 [7] on the general subject of this canal.

In 1886,[8] also, this committee reported the bill (H. R. 5885) relating to the Atlantic and Pacific Ship Railway Company and government encouragement thereto.

The committee has also reported on the subject of canals within the United States: [9]

In 1901,[10] on the subject of the Duluth Canal.

In 1895,[11] the subject of canals to connect the Great Lakes with the Atlantic Ocean.

In 1892,[12] on the Welland and St. Lawrence canals.

In 1893,[13] the subject of a ship canal between Lakes Union and Washington and Puget Sound.

4104. Bills establishing light-houses and fog signals and authorizing light-ships are reported by the Committee on Interstate and Foreign Commerce.—The Committee on Interstate and Foreign Commerce has reported legislative bills relating to certain aids to navigation, as follows:

In 1882 [14] on bills relating to marine lights and fog signals.

In 1884 [15] bills establishing lights; and in 1906,[16] bills establishing a light-ship at Brunswick, Ga., lights in Hawaii, and light-houses, light stations, and fog signals generally.

In 1884,[17] the bill (H. R. 3890) to establish a signal station on Nantucket Island and submarine cable communication with the mainland.

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[1] First session Fiftieth Congress, Report No. 530.

[2] First session Fifty-first Congress, Report No. 3035.

[3] Second session Fifty-third Congress, Record, p. 4228.

[4] Third session Fifty-fifth Congress, Record, p. 25.

[5] First session Fifty-sixth Congress, Report No. 351.

[6] First session Forty-ninth Congress, Record, p. 4137.

[7] First session Fifty-ninth Congress, Report No. 5017.

[8] First session Forty-eighth Congress, Report No. 717.

[9] See, however, jurisdiction of Committee on Railways and Canals, section 4217 of this volume.

[10] First session Fifty-seventh Congress, Report No. 33.

[11] Third session Fifty-third Congress, Report No. 1840.

[12] First session Fifty-second Congress, Report No. 185.

[13] Second session Fifty-second Congress, Report No. 2395.

[14] Forty-seventh Congress, first session, Report No. 682; second session, Reports Nos. 1944, 1972, 1973.

[15] First session Forty-eighth Congress, Reports Nos. 197–199.

[16] First session Fifty-ninth Congress, Reports Nos. 158, 159, 1560, 2279, 4251.

[17] First session Forty-eighth Congress, Report No. 1301.

4105. Bills relating to ocean derelicts, lumber rafts, and hydrographic office charts have been reported by the Committee on Interstate and Foreign Commerce.—The Committee on Interstate and Foreign Commerce has exercised a general jurisdiction as to certain obstructions to navigation, and has reported:

In 1895,[1] 1905,[2] and 1906,[3] bills relating to the removal of derelict craft in the ocean.

In 1891[4] and 1893,[5] bills on the subject of lumber rafts on the Great Lakes.

In 1884,[6] the resolution (H. Res. 134) for the distribution of the charts and other publications of the hydrographic office.

4106. Bills relating to ocean cables have been reported by the Committee on Interstate and Foreign Commerce.—The Committee on Interstate and Foreign Commerce has reported:

In 1900,[7] the bill (S. 2) for the establishment of a trans-Pacific cable.

In 1902,[8] on a submarine cable to Hawaii, Guam, and Philippine Islands.

In 1898,[9] a bill authorizing the Postmaster-General to make a perpetual contract with the Pacific Cable Company.

4107. Bills relating to the Life-Saving Service and refuge stations in the Arctics have been reported by the Committee on Interstate and Foreign Commerce.—The Committee on Interstate and Foreign Commerce has exercised general jurisdiction of the Life-Saving Service, and has reported as follows:

In 1889,[10] bills in relation to life-saving stations.

In 1887,[11] the bill (H. R. 10996) providing for the establishment of a life-saving station at Kewaunee, Wis.

In 1892,[12] a bill providing for Virginia coast telephone service for assistance to Life-Saving Service.

In 1902,[13] a bill relating to a life-saving station at Nome, Alaska.

In 1902,[14] a bill relating to pensions for officers and men of Life-Saving Service.

In 1889,[15] the bill (H. R. 12215) to establish a refuge station at Point Barrow, Alaska.

In 1899,[16] the bill (S. 5144) donating life-saving apparatus to the Imperial Japanese Society for Saving Life from Shipwreck.

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[1] First session Fifty-third Congress, Report No. 125.

[2] Second session Fifty-eighth Congress, Report No. 2515.

[3] First session Fifty-ninth Congress, Report No. 3589.

[4] Second session Fifty-first Congress, Report No. 3759.

[5] Second session Fifty-second Congress, Report No. 2353.

[6] First session Forty-eighth Congress, Report No. 325.

[7] First session Fifty-sixth Congress, Report No. 1114.

[8] First session Fifty-seventh Congress, Report No. 568.

[9] Second session Fifty-fifth Congress, Report No. 664.

[10] Second session Fiftieth Congress, Reports Nos. 3988, 4108.

[11] Second session Forty-ninth Congress, Report No. 4034.

[12] First session Fifty-second Congress, Report No. 1044,

[13] Third session Fifty-eighth Congress, Report No. 4801.

[14] First session Fifty-seventh Congress, Report No. 2646.

[15] Second session Fiftieth Congress, Report No. 3751.

[16] Third session Fifty-fifth Congress, Report No. 2053.

4108. Bills authorizing the construction of revenue cutters and auxiliary craft of the Customs Service are reported by the Committee on Interstate and Foreign Commerce.—The Committee on Interstate and Foreign Commerce has general jurisdiction of the Revenue-Cutter Service, and auxiliary craft for the Customs Service, and has reported:

In 1882,[1] 1889,[2] 1902,[3] and 1906[4] on bills relating to the organization and efficiency of the Revenue-Cutter Service.

In 1884[5] and 1902,[6] bills authorizing the construction of revenue cutters for waters of the United States, including Alaska.

In 1890,[7] a bill providing for the Revenue Service a boarding vessel for Chicago Harbor.

In 1896,[8] 1900,[9] and 1902,[10] bills providing steam launches for various customs collection districts.

In 1890,[11] a bill providing a steamer for use of the civil government of Alaska.

4109. The general subjects of quarantine and the establishment of quarantine stations are within the jurisdiction of the Committee on Interstate and Foreign Commerce.—The Committee on Interstate and Foreign Commerce has reported bills relating to the subject of quarantine[12] and regulation and establishment of quarantine stations,[13] and also, in 1888,[14] on the bill (H. R. 1526) to establish a bureau of public health and prevent the importation of infectious diseases into the United States.

4110. Bills authorizing the construction of marine hospitals and the acquisition of sites therefor are reported by the Committee on Interstate and Foreign Commerce.—Since 1880,[15] the Committee on Interstate and Foreign Commerce has exercised jurisdiction over bills authorizing the construction of marine hospitals, and the acquisition of sites[16] for the same.

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[1] First session Forty-seventh Congress, Report No. 926.

[2] Third session Fifty-fifth Congress, Report No. 2100.

[3] First session Fifty-seventh Congress, Report No. 622.

[4] First session Fifty-ninth Congress, Reports Nos. 4902, 2749.

[5] First session Forty-eighth Congress, Report No. 802.

[6] First session Fifty-seventh Congress, Reports Nos. 67, 253, 103, 1317.

[7] First session Fifty-first Congress, Report No. 2861.

[8] First session Fifty-fourth Congress, Report No. 1545.

[9] First session Fifty-sixth Congress, Reports Nos. 481, 1220.

[10] First session Fifty-seventh Congress, Report No. 130.

[11] First session Fifty-first Congress, Report No. 1203.

[12] Second session Fifty-second Congress, Report No. 2210; first session Fifty-ninth Congress, Report No. 3161.

[13] First session Forty-seventh Congress, Report No. 50; second session Forty-ninth Congress, Report No. 3998; second session Fifty-fifth Congress, Report No. 626; second session Fifty-eighth Congress, Report No. 1391; first session Fifty-ninth Congress, Reports Nos. 2277, 2341.

[14] First session Fiftieth Congress, Report No. 498.

[15] First session Forty-sixth Congress, bill H. R. 1607; first session Forty-seventh Congress, Reports Nos. 48, 396, 400, 759, 1211; first session Fifty-first Congress, Reports Nos. 246, 1400, 2498; first session Fifty-sixth Congress, Reports Nos. 186, 1649; first session Fifty-seventh Congress, Reports Nos. 270, 548, 948.

[16] First session Forty-seventh Congress, Report No. 399; first session Forty-eighth Congress, Report No. 1039; first session Fiftieth Congress, Report No. 1235.

4111. Subjects relating to health, spread of leprosy, and other contagious diseases, international congress of hygiene, etc., have been considered by the Committee on Interstate and Foreign Commerce.—The Committee on Interstate and Foreign Commerce, probably in consideration of the fact that it has jurisdiction of legislation relating to the Marine-Hospital Service, has also exercised a broad jurisdiction over bills relating to the subject of health generally. Thus it has reported—

In 1904[1] and 1907[2] on the International Congress of Hygiene and Demography.[3]

In 1886,[4] 1889,[5] 1890,[6] and 1897[7] on bills for the prevention of the introduction and spread of contagious and infectious diseases.

In 1886[8] on the bill (H. R. 1730) providing for a commission to investigate inoculation for yellow fever.

In 1898[9] and 1899[10] on the investigation of leprosy, and in 1905[11] on the subject of establishing a leprosarium.

4112. Bills to prevent the adulteration, misbranding, etc., of foods and drugs have been reported by the Committee on Interstate and Foreign Commerce.—On March 4, 1882,[12] the Committee on Commerce reported the bill (H. R. 4789) to prevent adulterated foods and drugs from being shipped from abroad into this country, and to prevent the manufacture and sale of such drugs in the District of Columbia and the Territories.

In 1900[13] the Committee on Interstate and Foreign Commerce reported the bill (H. R. 9677) for preventing the adulteration, misbranding, and imitation of foods, beverages, candies, drugs, and condiments in the District of Columbia and the Territories, and for regulating interstate traffic therein.

Also in 1900[14] and 1902,[15] bills to prevent false branding of food and dairy products.

And in 1902,[16] 1904,[17] and 1906,[18] bills relating to purity of foods and drugs.

In 1900[19] the committee reported the bill (H. R. 5) to appoint a commission for the investigation of water supplies.

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[1] Third session Fifty-eighth Congress, Report No. 4208.

[2] Second session Fifty-ninth Congress, Report No. 8020.

[3] See, however, section 4177 of this volume.

[4] First session Forty-ninth Congress, Report No. 1230.

[5] Second session Fiftieth Congress, Report No. 3587.

[6] First session Fifty-first Congress, Report No. 539.

[7] Second session Fifty-fourth Congress, Report No. 3047.

[8] First session Forty-ninth Congress, Report No. 2914.

[9] Second session Fifty-fifth Congress, Report No. 1215.

[10] Third session Fifty-fifth Congress, Report No. 1759.

[11] Third session Fifty-eighth Congress, Reports Nos. 4599, 4624.

[12] First session Forty-seventh Congress, Report No. 634.

[13] First session Fifty-sixth Congress, Report No. 1426.

[14] First session Fifty-sixth Congress, Report No. 872.

[15] First session Fifty-seventh Congress, Report No. 258.

[16] First session Fifty-seventh Congress, Report No. 1319.

[17] Second session Fifty-eighth Congress, Report No. 381.

[18] First session Fifty-ninth Congress, Report No. 2118.

[19] First session Fifty-sixth Congress, Report No. 89.

4113. The regulation of exportation of live stock, meat, and other agricultural products has been to a certain extent within the jurisdiction of the Committee on Interstate and Foreign Commerce.—On February 14, 1894,[1] the Committee on Agriculture was discharged from the consideration of the bill (H. R. 88) to prohibit monopoly in the transportation of cattle to foreign countries, and it was referred to the Committee on Interstate and Foreign Commerce.

The Committee on Interstate and Foreign Commerce has also reported as follows:

In 1886[2] and 1891[3] on bills providing for the inspection of live stock and meats for foreign shipment.

In 1884[4] and 1887[5] on bills providing for inspection of live stock and meats for exportation, prohibiting the importation of adulterated articles of food and drink.

In 1891[6] on the subject of inspection of vessels engaged in exportation of animals.

In 1882[7] and 1884[8] a bill regulating the exportation of imitation butter and cheese.

4114. The regulation of railroads through the relation which they bear to interstate commerce is within the jurisdiction of the Committee on Interstate and Foreign Commerce.—The Committee on Interstate and Foreign Commerce has exercised a broad jurisdiction over the subject of railroads.[9] The subjects of intercolonial and interstate railways have been given to this committee by resolutions distributing the message of the President.[10] It also has reported—

In 1888[11] the bill (H. R. 8367) for the regulation of railway companies chartered by the United States; also the same year on a resolution requesting the Interstate Commerce Commission to investigate the strike on the Reading Railroad.

In 1889[12] a resolution in relation to a meeting of railroad presidents.

In 1893[13] as to an investigation of alleged coal combination among certain railroads.[14]

In 1895[15] on railroad train wrecking.

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[1] Second session Fifty-third Congress, Record, p. 2183.

[2] First session Forty-ninth Congress, Report No. 1644.

[3] First session Fifty-first Congress, Report No. 2985.

[4] First session Forty-eighth Congress, Report No. 1036.

[5] Second session Forty-ninth Congress, Report No. 3777.

[6] Second session Fifty-first Congress, Report No. 3752.

[7] First session Forty-seventh Congress, Report No. 1706.

[8] First session Forty-eighth Congress, Report No. 1669.

[9] The Committee on Railways and Canals has in fact retained little if any jurisdiction over this subject in recent years.

[10] See second session Fifty-fifth Congress, Record, p. 26, and third session, Record, p. 25.

[11] First session Fiftieth Congress, Reports Nos. 2514 and 170.

[12] Second session Fiftieth Congress, Report No. 4092.

[13] Second session Fifty-second Congress, Report No. 2278.

[14] But the subject of State jurisdiction over railroads was reported in 1896 by the Committee on the Judiciary. First session Fifty-fourth Congress, Report No. 102.

[15] Third session Fifty-third Congress, Report No. 1726.

In 1891[1] on a bill relating to rates of fare for commercial travelers; and in 1897[2] and 1898[3] on bills relating to ticket brokerage.

In 1896,[4] 1900,[5] 1902,[6] and 1904,[7] on bills to provide for the safety of railroad employees by requiring common carriers engaged in interstate commerce to equip their cars with couplers and brakes of a certain kind.[8]

In 1906,[9] the railroad rate bill, which became a law; and on the subject of railroad discriminations and monopolies.

4115. Bills relating to commercial travelers as agents of interstate commerce and the branding of articles going into such commerce have been considered by the Committee on Interstate and Foreign Commerce.—The Committee on Interstate and Foreign Commerce in 1886,[10] 1888,[11] and 1892,[12] reported bills on the subject of license fees required by States of commercial travelers or agents of interstate commercial transactions.

In 1906,[13] a bill, which became a law, relating to the misbranding of merchandise made of gold and silver and entering into interstate commerce.

4116. Bills to prevent the carriage from one State to another of indecent or harmful pictures or literature have been reported by the Committee on Interstate and Foreign Commerce.—The Committee on Interstate and Foreign Commerce reported, in 1896,[14] a bill relating to the carrying of obscene literature and articles designed for indecent and immoral use from one State to another; also, in 1904,[15] a similar bill.

In 1897,[16] the bill (H. R. 10369) to forbid the transmission by mail or interstate commerce of any picture or description of a prize fight.

4117. The subject of protection of game through prohibition of interstate transportation has been considered by the Committee on Interstate and Foreign Commerce.—In 1900[17] the Committee on Interstate and Foreign Commerce reported the bill (H. R. 6634) to enlarge the powers of the Department of Agriculture and prohibit the transportation by interstate commerce of game killed in violation of local laws.

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[1] Second session Fifty-first Congress, Report No. 3600.

[2] Second session Fifty-fourth Congress, Report No. 2586.

[3] Second session Fifty-fifth Congress, Report No. 232.

[4] First session Fifty-fourth Congress, Report No. 727.

[5] First session Fifty-sixth Congress, Report No. 1757.

[6] First session Fifty-seventh Congress, Report No. 2563.

[7] Second session Fifty-eighth Congress, Report No. 2605.

[8] In 1894 (first session Forty-eighth Congress) the Committee on Railways and Canals reported the bill (H. R. 313) to regulate the coupling of cars on railroads in the United States (Report No. 950); also in 1890 (first, session Fifty-first Congress, Report No. 3014); and in 1884 the bill (H. R. 312) to establish a uniform code of signals for the railroads of the United States (Report No. 951).

[9] First session Fifty-ninth Congress, Reports Nos. 591, 1557, 2274.

[10] First session Forty-ninth Congress, Report No. 1762.

[11] First session Fiftieth Congress, Report No. 1310.

[12] First session Fifty-second Congress, Report No. 186.

[13] First session Fifty-ninth Congress, Report No. 2402.

[14] First session Fifty-fourth Congress, Report No. 1363.

[15] Second session Fifty-eighth Congress, Report No. 383.

[16] Second session Fifty-fourth Congress, Report No. 3046.

[17] First session Fifty-sixth Congress, Report No. 474.

4118. The creation and history of the Committee on Rivers and Harbors, section 8 of Rule XL.

The rule gives to the Committee on Rivers and Harbors the jurisdiction of subjects relating "to the improvement of rivers and harbors."

Section 8 of Rule XI provides for the reference of subjects relating—

to the improvements of rivers and harbors: to the Committee on Rivers and Harbors.

This committee has eighteen Members.

It was authorized as a standing committee on December 19, 1883,[1] with the same privilege for reporting the river and harbor bill[2] that had been enjoyed by the Committee on Commerce.[3] This privilege still remains, being provided for in section 61 of Rule XI.[4]

4119. A subject of which the River and Harbor Committee has jurisdiction may be reported in the river and harbor bill.—On February 23, 1905,[5] the river and harbor appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

Upon the completion of the dredging of said Snake River and the construction of the bulkheads and jetties, so as to form a channel from the ocean into Snake River not less than 50 feet wide and 6 feet deep at mean low tide, the said Nome Improvement Company shall have the right, during the time it may maintain the channel aforesaid, to collect as toll on freight and passengers entering or leaving the mouth of the jetties so constructed, as follows: On all freight carried in or out, $1 per ton; passengers, 25 cents each; horses and cattle, $1 per head; hogs and sheep, 25 cents each: *Provided, however,* That these rates of toll and any wharfage rates charged or imposed by the said company may be revised, modified, or changed by the Secretary of War whenever he becomes satisfied that the same are unreasonable or oppressive: *Provided, further,* That all native Indians and Eskimos shall have the right of free ingress and egress through said channel and jetties to and from Snake River with their boats, provisions, and personal effects.

Mr. James R. Mann, of Illinois, raised a question of order.

Mr. Chairman, this is a bill which is reported originally by the Committee on Rivers and Harbors, not a bill which has been referred to that committee by the House, and anything in the bill which they have not authority to report as a privileged matter under the rules is subject to a point of order. Under the rules they are permitted to report at any time bills relating to the improvement of rivers and harbors. This paragraph has nothing whatever to do with the improvement of either a river or a harbor. It is a paragraph granting a franchise to a company and authorizing the company to collect tolls on freights and passengers, and is not related to the improvement of the river and harbor at Nome at all. It contains a large number of provisions in reference to wharfage rates, not one of which, I contend, is within the jurisdiction of the committee to report in this bill. * * * This bill is a privileged bill under the rule—a bill which they can call up as a privileged matter under the rule with a right to report it at any time. Now, clearly, the Committee on Rivers and Harbors, if it had a Senate bill referred to it—and which it has already reported, by the way, and which is within the jurisdiction of that committee—clearly that bill was not subject to be called up at any time.

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[1] First session Forty-eighth Congress, Record, pp. 196, 214.

[2] For an exhaustive discussion of the jurisdiction over river and harbor bills from the foundation of the Government, see Congressional Record of December 4, 1877 (second session Forty-fifth Congress, pp. 18, 20, 21, etc.).

[3] See section 4096 of this volume.

[4] See section 4621 of this volume.

[5] Third session Fifty-eighth Congress, Record, pp. 3225, 3226.

That bill would go on the Union Calendar, or whatever calendar it goes onto, and be subject to the rules. Now, giving the committee this jurisdiction to report at anytime upon one kind of a proposition would not enable it to insert in the bill which it reports some other proposition which is not privileged and have that considered in that bill.

The Chairman [1] said:

The question is upon the point of order raised by the gentleman from Illinois. In the opinion of the Chair, the fact having been established by the statement of the gentleman from Ohio that this legislation contained in the Senate bill was referred to the Committee on Rivers and Harbors, leads the Chair to believe that that committee has acquired jurisdiction, and the point of order is not well taken.

* * * The Chair will call the attention of the gentleman from Iowa to the rule which says that the bills may be reported at any time—clearly.

* * * This is clearly a provision coming from the River and Harbor Committee, and if the committee has jurisdiction of the subject-matter they may report it to the House.

* * * The gentleman from Illinois is wrong. The tolls provided for by this section are intended to be for the improvement.

4120. To a bill providing generally for the improvement of rivers and harbors an amendment providing for an additional harbor was held to be germane.—On February 1, 1899,[2] the river and harbor bill (H. R. 11795) was under consideration in Committee of the Whole House on the state of the Union, and the following paragraph had been reached:

Improving harbor at Milwaukee, Wis.: For maintenance, $14,000.

To this Mr. Theobold Otjen, of Wisconsin, proposed this amendment:

After the word "dollars," insert "improving the harbor of South Milwaukee, Wis., $10,000."

Mr. Theodore E. Burton, of Ohio, made a point of order against this amendment.

The Chairman [3] held:

The Chair desires to state to the gentleman in charge of the bill [Mr. Burton] that, in the opinion of the Chair, the point made that it is not germane is not well taken, and the Chair will overrule that; and if there is no further debate, the Chair will put the motion.

4121. A proposition to improve the harbor of a foreign country was held not to be germane to the river and harbor bill.—On March 20, 1902,[4] while the river and harbor appropriation bill was under consideration in Committee of the Whole House on the state of the Union, Mr. Samuel M. Robertson, of Louisiana, proposed the following amendment:

Between lines 2 and 3 on page 52 insert: "For improving the harbor of Habana, Cuba, to be expended under the supervision of the Secretary of War, $2,500,000."

Mr. Theodore E. Burton, of Ohio, having raised a question of order, the Chairman [5] said:

The Chair is of the opinion that the amendment is not germane to that part of the bill to which it is offered, and also is of opinion that it is not germane to the bill at all, and therefore sustains the point of order.

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[1] William A. Smith, of Michigan, Chairman.

[2] Third session Fifty-fifth Congress, Record, p. 1364.

[3] Albert J. Hopkins, of Illinois, Chairman.

[4] First session Fifty-seventh Congress, Record, p. 3093.

[5] Marlin E. Olmsted, of Pennsylvania, Chairman.

4122. River and harbor improvements not authorized or placed under contract may not be appropriated for in the sundry civil appropriation bill.—On May 5, 1900,[1] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and Mr. D. W. Shackleford, of Missouri, offered this amendment:

"Improving Missouri River at Jefferson City, Mo.: Continuing improvement, $50,000; and at Overton, Mo., continuing improvement, $50,000."

Mr. Joseph G. Cannon, of Illinois, made a point of order against the proposed amendment, which did not relate to a work authorized by existing law and under contract.

The Chairman[2] sustained the point of order.

4123. On February 12, 1903[3] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Charles Curtis, of Kansas, proposed the following amendment:

Insert in line 13, page 108, after the word "dollars," the following:

"To continue the work of repairing and renewing the revetments on the Kansas bank of the Missouri River, in Elwood and Belmont bends, near the city of St. Joseph, Mo., the sum of $40,000, or so much thereof as may be necessary, to be immediately available."

Mr. Theodore E. Burton, of Ohio, made the point of order that the matter was not within the jurisdiction of the committee reporting this bill, and that it was not authorized by law.

After debate the Chairman[4] held:

The Chair is ready to rule. Upon the facts conceded in the discussion on this point of order it is clear to the Chair that if the item proposed in this amendment had been originally included in the pending appropriation bill as it came from the Committee on Appropriations it would not have been in order, on the ground that the Committee on Appropriations under the rules of the House has no jurisdiction of the subject-matter of this amendment. The Chair therefore sustains the point of order.

4124. On March 30, 1904,[5] during consideration of the sundry civil appropriation bill in Committee of the Whole House on the state of the Union, the Clerk read:

Improving harbor at Toledo, Ohio: For continuing improvement, $70,000.

Mr. R. B. Scarborough, of South Carolina, offered the following amendment:

Amend line 6, page 100, by inserting:

"Improving Waccamaw River, South Carolina: For special improvement of Waccamaw River, South Carolina, between Conway and Bucksville, in Horry County, $15,000."

Mr. James A. Hemenway, of Indiana, made the point of order that the proposition was not authorized by law.

In the debate it was shown that the proposed work had not been authorized by law.

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[1] First session Fifty-sixth Congress, Record, pp. 5198, 5199.

[2] John Dalzell, of Pennsylvania, Chairman.

[3] Second session Fifty-seventh Congress, Record, pp. 2081–2083.

[4] James A. Tawney, of Minnesota, Chairman.

[5] Second session Fifty-eighth Congress, Record, p. 4000.

The Chairman [1] held:

The river and harbor bill alone provides for authorizations of appropriations for rivers and harbors. The sundry civil bill simply makes provision for such improvements as are authorized and placed under contract by the river and harbor bill.

4125. The preservation of public works for the benefit of navigation and the use of water power on improved streams have been within the jurisdiction of the Committee on Rivers and Harbors.—As an incident of its function of improving the rivers and harbors the Committee on Rivers and Harbors has sometimes reported on bills as to related subjects. Thus it reported:

In 1890 [2] a bill to prevent the obstruction of navigable waters and to protect public works from injury.

In 1891 [3] on the use of surplus water in the Kentucky River for industries, and the same year on certain commercial statistics.

In 1900 [4] the bills (H. R. 11876) regulating the construction and operation of a water power canal at Sault Ste. Marie, Mich.; (H. R. 9542) extending the time for completion of the works of the Muscle Shoals Power Company of Alabama; [5] (H. R. 9824) relating to the floating loose timber and logs and rafts in navigable streams.

4126. The Committee on Rivers and Harbors has reported on the subject of an international arrangement as to the use of water at the outlet of the Great Lakes.—The Committee on Rivers and Harbors has exercised jurisdiction over legislation inviting the Government of Great Britain to join in the formation of an international commission to investigate into the conditions and uses of the waters on the boundary line whose outlet is the St. Lawrence River, and as to the advisability of locating a dam at the outlet of Lake Erie.[6]

4127. An amendment prohibiting the employment of nonresident foreigners, on certain river and harbor works was held not to be germane to the river and harbor bill.—On January 16, 1901,[7] the river and harbor bill (H. R. 13189) was under consideration in Committee of the Whole House on the state of the Union, and Mr. John B. Corliss, of Michigan, offered this amendment:

That all persons hereafter employed by the United States or by any contractor or subcontractor, under and by virtue of the authority hereby granted and appropriations hereby made, shall be bona fide residents or citizens of the United States; and all contracts or subcontracts made for the expenditure of the moneys hereby appropriated shall expressly prohibit the employment of nonresident foreigners in the execution of said public improvements. A violation of said provision by any contractor or subcontractor shall render such contract or subcontract null and void.

Mr. Theodore E. Burton, of Ohio, made the point of order that the subject of the proposed amendment was not germane to the bill.

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[1] Theodore E. Burton, of Ohio, Chairman.

[2] First session Fifty-first Congress (Report No. 1635).

[3] Second session Fifty-first Congress, Reports Nos. 3278, 3460.

[4] First session Fifty-sixth Congress, Reports Nos. 731, 1759, 1816.

[5] In 1906 the Committee on Interstate and Foreign Commerce reported on the subject of the dam at Muscle Shoals, Ala. (First session Fifty-ninth Congress, Report No. 1350.)

[6] River and harbor act of 1902. (32 Stat. L., p. 373.) The river and harbor act of 1906 also contained legislation on this subject. This jurisdiction must be regarded as exceptional, however, as ordinarily it would belong to the Committee on Foreign Affairs. (See sec. 4165 of this volume.)

[7] Second session Fifty-sixth Congress, Record, pp. 1095, 1096.

After debate the Chairman [1] held:

The Chair will state that in the judgment of the Chair this is a separate and independent proposition, without reference to what may be its merits, and the Chair must hold that it is not germane to the purposes of the bill, and sustains the point of order.

4128. An amendment providing for a system of irrigating arid lands was held not to be germane to the river and harbor bill.—On January 15, 1901,[2] the river and harbor bill (H. R. 13189) was under consideration in Committee of the Whole House on the state of the Union, when Mr. William H. King, of Utah, offered an amendment providing for a plan of irrigating arid public lands.

Mr. Theodore E. Burton, of Ohio, made the point of order that the amendment was not germane.

The Chairman [1] said:

The Chair holds that it is neither germane to the purpose of the bill, nor does the Committee on Rivers and Harbors have jurisdiction of the subject-matter contained in the amendment.

4129. The creation and history of the Committee on Merchant Marine and Fisheries, section 9 of Rule XI.

The jurisdiction of subjects relating to the "merchant marine and fisheries" is given by the rule to the Committee on Merchant Marine and Fisheries.

Section 9 of Rule XI provides for the reference of subjects relating—

to the merchant marine and fisheries: to the Committee on the Merchant Marine and Fisheries.

This committee has eighteen members.

It dates from December 21, 1887,[3] when it was established to take the place of the old Select Committee on American Shipbuilding and Shipowning Interests.

4130. The subjects of navigation and the navigation laws and regulation of shipping in Hawaii and even in the Philippines have been considered by the Committee on Merchant Marine and Fisheries.—The Committee on the Merchant Marine and Fisheries has general jurisdiction over bills relating to navigation and the navigation laws.[4] It has also reported:

In 1899 [5] and 1900 [6] bills extending the laws relating to commerce, navigation, and merchant seamen over the Hawaiian Islands.

In 1904 [7] the bill to regulate shipping between the United States and the Philippine Archipelago and between ports and places in the Philippine Archipelago. Two years later the Committee on Insular Affairs reported a bill on the same subject, but not without a protest on the part of the Committee on the Merchant Marine and Fisheries.[8]

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[1] Albert J. Hopkins, of Illinois, Chairman.

[2] Second session Fifty-sixth Congress, Record, pp. 1057, 1058.

[3] First session Fiftieth Congress, Record, p. 146.

[4] First session Fiftieth Congress, Report No. 69; second session Fifty-fifth Congress, Report No. 441.

[5] Third session Fifty-fifth Congress, Report No. 1694.

[6] First session Fifty-sixth Congress, Report No. 375.

[7] Second session Fifty-eighth Congress, Report No. 1904.

[8] First session Fifty-ninth Congress, Record, p. 5337.

In 1884[1] the bill (H. R. 3056) to constitute a bureau of navigation was reported by the old Select Committee on American Shipbuilding and Shipowning Interests.

4131. The subjects of tonnage taxes and fines and penalties on vessels are within the jurisdiction of the Committee on Merchant Marine and Fisheries.—The subject of tonnage dues is within the jurisdiction of the Committee on the Merchant Marine and Fisheries;[2] and in 1898[3] and 1902[4] this committee has reported bills relating to tonnage taxes. It also reported in 1894[5] on the subject of fines and penalties on vessels.[6]

4132. The naming and measuring of vessels are subjects within the jurisdiction of the Committee on Merchant Marine and Fisheries.—The Committee on the Merchant Marine and Fisheries has reported:

In 1890[7] a bill to change the law in relation to marking the names of vessels.

In 1896[8] on vessels' names and draft.

In 1906[9] on the subject of changes of the names of sailing vessels.

In 1895[10] on the subject of the measurement of vessels.

4133. The inspection of steam vessels, as to hulls and boilers, is generally within the jurisdiction of the Committee on Merchant Marine and Fisheries.—The Committee on Merchant Marine and Fisheries reported, in 1904[11] and 1906,[12] bills relating to the inspection of steam vessels; and in 1898[13] on the subject of steamboat inspectors in Alaska.

This committee has also reported:

In 1900[14] a bill creating a new inspection district for inspectors of hulls and boilers in the vicinity of Toledo.

In 1901[15] the bill (H. R. 13782) relating to the inspection of hulls and boilers.

In 1902[16] on the subject of certificates as to boiler inspection.[17]

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[1] First session Forty-eighth Congress, Report No. 281.

[2] First session Fifty-fourth Congress, Record p. 301.

[3] Second session Fifty-fifth Congress, Report No. 760.

[4] Second session Fifty-seventh Congress, Report No. 2966.

[5] Second session Fifty-third Congress, Report No. 1381.

[6] Before the creation of the Committee on the Merchant Marine and Fisheries the Select Committee on American Shipbuilding and Shipowning Interests, in 1885 (second session Forty-eighth Congress, Report No. 2381), reported a bill to remove certain burdens on the American merchant marine, and in 1884 (first session Forty-eighth Congress, Report No. 1443) the Committee on Commerce reported a bill relating to fees levied on vessels in domestic commerce.

[7] First session Fifty-first Congress, Report No. 1974.

[8] First session Fifty-fourth Congress, Report No. 1867.

[9] First session Fifty-ninth Congress, Report No. 3397.

[10] Third session Fifty-third Congress, Reports Nos. 1515, 1780.

[11] Second session Fifty-eighth Congress, Report No. 2471.

[12] First session Fifty-ninth Congress, Report No. 1347.

[13] Second session Fifty-fifth Congress, Report No. 566.

[14] First session Fifty-sixth Congress, Report No. 2642.

[15] Second session Fifty-sixth Congress, Report No. 2642.

[16] First session Fifty-seventh Congress, Report No. 432.

[17] While the subject of inspection of hulls and boilers logically belongs to the classification of subjects within the jurisdiction of the Committee on Merchant Marine and Fisheries, and the recent practice has largely been in harmony therewith, yet the subject belonged to the old Committee on Commerce before the creation of the Committee on Merchant Marine and Fisheries (see second session Forty-eighth

4134. The general subjects of shipbuilding, admission of foreign built ships, registering and licensing of vessels are within the jurisdiction of the Committee on Merchant Marine and Fisheries.—On December 3, 1878,[1] a question arose as to the jurisdiction over the bill (H. R. 5299) to authorize the purchase of foreign-built ships by citizens of the United States. Mr. Fernando Wood, of New York, on behalf of the Committee on Ways and Means, claimed the jurisdiction; but the House denied this claim, ayes 66, noes 91, and referred the bill to the Committee on Commerce. In 1884[2] the Select Committee on American Shipbuilding and Shipowning Interests took jurisdiction of this subject and reported the bill (H. R. 3230) to authorize the purchase of foreign-built ships by citizens of the United States for use in the foreign carrying trade.

In 1887 the Committee on Merchant Marine and Fisheries was created; and in 1888,[3] and again in 1892,[4] the new committee reported bills to authorize the purchase of foreign-built ships by citizens of the United States.

The Committee on Merchant Marine and Fisheries has also reported:

In 1894,[5] and 1902,[6] on vessel registers and licenses.

In 1890,[7] 1901,[8] and 1902,[9] on bills to admit vessels, some specifically mentioned, to American registry;[10] and in 1906,[11] on registry of repaired foreign wrecks.

Also this committee has reported on the general subject of shipbuilding.[12]

4135. The subject of rules to prevent collisions at sea and international arrangements therefor have been reported by the Committee on Merchant Marine and Fisheries.

Congress, Reports Nos. 2179, 2365, and first session Forty-eighth Congress, Report No. 1967), and from time to time bills on this subject have found their way to the Committee on Interstate and Foreign Commerce and been reported therefrom. Thus, in 1898, the bill (H. R. 5640) relating to the salaries of inspectors of hulls and boilers in the customs districts of the United States (first session Fiftieth Congress, Report No. 1136); and similar bills in 1890 (first session Fifty-first Congress, Reports Nos. 540, 638) and 1894 (second session Fifty-third Congress, Report No. 456); and as late as 1906 a bill on the inspection of hulls and boilers. (First session Fifty-ninth Congress, Report No. 2754.) In 1893 also this committee reported a bill relating to inspection of steam-boiler plates. (First session Fifty-third Congress, Report No. 25.)

[1] Third session Forty-fifth Congress, Record, pp. 22, 23.

[2] First session Forty-eighth Congress, Report No. 750.

[3] First session Fiftieth Congress, Report No. 1874.

[4] First session Fifty-second Congress, Report No. 966.

[5] Second session Fifty-third Congress, Report No. 1451.

[6] First session Fifty-seventh Congress, Report No. 1099.

[7] First session Fifty-first Congress, Reports Nos. 1820, 3158.

[8] Second session Fifty-sixth Congress, Reports Nos. 2619, 2734, 2962.

[9] Second session Fifty-seventh Congress, Reports Nos. 3771, 3784.

[10] The Committee on Interstate and Foreign Commerce has reported, however, in 1885, before Merchant Marine and Fisheries was created, the bill (H. R. 6662) to authorize the registration of certain steamships (Report No. 2611, second session Forty-eighth Congress); and as an exceptional instance in 1892 a bill relating to admission of foreign-built vessels to American registry. (First session Fifty-second Congress, Report No. 966.)

[11] First session Fifty-ninth Congress, Report No. 926.

[12] First session Fifty-second Congress, Reports Nos. 927, 1634; second session Fifty-third Congress, Reports Nos. 148, 1272.

Lights and signals on vessels are subjects that have been considered both by the Committees on Merchant Marine and Fisheries and Interstate and Foreign Commerce.

The Committee on Merchant Marine and Fisheries has reported:

In 1890 [1] and 1894 [2] bills relating to an international marine conference.[3]

In 1890,[4] 1895,[5] and 1896,[6] bills for adoption of rules to prevent collisions at sea.[7]

In 1895,[8] on subject of lights on vessels.

In 1894,[9] on lights on fishing vessels.

But in 1893 [10] a bill relating to lights on vessels, barges, etc., in tow was reported by the Committee on Interstate and Foreign Commerce, and in the same year the same committee reported a bill for protection of distinguishing flags and signals for vessels. But in 1900 [11] the Committee on Merchant Marine and Fisheries reported a bill relating to lights on steam pilot vessels.[12]

4136. The Committee on Merchant Marine and Fisheries has jurisdiction of the subject of pilotage.—In 1888,[13] 1890,[14] and 1906 [15] the Committee on Merchant Marine and Fisheries reported bills exempting American coastwise sailing vessels from obligations to pay State pilots.

In 1901,[16] the bill (H. R. 5462) to regulate pilots.[17]

4137. Bills of lading, liability of shipowners, and entering and clearing of vessels are subjects which have been within the jurisdiction of the Committee on Interstate and Foreign Commerce.—While the Committee on Merchant Marine and Fisheries has a wide jurisdiction over the subject of the merchant marine, yet on certain branches of the general subject the Committee on Interstate and Foreign Commerce has jurisdiction. In 1884,[18] before the creation of the Committee on Merchant Marine and Fisheries, the Committee on Commerce

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[1] First session Fifty-first Congress, Report No. 3208.

[2] First session Fifty-fourth Congress, Reports Nos. 110, 150.

[3] In 1901 (first session Fifty-seventh Congress, Report No. 2581), however, the Committee on Interstate and Foreign Commerce reported on an international commission of congresses of navigation.

[4] First session Fifty-first Congress, Report No. 2551.

[5] Third session Fifty-third Congress, Report No. 1911.

[6] First session Fifty-fourth Congress, Report No. 2134.

[7] In 1884 (first session Forty-eighth Congress, Report No. 731), before the creation of the Committee on Merchant Marine and Fisheries, the Committee on Commerce reported on international regulations to prevent collisions at sea.

[8] Third session Fifty-third Congress, Report No. 1615.

[9] Second session Fifty-third Congress, Report No. 1271.

[10] Second session Fifty-second Congress, Reports Nos. 2491, 2167.

[11] First session Fifty-sixth Congress, Report No. 197.

[12] In 1895 the Committee on Interstate and Foreign Commerce reported on the subject of international signals on the Great Lakes. (Third session Fifty-third Congress, Report No. 1682.)

[13] First session Fiftieth Congress, Report No. 956.

[14] First session Fifty-first Congress, Report No. 38.

[15] First session Fifty-ninth Congress, Report No. 1482.

[16] Second session Fifty-sixth Congress, Report No. 2027.

[17] In 1884 the Select Committee on American Shipbuilding and Ship-owning interests had reported a similar bill. (First session Forty-eighth Congress, Report No. 791.)

[18] First session Forty-eighth Congress, Report No. 1665.

reported the bill (H. R. 7163) to regulate the forms of bills of lading and the duties and liabilities of shipowners and others; and in 1901[1] the Committee on Interstate and Foreign Commerce reported on the navigation of vessels and bills of lading.

The Committee on Interstate and Foreign Commerce also reported:

In 1889,[2] the bill (H. R. 12414) authorizing the collector at Sabine Pass to enter and clear vessels.

In 1900,[3] the bill (S. 4615) to facilitate the entry of steamships engaged in the coasting trade between Porto Rico and the Territory of Hawaii and the United States.

In 1894,[4] on the subject of the entry of steamships.

4138. Bills to extend and increase the merchant marine, even when including the subject of a naval reserve, have been reported by the Committee on Merchant Marine and Fisheries.—On December 10, 1890,[5] the resolutions distributing the President's message provided for the reference of so much as related to "the development of American steamship lines and the extension of the merchant marine" to the Committee on Merchant Marine and Fisheries.

In 1889[6] and 1900[7] this committee reported bills to increase the commerce of the United States and provide auxiliary cruisers for Government use when needed, by the granting of subsidies.

In 1906,[8] the bill "to promote the national defense, to create a naval reserve, to establish American ocean mail lines[9] to foreign markets, and to promote commerce."

In 1890,[10] the bill "to place the American merchant marine engaged in the foreign trade upon an equality with that of other nations."

In 1896,[11] a bill to improve the merchant marine engineer service, and thereby increase the efficiency of the naval reserve.

4139. Bills relating to the titles, conduct, and licensing of officers of vessels, under the more recent practice, have been considered by the Committee on Merchant Marine and Fisheries.—The Committee on Merchant Marine and Fisheries has reported—

In 1901,[12] on bills relating to the titles of officers of vessels, and the conduct of officers of steam vessels.

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[1] First session Fifty-seventh Congress, Report No. 739.

[2] Second session Fiftieth Congress, Report No. 3994.

[3] First session Fifty-sixth Congress, Report No. 1641.

[4] Second session Fifty-third Congress, Reports Nos. 829, 994.

[5] Second session Fifty-first Congress, Journal, p. 43; Record, p. 303.

[6] Third session Fifty-fifth Congress, Report No. 1866.

[7] First session Fifty-sixth Congress, Report No. 890.

[8] Second session Fifty-ninth Congress, Report No. 6442.

[9] In 1884 the Select Committee on American Shipbuilding and Ship-owning Interests reported the bill (H. R. 4987) for the encouragement of the American merchant marine in relation to carrying the mails. (First session Forty-eighth Congress, Report No. 363.)

[10] First session Fifty-first Congress, Report No. 1210.

[11] First session Fifty-fourth Congress, Report No. 728.

[12] First session Fifty-seventh Congress, Reports Nos. 2336, 2357, 2359, 2360.

In 1900,[1] on a bill to prevent fraud in obtaining licenses as officers of steam vessels.[2]

In 1906,[3] a bill on the subject of licensed officers of vessels.

4140. The shipping, wages, treatment, and protection of seamen are subjects within the jurisdiction of the Committee on Merchant Marine and Fisheries.—The Committee on Merchant Marine and Fisheries has reported on subjects as follows:

In 1890,[4] a bill to amend the law relating to duties of shipping commissioners [5] in shipment of seamen.

In 1896,[6] a bill relating to the amelioration of the condition of American seamen; also on the subject of wages of seamen.

In 1901,[7] on the subject of hens for mariners' wages.

In 1900,[8] the bill (H. R. 5067) relating to the boarding of vessels by persons having designs against the sailors.[9]

In 1906,[10] on the subject of shanghaiing.

4141. Protection from fire on vessels is a subject which, under the later practice, has been considered by the Committee on Merchant Marine and Fisheries.

Conditions relating to the health of seamen are within the jurisdiction of the Committee on Merchant Marine and Fisheries.

The Committee on Merchant Marine and Fisheries reported in 1906 [11] a bill relating to the use of fire pumps and hose on steam vessels; and on April 18, 1894,[12] the Committee on Interstate and Foreign Commerce was discharged from the consideration of the bill (H. R. 6667) to require that vessels engaged in the fruit trade should be manned by acclimated seamen, and it was referred to the Committee on Merchant Marine and Fisheries.

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[1] First session Fifty-sixth Congress, Report No. 71.

[2] Before the establishment of the Committee on Merchant Marine and Fisheries, the Committee on Commerce, in 1882 (first session Forty-seventh Congress, Reports Nos. 50 and 51), reported on license fees of officers of vessels, and in 1884 (first session Forty-eighth Congress, Report No. 801) on a bill to authorize the employment of certain aliens as engineers and pilots. And as late as 1894, after the establishment of Merchant Marine and Fisheries, the Committee on Interstate and Foreign Commerce reported a bill relating to mates on passenger steamers. (Second session Fifty-third Congress, Report No. 489.)

[3] First session Fifty-ninth Congress, Report No. 4993.

[4] First session Fifty-first Congress, Report No. 2071.

[5] In 1884 and 1885 bills relating to shipping commissioners had been reported by the Select Committee on American Shipbuilding and Ship-owning Interests. (First session Forty-eighth Congress, Report No. 362; second session, Report No. 2494.)

[6] First session Fifty-fourth Congress, Report Nos. 1034, 1868.

[7] First session Fifty-seventh Congress, Report Nos. 2352–2355.

[8] First session Fifty-sixth Congress, Report No. 301.

[9] In 1885, before the establishment of the Committee on Merchant Marine and Fisheries, the Committee on Commerce reported the bill (H. R. 4691) to authorize the purchase of snug harbors for disabled seamen. (Second session Forty-eighth Congress, Report No. 2390.)

[10] First session Fifty-ninth Congress, Report No. 4267.

[11] First session Fifty-ninth Congress, Report No. 4446.

[12] Second session Fifty-third Congress, Record, p. 3822.

On the subject of life-saving appliances on steam vessels[1] and the safety of passengers on excursion steamers,[2] however, the jurisdiction has been exercised by the Committee on Interstate and Foreign Commerce; but later than any of these reports, on January 12, 1905,[3] the House changed the reference of the following bills from the Committee on Interstate and Foreign Commerce to the Committee on Merchant Marine and Fisheries:

H. R. 15613. A bill for the better protection against fire on steam vessels carrying passengers and for the protection of life thereon.

H. R. 16789. A bill for the prevention of fire from electrical apparatus on steam vessels carrying passengers.

4142. The regulation of small vessels propelled by naphtha, etc., and the transportation of inflammable substances on passenger vessels are generally but not exclusively reported by the Committee on Merchant Marine and Fisheries.—The Committee on Merchant Marine and Fisheries has reported:

In 1890,[4] a bill relating to restrictions on use of small vessels propelled by steam, gas, or fluid.

In 1902,[5] on subject of vessels propelled by gas, fluid, naphtha, or electric motors.[6]

In 1906[7] on a bill to permit the transportation by vessels not carrying passengers for hire of gasoline or any of the products of petroleum for use as a source of motive power for the motor boats or launches of such vessels.

In 1906[8] a bill relating to the carrying of dangerous articles on passenger steamers.

4143. The licensing, registering, etc., of pleasure yachts are subjects within the jurisdiction of the Committee on Merchant Marine and Fisheries.—The Committee on Merchant Marine and Fisheries has exercised a jurisdiction over legislation relating to yachts. Thus, it reported:

In 1896,[9] a bill (H. R. 8038) to give certain advantages in entering and leaving ports to yachts built in American yards.

In 1888,[10] a bill relating to licensing pleasure yachts.[11]

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[1] First session Fiftieth Congress, Report No. 773; second session Fifty-second Congress, Report No. 3464; second session Fifty-third Congress, Report No. 455; first session Fifty-fourth Congress, Record, p. 834.

[2] First session Fifty-fourth Congress, Report No. 1679.

[3] Third session Fifty-eighth Congress, Record, p. 764.

[4] First session Fifty-first Congress, Report No. 1251.

[5] Second session Fifty-seventh Congress, Report No. 3780.

[6] This jurisdiction was exercised also by the Committee on Interstate and Foreign Commerce for a time, and that committee reported in 1894 (Third session Fifty-third Congress, Report No. 454) and in 1896 (First session Fifty-fourth Congress, Report No. 726) bills relating to inspection of small craft propelled by gasoline, etc.; and in 1901 (Second session Fifty-sixth Congress, Report No. 2565) on a bill permitting steamboats to transport automobiles carrying gasoline.

[7] First session Fifty-ninth Congress, Record, p. 7204.

[8] First session Fifty-ninth Congress, Reports Nos. 3354, 4261.

[9] First session Fifty-fourth Congress, Report No. 1451.

[10] First session Fiftieth Congress, Report No. 1468.

[11] Prior to the creation of the Committee on Merchant Marine and Fisheries, the Committee on Commerce had reported a bill of this kind. (First session Forty-seventh Congress, Report No. 15.)

In 1889,[1] a bill providing register for a steam yacht.

4144. The privileges of foreign vessels in American ports, bills of lading, contracts in export trade, and wrecks in international waters have been reported on generally by the Committee on Interstate and Foreign Commerce.—While in 1902[2] the Committee on Merchant Marine and Fisheries reported a joint resolution to establish a joint commission on the subject of the policy of international navigation; and the old Select Committee on American Shipbuilding and Shipowning Interests considered somewhat and reported on the subject of foreign port charges in 1884,[3] yet the general jurisdiction of this class of subjects has been with the Committee on Interstate and Foreign Commerce, which has reported:

In 1886,[4] the bill (H. R. 9210) allowing the President to exclude from commercial privileges vessels of nations that discriminate against United States vessels.

In 1892,[5] relating to bills of lading, contracts of common carriers in foreign export trade.

In 1892,[6] and 1896[7] the bill (S. 661) to provide sufficient time for vessels from foreign ports to discharge their cargoes.

In 1893,[8] on subject of coastwise transportation by foreign vessels.

In 1890,[9] a bill relating to aid to vessels wrecked[10] in waters between the United States and Canada.

4145. Bills of lading as evidence, bonds in admiralty cases, willful destruction of vessels, mutiny, etc., are subjects within the jurisdiction of the Committee on the Judiciary.—Both before and since the establishment of the Committee on Merchant Marine and Fisheries a certain class of bins which might seem to fall within its jurisdiction have been considered by the Committee on the Judiciary, which has reported:

In 1884,[11] and 1888[12] bills making bills of lading conclusive evidence in certain cases.

In 1888,[13] a bill relating to willful destruction of vessels on the high seas.

In 1893[14] and 1894,[15] bills relating to punishment for mutiny and riot and other offenses on vessels on the high seas.

In 1899,[16] the bill (H. R. 11178) relating to bonds in admiralty cases.

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[1] Second session Fiftieth Congress, Report No. 3798.

[2] Second session Fifty-seventh Congress, Report No. 3854.

[3] First session Forty-eighth Congress, Record, p. 2871.

[4] First session Forty-ninth Congress, Report No. 3361.

[5] First session Fifty-second Congress, Report No. 1988.

[6] First session Fifty-second Congress, Report No. 1129.

[7] First session Fifty-fourth Congress, Report No. 295.

[8] Second session Fifty-second Congress, Report No. 2288.

[9] First session Fifty-first Congress, Report No. 1111.

[10] See, however, section 4166 of this chapter.

[11] First session Forty-eighth Congress, Report No. 1259.

[12] First session Fiftieth Congress, Report No. 84.

[13] First session Fiftieth Congress, Report No. 226.

[14] Second session Fifty-second Congress, Reports Nos. 2187, 2521.

[15] Second session Fifty-third Congress, Report No. 467.

[16] Third session Fifty-fifth Congress, Report No. 1691.

4146. Collisions, coasting districts, marine schools, etc., are subjects of doubtful jurisdiction between the Committees on Merchant Marine and Fisheries and Interstate and Foreign Commerce.—On a certain class of subjects the line of jurisdiction has not been marked definitely. Thus, in 1906,[1] the Committee on Merchant Marine and Fisheries reported on the subject of collisions in inland waters; and also on the subject of great coasting districts, while the Committee on Interstate and Foreign Commerce at the same time reported on the anchorage and movement of vessels in St. Marys River.[2]

In 1892,[3] however, the Committee on Interstate and Foreign Commerce reported on statistics of the coasting trade in the Great Lakes; and in 1902[4] on the subject of public marine schools.

4147. The authorization of fish-culture stations and the regulation of fisheries generally are within the jurisdiction of the Committee on Merchant Marine and Fisheries.—The Committee on Merchant Marine and Fisheries has reported generally bills for the establishment of fish-hatching and fish culture stations.[5] It also reported in 1890[6] a bill for the protection of fish in the Potomac River in the District of Columbia;[7] also in 1892[8] on District of Columbia fisheries.

But in 1886,[9] before the creation of the Committee on Merchant Marine and Fisheries, the Committee on Judiciary reported the bill (H. R. 4690) relating to the rights of citizens of the several States to fish in the navigable waters of each State, the question involving the title to the lakes and waters referred to.

In 1901[10] Merchant Marine and Fisheries reported on the Pacific Coast fisheries, and in 1889[11] and 1904[12] on the Alaska seal[13] and salmon[14] fisheries.

4148. A bill for the protection of game and other birds, through the instrumentality of the Fish Commission, was reported by the Committee on Merchant Marine and Fisheries.—The Committee on Merchant Marine and Fisheries reported in 1898[15] a bill (H. R. 3589) relating to the protection of game birds and other wild birds, through the instrumentality of the Fish Commission.

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[1] First session Fifty-ninth Congress, Reports Nos. 3798, 4903.

[2] Report No. 2823.

[3] First session Fifty-second Congress, Report No. 688.

[4] Second session Fifty-seventh Congress, Report No. 3420.

[5] First session Fifty-ninth Congress, Report No. 2467; first session Fifty-seventh Congress, Report No. 2246; but in 1891 Interstate and Foreign Commerce reported several such bills. (See second session Fifty-first Congress, Reports Nos. 3654, 3285, 3606, 3630.)

[6] First session Fifty-first Congress, Report No. 2288.

[7] See, however, section 4282 of this volume.

[8] First session Fifty-second Congress, Report No. 1953.

[9] First session Forty-ninth Congress, Report No. 2385.

[10] First session Fifty-seventh Congress, Report No. 1873.

[11] Second session Fiftieth Congress, Reports Nos. 3883, 4126.

[12] Second session Fifty-eighth Congress, Report No. 2099.

[13] The fur seals generally have been under jurisdiction of Ways and Means. (See sec. 4025 of this volume.)

[14] The Committee on Territories, however, has more often exercised this jurisdiction. (See sec. 4211 of this volume.)

[15] Second session Fifty-fifth Congress, Report No. 522.

4149. The creation and history of the Committee on Agriculture, section 10 of Rule XI.

The rules give to the Committee on Agriculture the jurisdiction of subjects relating "to agriculture and forestry" and the appropriations for the Department of Agriculture.

Section 10 of Rule XI provides for the reference of subjects relating—

to agriculture and forestry: to the Committee on Agriculture, who shall receive the estimates and report the appropriations for the Agricultural Department.

This committee has eighteen Members and one Delegate.

It was first established as a standing committee on May 3, 1820, by a resolution offered by Mr. Lewis Williams, of North Carolina.[1] In the revision of 1880 the Committee on Rules proposed the simple rule "to agriculture: to the Committee on Agriculture." But during consideration by the House the words "and forestry"[2] were inserted on motion of Mr. Mark H. Dunnell, of Minnesota, who said that bills relating to tree culture had formerly gone to the Public Lands Committee, but more recently had gone to the Agriculture Committee. More important still was an amendment offered by Mr. D. Wyatt Aiken, of South Carolina, adding these words: "who shall receive the estimates and report the appropriations for the Agricultural Department."[3]

This committee may report at any time its appropriation bill.[4]

4150. Bills for establishing the Department of Agriculture and for transferring certain bureaus to it were reported by the Committee on Agriculture.—On January 23, 1884,[5] the Committee on Agriculture reported the bill (H. R. 1457) for the establishment of a Department of Agriculture.

This committee also reported, in 1896,[6] a bill providing for the transfer of the Fish Commission and Geological Survey to the Agricultural Department.

4151. Legislation relating to the Weather Bureau is within the jurisdiction of the Committee on Agriculture.—Subjects relating to the Weather Bureau, including appropriations therefor, have, by resolutions distributing the President's message, been placed within the jurisdiction of the Committee on Agriculture.[7] This committee also reported, in 1900,[8] the bill (H. R. 3988) to reorganize and improve the United States Weather Bureau.[9]

4152. The subject of agricultural colleges[10] and experiment stations is within the jurisdiction of the Committee on Agriculture.—The Committee on Agriculture has reported:

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[1] First session Sixteenth Congress, Journal, p. 479; Annals, p. 2179.

[2] Second session Forty-sixth Congress, Record, p. 694.

[3] Second session Forty-sixth Congress, Record, pp. 684–686.

[4] See section 4621 of this work.

[5] First session Forty-eighth Congress, Report No. 100.

[5] Second session Fifty-third Congress, Report No. 863.

[7] Third session Fifty-fifth Congress, Record, p. 25.

[8] First session Fifty-sixth Congress, Report No. 125.

[9] In 1890 the Committee on Agriculture reported a bill relating to the Signal Service, the predecessor of the Weather Bureau. (First session Fifty-first Congress, Report No. 1043.)

[10] See, however, section 4243 of this volume.

In 1895 [1] on agricultural colleges.

In 1894 [2] on agricultural experiment stations in Alaska.

4153. The subject of a highway commission has been considered by the Committee on Agriculture.—The Committee on Agriculture reported, in 1896 [3] on the subject of a highway commission.

4154. The animal industry, inspection of live-stock and meat products, and diseases of animals are subjects within the jurisdiction of the Committee on Agriculture.—In 1888 [4] the Committee on Agriculture reported the bill (H. R. 10320) to provide for the inspection of all slaughtered live stock intended for human consumption in any State or Territory other than that in which slaughtered or for exportation to foreign countries; to prohibit the introduction of adulterated or misbranded food [5] or drugs into any State or Territory or the District of Columbia from any other State or Territory or foreign country, and to provide through the Department of Agriculture for carrying out the regulations.

The Committee on Agriculture also has jurisdiction of subjects relating to "the destruction and eradication of diseases of domestic animals, and to the inspection of cattle and pork products intended for shipment to foreign countries." [6]

The Committee on Agriculture has had jurisdiction of the subject of animal industry in the United States, and reported bills:

In 1896,[7] on the Bureau of Animal Industry, and on cattle importation regulations of Great Britain.

In 1890,[8] 1891,[9] 1894,[10] and 1897,[11] on the subjects of meat inspection, the inspection of live stock, and the export trade in cattle.

In 1903,[12] on diseases of animals; and in 1905 [13] on quarantine districts for cattle.

4155. The Committee on Agriculture has reported as to export bounties, regulation of importation of trees, shrubs, etc., and as to the effects of the tariff on agriculture.—The Committee on Agriculture has reported on the following subjects:

In 1888,[14] the bill (H. R. 6109) for an export bounty on agricultural products exported from the United States. (Adversely.)

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[1] Third session Fifty-third Congress, Report No. 1997.

[2] Second session Fifty-third Congress, Report No. 880.

[3] First session Fifty-fourth Congress, Report No. 1439.

[4] First session Fiftieth Congress, Report No. 3341.

[5] The subject of pure food, in the later practice of the House, has been within the jurisdiction of the Committee on Interstate and Foreign Commerce (see sec. 4112 of this volume); although in 1892 and 1897 the Committee on Agriculture reported on this subject. (First session Fifty-second Congress, Report No. 914; second session, Fifty-third Congress, Report No. 1397.)

[6] Congressional Record, third session Fifty-third Congress, p. 71; first session Fifty-fourth Congress p. 301.

[7] First session Fifty-fourth Congress, Reports Nos. 1031, 1670.

[8] First session Fifty-first Congress, Report No. 1792.

[9] Second session Fifty-first Congress, Report No. 3761.

[10] Second session Fifty-third Congress, Reports Nos. 846, 1443.

[11] Second session Fifty-fourth Congress, Report No. 2868.

[12] Second session Fifty-seventh Congress, Report No. 2819.

[13] Third session Fifty-eighth Congress, Report No. 4200.

[14] First session Fiftieth Congress, Report No. 1305.

In 1898[1] and 1900,[2] bills to provide regulations governing the importation of shrubs, trees, plants, grafts, cuttings, and to provide regulations for the inspection of such articles grown in the United States, and the subject of interstate commerce.

In 1892,[3] a resolution of inquiry relating to the effect of the existing tariff on agriculture; also a report on the subject of the tariff and agriculture.

In 1905,[4] on the subject of the use of alcohol in the arts.

4156. Bills imposing an internal-revenue tax on oleomargarine are, by action of the House, included within the jurisdiction of the Committee on Agriculture.

The Committee on Agriculture has exercised a general, but not exclusive, jurisdiction of legislation relating to imitation dairy products, manufacture of lard, etc.

In 1886,[5] the Committee on Agriculture reported the bill (H. R. 8328) to prevent the sale of imitations of dairy products. This bill, or rather a similar bill for which this was reported as a substitute, was presented in the House on March 8, and by a vote of 67 to 40 referred to the Committee on Agriculture, although Mr. Speaker Carlisle said that it belonged to the Committee on Ways and Means under the rules of the House, as it proposed an internal-revenue tax.

And this jurisdiction continued with this committee, which reported bills on the subject of oleomargarine, several involving the internal-revenue tax feature, in 1892,[6] 1894,[7] 1896,[8] 1900,[9] and 1902.[10]

In 1890,[11] a bill subjecting oleomargarine to the laws of the several States was reported by the Committee on Commerce.

In 1888[12] and 1890[13] the Committee on Agriculture reported bills to regulate the manufacture and sale of counterfeited lard.

4157. The adulteration of seeds, insect pests, protection of birds and animals in forest reserves, grading of grain, etc., are subjects within the jurisdiction of the Committee on Agriculture.—The Committee on Agriculture has exercised jurisdiction over several subjects related more or less closely to the general interests of agriculture. Thus, in 1904[14] and 1906[15] it reported on the subject

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[1] Second session Fifty-fifth Congress, Report No. 456.

[2] First session Fifty-sixth Congress, Report No. 304.

[3] First session Fifty-second Congress, Reports Nos. 191, 2114.

[4] Third session Fifty-eighth Congress, Report No. 4791.

[5] First session Forty-ninth Congress, Report No. 2028, Record, p. 2193. Previously in 1884 (first session Forty-eighth Congress, Report No. 251) this committee had reported on a proposition to investigate the subject of oleomargarine or imitation butter.

[6] First session Fifty-second Congress, Report No. 913.

[7] Second session Fifty-third Congress, Report No. 1398.

[8] First session Fifty-fourth Congress, Report No. 1015.

[9] First session Fifty-sixth Congress, Report No. 1854.

[10] First session Fifty-seventh Congress, Reports Nos. 255, 1602.

[11] First session Fifty-first Congress, Report No. 2187.

[12] First session Fiftieth Congress, Report No. 3082.

[13] First session Fifty-first Congress, Reports Nos. 970, 2857.

[14] Second session Fifty-eighth Congress, Report No. 1842.

[15] First session Fifty-ninth Congress, Report No. 3337.

of the adulteration of grass seed;[1] in 1902[2] on protection of the eggs of game birds, and in 1906[3] on the protection of animals, birds, and fish in forest reserves; in 1905[4] on insect pests; in 1902[5] on nursery stock.

The Committee on Agriculture reported in 1896[6] on a bill providing for the extermination of the gypsy moth.

The Committee on Agriculture reported in 1892[7] the bill (S. 797) fixing a uniform standard of classification of grading of wheat, corn, rye, oats, etc.

4158. The subject of improving the breed of horses, even with the improvement of the Cavalry as an object, belongs to the jurisdiction of the Committee on Agriculture.—On January 18, 1906,[8] by action of the House, the Committee on Military Affairs was discharged from the further consideration of the bill (H. R. 10707) to provide for the improvement in breeding of horses for general purpose uses, and to enable the United States to procure better remounts for the Cavalry and Artillery service, and the same was referred to the Committee on Agriculture.

4159. Bills to incorporate certain agricultural societies have been reported by the Committee on Agriculture.—In 1892,[9] 1894,[10] and 1898,[11] the Committee on Agriculture reported bills to incorporate the Society of American Florists; and in 1893[12] on a bill relating to the Holstein-Friesian Cattle Association.

4160. The Committee on Agriculture has jurisdiction of subjects relating to timber, and forest reserves other than those created from the public domain.—The Committee on Agriculture has exercised jurisdiction over the subject of forest reserves other than those created from the public lands, and has reported bills:

In 1906,[13] the bills to create the Appalachian and White Mountain Forest reserves; and also in 1902[14] on the bill to create the National Appalachian Forest Reserve.

The Committee on Agriculture reported:

In 1892,[15] on the subject of the necessity for and condition of forest reservations in California.

In 1894,[16] on bill (S. 313) appropriating funds for investigations and tests of American timber.

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[1] But in 1884 the Committee on Commerce reported on a bill for fixing the tare on hops and standard weight of hop bailing. (First session Forty-eighth Congress, Report No. 1974.)

[2] First session Fifty-seventh Congress, Report No. 4401.

[3] First session Fifty-ninth Congress, Report No. 2494.

[4] Third session Fifty-eighth Congress, Report No. 4401.

[5] First session Fifty-seventh Congress, Report No. 557.

[6] Second session Fifty-third Congress, Report No. 709.

[7] First session Fifty-second Congress, Report No. 1232.

[8] First session Fifty-ninth Congress, Record, p. 1265.

[9] First session Fifty-second Congress, Report No. 476.

[10] Second session Fifty-third Congress, Report No. 408.

[11] Second session Fifty-fifth Congress, Report No. 1258.

[12] Second session Fifty-second Congress, Reports Nos. 2379, 2511.

[13] First session Fifty-ninth Congress, Report No. 4399.

[14] First session Fifty-seventh Congress, Report No. 1547.

[15] First session Fifty-second Congress, Report No. 2096.

[16] Second session Fifty-third Congress, Report No. 1442.

4161. Bills to discourage fictitious and gambling transactions in farm products have been considered within the jurisdiction of the Committee on Agriculture, even when an internal-revenue question was included.—On February 17, 1888,[1] Mr. William H. Hatch, of Missouri, called attention to the fact that the bill (H. R. 7051) "to prohibit fictitious and gambling transactions on the price of articles produced by American farm industry" had been referred to the Committee on the Judiciary. He moved that the reference be changed to the Committee on Agriculture, and this motion was agreed to by the House, although Mr. Speaker Carlisle expressed the opinion that the jurisdiction belonged to the Committee on the Judiciary.

In 1894,[2] a bill relating to the sale of options on agricultural products was at first referred to the Committee on Ways and Means, as it provided for affixing internal-revenue stamps to the contracts; but the House changed the reference to the Committee on Agriculture.

And bills on this general subject were reported by the Committee on Agriculture in 1889,[3] 1890,[4] 1892,[5] and 1894.[6]

4162. The creation and history of the Committee on Foreign Affairs, section 11 of Rule XI.

The rules give to the Committee on Foreign Affairs jurisdiction of "the relations of the United States with foreign nations, including appropriations therefor."

Section 11 of Rule XI provides for the reference of subjects relating—

> To the relations of the United States with foreign nations, including appropriations therefor; to the Committee on Foreign Affairs.

The committee consists of 18 Members.

It was made a standing Committee[7] on March 13, 1822.[8] The present form, excepting the words "including appropriations therefor," was made in the revision of 1880.[9] The words relating to the appropriations were added in 1885.[10]

This committee may report its appropriation bill at any time.[11]

4163. The general affairs of the consular service and the acquisition of land and buildings for legations in foreign capitals are within the jurisdiction of the Committee on Foreign Affairs.—In 1906 the Committee on Foreign Affairs reported on subjects as follows:

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[1] First session Fiftieth Congress, Record, p. 1308.

[2] Second session Fifty-third Congress, Record, p. 2423.

[3] Second session Fiftieth Congress, Report No. 4141.

[4] First session Fifty-first Congress, Report No. 1321.

[5] First session Fifty-second Congress Report No. 969.

[6] Second session Fifty-third Congress, Report No. 845.

[7] On December 7, 1815 (first session Fourteenth Congress, Journal, p. 29; Annals, p. 380) such a committee had been proposed by Mr. Richard H. Wilde, of Georgia.

[8] First session Seventeenth Congress, Journal, p. 351. Before this select committees on foreign relations had been appointed (first session Eleventh Congress, Annals, p. 90).

[9] Second session Forty-sixth Congress, Record, p. 205.

[10] First session Forty-ninth Congress, Congressional Record, pp. 168, 196, 278.

[11] See section 4621 of this volume.

Acquisition of land or buildings for United States embassies or legations in foreign capitals.[1]

Consulates in the Orient.[2]

Reorganization of the consular service.[3]

4164. Resolutions of intervention abroad and declarations of war are within the jurisdiction of the Committee on Foreign Affairs.—In 1898,[4] the Committee on Foreign Affairs reported the resolution (H. Res. 233) recognizing the independence of the people of Cuba, and directing Spain to withdraw her forces from the island; also the bill (H. R. 10086) declaring war with Spain.

4165. A provision relating to a commission to investigate the conditions and uses of waters adjacent to an international boundary line was ruled out of the river and harbor bill as not being within the jurisdiction of the Committee on Rivers and Harbors.[5]—On February 7, 1907,[6] the river and harbor appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

SEC. 6. That those members of the International Waterways Commission, created in accordance with section 4 of the river and harbor act of June 13, 1902, who represent the United States shall have power, and it shall be their duty, to investigate and report upon the conditions and uses of the waters adjacent to the boundary lines between the United States and Canada, and of waters flowing from the United States into Canada or from Canada into the United States, and of the tributaries of such waters; also upon the maintenance and regulation of suitable levels; and also upon the effect upon the shores of these waters and the structures thereon and upon the interests of navigation by reason of the diversion of these waters from or change in their natural flow; and, further, to report upon the necessary measures to regulate such diversion, and to make such recommendations for improvements and regulations as shall best subserve the interests of the two Governments in said waters. They shall, upon the order of the Secretary of War, locate the boundary line upon international waters between Canada and the United States as heretofore established, wherever the same is not clearly defined or wherever for any other reason a relocation is desirable, and shall prepare a series of modern charts upon which it shall be delineated; they shall also recommend the erection of such monuments as they may deem necessary to enable such boundary line to be accurately ascertained, etc.

Mr. James R. Mann, of Illinois, made a point of order against the section.

The Chairman[7] held:

The Chair has not examined the section very closely, but the Chair feels very certain that a proposition to give power to a boundary line commission on an international water course is not within the jurisdiction of the committee. If the chairman of the committee desires to offer an amendment, the Chair will first recognize him.

4166. The boundaries between the United States and foreign nations, and naval strength, bridges, and dams on waters along such boundaries are subjects within the jurisdiction of the Committee on Foreign Affairs.—On February 4, 1882,[8] the Committee on Foreign Affairs reported the bill (H. R. 2929)

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[1] First session Fifty-ninth Congress, Report No. 1345.

[2] Report No. 2168.

[3] Report No. 2281.

[4] Second session Fifty-fifth Congress, Reports Nos. 1071, 1173.

[5] See also section 4126 of this volume.

[6] Second session Fifty-ninth Congress, Record, p. 2469.

[7] Frank D. Currier, of New Hampshire, Chairman.

[8] First session Forty-seventh Congress, Report No. 234.

in relation to the navigation and bridging of certain rivers which constitute the boundary line between the United States and Canada.

In 1904,[1] on the subject of a clam and reservoir on the Rio Grande.

In 1900,[2] on a resolution requesting of the Secretary of State information as to the status of the agreement with Great Britain in regard to war vessels on the Great Lakes.

In 1888,[3] on the bill (H. R. 8063) relating to vessels wrecked[4] in American and Canadian waters, and their relief; and the same year[5] on the resolution (H. Res. 112) for the creation of an international commission to settle the Mexican boundary question.

In 1902,[6] on the subjects of the Alaskan boundary, and a dam across the St. Lawrence River.

4167. Bills creating courts of the United States in foreign countries are within the jurisdiction of the Committee on Foreign Affairs.—On March 26, 1906,[7] the House changed the reference of the bill (H. R. 17345) creating a United States district court for China, and prescribing the jurisdiction thereof, from the Committee on the Judiciary to the Committee on Foreign Affairs, and on April 7[8] the House also changed from the Committee on the Judiciary to the Committee on Foreign Affairs a bill (H. R. 17297) providing for the establishment of a district court of the United States for China and Korea.

In 1886[9] the Committee on Foreign Affairs reported the bill (H. R. 333) providing a more perfect system of courts and a body of law for the protection of American citizens residing in places where pagan or Mohammedan law prevails.

4168. The Committee on Foreign Affairs has exercised a general but not exclusive jurisdiction over projects of general legislation relating to claims having international relations.—The Committee on Foreign Affairs has exercised jurisdiction of general legislation as to claims having international relation, and has reported—

In 1882,[10] the bill (H. R. 5885) to provide for the adjudication of the French spoliation claims by the Court of Claims.

In 1884,[11] the bill (H. R. 745) referring the French spoliation claims to the Court of Claims.

In 1887,[12] the bill (H. R. 10241) to authorize a commission to investigate losses sustained by American citizens engaged in the fisheries in regions included within the provisions of the treaty with Great Britain.

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[1] Third session Fifty-eighth Congress, Report No. 3990.

[2] First session Fifty-sixth Congress, Report No. 44.

[3] First session Fiftieth Congress, Report No. 1812.

[4] See, however, section 4144 of this volume.

[5] Report No. 1008.

[6] First session Fifty-seventh Congress, Reports Nos. 1531, 1888.

[7] First session Fifty-ninth Congress, Record, p. 4309.

[8] Record, p. 4899, Report No. 4432.

[9] First session Forty-ninth Congress, Report No. 864.

[10] First session Forty-seventh Congress, Report No. 1067.

[11] First session Forty-eighth Congress, Report No. 109.

[12] Second session Forty-ninth Congress, Report No. 3648.

In 1882,[1] the bill (H. R. 1052) to provide for the return to Japan of a portion of the Japanese indemnity fund.

In 1884,[2] the bill (H. R. 1062) authorizing the adjustment of claims of foreign steamship companies for tonnage dues, said claims arising out of certain treaty stipulations.

On December 6, 1888,[3] the resolutions distributing the President's message sent to the Committee on Foreign Affairs "Chilean war claims of American citizens," and similarly, in 1889,[4] the subject of Spanish and Venezuelan claims was referred to the same committee.

In 1885,[5] a resolution empowering the President to negotiate in reference to the Venezuelan awards was reported by the Committee on Foreign Affairs; and in 1893[6] and 1894[7] the same committee reported bills for the application of the Venezuelan awards of 1868 to new awards of 1889 and 1890.

This committee also reported, in 1893,[8] the bill to carry into effect the Chileans convention for the settlement of claims; in 1894,[9] the bill for the disposal of interest on the *Virginus* indemnity fund; and in 1892,[10] a bill to distribute the awards under the convention of 1868 with Mexico.

4169. Questions relating to the protection of American citizens abroad and expatriation belong to the jurisdiction of the Committee on Foreign Affairs.—In general the Committee on Foreign Affairs has jurisdiction of the status and protection of American citizens abroad, and has reported—

In 1899,[11] a resolution of inquiry relating to outrages on American citizens in China.

In 1900,[12] a bill providing for the protection of the estates of Americans dying abroad.

In 1906,[13] a bill relating to citizenship, expatriation, and protection abroad.

4170. The enforcement of treaty regulations as to the protection of the fur seals has been considered by the Committee on Foreign Affairs.—The Committee on Foreign Affairs has exercised jurisdiction over the following subjects:

In 1893,[14] a bill (S. 3629) to give the Executive power to enforce regulation under the convention between the United States and Great Britain for the protection of the fur seals.

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[1] First session Forty-seventh Congress, Report No. 138.

[2] First session Forty-eighth Congress, Report No. 1568.

[3] Second session Fiftieth Congress, Journal, p. 53; Record, p. 68.

[4] First session Fifty-first Congress, Record, p. 188.

[5] Second session Forty-eighth Congress, Report No. 2610.

[6] Second session Fifty-second Congress, Report No. 2341.

[7] Second session Fifty-third Congress, Report No. 1360.

[8] Second session Fifty-second Congress, Report Nos. 2367.

[9] Second session Fifty-third Congress, Report No. 963.

[10] First session Fifty-second Congress, Reports Nos. 1142, 1143. Also in 1892, on refundment of moneys to Mexico (first session Fifty-seventh Congress, Report No. 420).

[11] Third session Fifty-fifth Congress, Report No. 1671.

[12] First session Fifty-sixth Congress, Report No. 1451.

[13] First session Fifty-ninth Congress, Report No. 4784.

[14] Second session Fifty-second Congress, Report No. 2355.

In 1894,[1] a resolution calling on the Secretary of State for correspondence relating to damages to Great Britain for seizures of sealing vessels in Bering Sea.

In 1903,[2] the subject of the fur seals in the North Pacific Ocean and Bering Sea.[3]

4171. The treaty rights of American fishermen in waters adjacent to foreign shores are within the jurisdiction of the Committee on Foreign Affairs.—The Committee on Foreign Affairs has exercised jurisdiction of subjects relating to the rights of American fishermen under treaties with foreign nations, and has reported:

In 1886,[4] a resolution making inquiry of the President in relation to the treatment of American fishermen in Canadian waters.

In 1887,[5] the bill (S. 3173) to authorize the President, by nonintercourse measures, to defend the rights of American fishermen.

In 1888,[6] the bill (H. R. 11309) relating to the protection of the rights of American fishermen.

In 1890,[7] the resolutions distributing the President's message referred the subject of the Canadian fisheries to Foreign Affairs.

4172. The subject of immigration of Chinese and Japanese is within the jurisdiction of the Committee on Foreign Affairs.—The first legislation in relation to Chinese immigration was in 1875, when an act was passed prohibiting the bringing in of Orientals for immoral purposes. This bill (H. R. 4747), supplemental to several acts in relation to immigration, was reported from the Committee on Foreign Affairs [8] and became a law.[9]

In 1879,[10] the first general exclusion act as to the Chinese was passed by Congress and vetoed by President Hayes. This bill was reported from the Committee on Education and Labor.[11]

The act of 1882,[12] to execute certain treaty stipulations with China, which was in fact an exclusion act, was, as the bill H. R. 5804, referred in the House, on April 6, 1882,[13] to the Committee on Education and Labor. Other similar bills were referred to the same committee.

In the next Congress, however, on January 9, 1884,[14] the resolutions referring the President's message referred to the Committee on Foreign Affairs subjects relating to the violation of the laws regarding Chinese immigration and pauper immi-

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[1] Third session Fifty-third Congress, Report No. 1500.

[2] Second session Fifty-eighth Congress, Report No. 1500.

[3] The Committee on Ways and Means also has a jurisdiction over this branch of the subject. (See sec. 4025 of this volume.)

[4] First session Forty-ninth Congress, Record, p. 3563.

[5] Second session Forty-ninth Congress, Report No. 4087.

[6] First session Fiftieth Congress, Report No. 3373.

[7] First session Fifty-first Congress, Record, p. 188.

[8] Second session Forty-third Congress, Journal, p. 487.

[9] 18 Stat. L., p. 477. The Committee on Immigration and Naturalization had not been created at this time. (See sec. 4309 of this volume.)

[10] Third session Forty-Fifth Congress, Record, p. 791.

[11] This committee has since been divided into two committees, Education and Labor. (See secs. 4242, 4244 of this volume.)

[12] 22 Stat. L., p. 58.

[13] First session Forty-seventh Congress, Record, p. 2678.

[14] First session Forty-eighth Congress, Journal, p. 256; Record, p. 319.

gration from Great Britain; and at this session a bill was introduced to amend the act of 1882. It was the bill H. R. 1798, reported from the Committee on Foreign Affairs,[1] and became a law.[2]

At this session also the Committee on Foreign Affairs reported[3] the bill (H. R. 614) to execute certain treaty stipulations in relation to Chinese exclusion.

In 1886,[4] during the next Congress, the Committee on Foreign Affairs reported a bill (H. R. 171) supplementary to the act regulating the coming of Chinese.

In 1888[5] the Committee on Foreign Affairs reported the bill (H. R. 10605) to prohibit the coming of Chinese laborers to the United States. This bill did not become a law, but a bill (H. R. 11336) presented from the floor without reference to any committee was enacted.

The jurisdiction of the Committee on Foreign Affairs, being thus established as to this subject, was not disturbed by the creation of the Committee on Immigration and Naturalization on December 20, 1889,[6] for at that session several bills to prohibit immigration of Chinese were introduced and referred to the Committee on Foreign Affairs. A bill (H. R. 11657) to absolutely prohibit the incoming of Chinese was reported[7] by that committee.

In the next Congress the bill (H. R. 6185) to absolutely prohibit the coming of Chinese persons into the United States was reported[8] from the Committee on Foreign Affairs, and became a law.[9]

And the same jurisdiction has continued in 1893,[10] 1898,[11] and 1901.[12]

In 1900[13] the Committee on Foreign Affairs reported on a resolution relating to the immigration of Japanese laborers, and the House acted on it. A similar resolution was referred also to Immigration and Naturalization, and was reported back adversely after the House had acted on the report from Foreign Affairs.

4173. The incorporation of the American National Red Cross and the protection of its insignia are subjects within the jurisdiction of the Committee on Foreign Affairs.—In 1892,[14] 1894,[15] and 1898[16] the Committee on Foreign Affairs reported bills to protect the insignia of the Red Cross; and in 1900[17] and 1904[18] bills to incorporate the American National Red Cross.

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[1] Journal, p. 737.

[2] 23 Stat. L., p. 115.

[3] Report No. 614.

[4] First session Forty-ninth Congress, Report No. 2043.

[5] First session Fiftieth Congress, Journal, p. 2196; Record, p. 8226; Report No. 2727.

[6] First session Fifty-first Congress, Record, p. 336.

[7] Reports Nos. 1925, 2915; Record, p. 977.

[8] First session Fifty-second Congress, Report No. 407.

[9] 27 Stat. L., p. 325. (See also Report No. 1231, first session Fifty-seventh Congress.

[10] Second session Fifty-second Congress, Report No. 2549; first session Fifty-third Congress, Report No. 70.

[11] Second session Fifty-fifth Congress, Report No. 1628.

[12] Second session Fifty-sixth Congress, Report No. 2503.

[13] First session Fifty-sixth Congress, Reports Nos. 1425, 1569.

[14] First session Fifty-second Congress, Report No. 1790.

[15] Second session Fifty-third Congress, Report No. 477.

[16] Second session Fifty-fifth Congress, Report No. 1135.

[17] First session Fifty-sixth Congress, Report No. 758.

[18] Third session Fifty-eighth Congress, Report No. 3146.

4174. The Committee on Foreign Affairs has exercised jurisdiction of the subjects of commercial treaties and reciprocal arrangements.—On December 6, 1882,[1] the resolutions distributing the President's message contained the following:

> To the revenue provisions of the reciprocity treaty with Hawaii and to commercial relations with foreign countries having connection with revenue questions to be referred to the Committee on Ways and Means.[2]

After debate, this was amended so as to refer the subject of the revenue provisions of the Hawaiian treaty to the Committee on Foreign Affairs.[3]

And the Committee on Foreign Affairs has reported legislation as follows:

In 1884,[4] the resolution (H. Res. 32) requesting the President to negotiate for the renewal of the Canadian reciprocity treaty.

In 1886,[5] the bill (H. R. 7884) authorizing the President to arrange for a conference to promote arbitration and commercial relations of a reciprocal nature with the other American nations.

In 1888,[6] the bill (H. R. 1473) to arrange a conference to promote reciprocity and arbitration with the other nations of America and the bill (H. R. 129) to promote commercial union with Canada.

In 1890,[7] a resolution recommending the negotiation of reciprocity treaties and a resolution relating to the promotion of commercial union with Canada. Again, in 1892,[8] on the same subject.

In 1892[9] and 1894,[10] on the subject of reciprocity with Mexico.

4175. Measures for fostering commercial intercourse with foreign nations and for safeguarding American business interests abroad have been considered by the Committee on Foreign Affairs.—On June 20, 1882,[11] the Committee on Foreign Affairs reported the bill (H. R. 6023) to authorize the appointment of a special commissioner to promote commercial intercourse with the nations of Central and South America.

In 1890,[12] the resolutions distributing the President's message referred to Foreign Affairs the subject of West India trade.

The Committee on Foreign Affairs also reported:

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[1] Second session Forty-seventh Congress, Journal, p. 41; Record, p. 58.

[2] It should be noted. however, that the legislation to carry into effect the reciprocity treaty with Cuba in 1903 was reported from the Committee on Ways and Means. (First session Fifty-eighth Congress, Report No. 1.)

[3] The Committee on Ways and Means has exercised this jurisdiction, however. (See sec. 4021 of this chapter.)

[4] First session Forty-eighth Congress, Report No. 2149.

[5] First session Forty-ninth Congress, Report No. 1648.

[6] First session Fiftieth Congress, Reports Nos. 369, 1183.

[7] First session Fifty-first Congress, Reports Nos. 1827, 1870.

[8] First session Fifty-second Congress, Report No. 1957.

[9] First session Fifty-second Congress, Report No. 1145.

[10] Second session Fifty-third Congress, Report No. 878.

[11] First session Forty-seventh Congress, Report No. 1457.

[12] First session Fifty-first Congress, Record, p. 188.

In 1884,[1] the bill (H. R. 6926) to authorize the appointment of a special commissioner for promoting commercial intercourse with the countries of Central and South America.[2]

In 1886,[3] the resolution (H. Res. 14) requesting the President to invite the cooperation of the governments of American nations in securing the establishment of free commercial intercourse and an American customs union.

On December 10, 1890,[4] the resolutions for the distribution of the President's message provided for the reference of subjects relating to "extension of commercial and banking facilities with Mexico, South and Central America" to the Committee on Foreign Affairs.

Foreign Affairs reported—

In 1890,[5] on the subject of an intercontinental railway.

In 1885,[6] on the subject of discrimination against American products by the German Empire.

In 1896,[7] on the exclusion of American life insurance companies from Germany.

4176. Preliminary jurisdiction of the Committee on Foreign Affairs as to the canal between the Atlantic and Pacific Oceans.[8]—In certain of the steps preliminary to the undertaking of a canal between the waters of the Atlantic and Pacific the Committee on Foreign Affairs exercised jurisdiction, and reported:

In 1882,[9] the bill (H.R. 6799) relating to the Nicaragua Canal.

In 1889,[10] the resolution (S. Res. 122) declaring the sense of the United States Government in respect to the connection of European governments with ocean canals at the isthmus of Darien and in Central America; and the bill (S. 3949) for the relief of laborers on the Panama Canal.

In 1890,[11] the resolutions distributing the President's message referred the subject of "Isthmian transit" to Foreign Affairs.

4177. The Committee on Foreign Affairs has general jurisdiction of the subject of international conferences and congresses.[12]—On December 6, 1882,[13] the resolutions distributing the President's message provided for the reference to the Foreign Affairs Committee subjects relating to legislation touching the sending

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[1] First session Forty-eighth Congress, Report No. 1445.

[2] In 1900, however, the Committee on Interstate and Foreign Commerce reported the bill (S. 1939) authorizing the President to appoint a commission to study trade conditions in China and Japan. (First session Fifty-sixth Congress, Reports Nos. 484, 878.)

[3] First session Forty-ninth Congress, Report No. 1645.

[4] Second session Fifty-first Congress, Journal, p. 42; Record, p. 303.

[5] First session Fifty-first Congress, Report No. 2243.

[6] Second session Forty-eighth Congress, Report No. 2682.

[7] Second session Fifty-fourth Congress, Report No. 215.

[8] This subject generally belongs, however, to the jurisdiction of the Committee on Interstate and Foreign Commerce. See section 4103 of this volume.

[9] First session Forty-seventh Congress, Reports Nos. 1698, 4167.

[10] Second session Fiftieth Congress, Report No. 3869, Record, p. 1936.

[11] First session Fifty-first Congress, Record, p. 188.

[12] See, however, section 4111 of this volume for instances wherein this jurisdiction was shared by the Committee on Interstate and Foreign Commerce; and section 4255 for instance of exercise of the jurisdiction by the Committee on Patents.

[13] Second session Forty-seventh Congress, Journal, p. 40; Record, p. 56.

of delegates to represent the United States at international conventions to consider matters of common interest to civilized nations; to the holding of a peace congress at Washington, D.C., to be composed of representatives of the countries constituting the American continents; to the centennial celebration of the birth of Bolivar, the founder of South American independence, to be held in July, 1883, at the city of Caracas, Venezuela.

Similarly, in 1889,[1] subjects relating to the Pan-American Congress and the International Maritime Congress were referred to Foreign Affairs.

The Committee on Foreign Affairs has reported:

In 1884,[2] the resolution (H. Res. 225) to authorize the President to appoint a commissioner to the International Prison Congress.

In 1888,[3] the bill (H. R. 6554) to provide for an international marine conference—

In 1890,[4] on the subject of the International American Conference.

In 1892,[5] on the subject of the Pan-American Medical Congress.

In 1906,[6] on the subject of an international conference relative to immigration.

4178. Bills to carry out the stipulations of treaties are often reported by the Committee on Foreign Affairs.—The Committee on Foreign Affairs has jurisdiction of matters of international concern, and has reported—

In 1886[7] and 1891,[8] on bills to carry out a treaty or convention for the protection of submarine cables, and as to the Pacific Cable Company.

In 1887,[9] the bill (S. 3044) to provide for the execution of the treaty with China in relation to the importation of opium.

In 1899,[10] the resolution relating to correspondence with other nations to obtain an agreement to exempt from capture private property on the sea.

On January 9, 1882,[11] in the distribution of the President's message, so much as referred "to legislation to carry into effect treaties recently negotiated between the United States and China and the United States and Japan," were referred to the Committee on Foreign Affairs.

4178*a*. The subjects of extradition with foreign nations, international arbitration, and violation of neutrality have been within the jurisdiction of the Committee on Foreign Affairs.—The Committee on Foreign Affairs reported in 1889[12] on the subject of enlargement of extradition with Great Britain.

The Committee on Foreign Affairs also has reported:

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[1] First session Fifty-first Congress, Record, p. 188.

[2] First session Forty-eighth Congress, Report No. 1339.

[3] First session Fiftieth Congress, Report No. 361.

[4] First session Fifty-first Congress, Report No. 627.

[5] First session Fifty-second Congress, Report No. 1791.

[6] First session Fifty-ninth Congress, Report No. 3400.

[7] Flint session Forty-ninth Congress, Report No. 3198.

[8] Second session Fifty-first Congress, Report No. 3774.

[9] Second session Forty-ninth Congress, Report No. 3691.

[10] Third session Fifty-fifth Congress, Report No. 1874.

[11] First session Forty-seventh Congress, Journal, p. 246; Record, p. 297.

[12] First session Fifty-first Congress, Record, p. 188.

In 1886,[1] recommending that the subject of appropriating for the ceremonies of inauguration of the Bartholdi statue, as well as the appropriation for establishing it as a light, be referred to the Committee on Appropriations.

In 1892,[2] on international arbitration.

In 1901,[3] a resolution relating to the violation of the neutrality laws by the shipment of horses and mules to South Africa.

4179. The creation and history of the Committee on Military Affairs, section 12 of Rule XI.

The rules give to the Committee on Military Affairs jurisdiction of subjects relating "to the military establishment and the public defense."

Appropriations for the military establishment and the public defense, including the Military Academy, are by rule placed within the jurisdiction of the Committee on Military Affairs.

Section 12 of Rule XI provides for the reference of subjects relating—

> To the military establishment and the public defense, including the appropriations for its support.[4] and for that of the Military Academy to the Committee on Military Affairs.

This committee consists of eighteen Members and one Delegate.

It was added to the list of standing committees[5] on March 13, 1822.[6] When the rules were revised in 1880,[7] its jurisdiction was defined:

> To the military establishment and the public defense, other than the appropriations for its support, to the Committee on Military Affairs.

In 1885, when the appropriation bills were distributed, the present form was adopted.[8]

The committee may report at any time its general appropriation bills.[9]

4180. The Committee on Military Affairs reports two general appropriation bills, one for the Army and the other for the Military Academy.—The Committee on Military Affairs reports not only the general appropriation bill for the support of the Army, but also the general appropriation bill for the support of the Military Academy.[10]

4181. The Committee on Military Affairs has jurisdiction over legislative propositions relating to the War Department, but does not report appropriations for salaries therein.—In 1906[11] the Committee on Military

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[1] First session Forty-ninth Congress, Report No. 2899.

[2] First session Fifty-second Congress, Report No. 1897.

[3] Second session Fifty-sixth Congress, Report No. 2912.

[4] See, however, sections 4042–4049 of this volume for exceptions to this rule.

[5] On December 7, 1815 (First session Fourteenth Congress, Journal, p. 29; Annals p. 380), such a committee had been proposed by Mr. Richard H. Wilde, of Georgia.

[6] First session Seventeenth Congress, Journal, p. 357.

[7] Second session Forty-sixth Congress, Record, p. 205.

[8] First session Forty-ninth Congress, Record, pp. 168, 196, 278.

[9] See section 4621 of this volume.

[10] First session Fifty-sixth Congress, Report No. 1445; first session Fifty-ninth Congress, Report No. 3169.

[11] First session Fifty-ninth Congress, Report No. 2663.

Affairs reported on a subject relating to the Bureau of Insular Affairs in the War Department,[1] in accordance with its legislative[2] jurisdiction over the War Department.

4182. Appropriations for clerks in the office of the Chief of Staff belong to the army bill.—On January 23, 1904,[3] the army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read the paragraph headed:

PAY TO CLERKS AND MESSENGERS AT HEADQUARTERS OF DIVISION AND DEPARTMENTS AND OFFICE OF THE CHIEF OF STAFF.

One chief clerk, $2,000.
Four clerks, at $1,800 each per annum, etc.

And concluding:

And said clerks and messengers shall be employed and assigned by the Secretary of War to the offices and positions in which they are to serve.

Mr. Oscar W. Underwood, of Alabama, made the point of order that the subjects of this paragraph were within the jurisdiction of the Committee on Appropriations.

After debate the Chairman[4] held:

This paragraph appropriates for "pay to clerks and messengers at headquarters of division and departments and office of the Chief of Staff." The point of order of the gentleman from Alabama, as the Chair understands it, is that because this paragraph includes an appropriation for clerks in the office of the Chief of Staff, therefore it is in effect an appropriation for one of the Executive Departments of the Government at Washington, and therefore should not be included in this army appropriation bill, which comes from the Committee on Military Affairs, but should be covered by the legislative, executive, and judicial appropriation, which is within the jurisdiction of a different committee. We have a statute which provides that—

"Each head of a Department is authorized to employ in his Department such number of clerks of the several classes recognized by law, and such messengers, assistant messengers, copyists, watchmen, laborers, and other employees, and at such rates of compensation, respectively, as may be appropriated for by Congress from year to year."

Salaries for such clerks and employees are properly carried in the executive and not in the army bill. As to what constitutes a "Department," the Chair calls attention to an opinion of the Attorney-General of the United States directly in point. It is found in Opinions of the Attorney-General, volume 15, page 267, and reads as follows:

"The several Executive Departments are by law established at the seat of government. They have no existence elsewhere. Only those bureaus and offices can be deemed bureaus or offices in any of these Departments which are constituted such by the law of its organization. The Department, with its bureaus or offices, is in contemplation of the law an establishment distinct from the branches of the public service and the offices thereof, which are under its supervision. Thus the office of postmaster, or of collector of internal revenue, or of pension agents, or of consuls, is not properly a departmental office—not an office in a Department having supervision over the branch of the public service to which

[1] The Committee on Insular Affairs has an exclusive jurisdiction over Porto Rico and the Philippines as to all subjects except appropriations. (See sec. 4213 of this work.)

[2] While the Committee on Military Affairs has legislative jurisdiction over the War Department, the appropriations for salaries of the Secretary, chiefs of divisions, and clerks in Washington are carried in the legislative bill, which is reported from the Committee on Appropriations.

[3] Second session Fifty-eighth Congress, Record, pp. 1084–1087.

[4] Marlin E. Olmsted, of Pennsylvania, Chairman.

it belongs. True, an official relation exists here between the office and the Department, one, moreover, of subordination of the former to the latter, but this does not make the office a part of the Department."

The Chair thinks that ruling very applicable to the case in hand. Referring to the act of February 14, 1903, entitled "An act to increase the efficiency of the Army," being the act whereby this office of Chief of Staff is created, it does not appear that there is any provision that he shall be established or even have his headquarters at Washington. He may be in the field. He may be anywhere the necessities of the service require. He is, among other things, to "have supervision of all troops of the line" and to "perform such other military duties" as may be lawfully assigned him by the President. The Chair is of the opinion that he is not the head of a "Department" within the meaning of the law and ruling of the Attorney-General, but his relation to the War Department, so far as the bill is concerned, is of a character similar to that formerly sustained by the Lieutenant-General. The words embraced in lines 13, 14, and 15, on page 8, "And said clerks and messengers shall be employed and assigned by the Secretary of War to the offices and positions in which they are to serve," would, if introduced for the first time in this bill, be open to objection, but it appears to be the identical language which is in the existing law, the army appropriation bill of last year. It is a mere reaffirmation of law. The Chair, therefore, overrules the point of order.

4183. Legislative authorization for construction of buildings for use of the Army and provisions for the control thereof are generally within the jurisdiction of the Committee on Military Affairs.—The Committee on Military Affairs has jurisdiction of authorizations of law as to buildings for use of the Army, as in the case of the quartermaster's warehouse at Omaha, Nebr.;[1] and as to the control of army posts, as in the case of the bill relating to the sale of liquor in canteens at army posts.[2]

4184. Fire control and direction apparatus for field artillery comes within the jurisdiction of the Committee on Military Affairs.

The acts of the Executive Departments in submitting estimates are not of effect in determining questions of jurisdiction.

On February 27, 1906,[3] the army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a paragraph of appropriation was read including the following:

Fire control and direction apparatus and material for field artillery.

Mr. Lucius N. Littauer, of New York, made the point of order that the jurisdiction of this item belonged to the Committee on Appropriations and not to the Committee on Military Affairs.

In the course of the debate Mr. Richard Wayne Parker, of New Jersey, explained as follows:

Mr. Chairman, General Greely has stated this matter with some care, on pages 1 and 2 of the hearing.

He states generally that the Signal Corps have to manage this arrangement by which guns shall be pointed in the field; I have seen it in actual work within the past two months, and I think perhaps the Chairman will be enlightened by a statement of how it is done.

Suppose it is desired to shoot at an enemy who is seen from the top of a hill. The guns are not brought to the top of the hill, because then they would be a mark instantly for the enemy. They are placed in a hollow behind where the gunners can shoot over the hill, but can not see the mark at which they are to shoot. Instantly the Signal Corps, who now ask this appropriation, lay a telegraph line which operates by telephone from the battery of guns up to the observing point on the top of the hill,

[1] First session Fifty-seventh Congress, Report No. 1920.

[2] First session Fifty-sixth Congress, Report No. 1701.

[3] First session Fifty-ninth Congress, Record, pp. 3071–3080.

where the Signal Corps have taken their stand. There they have an instrument, a small spyglass, that is leveled like a transit, by which they can take sight on the object to be shot at; and likewise we will say on a steeple in the rear, and they thus get the angle between the line of fire from the point on the top of the hill and the line back to the steeple. Then they know, or measure the distance, from that observation point to the gun's at one side in the hollow. They then calculate upon that distance that the lines to the steeple and to the enemy will make a certain different angle at the gun from what they did at the top of the hill, and so the man down the hill having a small instrument, a telescope or transit like that used at the top of the hill, sights back upon the steeple and forward at the angle that he is directed to take by telephone, shoots over the hill at that angle, and without seeing his mark, hits that mark.

It is those instruments which are used by the Signal Service in the field which gentlemen here say belong to the fortifications appropriation. In fortifications all that work is done by fixed telescopes, instruments put in houses or at fixed points, and managed by the artillery. In the field that direction is given by the Signal Corps and by no other corps, and this provision, as explained by General Greely, is to allow the Signal Corps to provide themselves not with fortification artillery, but with telescopic sights fitted with small graduated circles, which will tell them how to direct the guns in the field, how to shoot, and with the like sights to be put upon the guns or set near the guns, which will enable them to fulfill those directions.

At the conclusion of the debate the Chairman [1] ruled:

The gentleman from New York [Mr. Littauer] makes the point of order against the words "fire control and direction apparatus and material for field artillery," in lines 1 and 2, on page 5 of the bill, contending that this item of appropriation belongs to the Appropriation Committee and not to the Committee on Military Affairs. This raises the square question of jurisdiction between these two committees. It is a question which has been before the Committee of the Whole and before the House ever since division of the appropriations, in the Forty-ninth Congress, between the various committees now reporting appropriation bills. This is an extremely important question, and the Chair has found it a very delicate one to pass upon, involving not only an interpretation of the rules and the precedents of the House, but also a review of the practice of the committees dating back for many years.

The Chair will state, in the first place, that he does not think the occupant of this chair in Committee of the Whole is called upon to consider, in passing upon such a question as this, the attitude of the Executive Departments toward the various committees of the House.

It appears that an item similar to this has been carried for the past three years in appropriation bills coming from the Committee on Appropriations, and that no point of order has been made against those items. The present occupant of the chair, however, is compelled to find that the Chair ought not to seek shelter behind the undisputed action of the House or committee when he is called upon to decide a point of order according to the law and the precedents.

This question brings before us the history of the separation of the jurisdiction of the Appropriation Committees of the House, and the present occupant of the chair has undertaken to look into it with as much care and as fully as time permitted.

Prior to the Forty-ninth Congress all appropriation bills were framed by the Appropriations Committee, and matters relating to military affairs were scattered, at first apparently indiscriminately, between the sundry civil bill, the military bill, the fortification bill, and, of course, the various deficiency bills. Prior to the Forty-ninth Congress the rules under which authority was given to the Appropriations Committee and the Military Committee were as follows: The rules provided that matters relating to appropriations of the revenue for the support of the Government should go to the Committee on Appropriations, while matters relating to the military establishment and the public defense, other than appropriations for its support, should go to the Committee on Military Affairs. When the subdivision and distribution of matters going to the various appropriation committees were made, they were made effective by the rules of the House which have prevailed down to the present time, which were as follows:

"Matters relating to appropriation of the revenue for the support of the Government as herein provided, namely, for legislative, executive, and judicial expenses, for sundry civil expenses, for forti-

[1] Henry S. Boutell, of Illinois, Chairman.

fications and coast defense, for the District of Columbia, for pensions, and for all deficiencies, to the Committee on Appropriations.

"Matters relating to the military establishment and the public defense, including appropriations for its support, and that of the Military Academy, to the Committee on Military Affairs."

The language in the latter rule, it will be seen, is sufficiently broad, if standing by itself, to cover all appropriations relating to the military establishment. In order, therefore, to find out what items are not given to the Military Committee, we must determine what is meant by the language in the rule conferring jurisdiction on the Appropriation Committee, which says: "For fortifications and for coast defense."

The gentleman from Iowa who last addressed the Chair has suggested that in this division of authority the Committee on Military Affairs took only those subjects which the military bill carried under the Appropriation Committee when that committee had charge of all the bills. According to this line of reasoning, then, it would be true, of course, that the Appropriations Committee, under the language, "for fortifications and for coast defense," retains jurisdiction of only those items which previous to the separation had been carried in the fortification bill. This was a matter which so interested the Chair that he took occasion to look through all of the fortification acts from 1885 back to the civil war, that he might discover whether the fortification bills ever carried any items other than those directly connected with the fortifications and with the heavy guns of the coast defenses. But for twenty years prior to the division of jurisdiction the fortification bill carried no items except such as were directly connected with fortifications and coast defenses. Therefore the Chair sought to discover on what theory field guns were given to the Appropriations Committee after the division of jurisdiction and were covered in the fortification bill.

The last decision upon this question was made as late as 1898, on February 5 of that year, the fortification bill then being under consideration in Committee of the Whole. When this paragraph was read, "For steel field guns, $30,000," Mr. Hull, of Iowa, then chairman of the Committee on Military Affairs, made the point of order that this provision belonged to the Committee on Military Affairs and not to the Committee on Appropriations. After considerable debate the chairman of the committee, Mr. Hopkins, of Illinois, held that the point of order was not well taken, and that the item "for steel field guns, $30,000," belonged to the fortification bill. He referred to certain precedents which the Chair will allude to. On March 31, 1890, the House being in Committee of the Whole House on the state of the Union, and considering the army appropriation bill, a paragraph for metallic cartridges for field gun batteries and steel shell and shrapnel for artillery guns was under consideration, was read, and Air. Marcus Brewer, of Michigan, made the point of order that those items were not properly in the army bill, since they belonged to fortifications and coast defense, and that they belonged to the jurisdiction of the Committee on Appropriations. After debate Mr. Payson, of Illinois,[1] being in the chair, said:

"The question presented is of great difficulty and the discussion has not been sufficiently full to entirely satisfy the Chair about the precedents, but the exigencies of the work before the House will not permit further delay. The practice of the House for the last twenty years preceding the last six years in large part has obtained under different conditions as between committees from those which now exist, and the Chair will confine himself strictly to the rule as he understands it."

He then read the rule prevailing at that time—which still prevails—which the Chair had previously read, and then said:

"As the Chair understands this rule, the Committee on Appropriations in this matter is confined strictly to that which pertains to fortifications and coast defenses. The Chair holds that the provision of the bill providing for steel field guns and carriages for the same not used in fortifications nor made for fortifications nor for coast defenses properly goes to the Committee on Military Affairs, and he therefore overrules the point of order."

Immediately, on motion of Mr. Joseph G. Cannon, of Illinois, then chairman of the Committee on Appropriations, the committee struck out the paragraphs in question from the military bill by a vote of 91 ayes to 57 noes.

On the next day, on April 1, 1890, the Committee of the Whole House had under consideration the fortifications appropriation bill. The item in that bill against which the point of order was made

[1] Mr. Allen, of Michigan, not Mr. Payson, was in the Chair. See section 4042 of this volume.

(and I call the attention of the members of the committee especially to these items as enumerated) was for steel field guns, 3.2 caliber, metallic cartridges for field-gun batteries, and steel shell or shrapnel for field guns.

Mr. Cutcheon, of Michigan, made the point of order against the paragraph, and Mr. Payson, of Illinois, decided that the point of order was not well taken and overruled it, as he said, in conformity with the uniform decisions of the House.

The Chair found upon more careful examination a similar decision on the 19th of January, 1899, when Mr. Blount, of Georgia, was in the chair, and a point of order was made by Mr. Cutcheon against this provision for steel forgings for not less than twenty-four 3.6-inch field guns, $24,000. Another point of order on the same bill was made by Mr. Cutcheon against the following paragraph:

"One thousand steel shrapnel for field guns; 4,800 projectiles, cast iron, for field guns."

These were on the fortifications bill. The Chair overruled the points of order.

Still the present occupant of the chair was unable to find the reason why these field guns were appropriated for in the fortifications bill from the Appropriations Committee. But by further reference he found that on February 9, 1887, this matter came before the House and not before the Committee of the Whole. On that day the Speaker laid before the House Senate bill 662, to encourage the manufacture of steel for modern army ordnance, armor, and other purposes; to provide heavy ordnance adapted to modern army warfare, and for other purposes. Mr. McAdoo said:

"Mr. Speaker, I make the same point of order with reference to this bill that the gentleman from Michigan made with regard to the preceding bill-that under clause 11 of the eleventh rule, which provides that all proposed legislation relating to the military establishment and the public defense, including the appropriations for its support and for that of the Military Academy, should be referred to the Committee on Military Affairs, and that this bill should be so referred."

The occupant of the chair at that time was Mr. Speaker Carlisle. The colloquy which followed, as shown by the Record, was participated in by his great successor as Speaker of the House, the late Speaker Reed. It appears from the colloquy preceding the reference of the bill that both Speaker Carlisle and Mr. Reed, the leader of the minority on the floor, acquiesced in the sending of this bill to the Appropriations Committee.

This occurred in 1887, very soon after the division of bills had been made and matters relating to the military establishment taken from the Appropriations Committee, with the exception of fortifications and coast defenses, and from the provisions of the bill then under consideration it seems very clear to the present occupant of the chair that the reason why Speaker Carlisle and Mr. Reed held that such bills should go to the Appropriations Committee to be considered in the fortifications bill was because the heavy siege guns and the field artillery were both manufactured by the same arsenal. The only ground on which the Appropriations Committee secured authority to appropriate for the field guns was not under the rule, but under the interpretation of the rule and by the decisions of the Speaker of the House and by the Chairmen of the Committee of the Whole. That is as nearly as the Chair has been able to analyze this subject and the disputes between the two committees.

There was no logical reason why field guns should not have been given to the Military Committee under that rule. They could not have been covered in fortifications and coast defenses under the language of the rule. It was only by an interpretation of the rule and by the decisions, as I have said, of the Speaker and of the various Chairmen. Now, if we go back and examine these items that have come before the committee and before the House, we will find that they cover, first, the guns themselves, and, second, those matters necessarily appurtenant to the guns, as carriages, shot, and ammunition. The Chair has been referred to no precedent which has held that equipment not appurtenant to the field guns, but connected with their operation, could go to the Appropriations Committee. The Chair has given due weight to the fact that this item has been carried in other Congresses in fortification bills, but the point has never been raised against them, and there are no rulings to guide the judgment of the Chair.

The Chair also gives very great weight to the point so ably made by the gentleman from Iowa [Mr. Smith], that fortification bills have uniformly carried similar items for the coast defenses and for fortifications, and right here is where the Chair thinks is the dividing line and why it seems to the Chair that this is such a delicate question. The fire control for guns in the coast defense are instrumentalities appurtenant to the coast defense. Fire control, on the other hand, for mobile guns in the field are instrumentalities appurtenant to the Army in its military operations and are not a part of the gun.

The Chair is confirmed in his general opinion by the very exhaustive history referred to by the gentleman from Minnesota [Mr. Tawney] setting forth the way in which jurisdiction was given to the Committee on Military Affairs, and by the ruling of the late Speaker Henderson following the able arguments made by the late Representative Moody, at that time serving on the Appropriations Committee and now Attorney-General, and the present chairman of the Military Affairs Committee. In ruling upon the items that were submitted to him the Speaker said:

"The Chair therefore holds that the appropriations for the manufacture of small arms and equipments for the infantry, cavalry, and artillery at the armories and arsenals are within the jurisdiction of the Committee on Military Affairs."

As the Chair is informed, respecting the character of this fire-control apparatus, he regards it as an equipment of the artillery establishment and not as connected with or appurtenant to the gun. And therefore this item should not go to the Appropriations Committee, which has jurisdiction of the manufacture of field guns and appurtenances, but to the Military Committee, which takes all those things which are appurtenant to the Army and the public defense. After giving the subject as thorough consideration as the time permitted, and after studying the history of the conflict of jurisdiction involved, the Chair feels constrained to overrule the point of order.

Mr. Walter I. Smith, of Iowa, then stated that in view of the fact that this item had already been placed in the fortifications bill, he would move to strike it out of this bill.

After debate this motion was disagreed to, ayes 38, noes 62.

4185. Legislation relating to the National Soldiers' Homes is within the jurisdiction of the Committee on Military Affairs.—The Committee on Military Affairs exercises jurisdiction over legislation [1] relating to the National Homes for Disabled Volunteer Soldiers, and has reported:

In 1900,[2] a joint resolution (H. J. Res. 216) appointing three members on the Board of Managers of the National Home for Disabled Volunteer Soldiers; and also other bills relating to National Homes.

Again, in 1906,[3] as to the board of managers; [4] and also as to a temporary Home for Union soldiers and sailors.

4186. Legislation relating to the national cemeteries is within the jurisdiction of the Committee on Military Affairs.—The Committee on Military Affairs has general jurisdiction of legislation relating to national cemeteries,[5] except appropriations therefor, which are carried in the sundry civil bill, within the jurisdiction of the Committee on Appropriations.

In 1901 [6] the Committee on Military Affairs reported the bill to extend the Loudon Park National Cemetery; and in 1906 [7] on the national cemetery at Greenville, Tenn.

On April 27, 1882,[8] the Committee on Military Affairs reported the bill (H. R. 6011) to improve the public road to the Arlington National Cemetery; and has reported similar bills since that time.[9]

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[1] The Committee on Appropriations exercises jurisdiction over appropriations for these Homes, reporting therefor in the sundry civil bill.

[2] First session Fifty-sixth Congress, Reports Nos. 312, 469, 777, 1851.

[3] First session Fifty-ninth Congress, Reports Nos. 3588, 2336.

[4] See, however, section 4052 of this volume.

[5] First session Fifty-seventh Congress, Reports Nos. 875, 878.

[6] Second session Fifty-sixth Congress, Report No. 2529.

[7] First session Fifty-ninth Congress, Report No. 2667.

[8] First session Forty-seventh Congress, Report No. 6011.

[9] First session Fifty-ninth Congress, Report No. 3718.

4187. Legislation relating to military parks and battlefields is within the jurisdiction of the Committee on Military Affairs.—The Committee on Military Affairs has jurisdiction over legislation relating to military parks and battlefields,[1] and has reported:

In 1893[2] and 1906,[3] as to the battlefield of Gettysburg and the improvements thereon.

In 1906,[4] as to the park commission for the battlefield of Petersburg, Va.

In 1901,[5] as to the national military park commission.

4188. In a few instances the Committee on Military Affairs has reported general bills providing for the adjustment of claims arising out of war.—On March 18, 1884,[6] the Committee on Military Affairs reported the resolution (H. Res. 172) relating to the settlement of the claims of western States and Territories for expenditures on account of Indian hostilities. The report also shows that a prior act on this subject was reported from this committee.

In 1899[7] this committee reported the bill (H. R. 12020) to reimburse the governments of States and Territories for expenses incurred in the war with Spain.

4189. The creation and history of the Committee on Naval Affairs, section 13 of Rule XI.

The rule gives to the Committee on Naval Affairs jurisdiction of subjects relating "to the naval establishment, including the appropriations for its support."

Section 13 of Rule XI provides for the reference of subjects relating—

> To the naval establishment, including the appropriations for its support; to the Committee on Naval Affairs.

The Committee on Naval Affairs has eighteen members.

It was made a standing committee[8] on March 13, 1822.[9] The form of the present rule is that of the revision of 1880[10] as modified by that of 1885,[11] when the naval appropriation bill was taken from the Appropriations Committee and given to this committee, with the privilege of reporting it at any time.[12]

This committee not only has entire jurisdiction of legislation relating to the Navy, Marine Corps, and Naval Academy, but also has jurisdiction of an appropriations therefor, except only those for the salaries, etc., of the Secretary of the Navy and the chief of divisions and clerks in the Department in Washington, which

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[1] Appropriations for these objects are carried in the sundry civil appropriation bill, which is within the jurisdiction of the Committee on Appropriations.

[2] Second session Fifty-second Congress, Report No. 2188.

[3] First session Fifty-ninth Congress, Report No. 4252.

[4] First session Fifty-ninth Congress, Report No. 2469.

[5] First session Fifty-seventh Congress, Report No. 2043.

[6] First session Forty-eighth Congress, Report No. 807.

[7] Third session Fifty-sixth Congress, Report No. 2176.

[8] On December 7, 1815 (first session Fourteenth Congress, Journal, p. 29; Annals, p. 380), such a committee had been proposed by Mr. Richard H. Wilde, of Georgia.

[9] First session Seventeenth Congress, Journal, p. 351.

[10] Second session Forty-sixth Congress, Record, p. 205.

[11] First session Forty-ninth Congress, Record, pp. 168, 196, 278.

[12] See section 4621 of this volume.

are carried in the legislative appropriation bill, reported by the Committee on Appropriations.

4190. The creation and history of the Committee on Post-Office and Post-Roads, section 14 of Rule XI.

The rule gives to the Committee on Post-Office and Post-Roads jurisdiction of subjects relating "to the post-office and post-roads, including appropriations for their support."

Section 14 of Rule XI provides for the reference of subjects relating—

To the post-office and post-roads, including appropriations for their support; to the Committee on the Post-Office and Post-Roads.

This committee has eighteen Members and one Delegate.

It first became a standing committee on November 9, 1808,[1] on motion of Mr. John Rhea, of Tennessee, who became its first chairman. At that time it was composed of one Member from each State. A rule defining its jurisdiction was reported and adopted in 1811.[2] The present rule is in the form of the revision of 1880[3] as modified by that of 1885,[4] when the clause relating to appropriations was inserted. The committee may report its appropriation bill at any time.[5]

4191. The appropriation for officers and clerks in the Railway Mail Service belongs to the jurisdiction of the Committee on the Post-Office and Post-Roads.—On March 29, 1906,[6] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, under the terms of a special order which made it impossible to raise a question of order against any provision reported in the bill; and the following paragraph was read:

Division of Railway Mail Service: For the following now authorized and being paid from appropriations for the postal service, namely: General Superintendent, $4,000; Assistant General Superintendent, $3,500; chief clerk, $2,500; assistant chief clerk, $1,800; five clerks of class 3; six clerks of class 2; five clerks of class 1; three clerks, at $1,000 each; two clerks, at $900 each; in all, $39,000.

Mr. Jesse Overstreet, of Indiana, raised a question that this paragraph was within the jurisdiction of the Post-Office appropriation bill, and moved to strike it out.

After debate the motion was agreed to, ayes 58, noes 22.

4192. The jurisdiction of the Committee on Post-Office and Post-Roads extends to the Railway Mail Service, ocean mail service, pneumatic-tube service, etc.—The Committee on Post-Office and Post-Roads has general legislative jurisdiction of subjects relating to the postal service,[7] as well as

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[1] Second session Tenth Congress, Journal, p. 345.

[2] See Report No. 38, first session Twelfth Congress.

[3] Second session Forty-sixth Congress, Record, p. 205.

[4] First session Forty-ninth Congress, Record, pp. 168, 196, 278.

[5] See section 4621 of this volume.

[6] First session Fifty-ninth Congress, Record, pp. 4473, 4477.

[7] The authorization of buildings for post-offices is within the jurisdiction of the Committee on Public Buildings and Grounds, and appropriations therefor are within the jurisdiction of the Committee on Appropriations and are reported in the sundry civil bill.

jurisdiction of appropriations therefor, including the Railway Mail Service,[1] ocean mail service,[2] pneumatic tube service;[3] and in 1901[4] reported a bill codifying the postal laws. The appropriations for salaries, etc., of the Postmaster-General and heads of divisions and clerks in the Department at Washington are reported in the legislative appropriation bill, which is within the jurisdiction of the Committee on Appropriations.

4193. Subjects relating to postal savings bank and postal telegraphy are within the jurisdiction of the Committee on Post-Office and Post-Roads.—The Committee on Post-Office and Post-Roads has also exercised jurisdiction as follows:

In 1991,[5] on the subject of postal savings banks.

In 1886,[6] a resolution relating to an inquiry as to a monopoly of telegraph facilities.

In 1887,[7] the bill (H. R. 10398) relating to telegraph lines, especially the landgrant telegraph lines.

On January 9, 1884,[8] the resolutions distributing the President's message referred subjects relating to postal telegraphy to the Committee on Post-Office and Post-Roads.

4194. The creation and history of the Committee on Public Lands, section 16 of Rule XI.

The rule gives to the Committee on Public Lands jurisdiction of subjects relating "to the lands of the United States."

Section 15 of Rule XI provides for the reference of subjects relating—

To the lands of the United States; to the Committee on the Public Lands.

This committee is composed of fifteen Members and one Delegate.

It dates from December 17, 1805,[9] when Mr. William Findley, of Pennsylvania, proposed to add to the standing committees of the House "a committee respecting the lands of the United States." It was opposed on the ground that a standing committee would gain too great an ascendancy over the sentiments and decisions of the House. On the other hand, it was contended that the business of the House would be greatly facilitated by the institution of a standing committee whose decisions would be uniform, and who would from long experience become more enlightened than a select committee.

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[1] For reports on this subject see first session Fifty-first Congress, Report No. 375; second session Fifty-third Congress, Report No. 501.

[2] First session Fifty-second Congress, Report No. 699.

[3] First session Fifty-seventh Congress, Report No. 1256.

[4] Second session Fifty sixth Congress, Report No. 2272.

[5] Second session Fifty-first Congress, Report No. 4002.

[6] First session Forty-ninth Congress, Record, p. 1704.

[7] Second session Forty-ninth Congress, Report No. 3501.

[8] First session Forty-eighth Congress, Journal, p. 256; Record, p. 319.

[9] First session Ninth Congress, Annals, pp. 285, 286. The committee had been first proposed January 3, 1805 (second session Eighth Congress, Journal, p. 76; Annals, p. 870), but the House had declined to authorize it.

The present form of the rule dates from the revision of 1880.[1] The committee may report certain classes of business at any time.[2]

4195. The Committee on Public Lands exercised a preliminary jurisdiction over the subject of irrigation.—In 1886[3] the Committee on Public Lands reported the bill (S. 1092) granting right of way through the public lands for irrigation purposes; and in 1905[4] on lands for reservoir sites

Generally, however, since 1901,[5] matters affecting irrigation, which had gone to public lands because they affected the national domain, began to be considered exclusively by the Committee on Irrigation of Arid Lands.

4196. The Committee on Public Lands has exercised jurisdiction over the public lands of Alaska, including grants to public service corporations.—The Committee on Public Lands have jurisdiction as to the public lands of Alaska, and the committee reported generally on that subject in 1890;[6] in 1896[7] on the subject of a surveyor-general for Alaska; in 1902,[8] on land offices there; in 1905[9] on Alaska coal-land laws; in 1906,[10] on allotment of homesteads to natives of Alaska; and in 1900,[11] on various bills relating to homestead laws, timber and stone lands, mining claims, and placer-mining laws in Alaska.

As to railways in Alaska, as generally they have been encouraged by grants of land, the Committee on Public Lands has maintained a certain jurisdiction, having reported bills:

In 1901,[12] relating to homestead laws and railroad rights of way.

In 1905,[13] relating to the Alaska Central Railway.

In 1906,[14] bills relating to the Alaska Central and Alaska Short Line railways.

The Committee on Territories, however, had also shared the jurisdiction as to Alaska railways.

Public Lands in 1901,[15] reported on rights of way for telephone and telegraph lines in Alaska.

4197. The Committee on Public Lands exercises jurisdiction as to such forest reserves as are created out of the public domain.—The forest reserves created by setting aside portions of the public lands[16] are, so far as legisla-

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[1] Second session Forty-sixth Congress, Record, p. 205.

[2] See section 4621 of this volume.

[3] First session Forty-ninth Congress, Report No. 2038.

[4] Third session Fifty-eighth Congress, Report No. 4503.

[5] Second session Fifty-sixth Congress, Reports Nos. 2904, 2927, 2934.

[6] First session Fifty-first Congress, Report No. 2450.

[7] First session Fifty-fourth Congress, Report No. 901.

[8] First session, Fifty-seventh Congress, Report No. 42.

[9] Second session Fifty-eighth Congress, Report No. 1298.

[10] First session, Fifty-ninth Congress, Report No. 3295.

[11] First session, Fifty-sixth Congress, Reports Nos. 561, 568, 569, 571, 572. But in 1886 (first session Forty-ninth Congress, Report No. 3232), the Committee on Territories reported a bill extending the homestead laws to the Territory of Alaska.

[12] First session Fifty-seventh Congress, Report No. 778.

[13] Third session Fifty-eighth Congress, Report No. 4821.

[14] First session Fifty-ninth Congress, Report Nos. 4983, 5009.

[15] First session Fifty-seventh Congress, Report No. 2460.

[16] Forest reserves on lands not a portion of the public domain are within the jurisdiction of the Committee on Agriculture. (See sec. 4160 of this volume.)

tion—distinguished from appropriation—is concerned within the jurisdiction of the Committee on Public Lands, and that committee has reported:

In 1898,[1] a bill authorizing the leasing of portions of forest reserves.

In 1894 [2] and 1899,[3] bills relating to forest reservations.

In 1900,[4] a bill preserving the rights of persons who have had unperfected land titles in regions included within forest reservations.

In 1903,[5] on the subject of game animals, birds, and fish in forest reserves.

In 1894,[6] in relation to timber on the public lands

In 1900,[7] on the bill (H. R. 10590) setting aside a preserve for the American bison.

4198. The Committee on Public Lands has jurisdiction over subjects relating to those national parks created out of the public domain.—The Committee on Public Lands has jurisdiction over legislation (but not of appropriation), relating to the national parks created out of portions of the public domain, and has reported bills relating to the Yellowstone,[8] Yosemite,[9] Wind Cave,[10] and also on the proposed Petrified Forest National Park.[11]

4199. Bills relating to the preservation of prehistoric ruins and natural objects of interest on the public lands have been reported by the Committee on Public Lands.—The Committee on Public Lands has reported bills of the following class:

In 1905,[12] relating to aboriginal monuments and ruins.

In 1900,[13] the resolution (H. Res. 170) providing for negotiating for or bonding the groves of Sequoia Gigantea, or big trees, in Calaveras and Tuolume counties, California; the bill (H. R. 10451) for the preservation of the prehistoric monuments and ruins on public lands; and the bill (H. R. 9634) to set aside certain lands to be known as the Petrified Forest National Park of Arizona.

In 1901,[14] the bill (H. R. 13071) to set apart certain lands in New Mexico to be known as the Cliff Dwellers' Park.

In 1906,[15] on the subject of American antiquities.

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[1] Second session Fifty-fifth Congress, Report No. 942.

[2] Third session Fifty-fifth Congress, Record, p. 919.

[3] Second session Fifty-third Congress, Report No. 897.

[4] First session Fifty-sixth Congress, Report No. 1700.

[5] Second session Fifty-seventh Congress, Report No. 3862; first session Fifty-ninth Congress, Report No. 4907.

[6] Second session Fifty-third Congress, Reports Nos. 241, 1204, 1400.

[7] First session Fifty-sixth Congress, Report No. 985.

[8] First session Fiftieth Congress, Report No. 3071; second session Fifty-third Congress, Reports Nos. 380, 658, 1386, 1387.

[9] Second session Fifty-fifth Congress, Reports Nos. 559, 1315, 1547; second session Fifty-eighth Congress, Report No. 2576.

[10] First session Fifty-seventh Congress, Reports Nos. 2606, 2676.

[11] First session Fifty-ninth Congress, Report No. 4638. In 1885 (second session Forty-eighth Congress, Report No. 2383) the Committee on Territories reported a bill setting aside a tract of land for the Yellowstone National Park.

[12] Third session Fifty-eighth Congress, Reports Nos. 3703–3705.

[13] First session Fifty-sixth Congress, Reports Nos. 436, 879, 1104

[14] Second session Fifty-sixth Congress, Report No. 2427.

[15] First session Fifty-ninth Congress, Report No. 2224.

4200. Subjects relating to Arkansas Hot Springs Reservation are within the jurisdiction of the Committee on Public Lands.—The Hot Springs Reservation in Arkansas, is within the jurisdiction of the Committee on Public Lands,[1] together with the regulation of the hotels and bath houses connected therewith.[2]

4201. The forfeiture of land grants and alien ownership of land have been considered by the Public Lands Committee, although the Judiciary Committee also has participated in the jurisdiction of certain land questions.—On January 20, 1885,[3] the Committee on Public Lands reported the bill (H. R. 2308) to prohibit aliens and foreigners from acquiring or owning lands within the United States.

In 1886[4] the Committee on the Judiciary submitted a report setting forth that the forfeiture of lands granted to corporations was a subject belonging to the jurisdiction of the Committee on Public Lands, and declining to take jurisdiction.

On June 16, 1882,[5] the Judiciary Committee reported the bill (H. R. 6520) relating to land patents in the Virginia military district of Ohio, a question arising out of the cession of the territory northwest of the Ohio by Virginia; and in 1887[6] the Judiciary Committee also reported the bill (H. R. 5556) making it a misdemeanor to set fires on the public lands of the United States.

4202. The Committee on Public Lands has exercised a general but not exclusive jurisdiction over the public lands in relation to the minerals contained therein, and has reported bills to establish schools of mines.—The Committee on Public Lands has exercised jurisdiction over the subject of public lands as related to the minerals contained therein, and has reported:

In 1894[7] bills relating to assessment work on mining claims; to mineral land laws in reservations; on Minnesota gold and silver lands.

In 1896,[8] on examination of mineral lands in California.

In 1894,[9] 1896,[10] and 1906,[11] on bills relating to the establishment of schools of mines.[12]

4203. The Committee on Public Lands has reported projects of general legislation relating to various classes of land claims, as related both

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[1] Third session Fifty-fifth Congress, Report No. 2088; third session Fifty-eighth Congress, Report No. 4215.

[2] Second session Fifty-eighth Congress, Report No. 2039.

[3] Second session Forty-eighth Congress, Report No. 2308.

[4] First session Forty-ninth Congress, Report No. 2027. But in the Forty-seventh Congress (first session, Record, p. 6852, Reports Nos. 1205, 1283) the Judiciary Committee had reported very important bills of this nature.

[5] First session Forty-seventh Congress, Report No. 1414.

[6] Second session Forty-ninth Congress, Report No. 4107.

[7] Second session Fifty-third Congress, Reports Nos. 262, 382, 1381.

[8] First session Fifty-fourth Congress, Report No. 317.

[9] Second session Fifty-third Congress, Reports Nos. 381, 410, 413.

[10] First session Fifty-fourth Congress, Reports Nos. 50, 140.

[11] First session Fifty-ninth Congress, Report No. 1685.

[12] The Committee on Mines and Mining has also reported on the subject of schools of mines. (See sec. 4226 of this volume.)

to States and individuals.—The Committee on Public Lands has reported general legislation—as distinguished from private and special—on these subjects:

In 1891,[1] the subject of Arkansas indebtedness.

In 1892,[2] on the Arkansas swamp land claims.

In 1898,[3] on a bill (H. R. 10170) for the relief of homestead claimants who served in the war with Spain.

4204. The creation and history of the Committee on Indian Affairs, section 16 of Rule XI.

The rule gives to the Committee on Indian Affairs jurisdiction of subjects relating "to the relations of the United States with the Indians and the Indian tribes, including appropriations therefor."

Section 16 of Rule XI provides for the reference of subjects relating—

> to the relations of the United States with the Indians and the Indian tribes, including appropriations therefor; to the Committee on Indian Affairs.

This committee consists of eighteen Members and one Delegate.

It was established as a standing committee on December 17, 1821[4] by a resolution moved by Mr. Samuel Moore, of Pennsylvania, who became its first chairman. The present form of the rule dates from the revision of 1880,[5] as modified by the distribution of the appropriation bills in 1885.[6] The committee may report its appropriation bill at any time.[7]

4205. The Committee on Indian Affairs has a broad jurisdiction of subjects relating to the care, education, and management of the Indians, including the care and allotment of their lands.—On December 6, 1888,[8] the resolutions distributing the President's message used this language relating to the jurisdiction of the Committee on Indian Affairs, giving to that committee so much "as relates to the care, education, and management of the Indians." This language had been used for a long time in these resolutions; and the committee has exercised a broad jurisdiction as to the care of Indians on the reservations, and in Indian Territory while that reserve existed as a separate territory, and also as to the care and preservation of Indian lands and the allotment in severalty.[9]

4206. The Committee on Indian Affairs has jurisdiction of both general and special bills as to claims which are paid out of Indian funds.—On January 18 and 19, 1882, the House,[10] after consideration, determined that bills for the payment of Indian depredation claims out of Indian funds should go to the Committee on Indian Affairs and not to the Committee on Claims.

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[1] Second session Fifty-first Congress, Report No. 3314.

[2] First session Fifty-second Congress, Report No. 1571.

[3] Second session Fifty-fifth Congress, Report No. 1343.

[4] First session Seventeenth Congress, Journal, pp. 57, 62; Annals, p. 553.

[5] Second session Forty-sixth Congress, Record, p. 205.

[6] First session Forty-ninth Congress, Record, pp. 168, 196, 278.

[7] See section 4621 of this volume.

[8] Second session Fiftieth Congress, Journal, p. 53.

[9] First session Fifty-ninth Congress, Report No. 1558.

[10] First session Forty-seventh Congress, Record, pp. 484, 517.

The Committee on Indian Affairs reported in 1903[1] on the subject of Indian depredation claims, and in 1891[2] on the Miami Indian claims.

4207. As to jurisdiction in relation to overdue bonds of certain States held in the Treasury as part of Indian trust funds.—A question has frequently arisen as to certain overdue bonds and stocks of certain States, formerly belonging to an Indian trust fund and held in the Treasury of the United States, and the jurisdiction of the subject has sometimes been with the Committee on Indian Affairs[3] and sometimes with the Committee on Ways and Means.[4]

4208. The creation and the history of the Committee on the Territories, section 17 of Rule XI.

The Committee on the Territories has, by rule, jurisdiction of subjects relating "to Territorial legislation, the revision thereof, and affecting Territories or the admission of States."

Section 17 of Rule XI provides for the reference of subjects relating—

> to Territorial legislation, the revision thereof, and affecting Territories or the admission of States; to the Committee on the Territories.

This committee consists of sixteen Members and two Delegates.

The jurisdiction given the committee on December 13, 1825,[5] when it was established, was as follows:

> It shall be the duty of the Committee on Territories to examine into the legislative, civil, and criminal proceedings of the Territories, and to devise and report to the House such means as, in their opinion, may be necessary to secure the rights and privileges of residents and nonresidents.

The present form of the rule dates from the revision of 1880.[6] The committee may report at any time bills for the admission of new States.[7]

4209. The Committee on the Territories has jurisdiction of legislation relating to the general affairs of the Territories, and has even reported bills relating to the courts.—The Committee on Territories has general jurisdiction of subjects relating to the Territories within what has been termed continental United States, and has reported on a wide range of bills:

In 1906[8] a bill to ratify and confirm the act of the legislative assembly of the Territory of Oklahoma, passed in the year 1901, authorizing the board of county commissioners of Kay County, Okla., to change the course of Spring Creek; and similar bills.

In 1886[9] the bill (H. R. 2163) relating to the sale of intoxicating liquors in the Territories.

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[1] Second session Fifty-eighth Congress, Report No. 2854.

[2] Second session Fifty-first Congress, Report No. 3852.

[3] Thus, by the Indian appropriation act of 1894 (28 Stat. L., p. 311) the Secretary of the Treasury was directed to place these bonds and stocks on the books of the Treasury to the credit of the Indians.

[4] Second session Forty-first Congress, Globe, p. 1689.

[5] First session Nineteenth Congress, Journal, p. 46.

[6] Second session Forty-sixth Congress, Record, p. 205.

[7] See section 4621 of this volume.

[8] First session Fifty-ninth Congress, Report No. 3929.

[9] First session Forty-ninth Congress, Report No. 2444.

In 1887[1] the bill (H. R. 3750) relating to the power of Territorial legislatures to create corporations.

In 1904[2] on a bill relating to the Arizona Asylum for the Insane.

In 1884[3] this committee reported as to jurisdiction of justices of the peace, and also as to courts and judicial proceedings, and in 1887[4] as to the fees of marshals and attorneys, and even as to the creation of an additional justice for a Territorial supreme court, although in general this jurisdiction belongs to the Judiciary Committee.

4210. The Committee on the Territories has jurisdiction of general subjects relating to the district of Alaska.—Although a Territorial government has not been created for Alaska, the Committee on Territories has exercised a general jurisdiction over subjects relating to that region, and has reported:

On the subject of representation in Congress by a Delegate;[5]

The laws of the Territory;[6]

Construction and maintenance of roads;[7]

Municipal corporations;[8]

Sale of intoxicating liquors in;[9]

Care of the insane;[10]

As to justices of the peace and constables.[11]

4211. The Committee on Territories has exercised a general but not exclusive jurisdiction as to game and fish in Alaska, including the salmon fisheries.—The Committee on Territories has exercised a general although not exclusive jurisdiction as to the salmon fisheries of Alaska, and has reported several bills[12] on that subject, and on May 28, 1902,[13] the reference of a bill on this subject was changed from Merchant Marine and Fisheries to Territories, although later the former committee reported a bill on the same subject.[14] In 1906,[15] however, the Committee on Territories reported on the subject of fisheries in Alaska, and on a bill prohibiting aliens from taking fish in those waters.

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[1] Second session Forty-ninth Congress, Report No. 3750.

[2] Second session Fifty-eighth Congress, Report No. 1021.

[3] First session Forty-eighth Congress, Reports Nos. 254, 1056.

[4] Second session Forty-ninth Congress, Reports Nos. 3486, 3739, 3751.

[5] First session Forty-seventh Congress, Report No. 1306; First session Fifty-ninth Congress, Report No. 1472.

[6] Third session Fifty-third Congress, Report No. 1607.

[7] Second session Fifty-eighth Congress, Report No. 2235.

[8] Second session Fifty-eighth Congress, Report No. 2742.

[9] Third session Fifty-third Congress, Report No. 1616.

[10] Second session Fifty-eighth Congress, Report No. 2743.

[11] Third session Fifty-third Congress, Report No. 1649.

[12] First session Fifty-fourth Congress, Reports Nos. 871, 1452; first session Fifty-seventh Congress, Report No. 2062.

[13] First session Fifty-seventh Congress.

[14] Second session Fifty-eighth Congress, Report No. 2099. See section 4147 of this volume.

[15] First session Fifty-ninth Congress, Reports Nos. 2657, 2485.

The Committee on Territories has also reported on the subject of game [1] and wild fowl [2] in Alaska, although legislation relating to the reindeer [3] has been reported from the Committee on Agriculture.

4212. The Committee on Territories has general jurisdiction of subjects relating to the Territory of Hawaii.—The Committee on Territories exercises a general jurisdiction of subjects relating to the Territory of Hawaii:

Laws relating to election of Delegate; [4]

Fuel and gas supply in Honolulu; [5]

Fund for public works in Hawaii; [6]

Quarantine station at Honolulu.[7]

In 1900 [8] this committee reported a bill reserving certain lands at Oahu, Hawaiian Islands, which were a part of the public domain; and this year [9] and the next year the committee reported bills relating to Hawaiian coinage, although the Committee on Coinage, Weights, and Measures protested.

In 1901,[10] also, the Committee on Territories reported a bill relating to subports of entry and delivery in Hawaii.

4213. The creation and history of the Committee on Insular Affairs, section 18 of Rule XI.

The rule gives to Insular Affairs jurisdiction of all subjects, other than revenue and appropriations, relating to the islands which came to the United States by the Spanish treaty of 1899.

The rule creating the Committee on Insular Affairs gave to it jurisdiction of subjects relating to Cuba.

Section 18 of Rule XI provides that the Committee on Insular Affairs shall have jurisdiction of:

> All matters (excepting those affecting the revenue and the appropriations) pertaining to the islands which came to the United States through the treaty of 1899 with Spain, and to Cuba.

This committee consists of eighteen Members and the Resident Commissioner of Puerto Rico.

On December 5, 1899,[11] Mr. James A. Tawney, of Minnesota, introduced a resolution providing for a Committee on Insular Affairs; and on December 8 [12] Mr. John Dalzell, of Pennsylvania, reported from the Committee on Rules a resolution creating the committee. This resolution was on that day agreed to by the House.

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[1] First session Fifty-seventh Congress, Report No. 951.

[2] Third session Fifty-third Congress, Record, p. 2957.

[3] First session Fifty-second Congress, Report No. 1093.

[4] First session Fifty-ninth Congress, Report No. 3704.

[5] Second session Fifty-eighth Congress, Report No. 1634.

[6] First session Fifty-ninth Congress, Report No. 2743.

[7] First session Fifty-ninth Congress, Report No. 1113.

[8] First session Fifty-sixth Congress, Report No. 778.

[9] First session Fifty-sixth Congress, Report No. 831; second session, Report No. 2941.

[10] Second session Fifty-sixth Congress, Report No. 2463.

[11] First session Fifty-sixth Congress, Record, p. 60.

[12] Record, p. 159.

4214. The Committee on Insular Affairs exercises practically an exclusive jurisdiction over the affairs of the islands ceded by the treaty of 1899, except as to matters of revenue and appropriation.—The Committee on Insular Affairs, both by the terms of the rule defining its jurisdiction and in practice, exercises a broad jurisdiction over matters relating to the island possessions, without regard generally to the facts that the subjects would be such as ordinarily would fall within the jurisdiction of other committees.[1] Thus, it has reported:

In 1903,[2] on the Philippine coinage; and on removal of persons accused of crime to and from the Philippine Islands.

In 1904,[3] on the construction of harbors and establishment of agricultural experiment stations in Porto Rico; and on the issue of bonds for municipal improvements in the Philippines.

In 1906,[4] on Batan Island military reservation in the Philippines; on construction of wharves and piers in Porto Rico; exemption of Porto Rican bonds from taxation; loan of naval vessel to Philippine government; Philippine coinage system; Phillippine shipping trade; qualifications of jurors and temporary substitute for a district judge in Porto Rico.

In 1907,[5] a bill to provide for the establishment of an agricultural bank in the Philippines.

4215. Although there is a specific rule giving to Insular Affairs the jurisdiction of matters relating to Cuba, the House has decided that they belong rather to Foreign Affairs.—On December 20, 1906,[6] House Resolution No. 647, distributing the President's message, was considered in the Committee of the Whole House on the state of the Union, when this clause was considered:

> That so much as relates to the islands which came to the United States through the treaty of eighteen hundred and ninety-nine, with Spain [and to Cuba] (except so much as relates to the revenue and the appropriations), be referred to the Committee on Insular Affairs.

Mr. Sereno E. Payne, of New York, in explaining the amendment which the Ways and Means Committee had recommended, to strike out the words "and to Cuba," saying that as Cuba had become a foreign country the provision of the rules of the House giving jurisdiction to the Insular Affairs Committee had become inapplicable, and such matters would now be referred to the Committee on Foreign Affairs.

Considerable debate arose about taking the subject from the Committee on Insular Affairs, but Mr. Payne explained that the House had taken similar action the year before.

The amendment was agreed to.

4216. A proposition to establish a system for dealing with a certain class of claims in the Philippines was referred by the House to the Committee on Insular Affairs.

Instance wherein the House referred a message of the President.

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[1] Of course exception is made by rule of matters relating to revenue and appropriations.

[2] Second session Fifty-seventh Congress, Reports Nos. 3023, 3478, 3542, 3834.

[3] Second session Fifty-eighth Congress, Reports Nos. 2227, 2717.

[4] First session Fifty-ninth Congress, Reports Nos. 3214, 3629, 4214, 4216, 4218, 4665, 4879, 4923.

[5] Second session Fifty-ninth Congress, Report No. 8115.

[6] Second session Fifty-ninth Congress, Record, pp. 602–604.

On December 5, 1906,[1] the Speaker laid before the House the following message from the President of the United States:

To the Senate and House of Representatives:

I herewith submit to the Congress the report of the Secretary of War and of the Judge-Advocate-General in reference to the claims presented by the representatives of the Roman Catholic Church for amounts due from the United States to the various Roman Catholic churches in the islands for use and occupation by troops of the United States, and for damages during such occupation. I cordially indorse all that is said in these reports, and earnestly hope that the amount recommended by the board will be immediately appropriated, in order to do what is really an act of substantial justice to the Roman Catholic churches of the Philippines, in accordance with the suggestion of the Secretary of War. It is not only a matter of equity that we should pay this sum, but for the reasons set forth by the Secretary of War it is very greatly to the interest of the people of the Philippine Islands that it should be paid. I have accordingly approved the action of the Secretary of War in directing that the same board be reconvened, or another convened, to report on the advisability of paying additional sum to the Roman Catholic churches in the islands, in view of the damages inflicted upon them by reason of the war and by the insurrectos. I feel that this is peculiarly a case where, in the interest of the Philippine people themselves, it would be wise for the Congress to exercise a large liberality.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *December 5, 1906.*

The Speaker[2] said, after the reading of the message:

The Chair is in doubt as to the proper reference of this message. Offhand, perhaps, under the rules, the proper reference would be to the Committee on War Claims; but from a broader view, touching the Philippines, the Chair is inclined to think possibly the substance of the rules would be more fully met by its reference to the Committee on Insular Affairs. If the House has a preference as to its reference——

Mr. Sereno E. Payne, of New York, interrupting, said:

Mr. Speaker, if it is in order, I move that it be referred to the Committee on Insular Affairs.

The question was taken; and the motion was agreed to

So the message was referred to the Committee on Insular Affairs.

4217. The creation and history of the Committee on Railways and Canals, section 19 of Rule XI.

The rule gives to the Committee on Railways and Canals jurisdiction of subjects relating "to railways and canals, other than Pacific railroads."

Early arguments for and against the creation of standing committees.

Section 19 of Rule XI provides for the reference of subjects relating—

to railways and canals, other than Pacific railroads: to the Committee on Railways and Canals.

This committee consists of fourteen Members.

It was established as a standing committee on December 15, 1831,[3] on motion of Mr. Charles F. Mercer, of Virginia, who named it the "Committee on Roads and Canals." A committee of this name had been proposed, however, as early as December 7, 1815,[4] by Mr. Richard H. Wilde, of Georgia. Mr. Mercer's motion in 1831 was agreed to by a vote of 96 to 90, there having been strong opposition to

[1] Second session Fifty-ninth Congress, Record, pp. 73, 74.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] First session Twenty-second Congress, Journal, p. 59; Annals, pp. 1438, 1442.

[4] First session Fourteenth Congress, Journal, p. 29; Annals, p. 380.

making it a standing committee[1] lest it should be construed as an indorsement of an elaborate system of internal improvement. On the other hand, it was urged that there had already been special committees on the subject, and that such a standing committee had existed in the Senate for many years. It was provided at that time that the committee should have jurisdiction of matters "relating to railways and canals and the improvement of the navigation of rivers." On January 10, 1834,[2] Mr. Mercer proposed to add "harbors" to the jurisdiction of the committee, but the House disagreed to the proposition. While the clause of the rule relating to "the improvement of the navigation of rivers" remained until the revision of the rules in 1880,[3] it was to a large extent obsolete, since from 1831 to 1879 most bills relating to the improvement of rivers were sent to the Committee on Commerce.[4] The jurisdiction of the Committee on Railways and Canals, in this respect especially, was carefully examined and reported on in 1877.[5] The present form of rule defining jurisdiction dates from the revision of 1880.

4218. The Committee on Railways and Canals has retained a general jurisdiction of the subject of canals; but has lost its jurisdiction as to railways.—The jurisdiction of the Committee on Railways and Canals as to railways has been absorbed by the Committee on Interstate and Foreign Commerce.[6] But the jurisdiction of legislation as to canals has been retained, and the Committee on Railways and Canals has reported.

In 1882,[7] on the Illinois and Mississippi Canal, the Maryland and Delaware ship canal, and the Michigan ship canal; also the bill (H. R. 5545) relating to the jurisdiction of the United States over certain ship canals and other navigable waters.

In 1884,[8] on various canals; and the bill (H. R. 6320) relating to a harbor of refuge and breakwater at the northern end of the Cape Cod ship canal.[9]

In 1885,[10] on the bill (H. R. 4991) to provide for the survey of a water route to connect Lake Michigan and Detroit River.

In 1891,[11] 1892,[12] 1901,[13] and 1906,[14] on the incorporation of the Lake Erie and Ohio Ship Canal Company.

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[1] For another argument in opposition to standing committees, see section 4194 of this volume.

[2] First session Twenty-third Congress, Journal, pp. 179, 180, 508.

[3] Second session Forty-sixth Congress, Record, p. 205.

[4] Now the Committee on Interstate and Foreign Commerce. See section 4096 of this volume.

[5] Second session Forty-fifth Congress, Record, pp. 18, 28; Report No. 13. See also remarks of Mr. Beale, second session Forty-sixth Congress, Record, p. 726.

[6] See section 4114 of this volume.

[7] First session Forty-seventh Congress, Reports Nos. 879, 880, 1000, 1016.

[8] First session Forty-eighth Congress, Reports Nos. 339, 602, 603, 628, 1294, 2040.

[9] As this bill carried an appropriation, the jurisdiction of this committee over it may be doubted, as the appropriating power belongs to the Rivers and Harbors Committee, or where contracts have been made, to the Appropriations Committee. Furthermore, the subject of harbors is in the later practice exclusively within the jurisdiction of the Rivers and Harbors Committee.

[10] Second session Forty-eighth Congress, Report No. 2455.

[11] First session Fifty-second Congress, Report No. 1416.

[12] Second session Fifty-sixth Congress, Report No. 2496.

[13] First session Fifty-seventh Congress, Report No. 1872.

[14] First session Fifty-ninth Congress, Report No. 1343.

In 1901 [1] and 1906 [2] on the Chesapeake and Delaware Canal.

In 1896,[3] on canal navigation; and in 1906 [4] on condition and ownership of canals.

In 1892,[5] 1894,[6] and 1896,[7] on a proposed ship canal between the Great Lakes and the Hudson River.

In 1894,[8] on the proposed connection between the Red River of the North and the Minnesota River.

In 1890,[9] on the Niagara Falls ship canal.

4219. The Committee on Rivers and Harbors does not have jurisdiction of the subject of canals, and may not include provisions therefor in the river and harbor appropriation bill.

Where points of order are reserved on an appropriation bill, a portion not germane, and not within the jurisdiction of the committee, may be stricken out on a point of order in Committee of the Whole.

The river and harbor bill is not a general appropriation bill.

On February 19, 1885,[10] a question arose over a paragraph in the river and harbor bill, providing for the construction of the Hennepin Canal, and after extended debate the Chairman [11] of the Committee of the Whole House on the state of the Union, in the course of an elaborate opinion, said:

The gentleman from Georgia [Mr. Turner] asked that that part of the bill which begins on line 813 and ends with line 842 be stricken out. They relate exclusively to the "construction of a canal from the Illinois River near the town of Hennepin to the Mississippi River at or near Rock Island," and propose that $300,000 be appropriated therefor. He claimed that they should be stricken from the bill upon four points of order.

The first was that the Committee on Rivers and Harbors had no jurisdiction over the subject-matter of that canal. The second was that that committee had no right to put that canal into this bill and thereby give it the precedence allowed to bills making appropriations for the improvement of rivers and harbors by paragraph 8, Rule XI.[12] The third ground was that said lines are practically the same as H. R. 1975 upon the Calendar, reported last session by the gentleman from Iowa [Mr. Murphy] from the Committee on Railways and Canals. That being true, it is contended that those lines are therefore obnoxious to clause 4, Rule XXI, as to amendments. His last point was that this was "new legislation, increasing the amount of expenditure covered by the bill, and doing it by a clause not germane to the bill." Allusion was there meant to the familiar third paragraph of Rule XXI.[13]

For convenience, the last two points will be disposed of first. In reply to them it was urged that this bill is not a general appropriation bill and not covered by the third clause of Rule XXI, which in terms applies to "general appropriation bills," and that clause 4 of Rule XXI is in terms confined to amendments, whereas the lines attacked are in the bill and not offered as an amendment.[14]

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[1] First session Fifty-seventh Congress, Report No. 1610.

[2] First session Fifty-ninth Congress, Report No. 244.

[3] First session Fifty-fourth Congress, Report No. 351.

[4] First session Fifty-ninth Congress, Report No. 3215.

[5] First session Fifty-second Congress, Report No. 1023.

[6] Second session Fifty-third Congress, Report No. 913.

[7] First session Fifty-fourth Congress, Report No. 423.

[8] Second session Fifty-third Congress, Report No. 1335.

[9] First session Fifty-first Congress, Report No. 1430.

[10] Second session Forty-eighth Congress, Record, pp. 1677, 1927, 2097.

[11] Nathaniel J. Hammond, of Georgia, Chairman.

[12] Now section 61 of Rule XI. See section 4621 of this volume.

[13] See section 3578 of this volume.

[14] This provision of the rule no longer exists.

In February, 1881, Mr. Carlisle (our present Speaker) being Chairman of the Committee of the Whole House on the state of the Union, considering the river and harbor appropriation bill, held that it was not a general appropriation bill, and that therefore an amendment to add a new work—that is, "an ice harbor at Dubuque, Iowa, $40,000"—was not out of order.[1] That decision has been followed ever since, and, upon the letter of the rule, is fatal to the fourth point above stated. The third point as put is applicable to amendments only, and as the letter of the rule cited covers only amendments, and this is not an amendment, that letter again kills.

Having examined the point as to the jurisdiction of the committee, the Chairman said:

It is admitted that when the bill was reported to the House, and before and upon its reference to this committee, all points of order were reserved openly in the House and entered into its proceedings. But it is claimed that this precise question has been decided. It is asserted that during the last session of this Congress, when a like bill was in Committee of the Whole House on the state of the Union, the then chairman of the committee, the gentleman from Texas [Mr. Wellborn] held this same canal to be in order under like circumstances, and that on appeal his decision was sustained by the committee by a vote of 103 to 63.

A decision under like circumstances deliberately made by that gentleman would have great weight with the Chair. The vote of the committee on appeal, even though but half the Members voted, would add force to the decision were the issues fully understood when that vote was had. It is important, therefore, to examine the facts.

Having reviewed the facts of that decision, and quoted from it, the Chairman continued:

That extract contained a deliberate opinion "that the Committee on Rivers and Harbors did not have jurisdiction over the subject." It further held that "had the point been presented before the House at the proper time and in the proper way the Chair thinks the clause should have been stricken from the bill." There, as here, jurisdiction was asserted by reason of reference of the Chief Engineer's report, etc., to the Committee on Rivers and Harbors.

That Chairman gave no opinion as to what was the proper time and proper way in the House. Doubtless the proper time would have been when the bill was reported and before it was committed to the Committee of the Whole House on the state of the Union. And now about the "proper way." Had the House been informed that this matter was in the bill before it was sent here, action might have been taken in the House other than reserving points of order if its rules and practice allowed consideration in the House before consideration in the Committee of the Whole House on the state of the Union. But there is no such practice as to appropriation bills. When this bill was reported its title indicated what it was. It was an original bill reported from the committee, never having been before introduced into the House. By Rule XXI, clause 1, it was then read only by its title and referred to this committee.[2] It was never read in the House except by title. But suppose it be treated as having been so read. Rule XXIII[3] requires that—

"All motions or propositions involving a tax or charge upon the people; all proceedings touching appropriations of 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 been commenced."

It seems to the Chair that had it been so read in the House and a point of order had been raised and a motion had been made to strike out this canal provision, the Speaker could but have said that that was a "motion" or "proposition" or "proceeding touching appropriations of money" under Rule XXIII, and all that the House could do was to refer it to the Committee of the Whole House on the state of the Union, where that rule demands that its first consideration shall be had.

Suppose that is not true. Suppose that the House, when for the only time this bill was before it, had instructed this committee first to pass upon this point of order. None would then doubt that

[1] Third session Forty-sixth Congress, Record, p. 1634.

[2] This rule is different now.

[3] See section 4792 of this volume.

this committee could so act. Where is the difference when, pursuant to its ordinary practice, the House allowed all points of order to be reserved and sent the bill here under that disability for the action of this committee?

Paragraph 8 of the same Rule XXIII declares that "the rules of proceeding in the House shall be observed in Committee of the Whole House so far as they are applicable." Our Digest of Rules, when it states that the Chairman of the Committee of the Whole can not rule a proposition in an appropriation bill committed to it out of order, says:

"Of course it is otherwise where the point was reserved before commitment."—(Digest, 265.)

The fact that the House allows points of order to be reserved before commitment proves that it virtually instructs that the fact of commitment shall not cut them off. Otherwise the practice of reserving points of order on these bills would be worse than an unmeaning farce. It would operate as a snare and a fraud. Otherwise all the purposes sought by distributing matters among our committee according to their jurisdictions, fixed by the rules, would be thwarted. Otherwise the river and harbor bill would be an omnibus, capable of carrying whatever a majority of the Committee on Rivers and Harbors chose to pack into it, however foreign to its jurisdiction, and that, too, with a guaranteed "right of way" in preference to all legislation except that necessary to preserve the life of the Government. Such a construction must be wrong. The first and second points of order are sustained, and the lines objected to will be stricken from the bill.

Mr. Thomas J. Henderson, of Illinois, having appealed, on February 24, the decision of the Chair was sustained—108 yeas to 85 nays.[1]

4220. The subject of canals is not within the jurisdiction of the Committee on Rivers and Harbors.—On February 7, 1907,[2] the river and harbor appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. J. Warren Keifer, of Ohio, proposed an amendment as follows:

Add after line 7, on page 101, the following paragraph:

"Big Miami River, from the Ohio River at or near Cincinnati, northward along the line of the Miami and Erie Canal to a connection with Lake Erie at or near Toledo, and as to its practicability, utility, and with a view to obtaining the cost, if completed, of a ship canal connecting, for the purposes of trade and commerce, the Ohio River and Lake Erie."

Mr. James R. Mann, of Illinois, made a point of order, saying:

An amendment of this sort upon this bill is not in order, because it is neither the improvement of a river or a harbor. That matter was settled years ago in the case of the Hennepin Canal. The point of order was sustained by the Chairman at that time, that it was not in order upon a river and harbor bill on the ground that the Hennepin Canal was not an improvement of a river or a harbor, and the item went out on the point of order.

The Chairman[3] held:

It is perfectly clear to the Chair that this is not within the jurisdiction of this committee.

4221. The creation and history of the Committee on Manufactures, section 20 of Rule XI.

Reference to early jurisdiction of the Committee on Manufactures as to tariff bills.

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[1] It should be noted that the bill as to which this decision was made was an appropriation bill which originated in the Committee on Rivers and Harbors, and therefore should be distinguished from the ordinary public bill which originates with a Member and is referred to a standing committee. It is held that such reference, if it remain uncorrected, gives jurisdiction to the committee receiving it.

[2] Second session Fifty-ninth Congress, Record, p. 2467.

[3] Frank D. Currier, of New Hampshire, Chairman.

The rule gives to the Committee on Manufactures jurisdiction of subjects relating "to the manufacturing industries."

Section 20 of Rule XI provides for the reference of subjects relating—

to the manufacturing industries: to the Committee on Manufactures.

The committee consists of thirteen Members.

On December 12, 1809,[1] Mr. Lemuel Sawyer, of North Carolina, proposed a standing committee on manufactures; but as this involved a division of the jurisdiction of the old Committee on "Commerce and Manufactures" the House refused assent. But on December 18, 1819,[2] after considerable debate as to the propriety of separating the two subjects of commerce and manufactures, the Committee on Manufactures was created, on motion of Mr. Peter Little, of Maryland. In the early history of the House this committee sometimes reported tariff bills,[3] and as late as April 8, 1864,[4] it reported on the subject of the duty on wool. But these isolated reports have not in any way impaired the exclusive jurisdiction of revenue subjects exercised by the Committee on Ways and Means in the later history of the House. The present rule defining the jurisdiction of the Committee on Manufactures was adopted in the revision of 1880.[5]

4222. Illustrations of exercise of jurisdiction by the Committee on Manufactures.—The Committee on Manufactures in 1884[6] reported the following bills:

The bill (H. R. 986) to regulate commerce between the States pertaining to commercial travelers.

The bill (H. R. 1435) authorizing the President to appoint a commission on the tests of metals.

In 1882,[7] the bill (H. R. 4726) providing for the appointment of a commission of experts to make tests of iron and steel and materials used in structures generally.

In 1892 and 1893,[8] on the sweat-shop system.

In 1885[9] the Committee on Manufactures investigated the subject of the whisky and cotton bagging trusts.

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[1] Second session Eleventh Congress, Journal, p. 128; Annals, p. 717.

[2] First session Sixteenth Congress, Journal, p. 9; Annals, pp. 708, 709. See also section 4096 of this volume.

[3] Second session Nineteenth Congress, Journal, p. 141; first session Twentieth Congress, Journal, p. 236.

[4] First session Thirty-eighth Congress, Report No. 48.

[5] Second session Forty-sixth Congress, Record, p. 205.

[6] First session Forty-eighth Congress, Reports Nos. 1321, 629.

[7] First session Forty-seventh Congress, Report No. 1307.

[8] Fifty-second Congress, first session, Report No. 164; second session, Report No. 2309.

[9] Second session Fiftieth Congress, Report No. 4165.

Chapter CI.

HISTORY AND JURISDICTION OF THE STANDING COMMITTEES—CONTINUED.

1. The Committees on—
Mines and Mining. Sections 4223–4230.
Public Buildings and Grounds. Sections 4231–4238.
Pacific Railroads. Section 4239.
Levees and Improvements of the Mississippi River. Sections 4240, 4241.
Education. Sections 4242, 4243.
Labor. Sections 4244–4251.
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Industrial Arts and Expositions. Sections 4353, 4354.

4223. The creation and history of the Committee on Mines and Mixing, section 21 of Rule XI.

The rule gives to the Committee on Mines and Mining jurisdiction of subjects relating "to the mining interests."

Section 21 of Rule XI provides for the reference of subjects relating—

to the mining interests: to the Committee on Mines and Mining.

This committee consists of fifteen Members and one Delegate.

It was established on December 19, 1865,[1] and the present form of the rule dates from the revision of 1880.

4224. Legislative propositions relating to the work of the Geological Survey have been reported by the Committee on Mines and Mining.—On April 17, 1882,[2] the Committee on Mines and Mining reported a resolution authorizing an appropriation to enable the Geological Survey to procure statistics in regard to mines and mining, and make analyses of coal, iron, and oil.

In 1906 and 1907[3] this committee reported bills authorizing examinations of the black sands of the Pacific coast, and providing for investigation of the water resources of the United States.

4225. Propositions to establish departments or bureaus of mines and of geology have been reported by the Committee on Mines and Mining.—The Committee on Mines and Mining reported in 1892[4] and 1900[5] the bills to create an executive department of mines and mining; in 1886[6] the bill (H. R. 8101) to establish a bureau of mines and mining; and in 1906[7] on the subject of a bureau of geology and mining.

4226. The Committee on Mines and Mining has reported bills for establishing schools of mines and mining experiment stations.—The Committee on Mines and Mining has reported bills for the establishment, from the proceeds of the sale of public lands,[8] of schools of mines[9] and mining experiment stations.[10]

4227. The Committee on Mines and Mining has reported on the subject of alien ownership of mineral lands.—The Committee on Mines and Mining reported in 1888,[11] and 1890[12] on the subject of alien ownership of mineral lands.

4228. The subjects of the mineral land laws and claims and entries thereunder have been within the jurisdiction of the Committee on Mines and Mining.—The Committee on Mines and Mining has reported:

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[1] First session Thirty-ninth Congress, Globe, p. 83.

[2] This report reviews the establishment of the Geological Survey, which was authorized on an appropriation bill (First session Forty-seventh Congress, Report No. 1065.)

[3] First session, Fifty-ninth Congress, Report No. 7; second session, Report No. 6408.

[4] First session Fifty-second Congress, Report No. 1003.

[5] First session Fifty-sixth Congress, Report No. 334.

[6] First session Forty-ninth Congress, Report No. 1881.

[7] First session Fifty-ninth Congress, Report No. 1184.

[8] See also the Committee on Public Lands, section 4202 of this volume.

[9] First session Fifty-sixth Congress, Reports Nos. 385, 1631; first session Fifty-first Congress, Report No. 1136; First session Fifty-seventh Congress, Report No. 604; second session Fifty-eighth Congress, Report No. 666.

[10] Second session Fifty-eighth Congress., Report No. 1966; first session Fifty-ninth Congress, Report No. 1066.

[11] First session Fiftieth Congress, Report No. 703.

[12] First session Fifty-first Congress, Report No. 1140.

In 1891,[1] 1894, and 1895,[2] on legislation relating to the mineral land laws and claims and entries thereunder.

In 1882[3] on the bill (H. R. 4170) authorizing claimants to mines to make certain affidavits.

In 1904 and 1905,[4] on suits in mining claims, mineral veins within boundaries of placer claims, and exploration and purchase of mines within boundaries of private land claims.

4229. Bills relating to the welfare of men working in mines have been reported by the Committee on Mines and Mining.—The Committee on Mines and Mining reported in 1890[5] a bill relating to the protection of the lives of miners; and in 1901[6] as to miners in the Territories.

4230. The subject of mining debris in California has been within the jurisdiction of the Committee on Mines and Mining.—In 1888,[7] 1892,[8] 1896,[9] 1905,[10] and 1906[11] the Committee on Mines and Mining reported on the subject of mining débris in California and as to the California Débris Commission.

4231. The creation and history of the Committee on Public Buildings and Grounds, section 22 of Rule XI.

The rule gives to the Committee on Public Buildings and Grounds jurisdiction of subjects relating "to the public buildings and occupied or improved grounds of the United States, other than appropriations therefor."

Section 22 of Rule XI provides for the reference of subjects relating—

> to the public buildings and occupied or improved grounds of the United States, other than appropriations therefor: to the Committee on Public Buildings and Grounds.

There are sixteen Members on this committee.

The committee was first established on September 15, 1837,[12] with jurisdiction of "subjects relating to the public edifices and grounds within the city of Washington." On March 10, 1871,[13] on motion of Mr. Henry L. Dawes, of Massachusetts, this jurisdiction was extended to include "all the public buildings constructed by the United States." The present form of the rule comes from the revision of 1880.[14]

4232. The Committee on Public Buildings and Grounds has jurisdiction of bills authorizing the purchase of sites and construction of post-offices, custom-houses, and Federal court-houses in various portions of the country.

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[1] Second session Fifty-first Congress, Report No. 3484.

[2] Fifty-third Congress, second session, Reports Nos. 1283, 1338; third session, Report No. 1875.

[3] First session Forty-seventh Congress, Report No. 270.

[4] Fifty-eighth Congress, second session, Reports Nos. 1885, 2510; third session, Report No. 4095.

[5] First session Fifty-first Congress, Report No. 2588.

[6] First session Fifty-seventh Congress, Report No. 148.

[7] First session Fiftieth Congress, Report No. 408.

[8] First session Fifty-second Congress, Reports Nos. 165, 937.

[9] First session Fifty-fourth Congress, Report No. 876.

[10] Third session Fifty-eighth Congress, Report No. 4202.

[11] First session Fifty-ninth Congress, Report No. 1110.

[12] First session Twenty-fifth Congress, Globe, p. 34.

[13] First session Forty-second Congress, Globe, p. 53; Journal, p. 27.

[14] Second session Forty-sixth Congress, Record, p. 205.

Legislation relating to the office of the Supervising Architect of the Treasury is within the jurisdiction of the Committee on Public Buildings and Grounds.

The Committee on Public Buildings and Grounds exercises a general jurisdiction over bills authorizing the construction of buildings for post-offices, custom-houses, and Federal courts in various portions of the country,[1] as in 1907 the bill (H. R. 25758) amending an act entitled "An act to increase the limit of cost of certain public buildings, to authorize the purchase of sites for public buildings, to authorize the erection and completion of public buildings, and for other purposes," and for other purposes. These bills carry only the authorizations. The actual appropriations are within the jurisdiction of the Committee on Appropriations.[2]

In 1885[3] the Committee on Public Buildings and Grounds reported the bill (H. R. 7523) defining the duties of the Supervising Architect, who controls the plans, etc., of buildings authorized by Congress.

4233. Government buildings within the District of Columbia are within the jurisdiction of the Committee on Public Buildings and Grounds.

The bill authorizing the acquisition of a site and erection of the Government Printing Office was placed within the jurisdiction of the Committee on Public Buildings and Grounds.

On September 6, 1893,[4] the joint resolution relating to the acquisition of a site and the erection of a Government Printing Office was changed from the Committee on Printing to the Committee on Public Buildings and Grounds.

The Committee on Public Buildings and Grounds has also reported:

In 1885,[5] in relation to an underground cable for telegraphic communication between the various Departments of the Government.

In 1890,[6] on the subject of fire alarm for public buildings in District of Columbia.

In 1894,[7] on the subject of municipal building in District of Columbia.

In 1906,[8] an act to provide a site and building for the Departments of State, Justice, and Commerce and Labor.

4234. The bill for the purchase of the house in which Abraham Lincoln died was reported by the Committee on Public Buildings and Grounds.—On January 29, 1883,[1] the Committee on Public Buildings and Grounds reported the bill (H. R. 7463) for the purchase of the house in which Abraham Lincoln died.

4235. Subjects relating to the Zoological Park in the District of Columbia have been within the jurisdiction of the Committee on Public

[1] See Fifty-ninth Congress, first session, Report No. 5011; second session, Report No. 8041; also prior Congresses.

[2] These appropriations are usually carried in the sundry civil bill. See 34 Stat. L., p. 697.

[3] Second session Forty-eighth Congress, Report No. 2445.

[4] First session Fifty-third Congress, Record, p. 1801.

[5] First session Forty-eighth Congress, Report No. 2395.

[6] First session Fifty-first Congress, Report No. 2078.

[7] Second session Fifty-third Congress, Report No. 1205.

[8] First session Fifty-ninth Congress, Report No. 5095.

[9] Second session Forty-seventh Congress, Report No. 1899.

Buildings and Grounds.—In 1889[1] the Committee on Public Buildings and Grounds reported the bill (H. R. 11810) for the establishment of the Zoological Park in the District of Columbia; and in 1890[2] and 1899[3] on bills to provide for the organization, improvement, maintenance, seclusion, and readjustment of boundaries of this park.

4236. Subjects relating to public reservations and parks within the District of Columbia, including Rock Creek Park, are within the jurisdiction of the Committee on Public Buildings and Grounds.—On April 2, 1906,[4] reference of the bill (H. R. 6000) to rectify the boundary line of Rock Creek Park was changed from the Committee on the District of Columbia to the Committee on Public Buildings and Grounds.

In 1907[5] the Committee on Public Buildings and Grounds reported the bill (S. 5201) "to acquire certain land in the District of Columbia as an addition to Rock Creek Park and in Hall and Elvan's subdivision of Meridian Hill for a public park."[6]

On March 28, 1906,[7] the House changed the reference of bill (H. R. 17412) for acquiring by condemnation for Government reservations certain triangles on Sixteenth street, in the city of Washington, from the Committee on the District of Columbia to the Committee on Public Buildings and Grounds.

On February 3, 1906,[8] on motion of the chairman of the committee on the District of Columbia, the bills (H. R. 9325) to acquire certain ground for a Government reservation (H. R. 6031), to acquire certain grounds in the District of Columbia for a Government reservation, and (H. R. 72) to acquire certain ground for a Government reservation, were referred to the Committee on Public Buildings and Grounds.

4237. Subjects relating to the House restaurant and kitchen have been within the jurisdiction of the Committee on Public Buildings and Grounds.—On April 8, 1869,[9] the Committee on Revisal and Unfinished Business, which had charge of the House restaurant, had been discontinued, and the care of the restaurant was given by resolution of the House to the Committee on Public Buildings and Grounds.

On December 15, 1893,[10] the House directed the Committee on Public Buildings and Grounds to investigate the condition of the kitchen of the House restaurant.

In 1894[11] Public Buildings and Grounds reported on the subject of the House restaurant and kitchen, and on the sale of intoxicating liquors in the Capitol.

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[1] Second session Fiftieth Congress, Report No. 3907.

[2] First session Fifty-first Congress, Report No. 305.

[3] Third session Fifty-fifth Congress, Report No. 2329.

[4] First session Fifty-ninth Congress, Record, p. 4624.

[5] Second session Fifty-ninth Congress, Report No. 7642.

[6] In 1891 (first session Fifty-first Congress, Report No. 870) however, the Committee on the District of Columbia reported the bill to establish Rock Creek Park, and in 1887 (second session Forty-ninth Congress, Report No. 3820) a bill providing for condemnation of land for this park.

[7] First session Fifty-ninth Congress, Record, p. 4423.

[8] First session Fifty-ninth Congress, Record, p. 2039.

[9] First session Fortieth Congress, Journal, p. 201; Globe, p. 644.

[10] Second session Fifty-third Congress, Record, p. 254.

[11] First session Fifty-fourth Congress, Reports Nos. 74, 1831.

4238. Subjects relating generally to the Capitol building, especially the House wing, have been reported by the Committee on Public Buildings and Grounds.—On January 18, 1882,[1] the Committee on Public Buildings and Grounds reported the bill (H. R. 3181) directing the architect to make certain repairs in the House wing of the Capitol, especially in the House restaurant.

The same committee also reported:

In 1890,[2] on the subject of shelving for the document room of the House.

In 1891,[3] on the subject of flags on the Capitol building

4239. The creation and history of the Committee on Pacific Railroads, section 23 of Rule XI.

The rule gives to the Committee on Pacific Railroads jurisdiction of subjects relating "to the railroads and telegraph lines between the Mississippi River and the Pacific coast."

Section 23 of Rule XI provides for the reference of subjects relating—

to the railroads and telegraphic lines between the Mississippi River and the Pacific coast, to the Committee on Pacific Railroads.

This committee consists of fifteen members.

It was at first a select committee, and was made a standing committee on March 2, 1865.[4] The present form of the rule dates from 1880.[5]

4240. The creation and history of the Committee on Levees and Improvements of the Mississippi River, section 24 of Rule XI.

The rule gives to the Committee on Levees and Improvements of the Mississippi River jurisdiction of subjects relating "to the levees of the Mississippi River."

Section 24 of Rule XI provides for the reference of subjects relating—

to the levees of the Mississippi River, to the Committee on Levees and Improvements of the Mississippi River

This committee has thirteen Members.

Originally this was a select committee, to whom were referred matters relating to the levees of the Mississippi River. On December 9, 1875, Mr. Randall L. Gibson, of Louisiana, presented a resolution, which was agreed to, establishing as a standing committee the "Committee on Mississippi Levees."[6] In the next Congress the name was changed to its present form, and the committee reported and secured the passage of the bill establishing the Mississippi River Commission.[7] Up to the time of the revision in 1880 there had been no rule defining the jurisdiction of the committee. While the rules were under discussion at that time an attempt was made to define the jurisdiction by the words "improvement of the Mississippi

[1] First session Forty-seventh Congress, Report No. 23.

[2] First session Fifty-first Congress, Report No. 1753.

[3] Second session Fifty-first Congress, Report No. 3796.

[4] Second session Thirty-eighth Congress, Journal, p. 387; Globe, p. 1312.

[5] Second session Forty-sixth Congress, Record, p. 205.

[6] First session Forty-fourth Congress, Record, p. 191.

[7] Second session Forty-sixth Congress, Record, p. 452, remarks of Mr. Robertson.

River and its tributaries," but this was defeated, and the words of the present rule were adopted.[1]

4241. Subjects relating to the Mississippi River Commission are within the jurisdiction of the Committee on Levees and Improvements of the Mississippi River.—In 1880[2] the bill creating the Mississippi River Commission was reported by the Committee on Levees and Improvements of the Mississippi River; and in 1900[3] the same committee reported a bill to amend that law.

In 1906[4] it reported again on this subject.

In 1891[5] this committee reported on the subject of levees.

4242. The creation and history of the Committee on Education, section 25 of Rule XI.

The rule gives to the Committee on Education jurisdiction of subjects relating "to education."

Section 25 of Rule XI provides for the reference of subjects relating—

to education, to the Committee on Education.

There are thirteen members in this committee.

Mr. Joseph Richardson, of Massachusetts, proposed a standing committee on Education on December 15, 1829,[6] but the proposition was successfully opposed on the ground that the jurisdiction of the subject of education belonged to the several States, Mr. Richardson's motion being disagreed to, by a vote of 127 to 52. On March 21, 1867,[7] Mr. Nathaniel P. Banks, of Massachusetts, from the Committee on Rules, reported a proposition for the establishment of a standing Committee on Labor, which had been proposed by Mr. Jehu Baker, of Illinois, so amended as to establish a Committee "on Education and Labor," the recent creation of the Bureau of Education rendering such a step desirable. On December 19, 1883,[8] the two jurisdictions were divided, leaving the rule in its present form.

4243. Illustrations of the general jurisdiction of the Committee on Education.—The Committee on Education has reported on the following subjects:

In 1884,[9] the bill (H. R. 4980) relating to the aid of the General Government for the support of common schools.

In 1890,[10] the bill (H. R. 634) to aid in the establishment and temporary support of common schools.

In 1901,[11] the bill (H. R. 1221) to provide for the education of the blind.

In 1899,[12] the bill (H. R. 9) to provide homes for teaching articulate speech to deaf children.

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[1] Second session Forty-sixth Congress, Record, pp. 732–735, 822–824.

[2] First, session Forty-sixth Congress, H. R. 1847.

[3] First session Fifty-sixth Congress, Report No. 1651.

[4] First session Fifty-ninth Congress, Reports Nos. 2759, 4774.

[5] Second session Fifty-first Congress, Report No. 3598.

[6] First session Twenty-first Congress, Journal, pp. 42, 55; Debates, pp. 475–477.

[7] First session Fortieth Congress, Globe, p. 264.

[8] First session Forty-eighth Congress, Record, pp. 195, 196.

[9] First session Forty-eighth Congress, Report No. 495.

[10] First session Fifty-first Congress, Report No. 2605.

[11] Second session Fifty-sixth Congress, Report No. 2424.

[12] First session Fifty-sixth Congress, Report No. 5.

In 1890,[1] the bill (S. 3714) "to apply a portion of the public lands to the more complete endowment and support of the colleges[2] for the benefit of agriculture and the mechanic arts."

In 1884,[3] on the investigation of the agricultural colleges.

In 1891,[4] on the subject of an Alaskan agricultural college.

In 1906,[5] on the incorporation of the National Educational Association.

4244. The creation and history of the Committee on Labor, section 26 of Rule XI.

The rule gives to the Committee on Labor jurisdiction of subjects "relating to and affecting labor."

Section 26 of Rule XI provides for the reference of subjects relating—

to and affecting labor: to the Committee on Labor.

This committee is composed of 13 members.

It was created December 19, 1883, when the jurisdiction of the old Committee "on Education and Labor" was divided.[6]

4245. The Committee on Labor has exercised general jurisdiction of propositions to make investigations as to the conditions of laboring people, labor troubles,[7] etc.—The Committee on Labor has exercised jurisdiction over proposition to make investigations of subjects relating to the condition of labor, and has reported:

In 1896,[8] on the subject of a commission on labor, agriculture, and capital.

In 1892,[9] on labor statistics in relation to use of machinery.

In 1886,[10] a resolution relating to the investigation of labor troubles.

In 1892,[11] on an investigation of Idaho labor troubles.

In 1891,[12] on a commission to inquire into the condition of colored people.

In 1892,[13] on an investigation of the slums of cities.

In 1888,[14] on the condition of saleswomen in the District of Columbia.[15]

In 1906,[16] a joint resolution authorizing an investigation of the condition of woman and child labor in the United States.

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[1] First session Fifty-first Congress, Report No. 2697.

[2] For this subject of the agricultural colleges, see also the Committee on Agriculture, section—of this volume.

[3] First session Forty-eighth Congress, Record, p. 1496.

[4] Second session Fifty-first Congress, Report No. 4414.

[5] First session Fifty-ninth Congress, Report No. 592.

[6] First session Forty-eighth Congress, Record, pp. 195, 196.

[7] See also section 4072 of this volume.

[8] First session Fifty-fourth Congress, Report No. 387.

[9] First session Fifty-second Congress, Report No. 514.

[10] First session Forty-ninth Congress, Report No. 1472.

[11] First session Fifty-second Congress, Report No. 2016.

[12] First session Fifty-seventh Congress, Report No. 2194.

[13] First session Fifty-second Congress, Report No. 625.

[14] First session Fiftieth Congress, Report No. 2903.

[15] First session Fifty-ninth Congress, Report No. 2745.

[16] The Committee on the Judiciary reported in 1894 a bill relative to treatment of female employees in stores in the District of Columbia. (Second session Fifty-third Congress, Report No. 1459.)

4246. The Committee on Labor has reported on the subject of arbitration as a means of settling labor troubles.—The Committee on Labor has reported:

In 1886,[1] the bill (H. R. 7479) for the settlement of controversies by arbitration.

In 1888,[2] on boards of arbitration for labor troubles on interstate railroads.

In 1894,[3] on arbitration of labor troubles.

In 1901,[4] on a board of investigation and arbitration.

In 1896,[5] on arbitration of railroad strikes.

In 1895,[6] on railroad labor controversies.

4247. Propositions relating to wages and hours of labor, even when a constitutional amendment[7] has been proposed, have been considered by the Committee on Labor.—The Committee on Labor has reported:

In 1884,[8] the resolution (H. Res. 74) proposing a constitutional amendment limiting the hours of labor.

In 1901,[9] on hours of labor on public works; and in 1906[10] on the same subject.

In 1887,[11] on the bill (H. R. 4011) providing for the payment of wages weekly by Government contractors; also in 1890[12] on Government laborers' pay.

In 1886[13] the bill (H. R. 5310) relating to the protection of laborers in their wages—a lien law.

4248. Bills relating to convict labor and the entry of goods made by convicts into interstate commerce have been reported by the Committee on Labor.—The Committee on Labor has exercised jurisdiction of the subject of convict labor, and has reported:

In 1884[14] the resolution (H. Res. 34) proposing an amendment to the Constitution of the United States prohibiting any State contracting the labor of prisoners; and the bill (H. R. 995) for the abolition of contract labor so far as the prisoners of the United States are concerned.

In 1886,[15] and 1892[16] bills relative to the employment of alien and convict labor on public works.

In 1891,[17] on a bill to prevent the use of convict labor on public buildings.

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[1] First session Forty-ninth Congress, Report No. 1447.

[2] First session Fiftieth Congress, Report No. 1725.

[3] Second session Fifty-third Congress, Report No. 1343.

[4] First session Fifty-seventh Congress, Report No. 2722.

[5] First session Fifty-fourth Congress, Report No. 1058.

[6] Third session Fifty-third Congress, Report No. 1754.

[7] See section 4056 of this volume.

[8] First session Forty-eighth Congress, Report No. 2044.

[9] First session Fifty-seventh Congress, Report No. 1793.

[10] First session Fifty-ninth Congress, Report No. 5030.

[11] Second session Forty-ninth Congress, Report No. 4011.

[12] First session Fifty-first Congress, Report No. 2630.

[13] First session Forty-ninth Congress, Report No. 514.

[14] First session Forty-eighth Congress, Reports Nos. 1064, 2043.

[15] First session Forty-ninth Congress, Report No. 369.

[16] First session Fifty-second Congress, Report No. 1312.

[17] First session Fifty-first Congress, Report No. 1785.

In 1888,[1] a bill to prevent convict-made goods from being furnished to any Department of the Government.

In 1891,[2] a bill to prevent the use of convict labor in any Department of the Government.

In 1906,[3] as to Government contracts for products of convict labor.

In 1888,[4] on a proposition to prohibit the importation of convict-made goods.

In 1894[5] and 1896,[6] on bills to confine the sale of convict-made goods to the States in which they are produced.

In 1900,[7] the bill (H. R. 5440) to protect free labor from prison competition, which was reported amended so as to provide for regulation of interstate commerce in prison-made goods.

In 1906,[8] the bill (H. R. 12318) "to limit the effect of the regulation of interstate commerce on goods, wares, and merchandise wholly or in part manufactured by convict labor."

4249. Propositions to regulate or prevent the importation of foreign laborers under contract have been within the jurisdiction of the Committee on Labor.—The Committee on Labor has exercised jurisdiction as to the subject of contract labor, and has reported:

In 1884,[9] the resolution (H. Res. 246) declaring in favor of the employment of residents and citizens of the United States in the construction of public works, and the bill (H. R. 2550) to prevent the importation of foreign contract labor into the United States.

In 1886,[10] the bill (H. R. 9232) to amend the act prohibiting the importation or immigration of alien laborers under contract.

In 1890,[11] on the subject of contract labor.

In 1899,[12] the bill (H. R. 11247) extending the contract-labor laws to Hawaii.

4250. Matters relating to labor employed in the various branches of the Government service have been considered by the Committee on Labor.—The Committee on Labor has exercised a general jurisdiction on the subject of labor employed by the Government, having reported:

In 1884,[13] 1886,[14] 1887,[15] and 1895,[16] on leaves of absence and wages of employees of the Government Printing Office.

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[1] First session Fiftieth Congress, Report No. 1200.

[2] First session Fifty-first Congress, Report No. 1786.

[3] Second session Fifty-eighth Congress, Report No. 2448.

[4] First session Fiftieth Congress, Report No. 1727.

[5] Second session Fifty-third Congress, Report No. 1233.

[6] First session Fifty-fourth Congress, Report No. 1542.

[7] First session Fifty-sixth Congress, Report No. 1415.

[8] First session Fifty-ninth Congress, Report No. 4782.

[9] First session Forty-eighth Congress, Reports Nos. 444, 2045.

[10] First session Forty-ninth Congress, Report No. 2901.

[11] First session Fifty-first Congress, Report No. 2997.

[12] Third session Fifty-fifth Congress, Report No. 1794.

[13] First session Forty-eighth Congress, Report No. 2015.

[14] First session Forty-ninth Congress, Report No. 1413.

[15] Second session Forty-ninth Congress, Report No. 3815.

[16] Third session Fifty-third Congress, Report No. 1562.

In 1886,[1] and 1892,[2] on conditions of employment in the Bureau of Engraving and Printing.

In 1886,[3] and 1888,[4] on hours of labor of letter carriers.

In 1884,[5] on a resolution providing an investigation of the sanitary condition of places where labor is employed by the Government.

In 1886,[6] on the bill (H. R. 8819) relating to employees in United States navy-yards.

In 1888,[7] concerning the employment of enlisted men of Army and Navy.

In 1900,[8] and 1902,[9] the resolution (H. J. Res. 33) in reference to the employment of enlisted men in competition with local civilians.

4251. The Committee on Labor has reported bills proposing general legislation as to classes of claims under the eight-hour law.—In 1884,[10] 1888,[11] and 1890,[12] the Committee on Labor reported general—as distinguished from private and special—bills providing for the adjustment of claims under the eight-hour law.

4252. The creation and history of the Committee on the Militia, section 27 of Rule XI.

The rule gives to the Committee on the Militia jurisdiction of subjects relating "to the militia of the several States."

Section 27 of Rule XI provides for the reference of subjects relating—

to the militia of the several States; to the Committee on the Militia.

This committee consists of fourteen members.

It was established on December 10, 1835,[13] on motion of Mr. Ransom H. Gillet, of New York. The present form of the rule dates from the revision of 1880.[14]

4253. Bills relating to the militia of the District of Columbia as well as to that of the various States have been considered by the Committee on the Militia.—The Committee on the Militia has reported:

In 1888,[15] 1904,[16] and 1905,[17] on the militia of the District of Columbia.

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[1] First session Forty-ninth Congress, Report No. 515.

[2] First session Fifty-second Congress, Report No. 408.

[3] First session Forty-ninth Congress, Report No. 2722.

[4] First session Fiftieth Congress, Report No. 265.

[5] First session Forty-eighth Congress, Report No. 932.

[6] First session Forty-ninth Congress, Report No. 2900.

[7] First session Fiftieth Congress, Report No. 493.

[8] First session Fifty-sixth Congress, Report No. 1199.

[9] First session Fifty-seventh Congress, Report No. 428.

[10] First session Forty-eighth Congress, Reports Nos. 1065, 1285.

[11] First session Fiftieth Congress, Report No. 1726.

[12] First session Fifty-first Congress, Reports Nos. 489, 2196, 2593.

[13] First session Twenty-fourth Congress, Journal, p. 38; Globe, p. 19. A standing committee on militia was proposed as early as December 7, 1815, by Mr. Richard H. Wilde, of Georgia (first session Fourteenth Congress, Journal, p. 29; Annals, p. 380).

[14] Second session Forty-sixth Congress, Record, p. 205.

[15] First session Fiftieth Congress, Reports Nos. 809, 2402, 2606, including also the militia of the Territory of Montana.

[16] Second session Fifty-eighth Congress, Report No. 2724.

[17] Third session Fifty-eighth Congress, Reports Nos. 4508, 4596.

In 1904[1] and 1906,[2] on promotion of efficiency of the militia and encouragement of rifle practice.

In 1890[3] and 1892,[4] on the reorganization of the militia.

In 1892,[5] on issuance of artillery for the national guard and on issuance of ordnance stores to the State of Nebraska to supply the place of those destroyed by fire.

4254. The creation and history of the Committee on Patents, section 28 of Rule XI.

The rule gives to the Committee on Patents jurisdiction of subjects relating "to patents, copyrights, and trade-marks."

Section 28 of Rule XI provides for the reference of subjects relating—

to patents, copyrights, and trade-marks; to the Committee on Patents.

This committee has fourteen members.

As created on September 15, 1837,[6] its jurisdiction related to patents alone. At the time of the revision of 1880, when the present form of the rule was fixed, the subjects of "copyrights and trademarks" were added, on motion of Mr. John S. Newberry, of Michigan.[7]

4255. The subjects of patent law, jurisdiction of courts in patent cases, the Patent Office, including a building therefor, have been considered by the Committee on Patents.

The subject of an international patent conference was considered by the Committee on Patents.

The general jurisdiction of the subject of patents belongs to the Committee on Patents, which has reported:

In 1890,[8] as to an investigation of the methods and accommodations of the Patent Office, including a revision of law and regulation and the authorization of a commission to select a site and provide a building for the Patent Office.

In 1896,[9] on the classification division of the Patent Office.

In 1891,[10] on revision of patent laws.

In 1890,[11] on the subject of international patent conference.

In 1897,[12] on a bill defining the jurisdiction of circuit courts in patent cases.

4256. Bills relating to the general subject of trade-marks, including punishment for the counterfeiting thereof, have been considered by the Committee on Patents.—The Committee on Patents has jurisdiction of the sub-

[1] Second session Fifty-eighth Congress, Reports Nos. 2775, 2845, 2872.

[2] First session Fifty-ninth Congress, Report No. 1068.

[3] First session Fifty-first Congress, Report No. 805.

[4] First session Fifty-second Congress, Report No. 754.

[5] First session Fifty-second Congress, Reports Nos. 1059, 2120.

[6] First session Twenty-fifth Congress, Globe, p. 34.

[7] Second session Forty-sixth Congress, Record, pp. 824, 825.

[8] First session Fifty-first Congress, Report No. 1320.

[9] First session Fifty-fourth Congress, Report Nos. 88, 2277.

[10] Second session Fifty-first Congress, Report No. 3281.

[11] First session Fifty-first Congress, Report No. 298.

[12] Second session Fifty-fourth Congress, Report No. 2905.

ject of trade-marks, and has reported general bills on that subject in 1890,[1] 1898[2] and 1906,[3] and in 1888[4] a bill to provide for punishing the counterfeiting of trade-marks.

This committee also reported in 1901[5] the bill (H. R. 13109) relating to the registration of persons, etc., engaged in transportation business.

In 1907[6] the Committee on Patents reported "A bill to amend sections 5 and 6 of an act entitled 'An act to authorize the registration of trade-marks used in commerce with foreign nations or among the several States or with Indian tribes, and to protect the same.'"[7]

4257. The Committee on Patents has jurisdiction of general and special legislation relating to copyrights, although its title to the jurisdiction of international copyright is not entirely clear.—The Committee on Patents has general jurisdiction of the subject of copyrights, and has reported numerous bills[8] revising or amending the general copyright laws, including those relating to music publications.[9] This committee has also reported special bills, as one in 1906,[10] to protect the copyright matter in a work entitled "Rules and specifications for grading lumber."

On the subject of international copyright, however, the Committee on the Judiciary has shared the jurisdiction, but not to the extent of complete possession.[11]

4258. The creation and history of the Committee on Invalid Pensions, section 29 of Rule XI.

The rule gives to the Committee on Invalid Pensions jurisdiction as "to the pensions of the civil war."

Section 29 of Rule XI provides for the reference of subjects relating—

to the pensions of the civil war: to the Committee on Invalid Pensions.

This committee consists of sixteen members.

On December 22, 1813,[12] the standing Committee on "Pensions and Revolutionary Claims "was established on motion of Mr. Stevenson Archer, of Maryland. On December 9, 1825,[13] a committee on Revolutionary pensions was created, and a few days later[14] its name was changed to the "Committee on Military Pensions," on motion of Mr. Daniel Webster, of Massachusetts, while at the same time the

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[1] First session Fifty-first Congress, Report No. 27.

[2] Second session Fifty-fifth Congress, Reports Nos. 549, 691, 692.

[3] First session Fifty-ninth Congress, Report No. 2668.

[4] First session Fiftieth Congress, Report No. 2707.

[5] Second session Fifty-sixth Congress, Report No. 2737.

[6] Second session Fifty-ninth Congress, Report No. 7637.

[7] In 1896 (First session Fifty-fourth Congress, Report No. 884), however, the Committee on Interstate and Foreign Commerce reported a bill relating to registration of trade-marks on vessels, bottles, boxes, etc., used in interstate and foreign commerce.

[8] First session Fifty-ninth Congress, Report No. 4955; second session Fifty-eighth Congress, Reports, Nos. 1287, 2857; first session Fiftieth Congress, Report No. 3434.

[9] Second session Fifty-fifth Congress, Report No. 1289.

[10] First session Fifty-ninth Congress, Report No. 4978.

[11] See section 4075 of this volume.

[12] Second session Thirteenth Congress, Journal, pp. 178, 182 Annals, p. 803.

[13] Is First session Nineteenth Congress, Journal, pp. 27, 32.

[14] Journal, p. 46.

name of the Committee on "Pensions and Revolutionary Claims" was changed to the "Committee on Revolutionary Claims."

On January 10, 1831,[1] on motion of Mr. James Trezvant, of Virginia, a rule was adopted establishing the Committee on Invalid Pensions as a standing committee, with jurisdiction of "matters respecting invalid pensions." The old Military Pensions Committee—successor to the Revolutionary Pensions Committee of 1825—was at the same time abolished, and the Committee on Revolutionary Pensions was established anew, with jurisdiction of "pensions for services in the Revolutionary war other than invalid pensions." By this arrangement pensions from the war of 1812 went in practice, if not by express rule, to the Invalid Pensions Committee, until March 26, 1867, when the latter committee became overburdened, and they were transferred to the Committee on Revolutionary Pensions.[2] In the revision of 1880 the present form of rule was adopted, both for the Invalid Pensions Committee and for the Pensions Committee, which thenceforth took the place of the Committee on Revolutionary Pensions.[3]

This committee may report general pension bills at any time.[4]

4259. The Committee on Invalid Pensions reports general and special bills authorizing payments of pensions to soldiers of the civil war, but the actual appropriations therefor are reported by the Committee on Appropriations.—On December 6, 1888,[5] the resolutions distributing the President's message referred to the Committee on Invalid Pensions so much as related to "pension laws and their modification and revision."

In general, this committee has reported all general pension legislation relating to veterans of the civil war;[6] and it also reports private and special acts for the relief of soldiers of that war.[7]

But the actual appropriation of the money to meet the requirements of both general and special pension laws is within the jurisdiction of the Committee on Appropriations, which reports in the general pension appropriation bill.[8]

4260. The creation and history of the Committee on Pensions, section 29 of Rule XI.

The rule gives to the Committee on Pensions jurisdiction of matters relating "to the pensions of all the wars of the United States other than the civil war."

Section 29 of Rule XI provides for the reference of subjects relating—

to the pensions of all the wars of the United States other than the civil war; to the Committee on Pensions.

This committee consists of fourteen members.

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[1] Second session Twenty-first Congress, Journal, pp. 145, 167.

[2] First session Fortieth Congress, Journal, p. 117; Globe, p. 362.

[3] See section 4.260 of this volume.

[4] See section 4621 of this volume.

[5] Second session Fiftieth Congress, Journal, p. 53.

[6] See first session Fifty-first Congress, Reports, Nos. 13, 226, 629, 2953, 3204; second session Fifty-third Congress, Reports Nos. 583, 1212, 1213.

[7] See Journal, first session Fifty-ninth Congress, pp. 1366–1374, for illustration of the work of this committee.

[8] First session Fifty-ninth Congress, Report No. 581.

The old Committee on Revolutionary Pensions, which had first been established on December 9, 1825, on motion of Mr. Peter Little, of Maryland,[1] was abolished at the time of the revision of 1880,[2] when the present rule was adopted.[3]

4261. The Committee on Pensions reports general and special bills authorizing the payment of pensions, but the actual appropriations are reported by the Committee on Appropriations.—The Committee on Pensions reports private and special bills for the relief of soldiers of all wars except the civil war,[4] and also bills proposing general pension legislation for all wars except the civil war.[5]

The actual appropriations authorized by laws reported from this committee are reported from the Committee on Appropriations in the general pension appropriation bill.[6]

4262. The creation and history of the Committee on Claims, section 31 of Rule XI.

The rule gives to the Committee on Claims jurisdiction of subjects relating "to private and domestic claims and demands other than war claims against the United States."

The Committee on Claims, in exercising its jurisdiction, reports bills which make appropriations from the Treasury.

Section 31 of Rule XI provides for the reference of subjects relating—

to private and domestic claims and demands other than war claims against the United States; to the Committee on Claims.

The Committee on Claims consists of fifteen members.

It divides with Elections the honor of being the oldest standing committee of the House. They were established on the same day, November 13, 1794,[7] and to Claims was given the jurisdiction of all "matters or things touching claims and demands on the United States." The present form of the rule was fixed by the revision of 1880.[2] The jurisdiction of the committee has not continued so broad as when first established, as war claims have generally gone to another committee.[8]

The Committees on Claims and War Claims, in dealing with individual claims, not only authorize the payments, but actually make the appropriations of money from the Treasury, in this respect exercizing a function not permitted to other committees that are not endowed by the rules expressly with the power of reporting appropriations.

4263. The Committee on Claims has reported general—as distinguished from special—bills providing for disposition of classes of claims, like the French spoliation claims, by the Court of Claims.—The Committee

[1] First session Nineteenth Congress, Journal, p. 32.

[2] Second session Forty-sixth Congress, Record, p. 205.

[3] For general history of the various pension committees, see section 4558 of this chapter.

[4] See Journal First session Fifty-ninth Congress, pp. 1376–1378, for illustration of work of this committee.

[5] Second session Fifty-fourth Congress, Report No. 2635.

[6] First session Fifty-ninth Congress, Report No. 581.

[7] Third and Fourth Congresses, Journal, p. 229 (Gales & Seaton ed.).

[8] See section 4269 of this volume.

on Claims reports private and special bills for the satisfaction of all claims other than war claims.[1] It also exercises a general, but not exclusive,[2] jurisdiction over propositions of general legislation regulating the disposition of claims. Thus it has reported:

In 1886[3] the Committee on Claims reported the bill (S. 2643) to afford assistance to Congress and the Executive Departments in the investigation of claims and demands against the Government. This was a general measure conferring jurisdiction on the Court of Claims for certain cases.

In 1894[4] a general bill providing for the disposition of claims for supplies and the French spoliation claims.

4264. The jurisdiction of French spoliation claims belongs to the Committee on Claims.—On January 23, 1906,[5] the Speaker[6] said:

> The Chair lays before the House a request coming from the Committee on Claims and also the Committee on War Claims, taking from the Committee on Claims certain Executive documents touching findings of the Court of Claims in the matter of the French spoliation claims, and asking that the reference be changed from the Committee on Claims to the Committee on War Claims. The effect of this, if done, would be to change the jurisdiction of the respective committees as that jurisdiction has been heretofore exercised. If the change should be made, about which the Chair does not intimate any opinion as to the propriety thereof, the Chair will feel justified in the future, if not incidentally authorized when similar communications come, to refer the same to the Committee on War Claims instead of to the Committee on Claims. With the explanation given, is there objection to the request?

Objection being made, the matter went over and did not come up thereafter.

4265. Appropriations for payment of French spoliation claims being included in a private bill reported by the Committee on War Claims, the chairman of the Committee of the Whole House ordered them stricken out as belonging to the jurisdiction of the Committee on Claims.—On January 4, 1907,[7] the Committee of the Whole House was considering the bill (H. R. 19003) for the allowance of certain claims for stores and supplies reported by the Court of Claims under the provisions of the act approved March 3, 1883, and commonly known as the Bowman Act, and to provide for the payment of French spoliation claims recommended by the Court of Claims, under the provisions of the acts approved January 20, 1885, and March 3, 1891, and for other purposes.

After the bill had been read Mr. James R. Mann, of Illinois, made a point of order, saying:

> I wish to make a point of order on this bill, or so much of it as relates to the French spoliation claims, on the ground that the Committee on War Claims has no jurisdiction to report a bill of this sort, it being a private bill and subject to a point of order at this time.[8]

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[1] See Journal First session Fifty-ninth Congress, p. 1364.

[2] See sections 4078, 4168 of this work.

[3] Second session Forty-ninth Congress, Report No. 3497.

[4] Second session Fifty-third Congress, Report No. 1051.

[5] First session Fifty-ninth Congress, Record, p. 1459.

[6] Joseph G. Cannon, of Illinois, Speaker.

[7] Second session Fifty-ninth Congress, Record, pp. 636, 637.

[8] General appropriation bills, being public bills and referred to Committee of the Whole House on the state of the Union in open House, are not subject to points of order of this nature unless a reservation is made at the time of reference (see secs. 6921–6926 of Volume V of this work); but private bills, which are reported by laying them on the Clerk's table, must, manifestly, be subject to such points of order without the reservation.

I may say, Mr. Chairman, that the rules provide that all bills carrying private or domestic claims and demands, other than war claims against the United States, shall be referred to the Committee on Claims. Bills providing for claims arising from any wax in which the United States has been engaged shall be referred to the Committee on War Claims.

It has been the universal custom and practice in the House that bills providing for the payment of French spoliation claims shall be referred to the Committee on Claims and not to the Committee on War Claims. Now, I insist that the Committee on War Claims can not enlarge its jurisdiction in violation of the rules of the House because a bill may be introduced carrying one claim properly referable to that committee, but including a large number of claims properly referable to the Committee on Claims. If that could be allowed, any committee dealing with private bills could obtain jurisdiction of any kind of a bill by putting one section in the bill properly referable to that committee, and including in the bill a number of things properly referable to some other committee.

The Chairman [1] held:

In the opinion of the Chair there is no question that such portion of the bill as relates to the French spoliation claims belongs properly to the jurisdiction of the Committee on Claims, and for that reason the Chair will sustain the point of order of the gentleman from Illinois [Mr. Mann] and order those portions of the bill relating to French spoliation claims to be stricken from the bill.

4266. Bills for the redemption of lost bonds, checks, and coupons are reported by the Committee on Claims.—On April 21, 1902,[2] a bill for replacing certain Government bonds lost by Clara H. Fulford was returned by the Committee on Ways and Means and referred to the Committee on Claims. And in general, special bills for the payment of lost coupons and for replacing lost checks drawn on the Treasury of the United States belong to the jurisdiction of Claims rather than Ways and Means.[3]

4267. The Committee on Claims has shared in jurisdiction over public bills for adjusting accounts between the United States and the several States and Territories.—Bills to adjust the claims of States, Territories, and the District of Columbia against the United States are classified as public bills rather than private and special, and the jurisdiction over such bills has not been exercised exclusively by any particular committee,[4] but on February 4, 1885,[5] the Committee on Claims reported the bill (H. R. 6047) to adjust certain accounts between the United States and the several States and Territories and the District of Columbia. This was a bill to return the direct tax of 1861.

4268. A private bill providing for a rehearing and readjudication in the Court of Claims belongs to the jurisdiction of a Claims Committee and not to the Committee on the Judiciary.—On February 15, 1901,[6] the House was in Committee of the Whole House considering, business on the Private Calendar, the first bill being the following:

A Bill (H. R. 6038) for the relief of Joseph H. Penny, John W. Penny, Thomas Penny, and Harvey Penny, surviving partners of Penny & Sons.

Be it enacted, etc., That the Court of Claims is hereby authorized to grant a new trial in the case of Penny & Sons v. The United States and the Sioux Indians, numbered in said court as Indian depredation No. 4634, and to rehear said case in accordance with the act of March 3, 1891, relative to Indian depredation claims, the same as if no judgment had been entered therein.

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[1] William A. Rodenburg, of Illinois, Chairman.

[2] First session Fifty-seventh Congress, Record, p. 4503.

[3] Second session Fifty-fifth Congress, Record, p. 6716; House Report No. 277.

[4] See section 4080 of this work.

[5] Second session Forty-eighth Congress, Report No. 2486.

[6] Second session Fifty-sixth Congress, Record, pp. 2481–2484.

The Committee on Claims had reported the bill with an amendment in the nature of a substitute, providing:

That the Court of Claims is hereby given jurisdiction to rehear and reconsider and determine the motion filed in said court by the claimants on the 15th day of April, 1898, for a rehearing and new trial of the case of Penny & Sons *v.* The United States and Sioux Indians, numbered in said court as Indian depredations No. 4634; and to that end the bar of the statute of limitations against said motion is hereby removed, and the said court is given jurisdiction to rehear and redetermine said motion in the same manner and with like effect as if said motion had been filed and presented within the time authorized by law and the rules of said court; and if said motion shall be sustained by said court, then, and in that event, the court shall proceed to retry and readjudicate the matter involved in said suit the same as if no former judgment had been entered therein.

Mr. George W. Ray, of New York, made the point of order that the subject should have been referred to the Committee on the Judiciary, and was therefore improperly before the Committee of the Whole.

After debate the Chairman [1] said:

The question before the Chair is as to the jurisdiction of the committee reporting this bill; which seeks to give the Court of Claims the power to rehear and reconsider and determine a motion filed for a new trial; and further, if the Court of Claims should grant the new trial of this case, to give that court the right to readjudicate the claim, or, in other words, to adjudicate it. Now, under subdivision 3 of Rule XXI no bill for the payment or adjudication of any private claim against the Government shall be referred, except by unanimous consent, to any other than the following-named committees: The Committee on Invalid Pensions, the Committee on Pensions, the Committee on Claims, the Committee on War Claims, the Committee on Private Land Claims, or the Committee on Accounts.

Now, this is a private claim. This rule says that no bill for the adjudication of private claims shall be referred to any other committee than the committees named. In the opinion of the Chair, this bill was properly referred to the Committee on Claims, and the point of order made by the gentleman from New York is not well taken. Consequently the point of order is overruled.

4269. The creation and history of the Committee on War Claims, section 32 of Rule XI.

The rule gives to the Committee on War Claims jurisdiction of it "claims arising from any war in which the United States has been engaged."

The Committee on War Claims may report, within the limits of its jurisdiction, bills making appropriations of money.

Section 32 of Rule XI provides for the reference of subjects relating—

to claims arising from any war in which the United States has been engaged: to the Committee on War Claims.

This committee consists of 13 members.

War claims were formerly considered by the old committee "on Revolutionary Claims," [2] which dated from December 22, 1813. On December 2, 1873,[3] the name of this committee was changed to "War Claims," and its jurisdiction was specified to be "all claims growing out of any war in which the United States has been engaged."

The Committee on War Claims, like the Committee on Claims,[4] exercises the power of reporting appropriations for the payment of individual claims.

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[1] James A. Hemenway, of Indiana, Chairman.

[2] Originally the Committee on "Pensions and Revolutionary Claims." (See sec. 4258 of this volume.)

[3] First session Forty-third Congress, Record, p. 23.

[4] See section 4262 of this volume.

4270. The Committee on War Claims has exercised a general but not exclusive jurisdiction over general bills providing for the adjudication or settlement of classes of war claims.—Besides reporting on private and special bills for the satisfaction of claims arising out of wars, the Committee on War Claims has exercised a general jurisdiction [1] over propositions of general legislation relating to the disposition of such claims, and has reported:

In 1899,[2] the bill (H. R. 12084) to reimburse those who had had sent to their homes for burial the dead bodies of officers, soldiers, and sailors who died away from home while members of the Army or Navy of the United States since January 1, 1898. (Spanish War.)

In 1901,[3] a general bill to provide for the reimbursement of officers and men of the Army for medical expenses incurred during leave or furlough.

In 1900,[4] the bill (H. R. 7662) to carry into effect the stipulations of the treaty with Spain in relation to claims arising since the beginning of the recent insurrection in Cuba and prior to the ratification of the treaty of 1898; also the bill (H. R. 1212) to authorize the Secretary of War to cause to be investigated and to provide for the payment of all claims presented in behalf of churches, schools, etc., arising out of use or damage by soldiers during the civil war.

In 1888,[5] the bill (H. R. 3366) authorizing the Court of Claims to adjudicate claims for property seized under the act relating to captured or abandoned property; also in 1900 [6] the bill (H. R. 4615) to revive and amend an act to provide for the collection of abandoned property and the prevention of frauds in insurrectionary districts.

In 1888,[7] the bill (H. R. 3367) to enable the President to appoint a board of claims commissioners.

In 1892,[8] on war of 1812 claims.

4271. The war claims of States and Territories against the United States have been considered, although not exclusively, by the Committee on War Claims.—Bills for the payment and adjudication of the war claims of States and Territories against the United States are classified as public rather than private and special. The Committee on War Claims does not have exclusive [9] jurisdiction over such bills, but has often reported them:

In 1884,[10] the bill (H. R. 2463) to reimburse the several states for interest paid on war loans.

In 1899,[11] the bill (S. 5260) relating to the reimbursements of States and Territories for expenses incurred by them in aiding the United States to raise, organize, and equip the volunteer army of the United States in the war with Spain.

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[1] This jurisdiction is not exclusive. (See sec. 4079 of this volume.)

[2] Third session Fifty-fifth Congress, Report No. 2093.

[3] Second session Fifty-sixth Congress, Report No. 2617.

[4] First session Fifty-sixth Congress, Reports Nos. 212, 597.

[5] First session Fiftieth Congress, Report No. 538.

[6] First session Fifty-sixth Congress, Report No. 214.

[7] First session Fiftieth Congress, Report No. 537.

[8] First session Fifty-second Congress, Report No. 220.

[9] See section 4080 of this volume.

[10] First session Forty-eighth Congress, Report No. 1102.

[11] Third session Fifty-fifth Congress, Report No. 2192.

In 1898,[1] the bill (H. R. 8003) to refund to the State of New York certain duties paid in 1863.

In 1900,[2] the bill (H. R. 1066) to indemnify Pennsylvania for money expended in 1864 for militia called into service by the governor.

4272. The Committee on War Claims has reported in a few instances bills relating to claims arising out of Indian hostilities.—The Committee on War Claims has reported these bills:

In 1895,[3] on Indian war claims in Oregon, Idaho, and Washington.

In 1900,[4] the bill (S. 2384) to reimburse certain persons for expenses incurred during incursions of Indians in Nevada.

4273. The creation and history of the Committee on Private Land Claims, section 33 of Rule XI.

The rule gives to the Committee on Private Land Claims jurisdiction as "to private claims to land."

Section 33 of Rule XI provides for the reference of subjects relating—

to private claims to land: to the Committee on Private Land Claims.

This committee consists of thirteen Members and one Delegate.

It was established as a standing committee on April 29, 1816, on motion of Mr. Thomas B. Robertson, of Louisiana.[5]

4274. A bill for the establishment of a land court was reported by the Committee on Private Land Claims.—On March 31, 1888,[6] the bill of the House (H. R. 7643) to establish a United States land court and to provide for a judicial investigation and settlement of private land claims in the Territories of Arizona and New Mexico, and in the State of Colorado, was called up under instructions from the Committee on Private Land Claims, having been reported from that committee.

4275. The Committee on Private Land Claims has exercised jurisdiction over general as well as special bills relating to the adjudication and settlement of private claims to land.—The Committee on Private Land Claims, besides reporting bills for the settlement of individual claims to public lands,[7] has also reported bills proposing general legislation:

In 1890,[8] a bill to establish a land court and provide for the settlement of land claims in certain Territories.

In 1898,[9] the bill (H. R. 10290) to amend an act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories.

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[1] Second session Fifty-fifth Congress, Report No. 1412.

[2] First session Fifty-sixth Congress, Report No. 222.

[3] Third session Fifty-third Congress, Report No. 1538.

[4] First session Fifty-sixth Congress, Report No. 782.

[5] First session Fourteenth Congress, Journal, p. 753; Annals, p. 1456.

[6] First session Fiftieth Congress, Journal, p. 1391; Record, pp. 2577, 2578.

[7] See Second session Fifty-seventh Congress, Report No. 3918; Third session Fifty-eighth Congress, Reports Nos. 3766, 4886.

[8] First session Fifty-first Congress, Report No. 1797.

[9] Second session Fifty-fifth Congress, Report No. 1292.

In 1884[1] and 1888,[2] bills to provide for ascertaining and settling private land claims in certain States and Territories.

In 1886,[3] the bill (H. R. 3235) relating generally to private land grants of a certain class in Arizona.

In 1892,[4] on the subject of Mexican land grants.

In 1905,[5] on land titles in the city of Mobile.

4276. The creation and history of the Committee for the District of Columbia, section 34 of Rule XI.

The rule gives to the Committee for the District of Columbia jurisdiction of subjects relating "to the District of Columbia other than appropriations therefor."

Section 34 of Rule XI provides for the reference of subjects relating—

to the District of Columbia, other than appropriations therefor; to the Committee for the District of Columbia.

This committee shall consist of eighteen Members.

It was established as a standing committee on January 27, 1808, in order to simplify the District business, to save the forming of many committees, and to promote consistency and uniformity in the laws relating to the District.[6] Mr. Philip Barton Key, of Maryland, on whose motion the committee was established, was its first chairman. The present form of the rule was adopted in the revision of 1880.[7] This committee has two days in the month for presentation of its business.[8]

4277. The Committee for the District of Columbia reports bills proposing legislation as to the general municipal affairs of the District.—The Committee for the District of Columbia has a general and usually an exclusive[9] jurisdiction of bills proposing legislation relating to the affairs of the District of Columbia, and reports on such subjects as extension of streets,[10] affairs of the schools and teachers,[11] control of railroads,[12] police and fire department,[13] etc.[14] This committee has also reported on the subject of claims against the District.[15]

All appropriations for the District are reported by the Committee on Appropriations in the District of Columbia general appropriation bill.

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[1] First session Forty-eighth Congress, Report No. 985.

[2] First session Fiftieth Congress, Report No. 675.

[3] First session Forty-ninth Congress, Report No. 192.

[4] First session Fifty-second Congress, Report No. 1253.

[5] Third session Fifty-eighth Congress, Report No. 3484.

[6] First session Tenth Congress, Journal, p. 146; Annals, Vol. II, p. 1512.

[7] Second session Forty-sixth Congress, Record, p. 825.

[8] See section 3304 of this volume.

[9] In 1894 (Second session Fifty-third Congress, Report, No. 607), however, the Committee on the Judiciary reported on the subject of representation by a Delegate in Congress.

[10] First session Fifty-ninth Congress, Reports, Nos. 241, 2760, etc.

[11] Report No. 3395.

[12] Report No. 4429.

[13] Report No. 1678.

[14] See Journal, first session Fifty-ninth Congress, page 1364, for summary of subjects within this jurisdiction.

[11] First session Fifty-second Congress, Report No. 2129; first session Fifty-fourth Congress, Report No. 1923; third session Fifty-fifth Congress, Report No. 2059.

4278. The Committee for the District of Columbia has exercised jurisdiction generally of the subject of insurance in the District.—The Committee for the District of Columbia has exercised jurisdiction as to the subject of insurance in the District of Columbia,[1] and reported:

In 1889,[2] the bill (H. R. 12137) relating to deposit of securities by insurance companies in the District.

In 1891,[3] on the subject of an insurance bureau.

In 1900,[4] the bill (H. R. 9283) to regulate insurance in the District of Columbia.

4279. The subject of tax sales and taxes in the District is within the jurisdiction of the Committee for the District of Columbia.—The Committee for the District of Columbia reported:

In 1896,[5] on the subject of tax sale certificates in the District.

In 1897,[6] a bill in relation to taxes and tax sales in the District of Columbia.

In 1899,[7] the bill (S. 4700) relating to interest on arrearages of taxes in the District of Columbia.

4280. The subject of adulteration of food, drugs, etc., in the District is within the jurisdiction of the Committee for the District of Columbia.—The Committee for the District of Columbia reported:

In 1898[8] and 1900,[9] bills providing for the inspection of flour in the District.

In 1888[10] and 1898,[11] bills to prevent the manufacture or sale of adulterated foods and drugs in the District.

In 1898,[12] on the subject of adulteration of candy in the District.

4281. The Committee for the District of Columbia has exercised general jurisdiction of bills for the regulation of the sale of intoxicating liquors in the District.—The Committee for the District of Columbia has reported:

In 1885,[13] 1893,[14] and 1894,[15] bills relating to the manufacture and sale of spirituous and malt liquors in the District of Columbia.

In 1887,[16] the bill (S. 1380) regulating the sale of liquors in the District of Columbia.

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[1] In 1906 the subject of Federal control of insurance arose, and the House committed the general subject of insurance to the Judiciary Committee, with the result that bills relating to the District of Columbia particularly also went to the Committee on the Judiciary. See section 4059 of this volume.

[2] Second session Fiftieth Congress, Report, No. 3931.

[3] Second session Fifty-first Congress, Report No. 4015.

[4] First session Fifty-sixth Congress, Report No. 691.

[5] First session Fifty-fourth Congress, Report No. 1182.

[6] Second session Fifty-fourth Congress, Report No. 2529.

[7] Third session Fifty-fifth Congress, Report No. 1799.

[8] Second session Fifty-fifth Congress, Report No. 1654.

[9] First session Fifty-sixth Congress, Report No. 1429.

[10] First session Fiftieth Congress, Report No. 3265.

[11] Second session Fifty-fifth Congress, Report No. 218.

[12] Second session Fifty-fifth Congress, Report No. 351.

[13] Second session Fifty-eighth Congress, Report No. 2581.

[14] Second session Fifty-second Congress, Report No. 2323.

[15] Second session Fifty-third Congress, Report No. 195.

[16] Second session Forty-ninth Congress, Report No. 4014.

In 1890,[1] a bill prohibiting the granting of liquor licenses within one mile of Soldiers' Home.

In 1907,[2] a bill prohibiting the sale of intoxicating liquors to minors by unlicensed persons.[3]

4282. Bills for the protection of fish and game within the District of Columbia have been reported by the Committee for the District of Columbia.—The Committee for the District of Columbia reported in 1892[4] and 1898[5] bills for the protection of fish in the District of Columbia;[6] and in 1901[7] the bill (H. R. 11881) "for the protection of birds, preservation of game, and for the prevention of its sale during certain close seasons in the District of Columbia;" also in 1906[8] a bill relating to game.

4283. Bills relating to holidays in the District have been reported by the Committee for the District of Columbia.—The Committee for the District of Columbia has reported:

In 1888,[9] the bill (H. R. 8843) making inauguration day a legal holiday.

In 1892,[10] a bill relating to holidays in the District.

4284. Subjects relating to the health of the District, sanitary and quarantine regulations, etc., have been within the jurisdiction of the Committee for the District of Columbia.—The Committee for the District of Columbia has reported:

In 1897,[11] a bill to prevent the spread of contagious diseases in the District of Columbia.

In 1895,[12] on sanitary and quarantine regulations for the District.

4285. The Government Hospital for the Insane and Congressional Cemetery have been within the jurisdiction of the Committee for the District of Columbia.—The Committee for the District of Columbia has exercised legislative jurisdiction as to the Government Hospital for the Insane,[11] and the Congressional Cemetery.[14]

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[1] First session Fifty-first Congress, Report No. 3048.

[2] Second session Fifty-ninth Congress, Report No. 6213.

[3] While the jurisdiction of bills relating to the traffic in intoxicating liquors in the District of Columbia is with the Committee for the District of Columbia, there have been variations from this in the past. Thus, in 1888 (first session Fiftieth Congress, Record, pp. 1117, 1118) four such bills were taken from the Committee f or the District of Columbia by the House and referred to the Committee on Alcoholic Liquor Traffic. And in 1891 (second session Fifty-first Congress, Report No. 3509), and even as late as 1896 (first session Fifty-fourth-Congress, Report No. 1813) stray bills of this class were reported from the Committee on Alcoholic Liquor Traffic.

[4] First session Fifty-second Congress, Record, p. 4172.

[5] Second session Fifty-fifth Congress, Report No. 143.

[6] See, however, section 4147 of this volume.

[7] Second session Fifty-second Congress, Report No. 2280.

[8] First session Fifty-ninth Congress, Report No. 4207.

[9] First session Fiftieth Congress, Report No. 1797.

[10] Second session Fifty-second Congress, Report No. 2324.

[11] Second session Fifty-fourth Congress, Report No. 2524.

[12] Third session Fifty-third Congress, Report No. 1944.

[13] First session Fifty-seventh Congress, Report, No. 494.

[14] Second session Fifty-first Congress, Report No. 3645; second session Fifty-fifth Congress, Report No. 413; first session Fifty-ninth Congress, Report No. 2223.

4286. Harbor regulations for the District and the bridge over the Eastern Branch have been within the jurisdiction of the Committee for the District of Columbia.—The Committee for the District of Columbia reported, in 1894 [1] and 1896,[2] on the subject of harbor regulations in the District, and in 1886,[3] 1888,[4] and 1906,[5] on bills relating to the construction of a bridge across the Eastern Branch of the Potomac.

4287. Bills for framing a municipal code and amending the criminal laws and corporations laws in the District have been within the jurisdiction of the Committee for the District of Columbia.—On January 11, 1882,[6] the Committee for the District of Columbia reported the bill (H. R. 1295) to establish a municipal code for the District of Columbia; and in 1891,[7] 1900,[8] and 1902 [9] on the subject of this code. In 1898 [10] the committee reported the bill (H. R. 8064) to amend the criminal laws of the District.

Also in 1889 [11] and 1891 [12] the Committee for the District of Columbia reported bills relating to the incorporation laws of the District.

4288. The Committee for the District of Columbia has reported bills for the incorporation of organizations and societies.—The Committee for the District of Columbia has reported bills creating corporations such as would have their location in the District of Columbia, as the National Congress of Mothers,[13] National Society of Daughters of 1812, and National White Cross of America,[14] Daughters of the American Revolution,[15] National Society Sons of the American Revolution,[16] General Federation of Women's Clubs,[17] etc.[18]

4289. The Committee for the District of Columbia has exercised jurisdiction as to bills relating to executors, administrators, wills, and divorce in the District.—The Committee for the District of Columbia has reported:

In 1886,[19] the bill (H. R. 2373) to allow foreign executors and administrators to sue in the District of Columbia.

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[1] Second session Fifty-third Congress, Report No. 563.

[2] First session Fifty-fourth Congress, Report No. 1578.

[3] First session Forty-ninth Congress, Report No. 2703.

[4] First session Fiftieth Congress, Report No. 1807; also first session Fifty-first Congress, Report No. 2841.

[5] First session Fifty-ninth Congress, Report No. 1119.

[6] First session Forty-seventh Congress, Report No. 8.

[7] Second session Fifty-first Congress, Report No. 3491.

[8] First session Fifty-sixth Congress, Report No. 1017.

[9] First session Fifty-seventh Congress, Report No. 2192.

[10] Second session Fifty-fifth Congress, Report No. 555.

[11] Second session Fiftieth Congress, Report No. 3921.

[12] Second session Fifty-first Congress Report No. 3740.

[13] Second session Fifty-fifth Congress, Report No. 1531.

[14] First session Fifty-sixth Congress, Reports Nos. 1019, 1441.

[15] Second session Fifty-seventh Congress, Report No. 3845.

[16] First session Fifty-ninth Congress, Report No. 1635.

[17] Second session Fifty-eighth Congress, Report No. 2862.

[18] In 1892 (first session Fifty-second Congress, Report No. 256) and 1896 (first session Fifty-fourth Congress, Reports Nos. 179, 5365) the Committee on the Library reported bills incorporating the National Society of the Daughters of the American Revolution and the National Society of Colonial Dames.

[19] First session Forty-ninth Congress, Report No. 2373.

In 1888,[1] the bill (11. R. 1514) relating to the record of wills in the District. In 1901,[2] the bill (H. R. 12331) to amend the act conferring on the supreme court of the District of Columbia jurisdiction to take proof of the execution of wills affecting real estate.[3]

In 1904[4] as to divorce proceedings in the District.

4290. The Committee for the District of Columbia has exercised jurisdiction as to the police and juvenile courts and justices of peace in the District.—The Committee for the District of Columbia has exercised jurisdiction of legislation relating to the juvenile court[5] and the police court[6] of the District, and in 1906[7] reported on the subject of the justices of the peace, although in 1893[8] and 1895[9] the Judiciary Committee had exercised jurisdiction over bills relating to those officers.

4291. The jurisdiction of the Committee for the District of Columbia as to matters affecting the higher courts of the District has been exceptional rather than general.—The jurisdiction of the Committee for the District of Columbia over the District courts higher than the juvenile and police court has not been extensive, and such cases as have occurred seem exceptions to the rule that gives the general jurisdictions as to the courts to the Judiciary Committee.

In 1887[10] and 1891[11] the Committee for the District of Columbia reported bills relating to the reporter for the supreme court of the District, and even a bill for the regulation of the court itself; but in 1880[12] the Committee on the Judiciary had jurisdiction of the bill (H. R. 1809) to enable the courts to take cognizance of a case in which a citizen of the District of Columbia is a party.

Committee for the District of Columbia reported, in 1889,[13] the bill (H. R. 12292) to amend the statutes relating to the jury law of the District.

And in 1898,[14] the bill (H. R. 7541) to require the marshal of the District to execute certain writs.

4292. Bills for preserving public order, etc., within the District at times of inaugurations have been reported by the Committee for the District of Columbia.—The Committee for the District of Columbia has exercised

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[1] First session Fiftieth Congress, Report No. 1805.

[2] Second session Fifty-sixth Congress, Report No. 2748.

[3] But in 1891 (second session Fifty-first Congress, Record, p. 445) the Committee on the Judiciary reported as to acknowledgment of wills in the District of Columbia.

[4] Second session Fifty-eighth Congress, Report No. 2085.

[5] First session Fifty-ninth Congress, Report No. 2169.

[6] First session Forty-ninth Congress, Report No. 2301; second session Fiftieth Congress, Report No. 3919.

[7] First session Fifty-ninth Congress, Report No. 236.

[8] Second session Fifty-second Congress, Reports Nos. 2389, 2490.

[9] Third session Fifty-third Congress, Report No. 1744.

[10] Second session Forty-ninth Congress, Reports Nos. 3792, 3819.

[11] Second session Fifty-first Congress, Reports Nos. 3324, 3837.

[12] First session Fiftieth Congress, Report No. 129.

[13] Second session Fiftieth Congress, Report No. 3794.

[14] Second session Fifty-fifth Congress, Report No. 341.

jurisdiction over certain legislation relating to the ceremonies of inauguration, reporting:

In 1885 [1] and 1892,[2] bills relating to inauguration day and inauguration police.

In 1889,[3] the bill (S. 3869) to secure the maintenance of public order during the inauguration.

In 1901,[4] the resolution (H. Res. 287) authorizing the use of certain reservations or public spaces in the city of Washington for the purposes of the inauguration.

4293. The creation and history of the Committee on Revision of the Laws, section 35 of Rule XI

The rule gives to the Committee on Revision of the Laws jurisdiction of subjects relating "to the revision and codification of the statutes of the United States."

Section 35 of Rule XI provides for the reference of subjects relating—

to the revision and codification of the statutes of the United States: to the Committee on the Revision of the Laws.

The committee consists of thirteen Members.

It dates from July 25, 1868. In reporting the resolution for its establishment [5] Mr. Elihu B. Washburne, of Illinois, explained that the new committee was intended to take the place of the old standing committee "on Revisal and Unfinished Business," which had existed since the early days [6] and had become obsolete, while the Select Committee on Revision of the Laws had become of importance sufficient to warrant establishing it as a standing committee.

At first there was no rule defining the jurisdiction of the committee. The present form of the rule dates from 1880.[7]

4294. Examples of jurisdiction of the Committee on Revision of the Laws over bills embodying codifications.[8]—The Committee on Revision of the Laws has exercised a general jurisdiction over bills revising the laws, and has reported:

In 1900,[9] on the following subjects: The bill (S. 3419) providing a civil code for Alaska; the bill (H. R. 7844) providing for the revision and codification of the general and permanent laws of the United States.

In 1894 [10] and 1896,[11] on codification of pension laws; also in 1894 and in 1896,[12] on the revision and codification of the statute laws of the United States.

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[1] Second session Forty-eighth Congress, Record, pp. 328, 348, 1146.

[2] Second session Fifty-second Congress, Report No. 2258.

[3] Second session Fiftieth Congress, Report No. 3920.

[4] Second session Fifty-sixth Congress, Report No. 2211.

[5] Second session Fortieth Congress, Globe, p. 4495.

[6] The Committee on Revisal and Unfinished Business was established in 1795, and was especially useful in the early years when business unfinished fell with the end of a session.

[7] Second session Forty-sixth Congress, Record, p. 205.

[8] The Committee on the Post-Office and Post-Roads reported a bill codifying the postal laws (see section 4192 of this volume), and the Committee for the District of Columbia has reported bills relating to the municipal code of Washington city. (See Section 4287 of this volume).

[9] First session Fifty-sixth Congress, Reports Nos. 1153, 1502.

[10] Second session Fifty-third Congress, Report No. 866.

[11] First session Fifty-fourth Congress, Report No. 219.

[12] First session Fifty-fourth Congress, Report No. 392.

In 1893,[1] on revision of the criminal and penal laws.

In 1901,[2] the code of civil government for Alaska.

4295. In exceptional cases the Committee on Revision of the Laws has exercised jurisdiction over bills embodying changes of law rather than revisions or codifications.—On December 6, 1882,[3] the resolutions distributing the President's message provided that the Committee on Revision of the Laws should have jurisdiction of subjects relating to:

The transfer of the Light-House Service, the Coast Survey, and the Revenue Marine Service as now organized from the Treasury Department to the Navy Department.

The Committee on Revision of the Laws has also reported:

In 1892,[4] a proposition to establish the office of Congressional correspondence and Department business; a bill amending the laws relating to contracts for Government supplies; and a bill to continue publication of the Revised Statutes.[5]

In 1888,[6] on the following subjects: Alien land ownership; clerks for Members of Congress; for punishing those setting fires to wood and grass on the public lands.

In 1892[7] on the franking privilege to commissioners of United States courts.

4296. Creation and history of the Committee on Reform in the Civil Service.

The rule gives to the Committee on Reform in the Civil Service jurisdiction of subjects relating "to reform in the civil service."

Section 36 of Rule XI provides for the reference of subjects relating—

to reform the civil service: to the Committee on Reform in the Civil Service.

This committee consists of thirteen Members.

It was made a standing committee on August 18, 1893,[8] having been a select committee prior to that date.

4297. The Committee on Reform in the Civil Service has exercised a general jurisdiction over bills relating to the status of officers, clerks, and employees in the civil branches of the Government.—The Committee on Reform in the Civil Service has exercised a general jurisdiction over projects of legislation relating to the officers, clerks, and employees in the civil branches of the Government, having reported:

In 1896,[9] 1899,[10] and 1900,[11] bills giving preference to soldiers, sailors, and marines in civil-service appointments.

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[1] Second session Fifty-seventh Congress, Report No. 3679; and also second session Fifty-eighth Congress, Report No. 225.

[2] Second session Fifty-sixth Congress, Report No. 2854.

[3] Second session Forty-seventh Congress, Journal, p. 41; Record, p. 56.

[4] First session Fifty-second Congress, Report No. 479, 1417, 1955.

[5] On May 13, 1879 (first session Forty-sixth Congress, Record, pp. 1301, 1302), a discussion occurred as to the respective jurisdictions of the Committees on Revision of the Laws and Judiciary.

[6] First session Fiftieth Congress, Reports Nos. 1454, 1455, 1481.

[7] First session Fifty-second Congress, Report No. 696.

[8] First session Fifty-third Congress, Journal, p. 13; Record, pp. 477, 478.

[9] First session Fifty-fourth Congress, Report No. 517.

[10] Third session Fifty-fifth Congress, Report No. 2056.

[11] First session Fifty-sixth Congress, Report No. 6784.

In 1884[1] and 1887[2] bills to repeal the tenure of office act; and in 1888[3] the bill (H. R. 1571) fixing a tenure of office of four years for certain Government officials.

In 1892,[4] a bill to regulate the appointment of fourth-class postmasters; and a bill to exclude political influence in the appointment of laborers.

In 1896,[5] a bill relating to deposit of the revenues by officers receiving them.

In 1888,[6] the bill (H. R. 1787) relating to the apportionment of appointments in the civil service among the several States on the basis of population; and the bill (H. R. 1884) to establish a retired list for persons employed in the civil service.[7]

In 1886,[8] the bill (H. R. 6855) to secure an equitable classification[9] and compensation of certain officers of the United States.

4298. Matters relating to the Civil Service Commission and alleged violations of the law have been reported by the Committee on Reform in the Civil Service.—The Committee on Reform in the Civil Service has reported on the following subjects:

In 1886,[10] on the investigation of certain employees of the House alleged to have attempted to influence legislation.

In 1892,[11] on violations of the civil-service law in Alabama, and on the investigation of the Baltimore post-office.

In 1890,[12] on an investigation of the Civil Service Commission.

In 1893,[13] on certain reinstated employees.

In 1896,[14] on a bill relating to delinquent officials.

In 1905,[15] on the dismissal of letter carriers.

4299. The creation and history of the Committee on the Election of President, Vice-President, and Representatives in Congress, section 37 of Rule XI.

The rule gives to the Committee on Election of President, Vice-President, and Representatives in Congress jurisdiction of subjects relating to the election of the officials enumerated in the designation.

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[1] First session Forty-eighth Congress, Report No. 1955.

[2] Second session Forty-ninth Congress, Report No. 3539.

[3] First session Fiftieth Congress, Report No. 807.

[4] First session Fifty-second Congress, Reports Nos. 821, 1403.

[5] First session Fifty-fourth Congress, Report No. 385.

[6] First session Fiftieth Congress, Reports Nos. 328, 329, 1457.

[7] Also in 1903 and 1904 this committee reported bills relating to retirement and superannuation. Second session Fifty-seventh Congress, Reports Nos. 2753–2760; and second session Fifty-eighth Congress, Report No. 2750.

[8] First session Forty-ninth Congress, Report No. 1303.

[9] Also in 1904 on reclassification of employees in the civil service. (Second session Fifty-eighth Congress, Report No: 2751.)

[10] First session Forty-ninth Congress, Report No. 2337.

[11] First session Fifty-second Congress, Reports Nos. 1669, 1747.

[12] First session Fifty-first Congress, Report No. 2445.

[13] Second session Fifty-second Congress, Report No. 2408.

[14] First session Fifty-fourth Congress, Report No. 386.

[15] Third session Fifty-eighth Congress, Report No. 3540.

Section 37 of Rule XI provides for the reference of subjects relating—

to the election of the President, Vice-President, or Representatives in Congress: to the Committee on election of President, Vice-President, and Representatives in Congress.

This committee consists of thirteen Members.

It was made a standing committee on August 18, 1893,[1] having been a select committee prior to that date.

4300. The Committee on Election of President, Vice-President, and Representatives in Congress has reported proposed constitutional amendments providing for election of Senators by the people and the disqualification of polygamists as Representatives.—The Committee on Election of President, Vice-President, and Representatives in Congress reported in 1892,[2] 1896,[3] 1898,[4] and 1900[5] on joint resolutions proposing an amendment to the Constitution providing for the election of United States Senators by direct vote of the people.[6]

This committee also reported in 1899[7] and 1900[8] joint resolutions proposing amendments to the Constitution prohibiting polygamy within the United States, and disqualifying polygamists for election as Senators or Representatives in Congress.

4301. The Committee on Election of President, Vice-President, and Representatives in Congress has reported bills relating to the national election laws and the enforcement thereof.—The standing Committee on Election of President, Vice-President, and Representatives in Congress dates from 1893, but before that date select committees exercised jurisdiction and reported:

In 1888,[9] the bill (H. R. 6672) defining the necessary and proper expenses incident to the nomination and election or appointment of Senators and Representatives, and authorizing the payment thereof.

In 1890,[10] the bill (H. R. 7712) "to regulate in part the time and manner of holding elections of Representatives in Congress, and for other purposes;" and the bill (H. R. 11045) "to amend and supplement the election laws of the United States and to provide for the more efficient enforcement of such laws and for other purposes."[11]

In 1893,[12] the bill (H. R. 2331) to repeal the Federal election laws, including those relating, to the duties of United States deputy marshals.[13]

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[1] First session Fifty-third Congress, Record, pp. 477, 478; Journal, p. 13.

[2] First session Fifty-second Congress, Report No. 368.

[3] First session Fifty-fourth Congress, Report No. 994.

[4] Second session Fifty-fifth Congress, Report No. 125.

[5] First session Fifty-sixth Congress, Report No. 88.

[6] In 1888 (first session Fiftieth Congress, Report No. 1456) the Committee on Revision of the Laws reported a resolution of this nature.

[7] Third session Fifty-fifth Congress, Report No. 2307.

[8] First session Fifty-sixth Congress, Report No. 348.

[9] First session Fiftieth Congress, Report No. 1786. But in 1882 (first session, Forty-seventh Congress, Report No. 912) the Committee on the Judiciary reported the bill (H. R. 5352) in relation to elections in West Virginia.

[10] First session Fifty-first Congress, Reports Nos. 1882, 2493.

[11] But at this time the Committee on the Judiciary reported as to the subject of abridgment of the suffrage under the fourteenth amendment. (Second session Fifty-first Congress, Report No. 4009.)

[12] First session Fifty-third Congress, Report No. 18; also second session Fifty-second Congress, Report No 2310.

[13] The Committee on the Judiciary also reported a bill relating to the deputy marshals. (First session Fifty-third Congress, Report No. 14.)

In 1898,[1] the bill (H. R. 10550) providing for the voting of solders at Congressional elections.

In 1899,[2] the bill (H. R. 11356) to permit the use of voting machines at elections of Representatives in Congress.[3]

In 1906,[4] on bills relating to frauds in elections, publicity of election expenses, and election and terms of Representatives in Congress.

4302. Proposed changes of the Constitution as to the term of Congress and the President and the time of annual meeting of Congress have been considered by the Committee on Election of President, Vice-President, and Representatives in Congress.—The standing Committee on Election of President, Vice-President, and Representatives in Congress, and the select committees which preceded it, have reported:

In 1888,[5] the resolution (H. Res. 33) proposing an amendment to the Constitution fixing the terms of Members of the House, and the date for the holding of the annual meeting of Congress; also on a proposed amendment changing the time for the commencement and limitation of the terms of the President, Vice-President, and Members of Congress.

In 1892,[8] on the subject of the terms of Congress and of the President.

In 1894,[7] on the bill (H. R. 6938) "to appoint the first Tuesday after the fourth day of March for the first annual meeting of Congress and the first Monday after the first day of January as the day for the second annual meeting.

In 1898,[8] the joint resolution (H. Res. 6) proposing an amendment to the Constitution making the term of Members of the House of Representatives four years.

4303. Changes in the law regarding the electoral count and resolutions regulating the actual count by the House and Senate are within the jurisdiction of the Committee on Election of President, Vice-president, and Representatives in Congress.—Before the creation of the present standing Committee on Election of President, Vice-President, and Representatives in Congress, on December 6, 1882,[9] the resolutions distributing the President's message gave to the Select Committee on Laws Respecting the Election of President and Vice-President "so much as relates to legislation in reference to counting and declaring the vote for President and Vice-President of the United States."

The select committee also reported:

In 1884,[10] the bill (S. 25) to provide for the meeting of the electors of President and Vice-President, the counting of the electoral vote, etc.

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[1] Second session Fifty-fifth Congress, Report No. 1502.

[2] Third session Fifty-fifth Congress, Report No. 1816.

[3] The Committee on the Judiciary reported in 1893 a bill fixing the qualification of voters in Cherokee Outlet, in Oklahoma. (First session Fifty-third Congress, Report No. 91.)

[4] First session Fifty-ninth Congress, Reports Nos. 3165, 3927, 5082.

[5] First session Fiftieth Congress, Reports Nos. 219, 841.

[6] First session Fifty-second Congress, Report No. 543.

[7] Second session Fifty-third Congress, Report No. 889.

[8] Second session Fifty-fifth Congress, Report No. 706.

[9] Second session Forty-seventh Congress, Journal, p. 41 Record, p. 56.

[10] First session Forty-eighth Congress, Report No. 1117.

In 1886,[1] the bill (S. 9) regulating the electoral count.

After the creation of the standing committee it reported:

In 1897[2] and 1898,[3] bills relating to a change in the mode of transmission of votes of electors for President and Vice-President from the several States of the Union to the seat of Government.

In 1897,[4] a resolution relating to the electoral vote of South Carolina and the abridgment of the political rights of a portion of the citizens of that State.

In 1885[5] and 1889,[6] the select committees reported the concurrent resolution providing for the count of the electoral vote in the presence of the two Houses; and in 1893[7] the standing committee reported a similar resolution. In 1897[8] and 1901[9] this resolution was reported by the Committee on Rules; but in 1905[10] the jurisdiction was returned to the Committee on Election of President, Vice-President, and Representatives in Congress.

4304. Subjects relating to the succession of the office of President in case of his death, disability, etc., have been within the jurisdiction of the Committee on Election of President, Vice-President, and Representatives in Congress.—In 1882,[11] before the creation of the standing Committee on the Election of President, Vice-President, and Representatives in Congress, the resolutions distributing the President's message referred to the Select Committee on Laws Respecting the Election of President and Vice-President so much as related "to the intendment of the Constitution in its provisions for devolving Executive functions upon the Vice-President in the event of disability of the President."

In 1884,[12] the select committee which preceded the present standing committee reported the bill (S. 22) providing for the performance of the duties of President and Vice-President in case of removal, death, or resignation.

In 1886,[13] the same select committee reported the bill (S. 471) changing the law in regard to the succession to the Presidential office, and the bill (H. R. 61) proposing an amendment to the Constitution relating to the creation of the office of Second Vice-President.

In 1895[14] the standing committee reported on the resolution (H. Res. 249) proposing an amendment to the Constitution making the President ineligible to succeed himself.

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[1] First session Forty-ninth Congress, Report No. 1638.

[2] Second session Fifty-fourth Congress, Report No. 3044.

[3] Second session Fifty-fifth Congress, Report No. 145.

[4] Second session Fifty-fourth Congress, Report No. 3065.

[5] Second session Forty-eighth Congress, Record, pp. 1037, 1053.

[6] Second session Fiftieth Congress, Record, p. 1254.

[7] Second session Fifty-second Congress, Record, p. 642.

[8] Second session Fifty-fourth Congress, Record, p. 1462.

[9] Second session Fifty-sixth Congress, Record, p. 1736.

[10] Third session Fifty-eighth Congress, Record, p. 918.

[11] Second session Forty-seventh Congress, Journal, p. 41; Record, p. 56.

[12] First session Forty-eighth Congress, Report No. 1323.

[13] First session Forty-ninth Congress, Reports Nos. 26, 2493.

[14] Third session Fifty-third Congress, Report No. 1658.

4305. The creation and history of the Committee on Alcoholic Liquor Traffic, section 38 of Rule XI.

The rule gives to the Committee on Alcoholic Liquor Traffic jurisdiction of subjects relating "to alcoholic liquor traffic."

Section 38 of Rule XI provides for the reference of subjects relating—

to alcoholic liquor traffic; to the Committee on Alcoholic Liquor Traffic.

This committee consists of 11 Members.

It was made a standing committee on August 18, 1893,[1] having been a select committee from May 16, 1879,[2] when it was created on motion of Mr. William P. Frye, of Maine.

4306. Illustrations of the jurisdiction of the Committee on Alcoholic Liquor Traffic.—The Committee on Alcoholic Liquor Traffic has reported bills as follows:

On February 17, 1885,[3] the bill (H. R. 2693) to regulate the manufacture and sale of intoxicating liquors in the Territories.

In 1898[4] the Committee on Alcoholic Liquor Traffic reported the bill (H. R. 7937) to prevent the sale of intoxicating liquors on reservations and in buildings controlled by the United States.

In 1896,[5] a bill to provide for a commission on the subject of the alcoholic liquor traffic.

In 1901[6] and 1902,[7] bills relating to the sale of firearms, opium, and intoxicants to native races in the South Sea Islands.

In 1890,[8] the bill (H. R. 5978) to prohibit the transportation of intoxicating liquors into any State or Territory in violation of law; but this jurisdiction does not accord with the later practice of the House, which has referred bills relating to the interstate commerce features of the liquor traffic to the Committee on the Judiciary.[9]

On February 10, 1888,[10] in the House Mr. James E. Campbell, of Ohio, moved that the Committee on Alcoholic Liquor Traffic be discharged from the consideration of a bill relating to special taxes on liquor dealers under the internal-revenue laws and that the bill be referred to the Committee on Ways and Means. This motion was agreed to, ayes 95, noes 46.

4307. The creation and history of the Committee on Irrigation of Arid Lands, section 39 of Rule XI.

The rule gives to the Committee on Irrigation of Arid Lands jurisdiction of subjects relating "to the irrigation of Arid lands."

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[1] First session Fifty-third Congress, Journal, p. 13, Record, pp. 477, 478.

[2] First session Forty-sixth Congress, Record, p. 1394 Journal, p. 314.

[3] Second session Forty-eighth Congress, Report No. 2586.

[4] Second session Fifty-fifth Congress, Report No. 1629.

[5] First session Fifty-fourth Congress, Report No. 1789.

[6] Second session Fifty-sixth Congress, Report No. 2887.

[7] First session Fifty-seventh Congress, Report No. 261.

[8] First session Fifty-first Congress, Report No. 1697.

[9] See section 4061 of this work.

[10] First session Fiftieth Congress, Record, p. 1118.

Section 39 of Rule XI provides for the reference of subjects relating—

to the irrigation of arid lands; to the Committee on Irrigation of Arid Lands.

This committee consists of twelve Members.

It was made a standing committee on August 18, 1893,[1] having been a select committee prior to that date.

4308. Examples of the general jurisdiction of the Committee on Irrigation of Arid Lands.—The Committee on Irrigation of Arid Lands reported in 1902[2] the bill "appropriating the receipts from the disposal and sale of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands" and also has reported:

In 1904,[3] on the use of earth, stone, and timber on forest reservations and public lands for irrigation works.

In 1905,[4] on dams across the Yellowstone River, and on the reclamation fund.

4309. The creation and history of the Committee on Immigration and Naturalization, section 40 of Rule XI.

The rule gives to the Committee on Immigration and Naturalization jurisdiction of subjects relating "to immigration or naturalization."

Section 40 of Rule XI provides for the reference of subjects relating—

to immigration or naturalization; to the Committee on Immigration and Naturalization.

This committee consists of fourteen Members.

It was made a standing committee on August 18, 1893,[1] having been a select committee prior to that date.

4310. The Committee on Immigration and Naturalization exercises a general but not exclusive jurisdiction over the subject of immigration and has reported bills relating to contract labor.—The Committee on Immigration and Naturalization, since its establishment as a standing committee in 1893, and before that as a special committee, has exercised generally jurisdiction over the subject of immigration, although there are a few notable exceptions.[5] Measures reported by the Committee on Immigration and Naturalization have been:

In 1906,[6] the general revision of the immigration laws.

In 1891,[7] on the immigration laws.

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[1] First session Fifty-third Congress, Record, pp. 477, 478; Journal, p. 13.

[2] First session Fifty-seventh Congress, Report No. 794; 32 Stat. L., p. 388.

[3] Second session Fifty-eighth Congress, Report No. 2584.

[4] Third session Fifty-eighth Congress, Reports Nos. 4833, 48314.

[5] In 1892 (Fifty-first session Fifty-second Congress, Report No. 255) and in 1891 (second session Fifty-first Congress, Report No. 4048) this committee reported on the subject of Chinese immigration; but in 1882 (second session Fortyseventh Congress, Journal, p. 40; Record, p. 56) the House in distributing the President's message referred to the Judiciary Committee "the construction of the law restricting immigration of laborers from China;" and the broad question of Chinese immigration has long rested with the Committee on Foreign Affairs (See sec. 4172 of this volume). The Judiciary Committee also reported in 1894 (second session Fifty-third Congress, Report No. 1460) on exclusion and deportation of alien anarchists, and the same year on inspection of immigrants by consuls (Report No. 416).

[6] First session Fifty-ninth Congress, Reports Nos. 3021, 3635, 4558, 4912.

[7] Second session Fifty-first Congress, Reports Nos. 3472, 3807.

In 1892,[1] on the immigration and contract labor laws.

In 1893,[2] on immigration laws.

In 1894,[3] the bill (H. R. 7415) for the protection of American labor and to establish additional regulations concerning immigration to the United States.

4311. In the later practice the Committee on Immigration and Naturalization has confirmed its jurisdiction over the subject of naturalization.—The Committee on Immigration and Naturalization, which has been a standing committee since 1893, has established its claim to jurisdiction over the subject of naturalization, having in 1906[4] reported important legislation on that subject; but up to 1893 the Committee on the Judiciary exercised a general and frequent jurisdiction over this subject, reporting general bills relating to naturalization[5] 1 and even in 1894,[6] on naturalization of Japanese. The Judiciary Committee also reported in 1886,[7] 1888,[8] and 1890[9] on bills relating to the ownership of lands within the United States by aliens.

4312. Authorizations for sites and buildings for immigrant stations are within the jurisdiction of the Committee on Immigration and Naturalization.—The Committee on Immigration and Naturalization has jurisdiction over the authorizations of immigrant stations at the ports of the United States, and the construction of buildings therefor; and has reported:

In 1891,[10] on the immigrant depot at New York.

In 1906,[11] the bill (H. R. 19468) to increase the limit of cost of the construction of the immigrant station at Angel Island, in the harbor of San Francisco, Cal.

In 1907,[12] bills providing for the establishment of immigrant stations, the selection of sites and the erection of buildings thereon, at Galveston, Charleston, and New Orleans.

4313. The creation and history of the Committee on Ventilation and Acoustics, section 41 of Rule XI.

The rule gives to the Committee on Ventilation and Acoustics jurisdiction of subjects relating "to ventilation and acoustics."

Section 41 of Rule XI provides for the reference of subjects relating—

to ventilation and acoustics; to the Committee on Ventilation and Acoustics.

This committee consists of seven Members.

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[1] First session Fifty-second Congress, Report No. 1573. See, however, the jurisdiction of the Labor Committee as to contract labor legislation. (See sec. 4249 of this volume.)

[2] Second session Fifty-second Congress, Reports Nos. 2197, 2206, 2542.

[3] First session Fifty-fourth Congress, Report No. 1597.

[4] First session Fifty-ninth Congress, Reports Nos. 1789, 3632.

[5] First session Forty-eighth Congress, Report No. 1030; first session Forty-ninth Congress, Report No. 731; second session Fiftieth Congress, Report No. 4145; second session Fifty-second Congress, Report No. 2180; first session Fifty-third Congress, Report No. 139.

[6] Second session Fifty-third Congress, Report No. 1385.

[7] First session Forty-ninth Congress, Report No. 1951.

[8] First session Fiftieth Congress, Report No. 255.

[9] First session Fifty-first Congress, Report No. 2388.

[10] Second session Fifty-first Congress, Report No. 3857.

[11] First session Fifty-ninth Congress, Report No. 4640.

[12] Second session Fifty-ninth Congress, Reports Nos. 8026, 8028, 8061.

It was made a standing committee on August 18, 1893,[1] having been a select committee prior to that date.[2]

4314. Subjects relating to the Hall of the House have been considered by the Committee on Ventilation and Acoustics.—The Committee on Ventilation and Acoustics reported in 1891[3] on the enlargement of the Hall of the House; and in 1899[4] on a plan for remodeling of the Hall and a rearrangement of the seats therein.

4315. Creation and history of the ten Committees on Expenditures in the Various Departments of the Government, sections 42 to 52 of Rule XI.

The rule gives to the several Committees on Expenditures jurisdiction of the pay of officers, abolition of useless offices, and the economy and accountability of officers.

The examination of the accounts of the Departments, proper application of public moneys, enforcement of payment of money due the Government, and economy and retrenchment generally are within the jurisdiction of the several Committees on Expenditures.

There are ten Committees on Expenditures in the various Departments of the Government, provided for by sections 42 to 52 of Rule XI:

42. The examination of the accounts and expenditures of the several Departments of the Government and the manner of keeping the same; the economy, justness, and correctness of such expenditures; their conformity with appropriation laws; the proper application of public moneys; the security of the Government against unjust and extravagant demands; retrenchment; the enforcement of the payment of moneys due to the United States; the economy and accountability of public officers; the abolishment of useless offices; the reduction or increase of the pay of officers, shall all be subjects within the jurisdiction of the nine standing committees on the public expenditures in the several Departments, as follows:

43. In the Department of State; to the Committee on Expenditures in the State Department.

44. In the Treasury Department; to the Committee on Expenditures in the Treasury Department.

45. In the War Department; to the Committee on Expenditures in the War Department.

46. In the Navy Department; to the Committee on Expenditures in the Navy Department.

47. In the Post-Office Department; to the Committee on Expenditures in the Post-Office Department.

48. In the Interior Department; to the Committee on Expenditures in the Interior Department.

49. In the Department of Justice; to the Committee on Expenditures in the Department of Justice.

50. In the Department of Agriculture; to the Committee on Expenditures in the Department of Agriculture.

51. In the Department of Commerce and Labor; to the Committee on Expenditures in the Department of Commerce and Labor.

52. On public buildings; to the Committee on Expenditures on Public Buildings.

Each of these committees consists of seven Members.

On February 26, 1814,[5] Mr. John W. Eppes, of Virginia, in order to relieve the Committee on Ways and Means of some of its duties, moved the creation of a Com-

[1] First session Fifty-third Congress, Record, pp. 477, 478; Journal, p. 13.

[2] In the old Hall of the House, now Statuary Hall, the acoustics were a source of constant trouble because of the echoes, and several investigations were made, resulting in reports of considerable interest. (First session Twenty-first Congress, Reports Nos. 83 and 123.)

[3] Second session Fifty-first Congress, Report No. 4021.

[4] Third session Fifty-fifth Congress, Report No. 2206.

[5] Second session Thirteenth Congress, Journal, pp. 311, 314: Annals, p. 1695.

mittee on Public Expenditures. The House agreed to the motion, and made it the duty of the new committee "to examine into the state of the several public departments, and particularly into the laws making appropriations of moneys, and to report whether the moneys had been disbursed conformably with such laws," and also to report measures to add to the economy of the Departments and the accountability of officers. This committee seems to have been industrious at times, at least, for on August 23, 1840,[1] a motion to abolish it failed, it being urged in its behalf that it entered into careful scrutiny of expenditures, even examining the furnishings of the White House. This committee was continued until the revision of the rules in 1880,[2] when it was dropped.

The several Committees on Expenditures, which are to be distinguished from that committee, date from March 30, 1816,[3] when, the spirit of inquiry being aroused by "clamors and suspicions" that had gone forth, Mr. Henry St. George Tucker, of Virginia, proposed these committees, which had been found useful in England and in Virginia. The House created them at that time, and on February 19, 1817,[4] when Mr. Charles H. Atherton, of New Hampshire, proposed to add to the jurisdiction of the Committee on Public Expenditures the subject of abolition of useless offices and regulation of pay of officers, the House preferred rather to add this new jurisdiction to the several expenditures committees. Long before the custom of appointing standing committees for the whole Congress instead of for a session had been established an exception was made of these committees, and they were appointed for the whole Congress.[5] As adopted in 1816 the rule did not include the committees for the Departments of Interior, Justice, Agriculture, and Commerce and Labor, which had not been created at that time. The committees for these Departments date, respectively, from March 16, 1860,[6] January 16, 1874,[7] December 20, 1889,[8] and December 11, 1905.[9] Although usually having little to do, these committees at times attain great importance and prominence.[10]

4316. The several Expenditures Committees may make investigations with or without specific direction from the House, but authority must be obtained of the House for compelling testimony.—The several Committees on Expenditures in the Departments of the Government, being charged by the rules with the duty of making investigations, have assumed the right to do so without further specific direction of the House. Such investigations were made in 1885[11] by the Committee on Expenditures in the Department of Justice and in 1893[12] by the Committee on Expenditures in the Department of State. As these

[1] First session Twenty-sixth Congress, Globe, p. 352.

[2] It appears last in the rules of first session Forty-sixth Congress, Journal, p. 625.

[3] First session Fourteenth Congress, Journal, p. 550; Annals, p. 1298.

[4] Second session Fourteenth Congress, Journal, p. 425; Annals, p. 996.

[5] Third session Twenty-seventh Congress, Journal, pp. 37, 742. In 1842 a Committee on Retrenchment was active. (Second session Twenty-seventh Congress, Journal, pp. 486, 491.)

[6] First session Thirty-sixth Congress, Globe, p. 1209.

[7] First session Forty-third Congress, Record, p. 677.

[8] First session Fifty-first Congress, Record, p. 336.

[9] First session Fifty-ninth Congress, Journal, p. 120.

[10] See section 2444 of Volume III of this work.

[11] Second session Forty-eighth Congress, Report No. 2645.

[12] Second session Fifty-second Congress, Report No. 2616.

committees have not the power to compel testimony except by special grant by the House, these investigations taken under authority of the rules are merely inquiries undertaken with the cooperation or acquiescence of the officers of the Departments affected. And when, in 1884,[1] the Committee on Expenditures in the Department of Justice proposed, in its investigation of charges against the First Comptroller of the Treasury, to go further and compel testimony, it was fortified by this resolution of the House:

Resolved, That the Committee on Expenditures in the Department of Justice, in making the investigation required by the rules of the House, be authorized to send for persons and papers.

In accordance with this authority the committee took testimony, which it reported to the House.[2]

In other cases these committees have proceeded on direction of the House that they investigate, as in investigations made by the Committee on Expenditures in the Department of Justice and by the Committee on Expenditures in the War Department in 1886,[3] and by the Committee on Expenditures in the Department of Agriculture in 1906.[4]

4317. Legislative propositions relating to the fees and salaries of officers and employees of the Government have been considered by the various Committees on Expenditures.—The Committees on Expenditures in the various Departments have exercised a general jurisdiction over bills relating to the salaries and compensation of officers and employees of the Government, and have reported:

In 1886,[5] the Committee on Expenditures in the Department of Justice the bill (H.R. 6977) abolishing the fee system and establishing salaries in the offices connected with the circuit and district courts of the United States.

In 1888,[6] the Committee on Expenditures in the Treasury Department on the subject of an inquiry into irregularities in the compensation of officers and employees of the Executive Departments; the Committee on Expenditures in the Interior Department on the bill (H.R. 1549) relating to fees to pension examining surgeons and the bill (H.R. 9422) relating to compensation of chiefs of division in the General Land Office; and the Committee on Expenditures in the Department of Justice on the bill (H.R. 9908) relating to the compensation of United States district attorneys, etc.

1890,[7] the Committee on Expenditures in the Treasury Department on the bill (H.R. 8106) to increase the pay of watchmen in the Treasury Department; the Committee on Expenditures in the Interior Department on the bill (H.R. 9283) providing increases of salaries of certain officials in the Indian Bureau; and the

[1] First session Forty-eighth Congress, Journal, p. 273.

[2] Second session Forty-eighth Congress, Report No. 2675.

[3] First session Forty-ninth Congress, Reports Nos. 521, 2023.

[4] First session Fifty-ninth Congress, Record, pp. 5607, 6324, 6406, 6573; second session Fifty-ninth Congress, Report No. 8147.

[5] First session Forty-ninth Congress, Report No. 1132.

[6] First session Fiftieth Congress, Reports Nos. 1198, 2078, 2190, 2424.

[7] First session Fifty-first Congress, Reports Nos. 797, 1411, 2542.

Committee on Expenditures in the Post-Office Department on the bill (H.R. 803) to pay employees of the Post-Office Department additional compensation for extra hours of duty in the year 1885.

In 1891,[1] the Committee on Expenditures in the Department of Justice on the subject of the fees of court officers; and the Committee on Expenditures in the Treasury Department on the compensation in the Life-Saving Service.

In 1892,[2] the Committee on Expenditures in the Treasury Department on increases of salaries of the Supervising Architect and the chief clerks in his department.[3]

4318. The Committees on Expenditures in the several Departments have reported bills creating and abolishing offices and employments.—The Committee on Expenditures in the Interior Department reported:

In 1888,[4] the bill (H.R. 1548) increasing the medical board of the Pension Department.

In 1890,[5] the resolution (H. Res. 135) empowering the Secretary of the Interior to appoint six additional members of the board of pension appeals.

The Committee on Expenditures in the Treasury Department reported, in 1894,[6] on the subject of the discontinuance of the offices of collectors of customs at several ports.[7]

4319. Bills relating to leaves of absence of officers and clerks of the Government have been considered by the several Committees on Expenditures.—The Committees on Expenditures in the various Departments of the Government have had general jurisdiction of legislation relating to the leaves of absence of officers and clerks, reporting:

The Committee on Expenditures in the Treasury Department, in 1888,[8] 1890,[9] 1892,[10] and 1894,[11] on leaves of absence in the customs service; and, in 1892,[12] on leaves of absence in the Treasury Department proper.

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[1] Second session Fifty-first Congress, Reports Nos. 3530, 3740.

[2] First session Fifty-second Congress, Reports Nos. 1211, 1212.

[3] In very recent years these Committees on expenditures have grown inactive, and have permitted bills plainly within the jurisdiction conferred on them by the rules to be taken by some of the larger committee. Thus, in 1907 (second session Fifty-ninth Congress, Report No. 6722), the Committee on Ways and Means reported the bill (H.R. 12222) authorizing the Secretary of the Treasury to fix the compensation of inspectors of customs; also the same year the Committee on the Judiciary reported the bill in relation to salaries of district attorneys and assistant district attorneys for the northern district of Illinois (Report No. 7557); and the Committee on Patents the bill (H.R. 22678) to provide increased force and salaries in the Patent Office.

[4] First session Fiftieth Congress, Report No. 1197.

[5] First session Fifty-first Congress, Report No. 1361.

[6] Second session Fifty-third Congress, Report No. 1033.

[7] But in 1906 (first session Fifty-ninth Congress, Report No. 583) the Committee on Ways and Means reported the bill (H.R. 7114) to provide for the consolidation and reorganization of the customs collection districts.

[8] First session Fiftieth Congress, Report No. 2616.

[9] First session Fifty-first Congress, Report No. 648.

[10] First session Fifty-second Congress, Report No. 1213.

[11] Second session Fifty-third Congress, Report No. 713.

[12] First session Fifty-second Congress, Report No. 6529.

The Committee on Expenditures in the Navy Department, in 1892,[1] on leaves of absence for navy-yard employees.

4320. Bills relating to the efficiency and integrity of the public service have been considered by the several Committees on Expenditures.—The Committees on Expenditures in the various Departments of the Government have exercised a general jurisdiction over matters relating to the efficiency and integrity of the public service, and have reported:

In 1888,[2] the Committee on Expenditures in the Interior Department, the bill (H. R. 7434) relating to the payment of pensions to pensioners who are incompetent to handle the money, such as those under guardianship; and the Committee on Expenditures in the Treasury Department the bill (H. R. 9623) to provide for printing Government securities in the highest style of the art.

In 1890,[3] the Committee on Expenditures in the Treasury Department, the bill (S. 2237) providing for the maintenance of discipline among customs officers.

In 1892,[4] the Committee on Expenditures in the Treasury Department, on the protection of persons engaged in public works or in furnishing materials to the Government.

In 1904,[5] the Committee on Expenditures in the State Department, on the use of official carriages.

4321. The creation and history of the Committee on Rules, section 53 of Rule XI.

The rule gives to the Committee on Rules jurisdiction of "all proposed action touching the rules, joint rules, and order of business."

Section 53 of Rule XI provides:

> All proposed action touching the rules, joint rules, and order of business shall be referred to the Committee on Rules.

This committee consists of five members.

From the First Congress, in 1789, there has always been a Committee on Rules, but it was for many years simply a select committee authorized at the beginning of each Congress to report a system of rules. In 1841 it was decided that the committee, which was still a select committee, might report from time to time.[6] At first the Speaker was not a member of the committee, but on June 14, 1858,[7] a resolution was agreed to authorizing the appointment of a committee on rules, of whom the Speaker[8] was to be one, to revise the rules and report at the next session. The committee

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[1] First session Fifty-second Congress, Report No. 1036.

[2] First session Fiftieth Congress, Reports Nos. 806, 3220.

[3] First session Fifty-first Congress, Report No. 800.

[4] First session Fifty-second Congress, Report No. 2124.

[5] Second session Fifty-eighth Congress, Report No. 1138.

[6] First session Twenty-seventh Congress, Journal, p. 204; Globe, p. 153.

[7] First session Thirty-fifth Congress, Journal, p. 1141; First session Thirty-sixth Congress, Journal, p. 167.

[8] At that time James L. Orr, of South Carolina. (For the membership of the Committees on Rules from 1789 to 1893, see Record, first session Fifty-third Congress, p. 1042.)

continued to be a select committee[1] until the revision of 1880,[2] when it was made a standing committee, with its membership fixed at five, in accordance with the previous usage. In 1891 the right to report at any time was conferred upon the committee,[3] and in 1893 it was given the right to sit during sessions of the House.[4]

4322. Orders or resolutions directing committees of the House to make investigations are considered by the Committee on Rules.

Resolutions or orders for the creation of select committees to make investigations are within the jurisdiction of the Committee on Rules.

Forms of resolutions for directing a standing committee to make an investigation or for creating a select committee for that purpose.

On January 11, 1882,[5] Mr. Godlove S. Orth, of Indiana, proposed this resolution:

Resolved, That the Committee on Reform of the Civil Service is hereby instructed to inquire into the expediency of providing a mode different from the present, for the appointment of the committees of this House.

Mr. Orth moved its reference to the Committee on Reform in the Civil Service, although the Speaker[6] expressed the opinion that it should be referred to the Committee on Rules. Mr. Orth's motion was disagreed to, yeas 86, nays 141. The resolution was then referred to the Committee on Rules.

Two reasons would account for the reference to rules: The fact that a change of the method of appointing committees would imply a change of rules; and that the making of a direction to a committee to do something that it would not otherwise have the authority to do, would involve the adoption of a new rule.

The second reason has caused the jurisdiction of resolutions directing committees to make investigations to rest with the Committee on Rules in the later practice of the House.[7] Thus on January 18, 1906,[8] the Committee on Rules reported the following:

Resolved, That the Committee on Naval Affairs is hereby directed to investigate the present condition of the U.S.S. *Constitution* to determine whether in the opinion of that committee an appropriation is justified for the continued maintenance of that ship; and if so, what amount will be required annually for this purpose; and further to report the amount which has been expended annually in maintaining the *Constitution* since she was put out of commission.

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[1] For years at the beginning of a Congress the House at its organization would adopt the rules of the preceding House, and authorize a select committee on rules, with right to report at any time. Thus on October 16, 1877. (First session Forty-fifth Congress, Journal, p. 20; Record, p. 69.)

[2] Second session Forty-sixth Congress, Record, p. 205.

[3] See section 4621 of this work. The committee had actually exercised the privilege before this.

[4] See section 62 of Rule XI. Section 4546 of this volume.

[5] First session Forty-seventh Congress, Record, p. 358.

[6] J. Warren Keifer, of Ohio, Speaker.

[7] Formerly resolutions directing investigations to be made by certain committees were referred to the committee which it was proposed to charge with the investigation. On January 18, 1892, the House discharged the Committee on Rules from the consideration of a resolution proposing to direct the Committee on Manufactures to make an investigation of the "sweating system" and referred the resolution to the Committee on Manufactures. (First session Fifty-second Congress, Record, p. 370.) See also First session Forty-ninth Congress, Journal, pp. 829, 830. In 1877 a very important resolution directing general investigations by committees of the House was reported by the Committee on Ways and Means. (Second session Forty-fifth Congress, Journal, p. 132; Record, p. 228.)

[8] First session Fifty-ninth Congress, Record, p. 1239.

Resolutions proposing the appointment of select Committees to make investigations have been within the jurisdiction of the Committee on Rules,[1] which in 1906[2] reported the following:

Resolved, That the Speaker of the House of Representatives be, and he is hereby, directed to appoint from the membership of the House a committee of the House with full power, and whose duty it shall be to make a full and complete investigation of the management of the Government Hospital for the Insane and report their findings and conclusions to the House; said committee to be empowered to send for persons and papers, to summon and compel the attendance of witnesses, to administer oaths[3] to take testimony and reduce the same to writing, and to employ such clerical and stenographic help as may be necessary, all expenses to be paid out of the contingent fund of the House.[4]

4323. Direction to a committee to make an investigation, being an addition to its duties and therefore a change of the rules, should be referred to the Committee on Rules.—On October 1, 1890,[5] Mr. Charles H. Grosvenor, of Ohio, claiming the floor for a privileged report, presented a preamble and resolution relating to obstructions to the navigation of the Ohio River, and authorizing the River and Harbor Committee, or a subcommittee thereof, to investigate the same, employ an additional clerk and stenographer, and sit during the recess, such expenses to be paid out of the contingent fund of the House.

Mr. W. C. P. Breckinridge, of Kentucky, raised the question of order, that the report was not a privileged question.

The Speaker[6] sustained the question of order, on the ground that clause 51, Rule XI,[7] conferred on the Committee on Rivers and Harbors the right to report at any time only "bills for the improvement of rivers and harbors," and further held, that as the preamble and resolution proposed a change of the rules by increasing the duties and powers of the Committee on Rivers and Harbors, the same should have been referred to the Committee on Rules.

The record of debates shows that the Speaker specified the particulars in which the resolution would increase the duties and powers of the committee—by authorizing it to make the investigation.

4324. On December 19, 1898,[8] Mr. Joseph W. Bailey, of Texas, presented, as affecting the privileges of the House, the following resolution:

Resolved, That the Committee on the Judiciary be, and it is hereby, instructed to ascertain and report to the House:

First. Whether any Member of the House has accepted any office under the United States; and

Second. Whether the acceptance of such office under the United States has vacated the seat of the Member accepting the same.

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[1] First session Forty-ninth Congress, Report No. 1621.

[2] First session Fifty-ninth Congress, Journal, p. 892.

[3] As the statutes empower the Speaker, chairman of Committee of the Whole, chairmen of select and standing committees and Members to administer oaths to witnesses, this provision seems superfluous. (Rev. Stat., sec. 101; 23 Stat. L., p. 60.)

[4] This branch of the subject is within the jurisdiction of the Committee on Accounts. (See see. 4328 of this volume.)

[5] First session Fifty-first Congress, Journal, p. 1116; Record, pp. 10777, 10778.

[6] Thomas B. Reed, of Maine, Speaker.

[7] Now section 61. (See sec. 4621 of this volume.)

[8] Third session Fifty-fifth Congress, Record, pp. 310, 353.

In accordance with Mr. Bailey's request this resolution was referred to the Committee on the Judiciary.

On December 20 Mr. David B. Henderson, of Iowa, chairman of the Judiciary Committee, moved that the reference be changed to the Committee on Rules, on the ground that the resolution properly belonged to the latter committee.

The change of reference was made, and on December 21 the resolution was reported by the Committee on Rules.

4325. Propositions relating to the hour of daily meeting and the days on which the House shall sit are considered by the Committee on Rules.—The Committee on Rules has jurisdiction of orders or resolutions providing for the hour of meeting and adjourning,[1] and also designating the days of the week on which the House shall sit.[2]

4326. Special orders providing for the consideration of individual bills or classes of bills are reported by the Committee on Rules.—The Committee on Rules has jurisdiction of all special orders providing specially for the consideration of bills or classes of bills.[3]

4327. Orders relating to the use of the galleries of the House during the electoral count are within the jurisdiction of the Committee on Rules.—Orders or resolutions providing for reservations of the galleries of the House during the counting of the electoral vote are within the jurisdiction of the Committee on Rules.[4]

4328. The creation and history of the Committee on Accounts, section 54 of Rule XI.

The rule gives to the Committee on Accounts jurisdiction of subjects "touching the expenditure of the contingent fund of the House, the auditing and settling of all accounts which may be charged therein by order of the House."

A temporary committee on accounts, authorized by law, performs the functions of the committee during the time between the expiration of one Congress and the organization of the next.

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[1] First session Forty-ninth Congress, Report No. 2212; Second session Fiftieth Congress, Record, pp. 744, 2209; second session Fifty-second Congress, Record, p. 1102; second session Fifty-fifth Congress, Report No. 17.

[2] First session Fifty-fifth Congress, Record, pp. 876, 933.

[3] See, for instance, first session Fifty-ninth Congress, Journal, p. 1378, for summary of instances wherein this jurisdiction has been exercised. The Committee on Rules did not always exercise this jurisdiction, but it had established its claim before 1890, and in 1893 the Committee on the Library gave up, in favor of the Committee on Rules, the jurisdiction of a resolution providing a time for the consideration of bills reported from the Library Committee. (Second session Fifty-second Congress, Record, p. 509.) See also Chapter LXXXVIII, section 3152, etc., of this volume.

[4] Second session Fifty-second Congress, Record, p. 1102; second session Fifty-fourth Congress, Record, p. 1462; second session Fifty-sixth Congress, Record, p. 1391. At the count in 1905 the resolution relating to the galleries was not referred to any committee, but was offered from the floor in connection with the adoption of the concurrent resolution providing for the proceedings of the count, which had been reported by the Committee on Election of President, Vice-President, and Representatives in Congress. (Third session Fifty-eighth Congress, Record, p. 918.)

Section 54 of Rule XI provides for the reference of subjects—

touching the expenditure of the contingent fund of the House, the auditing and settling of all accounts which may be charged therein by order of the House; to the Committee on Accounts.

This committee consists of nine Members.

It was established on December 27, 1803,[1] and on December 17, 1805,[2] is enumerated as a standing committee, in a rule which made it the duty of the committee "to superintend and control the expenditures of the contingent fund" of the House, and to "audit the accounts of Members for their travel to and from the seat of Government and their attendance in the House." Previous to this the Speaker and Sergeant-at-Arms had audited the accounts of Members. The present form of the rule dates from the revision of 1880.[3]

The law[4] provides that the Speaker shall, before the termination of the last session of a Congress, appoint three Members-elect of the next House as a temporary committee on accounts, to exercise such functions of the committee in reference to expenditures of the contingent fund, etc., as may need to be exercised during the recess before the organization of the next House.

4329. The accountability of the officers of the House is within the jurisdiction of the Committee on Accounts.—On January 17, 1845,[5] in a case where the Clerk of the House was charged with defalcation, the Committee on Accounts presented their report "in discharge of the duties imposed upon them by one of the standing rules of the House." The rule (No. 102) provided at that time that it should "be the duty of the Committee on Accounts to superintend and control the expenditures of the contingent fund of the House of Representatives, also to audit and settle all accounts that may be charged thereon." The report of the Clerk as to the expenditures from the contingent fund, made to the House January 7, and laid on the table, would have given jurisdiction if referred.

In 1890[6] the Committee on Accounts were directed to investigate, and did investigate, the conduct of the Postmaster of the House, and reported a resolution for his removal.

4330. The assignment of committee and other rooms in the House wing, custody of documents, etc., have been considered by the Committee on Accounts.—In 1888[7] "the procuring of additional committee rooms for the use of the committees of the House was delegated to the Committee on Accounts, which made several reports on the subject.

In 1890,[8] also, this committee reported on the subject of rooms for committees.

In 1901[9] it reported on the following subjects:

Additional rooms for the Speaker.

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[1] First session Eighth Congress, Journal, pp. 498, 503.

[2] First session Ninth Congress, Journal, pp. 202, 203, Annals, p. 284.

[3] Second session Forty-sixth Congress, Record, p. 205.

[4] 28 Stat. L., p. 768.

[5] Second session Twenty-eighth Congress, Journal, pp. 178, 223; Globe, p. 147.

[6] First session Fifty-first Congress, Report No. 3242.

[7] First session Fiftieth Congress, Record, pp. 878, 1097, 8458.

[8] First session Fifty-first Congress, Record, p. 521.

[9] Second session Fifty-sixth Congress, Reports Nos. 2643, 2067, 3006.

Disposal of flag formerly hanging over Speaker's desk.

Moving and cataloguing books and documents in House and Clerk's document room.

4331. The Committee on Accounts recommends to the House resolutions authorizing and assigning clerks to committees.—On December 17, 1897,[1] Mr. Benjamin B. Odell, jr., of New York, as a privileged matter, reported from the Committee on Accounts, in accordance with the usual practice at the beginning of each session, this resolution:

Resolved, That the eighteen clerks to committees of the House during the session provided for by the legislative, executive, and judicial appropriation bill for the fiscal year ending June 30, 1898, be, and they are hereby, allowed and assigned for the present Congress to the following committees, namely:

To the Committee on Coinage, Weights, and Measures, a clerk.

To the Committee on Education, a clerk, etc.

And resolved, That the pay of the clerks to committees of the House of Representatives, which have been or may be hereafter authorized by the House, who are paid during the session only, shall begin from the time such clerks entered upon the discharge of their duties, which shall be ascertained and evidenced by the certificate of the chairmen of the several committees employing clerks for the session only.

At the same time Mr. Odell presented the following resolution as a substitute for several resolutions referred to the Committee on Accounts:

Resolved, That an assistant clerk be allowed the Committee on Claims, to the Committee on Naval Affairs, the Committee on Interstate and Foreign Commerce, and the Committee on Military Affairs during the sessions of the Fifty-fifth Congress, at a compensation of $6 per day, to be paid out of the contingent fund of the House, and that the pay of such clerks to the above-named committees shall begin from the time such clerks enter upon the discharge of their duties, which shall be ascertained and evidenced by the certificate of the chairmen of the several committees employing clerks for the sessions only.

These authorizations and assignments are, of, course, subject to the approval of the House.

4332. The assignment of committee clerks is within the jurisdiction of the Committee on Accounts.—On December 17, 1869,[2] the House agreed to a resolution that all propositions providing for committee clerks be referred to the Committee on Accounts before being acted on, and this was also the practice in 1877,[3] when the resolutions assigning committee clerks were reported from this committee, and has continued the practice.[4]

4333. Resolutions authorizing the employment of persons by the House are reported by the Committee on Accounts.—The Committee on Accounts reports resolutions authorizing the employment of persons in the service of the House, as is illustrated by reports in 1904[5] authorizing an additional official reporter of debates, an assistant stenographer to committees, and assistants and a janitor in the document room.

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[1] Second session Fifty-fifth Congress, Record, pp. 264, 265.

[2] First session Forty-first Congress, Journal, p. 65; Globe, p. 125.

[3] First session Forty-fifth Congress, Journal, p. 120.

[4] Second session Fifty-eighth Congress, Report No. 13.

[5] Second session Fifty-eighth Congress, Reports Nos. 17, 44, 386.

4334. Bills providing clerks for Members and Senators were reported by the Committee on Accounts.—In 1889[1] the Committee on Accounts reported the bill (H. R. 11867) providing for clerks to Members and Senators. Again in 1890[2] this committee reported the bill (H. R. 309) "to authorize the appointment and prescribe the compensation of clerks to Representatives and Delegates to Congress."

4335. The statutes provide for a temporary Committee on Accounts, to be appointed by the Speaker, to serve through the recess following the expiration of a Congress.—The statutes provide that before the termination of the last session of a Congress the Speaker shall appoint from the Representatives-elect a temporary Committee on Accounts of three Members, which committee shall have the same powers and perform the same duties in reference to payments made from the contingent fund of the House of Representatives as are authorized by law and the rules of the House. This said temporary Committee on Accounts begins to exercise its powers immediately upon the termination of the Congress, and continues to exercise and discharge its duties until after the meeting and organization of the House of Representatives of the next Congress, and until the appointment of the regular Committee on Accounts. And all payments made out of the contingent fund of the House of Representatives upon vouchers approved by the temporary Committee on Accounts shall be deemed, held, and taken as, and are declared to be, conclusive upon all the departments and auditing officers of the Government.[3]

4336. The creation and history of the Committee on Mileage, section 55 of Rule XI.

The rule provides that "the ascertainment of the travel of Members of the House shall be made by the Committee on Mileage and reported to the Sergeant-at-Arms.

Section 55 of Rule XI provides that—

> The ascertaining of the travel of Members of the House shall be made by the Committee on Mileage and reported to the Sergeant-at-Arms.

This committee consists of five Members.

It was established on September 15, 1837,[4] on motion of Mr. William C. Dawson, of Georgia.[5] The present form of the rule dates from the revision of 1880.[6]

4337. The creation and history of the Joint Committee on the Library, section 56 of Rule XI.

The rule gives to the Joint Committee on the Library jurisdiction "touching the Library of Congress, statuary, and pictures."

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[1] Second session Fiftieth Congress, Report No. 3625.

[2] First session Fifty-first Congress, Report No. 24.

[3] Supplement Revised Statutes, vol. 2, pp. 413, 414; 28 Stat. L., p. 768. See also a modifying law of 1902, 32 Stat. L., p. 26.

[4] First session Twenty-fifth Congress, Globe, p. 35; Journal, p. 64.

[5] The Committee on Accounts originally audited the mileage. (Second session Seventeenth Congress, Journal, p. 226; third session Twenty-seventh Congress, Journal, p. 742.)

[6] Second session Forty-sixth Congress, Record, p. 205.

The Joint Committee on the Library is a creature of the laws rather than the rules, the statutes providing for it originally and conferring on it several duties.

The acceptance of works of art for the Capitol and control of the Botanic Garden are vested in the Committee on the Library.

The powers of the Joint Committee on the Library reside with the Senate portion in the recess after the expiration of a Congress.

Section 56 of Rule XI provides for the reference of matters—

> Touching the Library of Congress, statuary, and pictures; to the Joint Committee on the Library.

This committee has five Members of the House.

As early as 1800[1] the two Houses of Congress took joint action concerning the Library, and provided by law[2] for the purchase of books under the direction of a joint committee; and later the law of January 26, 1802,[3] provided for the future supervision of expenditures by a joint committee of three from each House. In accordance with the requirement of the statute the House and Senate, as is shown by action in 1809[4] adopted a resolution by concurrent action authorizing the appointment of a Joint Committee on the Library.

The Joint Committee on the Library was recognized by the joint rule adopted by the House and Senate in 1843.[5] The number of Members was fixed at three from each House, and its duties were "to superintend and direct the expenditure of all moneys appropriated for the Library," etc. In the revision of 1880[6] this committee was recognized in the rules of the House, the joint rules having ceased to exist in 1876. From that date the committee as a joint committee has had no foundation in any joint rule, but has rested on the statute alone, and in its recognition as a joint committee by the rules of the two Houses.

For a time previous to February 14, 1888,[7] the Committee on the Library on the part of the House consisted of five members, although the law prescribed for the number three. On that date the Committee on Rules reported a proposition to reduce the number to three. The committee in their report say that they do not discuss the question whether or not a law may override the constitutional right of the House to make its own rules, but waive it. The House agreed to the recommendation of the committee; and the number was continued at three by the rules of the House until 1902. A proposition was then pending before the Committee on Rules, proposed by Mr. James T. McCleary, of Minnesota,[8] to increase the House membership from three to five, but in view of the law this proposition was abandoned and a law was passed providing that thereafter the joint committee should consist of five Members of the House and five members of the Senate.[9] The Speaker,

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[1] First session Sixth Congress, Journal, pp. 683, 687.

[2] 2 Stat. L., p. 56.

[3] 2 Stat. L., p. 129.

[4] Journals of Eleventh Congress, pp. 71, 78, 142.

[5] First session Twenty-eighth Congress, Globe, pp. 13, 18.

[6] Second session Forty-Sixth Congress, Record, p. 205.

[7] First session Fiftieth Congress, Record, p. 1187.

[8] First session Fifty-seventh Congress, Record, p. 250.

[9] Record pp. 1278, 1312; 32 Statutes at Large, p. 735.

without further action on the part of the House, appointed[1] the additional members. So the present membership of five is fixed by law rather than by rule of the House.

The act of June 10, 1872,[2] provides:

> The Joint Committee on the Library, whenever, in their judgment, it is expedient, are authorized to accept any work of the fine arts, on behalf of Congress, which may be offered, and to assign the same such place in the Capitol as they may deem suitable, and shall have the supervision of all works of art that may be placed in the Capitol.[3]

The appropriation laws have for many years provided, in the words of the act of 1857,[4] that the sums for the Botanical Garden shall "be expended under the Library Committee of Congress;" and the act of March 3, 1873, provides:

> There shall be a superintendent, assistants, and two additional laborers in the Botanical Garden and greenhouses, who shall be under the direction of the Joint Committee on the Library.

By law[5] the Senate portion of the joint committee is endowed with the powers of the committee during the recess between the adjournment of one Congress and the organization of the next.

4338. On February 4, 1902,[6] the House passed the joint resolution of the Senate (S. Res. 49), providing as follows:

> *Resolved, etc.,* That the Joint Committee of Congress upon the Library, authorized by section 82 of the Revised Statutes, shall hereafter consist of five members of the Senate and five Members of the House of Representatives.

This resolution became a law.[7]

4339. Bills authorizing the construction and providing for the care of the Library building and the management of the Library itself have been reported by the House branch of the Joint Committee on the Library.—The House branch of the Joint Committee on the Library reported:

In 1884,[8] the bill (S. 1139) authorizing the construction of a building for the accommodation of the Library of Congress.

In 1890,[9] a resolution providing for ceremonies at the laying of the corner stone of the new Library of Congress.

In 1898,[10] a bill changing name of the Library of Congress.

In 1896,[11] a concurrent resolution authorizing the Joint Committee on the Library to formulate a plan for the reorganization of the Congressional Library.

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[1] Record, p. 3306.

[2] Section 1831 , Revised Statutes.

[3] On January 22, 1901 (second session Fifty-sixth Congress, Record, p. 1287), from the Joint Committee on the Library, a report was made authorizing the acceptance of a picture for the Senate. This report, in the form of a simple resolution, was agreed to by the Senate.

[4] 11 Statutes at Large, p. 219; 33 Statutes at Large, p. 642; The supervision of the Capitol police also extends over the Botanical Garden. (Sec. 1826, Rev. Stat.)

[5] 22 Statutes at Large, p. 592.

[6] First session Fifty-seventh Congress, Record, p. 1312; Journal, p. 305.

[7] 32 Statutes at Large, p. 735.

[8] First session Forty-eighth Congress, Report No. 471.

[9] First session Fifty-first Congress, Report No. 2096.

[10] Second session Fifty-fifth Congress, Report No. 34.

[11] First session Fifty-fourth Congress, Record, p. 4791.

In 1896,[1] on the subject of a catalogue for the law library.

4340. Bills relating to the purchase of books and manuscripts for the Library of Congress have been reported by the House branch of the Joint Committee on the Library.—On December 11, 1851,[2] Mr. Speaker Boyd laid before the House the "Acts of the Greek House of Deputies for the session of 1848–49," which had been forwarded to his address. The documents were ordered referred to the Committee on the Library.

The House branch of the Joint Committee on the Library has reported:

In 1892,[3] on the purchase of Jefferson's Papers, and also the purchase of the libraries of George Bancroft and Hubert Bancroft.

In 1900,[4] a bill relating to the collection and preservation of the historical archives of the various States.

In 1892,[5] in relation to the purchase of historical manuscripts relating to the District of Columbia.

4341. Bills authorizing the erection of monuments on battlefields have been considered by the House branch of the Joint Committee on the Library.—In 1882,[6] 1884,[7] and 1890,[8] the House branch of the Joint Committee on the Library reported bills to authorize the erection of monuments on Revolutionary battlefields; and in 1886,[9] on the subject of monuments at Stony Point and Plattsburg.[10] This committee also reported:

In 1899,[11] the bill (S. 1160) authorizing the erection of a monument to Abraham Lincoln on the battlefield of Gettysburg; and the resolution (S. R. 187) authorizing the erection at Habana, Cuba, of a monument to the sailors and marines who lost their lives on the battle ship *Maine*.

In 1906,[12] bills authorizing the erection of monuments on the battlefields of Kings Mountain, Tippecanoe, Princeton, etc.

4342. Subjects relating to monuments and statues in commemoration of individuals have been considered by the House branch of the Joint Committee on the Library.—On March 25, 1834,[13] the Speaker laid before the House a letter from Lieut. U. P. Levy, U. S. Navy, presenting to the United

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[1] First session Fifty-fourth Congress, Report No. 290.

[2] First session Thirty-second Congress, Journal, p. 84.

[3] First session Fifty-second Congress, Reports Nos. 1231, 1795, 1947.

[4] First session Fifty-sixth Congress, Report No. 1767.

[6] First session Fifty-second Congress, Report No. 1216.

[6] First session Forty-seventh Congress, Report No. 795.

[7] First session Forty-eighth Congress, Reports Nos. 929, 2123.

[8] First session Fifty-first Congress, Report No. 2977.

[9] First session Forty-ninth Congress, Report No. 1632.

[10] In 1882 (first session Forty-seventh Congress, Report No. 1167), however, the Committee on Public Buildings and Grounds reported a bill relating to the erection of a memorial column at Washington's headquarters at Newburg, N. Y., and for a centennial celebration there; and in 1884 (first session Forty-eighth Congress, Report No. 2143) the same committee reported a bill to assist the association in the maintenance and improvement of Washington's headquarters in Morristown, N.J.

[11] Third session Fifty-fifth Congress, Reports Nos. 2087, 2330.

[12] First session Fifty-ninth Congress, Reports Nos. 3162, 3612, 5083.

[13] First session Twenty-third Congress, Journal, pp. 453, 854.

States a bronze statue of Thomas Jefferson. This letter was referred to the Committee on the Library, which, on June 27, reported a joint resolution directing the placing of the statue.

The Committee on the Library has also reported:

In 1884,[1] the bill (H. R. 5410) for the completion of the monument to Mary, the mother of Washington,[2] at Fredricksburg, Va.

In 1882,[3] on the bills for the André and Jefferson monuments.

In 1886[4] the Committee on the Library reported as to a monument for Lincoln and a statue of Zachary Taylor; also in 1902[5] on several similar bills.

4343. The purchase of paintings and portraits has been within the jurisdiction of the Joint Committee on the Library.—The Committee on the Library has reported bills authorizing the purchase of portraits, as in 1890[6] and 1891[7] those of Abraham Lincoln and Winfield Scott, and in 1892[8] that of George H. Thomas, and also reported:

In 1884[9] on the subject of the painting of the Electoral Commission.

In 1891[10] on subject of paintings for Executive Mansion.[11]

4344. Instances of a general jurisdiction of the Committee on the Library as to ornamentation of the capital city.—The Committee on the Library reported in 1896[12] a resolution providing for a commission to establish at or near Washington a ground map of the United States; and in 1884[13] the resolution (H. Res. 45) providing for the removal and relocation of the Bartholdi fountain.

4345. Bills relating to the removal of the remains of distinguished men have been within the jurisdiction of the House branch of the Joint Committee on the Library.—The Committee on the Library in 1890[14] reported a bill providing for the removal of the remains of Joel Barlow to the United States, and also a bill on the subject of the removal of the remains of Gen. Ulysses S. Grant; and in 1905[15] on the removal of the remains of John Paul Jones.

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[1] First session Forty-eighth Congress, Report No. 1512.

[2] The Committee on Public Buildings and Grounds had reported on this monument in 1882. (First session Fortyseventh Congress, Report No. 1659.)

[3] First session Forty-seventh Congress, Reports Nos. 988, 1035.

[4] First session Forty-ninth Congress, Reports Nos. 3053, 3427.

[5] First session Fifty-seventh Congress, Reports Nos. 2462, 2054, 2745, 2416, 2419, 775.

[6] First session Fifty-first Congress, Report No. 2821.

[7] Second session Fifty-first Congress, Report No. 3623.

[8] First session Fifty-second Congress, Report No. 1923.

[9] First session Forty-eighth Congress, Record, p. 3354.

[10] Second session Fifty-first Congress, Report No. 3961.

[11] But on February 11, 1834 (first session Twenty-third Congress, Journal, p. 316), a joint resolution relating to a contract with competent American artists for the execution of four historical paintings to be placed in vacant panels in the Rotundo of the Capitol, was reported from the Committee on Public Buildings and Grounds.

[12] First session Fifty-fourth Congress, Report No. 2184.

[13] First session Forty-eighth Congress, Report No. 1316.

[14] First session Fifty-first Congress, Reports Nos. 431, 2965. Also in 1896 (first session Fifty-fourth Congress, Report No. 1871) on the bill relating to the remains of Joel Barlow.

[15] Third session Fifty-eighth Congress, Report No. 4887.

4346. The general affairs of the Smithsonian Institution, excepting appropriations therefor and the incorporation of similar institutions, are within the jurisdiction of the House branch of the Joint Committee on the Library.—The Committee on the Library reports the joint resolutions [1] providing for the appointment of regents of the Smithsonian Institution; and also reported a bill in 1892 [2] authorizing the institution to loan a portion of its exhibit. This committee has also had within its jurisdiction—

In 1884 [3] the bill (H. R. 6933) to authorize the National Academy of Science to hold trust funds for the promotion of science.

In 1903 [4] and 1905 [5] bills to incorporate the American Academy at Rome.

In 1896 [6] the bill (S. 1922) creating an art commission.

4347. The creation and history of the Joint Committee on Printing, section 57 of Rule XI.

The rules give to the "Joint Committee on Printing on the part of the House" jurisdiction of "all proposed legislation on orders touching printing."

The Joint Committee on Printing, while recognized by the rules, was created by the statutes.

The Joint Committee on Printing has executive duties conferred by statute.

The statutes empower either branch of the Joint Committee on Printing to act in case of the nonexistence of the other.

Section 57 of Rule XI provides that—

> All proposed legislation or orders touching printing shall be referred to the Joint Committee on Printing on the part of the House.

This committee consists of three Members on the part of the House.

As early as March 3, 1830,[7] a committee on printing was proposed, to have supervision of the printing for the House. In 1842 [8] the Committee on Retrenchment reported in favor of a standing committee on printing to oversee the printing of the House, but their proposition was rejected after it had been amended by a clause forbidding the furnishing of boxes, map cases, etc., to Members. On March 16, 1844,[9] abuses in the management of engraving for the use of the House led to the creation of the "Committee on Engraving," which continued for fifteen years. The Joint Committee on Printing, to consist of three Members of the House and

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[1] Second session Fifty-first Congress, Report No. 3863; second session Fifty-second Congress, Report No. 2200; first session Fifty-sixth Congress, Report No. 2109.

[2] Second session Fifty-second Congress, Report No. 2259.

[3] First session Forty-eighth Congress, Report No. 1656.

[4] Second session Fifty-seventh Congress, Report No. 3879.

[5] Third session Fifty-eighth Congress, Report No. 4682.

[6] First session Fifty-fourth Congress, Report No. 2136.

[7] First session Twenty-first Congress, Journal, p. 479.

[8] Second session Twenty-seventh Congress, Journal, pp. 486, 493; Globe, pp. 287, 291.

[9] First session Twenty-eighth Congress, Globe, p. 393. As early as December 8, 1818 (second session Fifteenth Congress, Journal, pp. 72, 73), the House and Senate investigated the subject through a joint committee.

three Members of the Senate, was created by the law approved August 3, 1846,[1] which directed the manner of procuring the printing for the two Houses, and provided that the committee should supervise the work of the contractor.

The law approved August 26, 1852,[2] provided for the election by each House of a Public Printer, and continued the "Joint Committee on the Public Printing" with its membership of three from each House, and power of supervision of the work of printing. The Joint Committee on Printing is therefore created by law instead of by any joint rule of the two Houses, although its existence is recognized in the rule of the House defining its jurisdiction. This form of the rule dates from the revision of 1880.[3] While in fact a joint committee, the House branch acts also as a standing committee of the House, receiving resolutions and bills which are referred to it and reporting them by its own authority, without the concurrent action of the Senate branch.[4]

From time to time various functions have been conferred by law[5] on the Joint Committee on Printing, as, for example, general supervision of the printing; the procuring of paper of suitable standards and approval of contracts therefor, and for other supplies; control of the arrangement, style, bulk, and indexing of the Congressional Record, including the designation of a person to supervise the indexing; direction as to binding extra documents and reports; supervision of the printing of the Congressional Directory; appointment of a person to edit the documents and reports accompanying the annual message of the President; the prescribing of limitations and conditions for printing and illustrating for the Patent Office; supervisory power as to type and form of reports of executive officers; and various other supervisory powers as to printing for the two Houses, as the power to remedy neglect or delay in the execution of the public printing and binding.[6]

The Committee on Printing has the right to report at any time;[7] but on April 16, 1872,[8] in a carefully considered ruling which was affirmed by the House and which has also been embodied in the language of the rules, Mr. Speaker Blaine held that this privilege extended only to printing for the use of the two Houses.

The statutes provide:

> At any time when there is no joint committee of the two Houses of Congress the powers and duties under the law devolving upon the Joint Committee on Printing shall be exercised and performed by the committee then in existence of either House.[9]

4348. The Committee on Printing has exercised an infrequent jurisdiction as to the pay of employees at the Government Printing Office.—On January 31, 1882,[10] the Committee on Printing reported the resolution (H. Res.

[1] 9 Stat. L., p. 114.
[2] 10 Stat. L., pp. 32, 34.
[3] Second session Forty-sixth Congress, Record, p. 205.
[4] See section 4361 of this volume for a decision on this point.
[5] 28 Stat. L., p. 601; 34 Stat. L., p. 825, an act approved March 1, 1907.
[6] Act approved March 1, 1907. (34 Stat. L.)
[7] See section 4621 of this volume.
[8] Second session Forty-second Congress, Journal, p. 697; Globe, pp. 287, 291.
[9] 28 Stat. L., p. 962.
[10] First session Fifty-seventh Congress, Report No. 166.

69) authorizing the Public Printer to pay the employees of the Government Printing Office the pay deducted for the time during the obsequies of the late President Garfield.

On July 28, 1882,[1] the committee reported the bill (H. R. 6844) to fix the pay of printers and bookbinders in the Government Printing Office.

4349. A proposition to make corrections in remarks printed in the Congressional Record was reported by the Committee on Printing.—In 1899[2] the Committee on Printing reported a resolution correcting the remarks of a Member in the Congressional Record by striking out certain portions which had been inserted in violation of a leave to print.

4350. The creation and history of the Joint Committee on Enrolled Bills, section 58 of Rule XI.

The rule confers on the Committee on Enrolled Bills "the enrollment of engrossed bills."

Section 58 of Rule XI provides for the reference of—

the enrollment of engrossed bills; to the Joint Committee on Enrolled Bills.

The House portion of this committee consists of seven Members. The present form of the rule dates from the revision of 1880,[3] but there was before that a joint rule of the two Houses, as follows:

When bills are enrolled they shall be examined by a joint committee of two from the Senate and two from the House of Representatives, appointed as a standing committee for that purpose, who shall carefully compare the enrollment with the engrossed bills as passed in the two Houses, and, correcting any errors that may be discovered in the enrolled bills, make their report forthwith to their respective Houses.

This joint rule was first adopted on July 27, 1789,[4] and readopted November 13, 1794.[5] It provided for a committee consisting of one Senator and two Representatives. On February 1, 1827,[6] the Senate portion was increased to two Senators. This, with other joint rules, lapsed in 1876,[7] and since that date the committees of the House and Senate, while referred to in the rules as joint committees, have had no authorization in any concurrent action of the two Houses, and have acted separately, each supervising the enrolling of bills originating in its own House.

The House Committee on Enrolled Bills has leave to report at any time.[8]

4351. The creation and history of the Committee on the Census, section 59 of Rule XI.

The rule confers on the Committee on the Census jurisdiction of "all proposed legislation concerning the census and the apportionment of Representatives."

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[1] Report No. 1752.

[2] Third session Fifty-fifth Congress, Report No. 1827.

[3] Second session Forty-sixth Congress, Record, p. 205.

[4] First session First Congress, Journal, p. 67.

[5] Second session Third Congress, Journal, p. 230.

[6] Second session Nineteenth Congress, Journal, p. 230.

[7] Forty-third Congress. See section 6782 of Volume V of this work.

[8] See section 4621 of this volume.

Section 59 of Rule XI provides that the Committee on the Census shall have jurisdiction of—

all proposed legislation concerning the census and the apportionment of Representatives.

This standing committee was created on December 2, 1901,[1] to succeed the Select Committee on the Twelfth Census, which had been in existence while the Twelfth Census was a subject of legislation. The creation of this standing committee was in anticipation of the act of March 6, 1902,[2] which created a permanent census office.

4352. The abridgment of the elective franchise with reference to apportionment as well as the collection of general statistics have been considered by the Committee on Census.—The standing Committee on the Census, and its predecessors, the select committees, have reported:

In 1899[3] the bill (H. R. 11982) requiring the Director of the Census to compile and collect certain State laws and statistics for the use of Congress in apportioning Representatives under the Twelfth Census.[4]

In 1901[5] on a resolution on the subject of the abridgment of the elective franchise in relation to apportionment.

At various times on bills providing for the collection of statistics as to births and deaths,[6] marriage and divorce,[7] farm mortgages,[8] irrigation, etc.[9]

4353. The creation and history of the Committee on Industrial Arts and Expositions, section 60 of Rule XI.

The rule gives to the Committee on Industrial Arts and Expositions jurisdiction of "all matters (except those relating to the revenue and appropriations) referring to the Centennial of the Louisiana Purchase and to proposed expositions."

Section 60 of Rule XI provides that the Committee on Industrial Arts and Expositions shall have jurisdiction of—

All matters (excepting those relating to the revenue and appropriations) referring to the Centennial of the Louisiana Purchase and to proposed expositions.

This committee consists of sixteen Members.

It was established as a new standing committee on December 2, 1901, at the time of the adoption of the rules, and its jurisdiction was then defined.

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[1] First session Fifty-seventh Congress, Record, p. 45.

[2] 32 Stat. L., p. 51.

[3] Third session Fifty-fifth Congress, Report No. 2354.

[4] In 1882 (a period not covered by a select committee on the census), the Judiciary Committee reported on the claims of Nebraska for a rectification of her apportionment. (First session Forty-seventh Congress, Report No. 911.)

[5] Second session Fifty-sixth Congress, Report No. 2977.

[6] First session Fifty-seventh Congress, Report No. 1932.

[7] Third session Fifty-eighth Congress, Report No. 4009.

[8] First session Fifty-first Congress, Report No. 1353.

[9] First session Fifty-seventh Congress, Report No. 2106.

4354. The Committee on Industrial Arts and Expositions has taken a jurisdiction as to expositions which was formerly divided among other committees.—The Committee on Industrial Arts and Expositions has, since its creation, reported on bills authorizing Government participation in expositions, as for example:

In 1904 [1] the Lewis and Clark and the Louisiana Purchase expositions.

In 1906 [2] the Jamestown and Tampa expositions.

Before the formation of this committee various committees exercised the jurisdiction. Thus, the Committee on the Library reported the initiatory legislation for the World's Columbian Exposition;[3] Interstate and Foreign Commerce had jurisdiction of the Centennial Exposition at New Orleans,[4] and in 1883 [5] the Committee on Agriculture reported the joint resolution (H. Res. 311) relating to participation in the Hamburg International Exhibition of Domestic Animals.

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[1] Second session Fifty-eighth Congress, Reports Nos. 5, 893, 1965, 2585.

[2] First session Fifty-ninth Congress, Reports Nos. 3389, 4416.

[3] Second session Forty-ninth Congress, Journal, p. 325; Record, p. 832; Report No. 3822.

[4] First session Forty-eighth Congress, Journal, p. 256; Record, p. 319.

[6] Second session Forty-seventh Congress, Report No. 1843.

Chapter CII.

GENERAL PRINCIPLES OF JURISDICTION OF COMMITTEES.

1. **Reference required to give jurisdiction. Sections 4355–4361.**[1]
2. **House may refer bill to any committee. Sections 4362–4364.**
3. **Erroneous reference of a public bill. Sections 4365–4372.**
4. **Senate amendments do not change jurisdiction of House bills. Sections 4373, 4374.**
5. **General principles of reference. Sections 4375, 4376.**[2]
6. **Correction of errors in reference. Sections 4377–4379.**
7. **Rule for reference of bills relating to claims. Sections 4380, 4381.**
8. **Effect of erroneous reference of private bills. Sections 4382–4392.**

4355. It has generally been held that a committee may not report a bill whereof the subject-matter has not been referred to it by the House.—On February 21, 1850,[3] Mr. Andrew Johnson, of Tennessee, from the Committee on Public Expenditures, reported a bill, which was read for information by its title, as follows:

A bill to provide a homestead of one hundred and sixty acres of the public domain for every man who is the head of a family and a citizen of the United States, etc.

Mr. Samuel F. Vinton, of Ohio, objected to the reception of the bill, on the ground that the subject-matter of the bill had not been referred to the committee which reported it to the House, either by resolution or by the rules or otherwise.

Debate arising, Mr. Alexander H. Stephens, of Georgia, read the rule:

89. It shall be the duty of the Committee on Public Expenditures to examine into the state of the several public departments, and particularly into laws making appropriations of money, and to report whether the moneys have been disbursed conformably with such laws; and also to report from time to time such provisions and arrangements as may be necessary to add to the economy of the departments and the accountability of their officers.[4]

Mr. Stephens urged that the principle involved was one of great parliamentary importance, whether any one of the standing committees of the House had power to originate and report bills upon any subject that had not been either generally or specially referred to it.

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[1] Certain papers only being referred in course of an examination, the committee did not take into account other pertinent papers. Section 559 of Vol. I.

[2] Acts of Executive Departments in submitting estimates do not control reference. Sections 4048, 4184 of this volume.

[3] First session Thirty-first Congress, Journal, p. 590; Globe, p. 408.

[4] This committee no longer exists, and the rules do not generally prescribe duties in this way.

The Speaker[1] decided that the bill was not in order from the Committee on Public Expenditures, not being on a subject referred to them by the rules or the action of the House.

Mr. Johnson having appealed, the decision of the Chair was sustained.

4356. On November 6, 1877,[2] Mr. Washington C. Whitthorne, of Tennessee, from the Committee on Naval Affairs, reported a resolution instructing that committee to make a thorough investigation into matters of deficiency, with power to send for persons and papers, etc.

Mr. William P. Frye, of Maine, made the point of order that the House not having referred any measure, bill, petition, or resolution to the Committee on Naval Affairs for an investigation as proposed by the foregoing resolution, it was not competent for the committee to report the same at this time.

The Speaker pro tempore[3] sustained the point of order, on the ground that the resolution was not a "measure" within the meaning of Rule 89.[4]

4357. On April 21, 1884,[5] Mr. Samuel S. Cox, of New York, under instructions from the committee to ascertain the results of the Tenth Census, moved to suspend the rules, so as to enable him to report from that committee and the House to pass a bill of the following title, viz: "An act supplementary to 'An act to provide for the publication of the Tenth Census.'"

Mr. Alfred M. Scales, of North Carolina, made the point of order that the motion submitted by Mr. Cox was not in order, for the reason that the subject-matter of the bill had not been referred to the committee, and also for the further reason that that subject-matter belonged under the rules to the Committee on Printing.

After debate on the point of order, the Speaker[6] sustained the same, on the ground that a committee had no right to submit a report to the House unless it related to a subject over which it had jurisdiction by the rules of the House, or by a reference of the subject to it by order of the House.[7]

4358. On August 18, 1890,[8] during the call of committees for motions to suspend the rules, the Committee on Irrigation of Arid Lands was called.

Mr. William Vandever, of California, on behalf of that committee, moved that the rules be suspended so as to enable him to report and the House to pass a certain concurrent resolution authorizing the Secretary of Agriculture to continue an investigation into the proper location for artesian wells, and for the ascertainment of the existence of other subterranean waters that might be utilized for irrigation purposes.

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[1] Howell Cobb, of Georgia, Speaker.

[2] First session Forty-fifth Congress, Journal, p. 159; Record, p. 256.

[3] Milton Sayler, of Ohio, Speaker pro tempore.

[4] Rule 89 at that time provided: "It shall be the duty of the Committee on Naval Affairs to take into consideration all matters which concern the naval establishment, and which shall be referred to them by the House, and to report their opinion thereupon; and also to report, from time to time, such measures as may contribute to economy and accountability in the said establishment." The present rule relating to the jurisdiction of this committee is somewhat different. (See sec. 4189 of this volume.)

[5] First session Forty-eighth Congress, Journal, p. 1108.

[6] John G. Carlisle, of Kentucky, Speaker.

[7] The Record (pp. 3202, 3203) shows that the Speaker considered that the question turned on whether or not the subject had been referred to the committee, and does not indicate that the Speaker held it in order for a committee to report without such reference, even on a subject of which the rules gave it jurisdiction. In this case the jurisdiction under the rules belonged to the Committee on Printing.

[8] First session Fifty-first Congress, Journal, p. 967; Record, p. 8772.

The Speaker having suggested the question of the right of the committee to report the resolution, the subject-matter not having been referred to the committee, after debate,

Mr. James B. Reilly, of Pennsylvania, made the point of order that the resolution was not before the House, not having been referred to the committee.

The Speaker[1] sustained the point of order.[2]

4359. On September 20, 1893,[3] Mr. Thomas C. Catchings, of Mississippi, submitted a report from the Committee on Rules recommending the adoption by the House of the following resolution:

Resolved, That immediately upon the adoption of this order the Speaker shall, in compliance with clause 2 of Rule XXIV, call the committees for reports; and reports then made shall be by the Speaker referred to the appropriate calendars; and no motion shall be entertained or be in order until this order shall have been fully executed.

Mr. Julius C. Burrows, of Michigan, objected to the reception of the report upon the ground that as appeared from the Journal and the Record no such resolution, or similar resolution, had been referred to the Committee on Rules, and that the committee therefore had no jurisdiction to report the proposed resolution, and that pursuant to clause 51 of Rule XI[4] all proposed action touching the rules and order of business must in the first instance be referred to the Committee on Rules.

The Speaker[5] overruled the objection, holding that under the provisions of clause 57 of Rule XI[6] the Committee on Rules had authority to report at any time on the rules and order of business of the House, notwithstanding the proposed rule or order had not been specially referred to that committee.

Mr. Burrows appealed from the decision of the Chair. Mr. Fitch moved to lay the appeal on the table, and the motion was decided in the affirmative—173 yeas to 55 nays.

4360. On January 5, 1894,[7] Mr. Thomas C. Catchings, of Mississippi, from the Committee on Rules, reported a resolution providing for the consideration of the bill (H. R. 4864) to reduce taxation, to provide revenue for the Government, and for other purposes.

Mr. Julius C. Burrows, of Michigan, made the point of order that the resolution reported by Mr. Catchings not having been referred to the Committee on Rules, that committee had no jurisdiction to report the same to the House.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] On December 4, 1877, and February 26, 1878 (second session Forty-fifth Congress, Journal, p. 527; Record, pp. 18, 19, 1342), Mr. Speaker Randall had ruled that a committee had no authority to report a resolution or bill the subject-matter whereof had not been referred to it. There was, however, a ruling of August 5, 1846 (first session Twenty-ninth Congress, Journal p. 1234; Globe, p. 1187), wherein Speaker pro tempore George W. Hopkins, of Virginia, permitted the Committee on Ways and Means to report a matter which had not been referred to it.

[3] First session Fifty-third Congress, Journal, pp. 96, 97, 98.

[4] Now section 53 of Rule XI. See section 4321 of this volume.

[5] Charles F. Crisp, of Georgia, Speaker.

[6] Now section 61 of Rule XI. See section 4621 of this volume.

[7] Second session Fifty-third Congress, Journal, p. 61; Record, p. 502.

The Speaker[1] overruled the point of order.

4361. A petition properly referred to a committee[2] gives jurisdiction for reporting a bill.—On July 22, 1852,[3] Mr. Richard H. Stanton, of Kentucky, from the Committee on Printing, to whom was referred the petition of Thomas Ritchie, made a report thereon, accompanied by a joint resolution, providing a settlement with Ritchie for the printing of the Thirty-first Congress.

Mr. Edward Stanly, of North Carolina, made the point of order that it was not in order for the gentleman (Mr. Stanton) to report the joint resolution from the committee, on the ground that it was not within the range of subjects contemplated for their action by the law of Congress establishing that committee.

The Speaker[4] decided that, inasmuch as the resolution was based upon a petition regularly referred to that committee, it was competent for the committee to report thereon by bill or otherwise.

Mr. Stanly appealing, the appeal was laid on the table by a vote of 81 to 65.

The record of debates[5] shows that Mr. Stanly, in making his point of order, declared that the matter was a private claim, and therefore not properly within the jurisdiction of the committee.

Mr. Solomon G. Haven, of New York, made the point that unless the resolution was reported from both branches of the Committee on Printing, which was a joint committee under the twentieth joint rule, it could not be received. Mr. Stanton admitted that the report was only from the House part of the committee.

The Speaker, in ruling on the point of order made by Mr. Stanly, quoted a precedent of February 12, 1851,[6] wherein the Speaker ruled that, as the twenty-first joint rule explicitly provided that "it shall be in order for the Committee on Printing to report at any time," it placed no restriction as to the subject-matter of the report, only limiting the committee to such matters as were legitimately before them. This latter decision also referred to a decision in the Thirtieth Congress.

On the second point the Speaker thought that the law governing the committee contemplated separate action by the two branches in certain cases.

4362. The House itself may refer a bill or resolution to any committee, and jurisdiction is thereby conferred.—On December 21, 1889,[7] 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.

The House having proceeded to their consideration, Mr. William C. Oates, of Alabama, raised the question of jurisdiction.

The Speaker[8] held that the House having referred the joint resolution to the Committee on Accounts in the regular course of business, jurisdiction was thereby conferred.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] See section 3364 of this volume for rule for proper reference of petitions.

[3] First session Thirty-second Congress, Journal, p. 935.

[4] Linn Boyd, of Kentucky, Speaker.

[5] First session Thirty-second Congress, Congressional Globe, p. 1884.

[6] Second session Thirty-first Congress, Journal, p. 267.

[7] First session Fifty-first Congress, Journal, p. 87; Record, p. 376.

[8] Thomas B. Reed, of Maine, Speaker.

4363. On December 4,1876,[1] Mr. William M. Springer, of Illinois, offered this resolution:

Resolved, That the credentials of James B. Belford be referred to the Judiciary Committee, and that said committee be instructed to inquire and report at as early a day as possible whether Colorado is a State in the Union, and that until such report is received no person claiming to be a Representative from Colorado be sworn in as a Member of this House.

Mr. Omar D. Conger, of Michigan, made the point of order that the proposed reference of the credentials was irregular, and that under the rules the same should be referred to the Committee on Elections.

The Speaker[2] overruled the point of order, on the ground that it was competent for the House to refer any subject to any committee that it might choose.[3]

4364. On April 28, 1900,[4] the House was considering the bill (S. 2799) to carry into effect the stipulations of Article VII of the treaty between the United States and Spain, etc., reported from the Committee on War Claims and under consideration in the House as in Committee of the Whole.

Mr. George W. Ray, of New York, moved that the bill be referred to the Committee on the Judiciary with certain instructions.

Mr. Thaddeus M. Mahon, of Pennsylvania, made the point of order that this could not be done since the jurisdiction of the bill by the rules belonged to the Committee on War Claims.

The Speaker pro tempore[5] overruled the point of order, holding that the House might refer a bill to any committee.

4365. According to the later practice of the House the erroneous reference of a public bill, if it remain uncorrected, in effect gives jurisdiction to the committee receiving it.—On October 19, 1893,[6] Mr. Joseph Wheeler, of Alabama, on behalf of the Committee on the Territories, presented for consideration the bill (H. R. 3606) to require railroad companies operating railroads in the Territories over a right of way granted by the Government to establish stations and depots at all town sites on the lines of said roads established by the Interior Department.

Mr. W. A. Stone, of Pennsylvania, made the point of order that the bill, not being within the jurisdiction of the Committee on the Territories, had been erroneously reported and was improperly on the Calendar.

The Speaker[7] overruled the point, holding as follows:

The reference of a public bill, as described by the rules, is different from that prescribed in regard to private bills. An erroneous reference of a public bill may be corrected any morning immediately after the reading of the Journal, either by unanimous consent or on motion of a Member representing the committee to which the bill has been erroneously referred or on motion of the committee claiming

[1] Second session Forty-fourth Congress, Journal, p. 13; Record, p. 10.

[2] Samuel J. Randall, of Pennsylvania, Speaker.

[3] Bills being now introduced by filing them at the Clerk's desk, the House does not often have the opportunity to express its wish as to reference, except by motion to change reference. (See sec. 3364 of this volume.)

[4] First session Fifty-sixth Congress, Record, p. 4823.

[5] Charles H. Grosvenor, of Ohio, Speaker pro tempore.

[6] First session Fifty-third Congress, Journal, p. 147.

[7] Charles F. Crisp, of Georgia, Speaker.

jurisdiction. And where a public bill has been suffered, even erroneously, to be considered by a committee and that committee has reported it back to the House, there is no way of raising the question of jurisdiction if the bill is a public bill, the case is different in regard to private bills. This bill is practically an amendment of a charter granted to a railroad company to pass through lands in the Territories, which original bill was reported by the Committee on the Territories.[2]

4366. On January 12, 1897,[3] during the call of committees in the morning hour, Mr. Charles S. Hartman, of Montana, called up, when the Committee on Mines and Mining was called, the bill (H. R. 6780) to amend section 2335 of the Revised Statutes.

Mr. John F. Lacey, of Iowa, reserved the point of order that the bill should have been referred to the Committee on the Public Lands and not to the Committee on Mines and Mining.

The Speaker[4] said:

The rules prescribe that if by any error or misunderstanding a bill has been sent to the wrong committee it is the duty of the committee who desire jurisdiction to present the matter to the House for a change; and no question having been raised, and the committee having reported, the Chair thinks it is too late to raise the question.

4367. On April 7, 1852,[5] Mr. James L. Orr, of South Carolina, from the Committee on Public Lands, to whom was referred the memorial of the board of internal improvements of the State of Florida, reported a bill granting the right of way and making a donation of the public lands to the State of Florida for the benefit of the Atlantic, Gulf and Central railroads, and for other purposes.

Mr. George S. Houston, of Alabama, made the point of order that, inasmuch as the bill contained a provision to exempt railroad iron from duty, which was a subject not within the jurisdiction of the Committee on Public Lands, it was not in order as a report from that committee.

The Speaker[6] said:

The Committee on Public Lands have reported a bill which provides, first, for granting alternate sections of land to aid in the construction of a railroad, and then provides for abolishing altogether duties upon all railroad iron. The Chair does not understand that any matter connected with duties upon railroad iron has ever been referred to the Committee on Public Lands at all. This subject has never been referred to them in the first place, and if referred, then the Chair must decide them very improperly referred to that committee, it being a matter touching the revenue, and therefore belonging exclusively, in the opinion of the Chair, to the Committee on Ways and Means. The Chair therefore decides that the report made from the Committee on Public Lands is not in order.

Mr. Thomas L. Clingman, of North Carolina, having appealed, the appeal was laid on the table by a vote of 125 yeas, 39 nays.

4368. On May 10, 1879,[7] Mr. John T. Harris, of Virginia, from the Committee on the Revision of the Laws, reported the bill (H. R. 1493) defining the duties of reporter of the Supreme Court of the United States.

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[1] See section 3364 of this volume.

[2] Speaker pro tempore S. S. Cox made a similar ruling on January 31, 1888. (First session Fiftieth Congress, Journal, pp. 617, 618; Record, p. 844.)

[3] Second session Fifty-fourth Congress, Record, pp. 725, 726.

[4] Thomas B. Reed, of Maine, Speaker.

[5] First session Thirty-second Congress, Journal, p. 565; Globe, p. 1003.

[6] Linn Boyd, of Kentucky, Speaker.

[7] First session Forty-sixth Congress, Record, pp. 1222, 1223.

Mr. James A. Garfield, of Ohio, made the point of order that the bill was not within the jurisdiction of the committee reporting it.

The Speaker[1] said:

The Chair is of the opinion that the bill having been referred to the committee by the House and acted on and reported by that committee, is not subject to the point of order.

4369. On January 29, 1906,[2] Mr. John J. Jenkins, of Wisconsin, on the call of committees when the Committee on the Judiciary was called, presented the bill (H. R. 2) requiring all corporations engaged in interstate commerce to make returns, and for other purposes.

Mr. William P. Hepburn, of Iowa, raised the question that the jurisdiction of the bill belonged to the Committee on Interstate and Foreign Commerce and not to the Committee on the Judiciary.

The Speaker[3] held:

The whole matter has been settled by former precedents in the House. * * *

The Chair is perfectly clear that * * * the question can not be raised in this way at this time.

4370. On January 15, 1900,[4] the bill (H. R. 5042) to provide for improvements in the tax departments of the District of Columbia, which had been reported from the Committee on the District of Columbia, was called up for consideration, when Mr. William W. Grout, of Vermont, raised the question that the bill should have been referred to the Committee on Appropriations, as it carried an appropriation.

After debate the Speaker[5] said:

The point of order made by the gentleman from Vermont, as the Chair understands, is that this committee—the Committee on the District of Columbia—has no jurisdiction over this bill because it contains an appropriation. It has been said by Speaker Crisp, Speaker Reed, and others that an erroneous reference of a public bill, remaining uncorrected, in effect gives jurisdiction to the committee. The House has had its day in court to have the erroneous reference corrected and has failed to do so. The Chair is of the opinion, therefore, that this matter is properly within the control of this committee, and that it is within the power of the House, in considering the bill, to determine whether to leave the appropriation in the bill or to strike the appropriation out of the bill and leave only the matters of general legislation.

4371. On February 2, 1901,[6] Mr. William S. Knox, of Massachusetts, asked for the immediate consideration of the bill (H. R. 7091) relating to the coinage of Hawaii.

Mr. James D. Richardson, of Tennessee, made the point of order that the bill had been reported from the Committee on Territories, whereas its jurisdiction belonged to the Committee on Coinage, Weights, and Measures.

After debate the Speaker[5] held:

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[1] Samuel J. Randall, of Pennsylvania, Speaker.

[2] First session Fifty-ninth Congress, Record, pp. 1721, 1722.

[3] Joseph G. Cannon, of Illinois, Speaker.

[4] First session Fifty-sixth Congress, Record, p. 832.

[5] David B. Henderson, of Iowa, Speaker.

[6] Second session Fifty-sixth Congress, Journal, p. 186; Record, pp. 1849, 1850.

Rule XXII, clause 2, discusses the reference of private bills, done by the Members themselves and not by the Speaker. Clause 3 of the same rule refers to public bills. The Chair will have the Clerk read clause 3 of Rule XXII:

"3. All other bills, memorials, and resolutions may, in like manner, be delivered, indorsed with the names of Members introducing them, to the Speaker, to be by him referred, and the titles and references thereof and of all bills, resolutions, and documents referred under the rules shall be entered on the Journal and printed in the Record of the next day, and correction in case of error of reference may be made by the House without debate in accordance with Rule XI on any day immediately after the reading of the Journal, by unanimous consent, or on motion of a committee claiming jurisdiction, or on the report of the committee to which the bill has been erroneously referred."

Now, the purpose of that rule is this: If a reference has been erroneously made, it is within the power of the House, without debate, to avoid the consumption of time, for on motion of the committee, as designated, a change of reference can be made by the House; the purpose of that rule being that a reference can not be made and the committee to which it is referred be permitted to spend days, weeks, and months in its consideration, and when brought into the House for its consideration a point of order be successfully made that it was not properly referred. That should have engaged the attention of those interested on the day following the reference, under the rule which has just been reported.

This matter, however, has been decided by Speaker Crisp, and the Clerk will read paragraph 667 of the Parliamentary Precedents of the House of Representatives of the United States.[1]

The Chair, without discussing now the original question of reference, for, as stated by the gentleman from Massachusetts, a reference made in the regular way can not be regarded in any way as a binding precedent. The Chair is constrained to hold that this point of order comes too late, the bill is now properly before the House, subject, of course, to an objection to its consideration by unanimous consent.

4372. A public bill having been reported by a committee and being under consideration in Committee of the Whole, it was held that the question of jurisdiction might not then be considered.

A bill may not be divided among two or more committees although it may contain matters properly within the jurisdiction of several committees.

On March 8, 1890,[2] the House was in Committee of the Whole House on the state of the Union, considering the bill (H. R. 7156) to provide for the increase of the limit of cost of site and public building at Newark, N.J. The bill, after authorizing the purchase of land and construction of the building at an increased limit of cost, provided:

And that the sum of $300,000, in addition to the sum of $350,000 appropriated by act of Congress approved March 1, 1888, be, and the same is hereby, appropriated, out of any moneys in the United States Treasury not otherwise appropriated.

Mr. William S. Holman, of Indiana, made a point of order that the bill made an appropriation of money.

After debate the Chairman[3] ruled:

The bill for which the pending bill is a substitute is the bill (H. R. 565) introduced by the gentleman from New Jersey [Mr. Lehlbach] on the 18th of December, 1889, prior to the adoption of the new rules. The indorsement upon the bill is: "Read twice, referred to the Committee on Public Buildings and Grounds, and ordered to be printed." The Committee on Public Buildings and Grounds took jurisdiction of the bill. The point of order is made as against that clause of the bill which provides for an appropriation, because of the provision in clause 21 of Rule XI, which is:

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[1] See section 4365.

[2] First session Fifty-first Congress, Record, pp. 2041, 2046.

[3] Lewis E. Payson, of Illinois, Chairman.

"All proposed legislation shall be referred to the committees named in the preceding rule, as follows, viz: Subjects relating * * * to the public buildings and occupied or improved grounds of the United States, other than appropriations therefor; to the Committee on Public Buildings and Grounds."

It is claimed that, because of the prohibition in the rule as to the reference to the Committee on Public Buildings and Grounds of matters involving appropriations for public buildings or for the occupied grounds in the United States, the point of order can be made against that provision in this bill which provides for an appropriation. It must be remembered that the House is now acting in Committee of the Whole on the state of the Union, considering a bill which has been reported by the committee, to which a bill substantially like this one has been referred. It has been frequently decided—and the Chair refers to the one decision covering the question—that a point of order as to the reference of a bill can not be made for the first time in Committee of the Whole. On the 10th day of May, 1879—the Chair reads now from a collection of decisions made by Mr. Speaker Randall—

"Mr. John T. Harris, from the Committee on the Revision of the Laws, to which was referred the bill (H. R. 1493) defining the duties of reporter of the Supreme Court of the United States, fixing his compensation, and providing for the publishing and distribution of said reports, reported the same without amendment.

"Mr. Garfield made the point of order that the bill was not in order to be reported from the Committee on the Revision of the Laws, on the ground that the subject-matter of the bill was, under the rule, committed to another committee.

"The Speaker overruled the point of order on the ground that it was too late to raise the question of the proper reference of a bill when the same was reported for consideration, the question of reference being in order only after its second reading, when, under the rule (Rule CXVIII), it was read for commitment or engrossment, which question of reference was not then raised."

It must be remembered that the fact is, as the Chair thinks, that the reference of this bill on the 18th day of December last was the act of the House of Representatives, and was not the individual act of the Speaker, nor the act of the Speaker in his position as Speaker alone. The bill, in legal contemplation, was read a first and second time, and then referred, as was assumed, under the rule. The question has been presented in the arguments whether or no that was the proper reference. Now, it is conceded by gentlemen who are in favor of sustaining the point of order that the subject-matter of the bill, which is the erection of a public building, was properly referred to the Committee on Public Buildings and Grounds, and could have been properly referred to no other committee.

It is suggested in argument that as the bill embraced two propositions, one of which might properly go to the Committee on Public Buildings and Grounds and the other involving an appropriation, which, as suggested by the gentleman from Kentucky [Mr. Breckinridge], ought properly to go to the Committee on Appropriations—in this view it has been suggested that some action should be had by which that kind of division should be made. But it has been repeatedly held that a bill can not be so divided. The Chair reads from the Manual and Digest:

"It has been uniformly held that a bill can not be divided among two or more committees, although it contains subject-matter which legitimately belongs under Rule XI (the rule under consideration) to several committees; but must be referred to one committee as an entirety."

Therefore, under the decisions and under this opinion in the digest collating the decisions, the reference of this bill to the Committee on Public Buildings and Grounds was, in the judgment of the Chair, a proper reference. The question is one of jurisdiction. The Committee on Public Buildings and Grounds has, by the formal action of the House itself—not by a formal vote of the House, but by action which, in the judgment of the Chair, was tantamount or equivalent to a vote of the House—received jurisdiction of this bill.

The bill being before that committee and involving a matter upon which the House has power to act, namely, to provide for payment for the erection of a public building at the same time that it provides for its erection, the committee alone had power to act upon the bill, because it is conceded, as the Chair understands, by all gentlemen who have taken part in the debate that the Appropriations Committee would not have jurisdiction of this appropriation until after the erection of the public building had been authorized,[1] when the Committee on Appropriations would have the power, under the rule, to

[1] The Committee on Appropriations might not include an item in a general appropriation bill until it should have been authorized; but would it not have jurisdiction to report a special bill?

make the appropriation in pursuance of existing law and to include the amount in the sundry civil appropriation bill.

Clearly, the proposition for the appropriation for this building must go to some committee, and the Chair is of opinion that, under the rules of the House as they stand now and under the rules of the House of Representatives in the last Congress, there is no committee of the House to which a proposition for the appropriation of a sum of public money to pay for the erection of a public building might properly be referred under the rule in the first instance. None has been suggested in the argument, so far as the Chair knows. The Chair has made inquiry of two or three gentlemen having the floor as to what committee, in their opinion, this bill could have been referred to except the Committee on Public Buildings and Grounds.

Clearly it could not go to the Committee on Appropriations, because in general appropriation bills nothing is allowable except appropriations for expenses incurred in pursuance of existing law. As the bill had to go somewhere; as it did go to the Committee on Public Buildings and Grounds; as that committee has reported the bill, and it has been committed by the House to the Committee of the Whole on the state of the Union, and is now under consideration in Committee of the Whole, the Chair is of opinion that it is properly cognizable here and that the point of order should be overruled.

In connection with this question the Chair desires to say that a matter of the correction of a reference or taking any advantage of any improper reference is purely a matter for the House itself. Under the existing rules, if this bill had been referred by the Speaker without the knowledge of the House—furtively, as suggested—perhaps by the influence of some Member who desired the bill to go to a committee that had not jurisdiction—if a bill under those circumstances should be referred to a committee not having jurisdiction, it would be because the rules gave the Speaker that power. But the rules also provide that any improper reference of a bill may be corrected in any one of three ways: Either by unanimous consent, or upon request of the committee claiming jurisdiction, or upon the report of the committee to which the bill has been referred.

Because this bill was referred by the House to this committee—and not improperly, as the Chair thinks, for the reasons which have been stated—and because it is under consideration in Committee of the Whole, the Chair thinks this point of order must be overruled.

4373. A House bill relating to the revenue, being returned with a Senate amendment in the nature of a substitute relating to coinage, was in the House referred to the committee having jurisdiction of the subject of the original bill.—On December 27, 1895,[1] the bill (H. R. 2904) "to maintain and protect the coin-redemption fund, and to authorize the issue of certificates of indebtedness to meet temporary deficiencies of revenue," was reported from the Committee on Ways and Means. In the Senate it was voted to strike out all after the enacting clause and insert a measure providing for the free coinage of silver.[2] On February 3, 1896,[3] the bill and amendment, having been returned from the Senate, were referred by the Speaker, under the rule,[4] to the Committee on Ways and Means, although the subject of the substitute would belong to the Committee on Coinage, Weights, and Measures.

4374. A House bill relating to revenue in Porto Rico and reported from the Ways and Means Committee, being returned from the Senate with an amendment relating to the civil government of the island, was referred to the Ways and Means Committee, although the subject of the amendment was within the jurisdiction of the Committee on Insular Affairs.—On April 4, 1900.[5] the bill (11. R. 8245) "an act temporarily to provide

[1] First session Fifty-fourth Congress, Record, p. 343.

[2] First session Fifty-fourth Congress, Record, pp. 484, 1216.

[3] First session Fifty-fourth Congress, Record, p. 1260.

[4] See section 4020 of this volume.

[5] First session Fifty-sixth Congress, Record, p. 3781.

revenues for the relief of the island of Porto Rico, and for other purposes," with an amendment of the Senate providing a system of territorial government for the island, was on the Speaker's table.

The bill had originally been reported from the Committee on Ways and Means of the House, and to this committee the bill with the Senate amendment was again referred, although the subject of the amendment was within the jurisdiction of the Committee on Insular Affairs.[1]

4375. The House may by vote, refer a bill to any committee, without regard to the rules of jurisdiction.

To a bill to place an officer on the retired list of the Army, an amendment proposing to give him a pension was held not germane.

On February 29, 1884,[2] the House having under consideration the bill to retire General Pleasonton, and the previous question having been moved on the passage of the bill, Mr. Thomas M. Browne, of Indiana, moved that the bill be recommitted to the Committee on Military Affairs with instructions to report the same with an amendment to put General Pleasonton's name on the pension roll at $100 per month.

Mr. Thomas M. Bayne, of Pennsylvania, made the point of order that it was not in order to refer a bill to a committee which did not have jurisdiction of the subject; and also the further point of order that the proposition was not germane to the subject-matter of the bill.

The Speaker[3] overruled the first point of order on the ground that it was competent for the House to refer a bill to any committee it pleased,[4] and sustained the second point of order on the ground that the pending bill was proposed to restore General Pleasonton to the Army of the United States and give him rank and pay as a retired officer, while the proposition submitted by Mr. Browne merely gave him a pension while he still remained out of the military service of the Government.

4376. A joint resolution may not be divided for reference.—On January 11, 1882,[5] the House was considering the reference of a joint resolution (H. Res. 91) to declare certain lands heretofore granted to railroad companies forfeited to the United States, etc.

A proposition being made to refer portions of the resolution to different committees, the Speaker[6] said:

> The Chair doubts the right of the House to divide a joint resolution for reference.

Thereupon the entire resolution was referred to the Committee on Public Lands.

4377. The rule provides that errors in reference of public bills may be corrected after the reading of the Journal in certain specified ways.—Section 3 of Rule XVI[7] provides as follows for change of reference of public bills:

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[1] See Rule XI, section 18.

[2] First session Forty-eighth Congress, Journal, p. 703.

[3] John G. Carlisle, of Kentucky, Speaker.

[4] In the first instance bills are not introduced now as then. (See section 3364 of this volume.)

[5] First session Forty-seventh Congress, Record, pp. 365, 366.

[6] J. Warren Keifer, of Ohio, Speaker.

[7] For full form and history of this rule see section 3364 of this volume.

* * * correction in case of error of reference may be made by the House without debate in accordance with Rule XI on any day immediately after the reading of the Journal, by unanimous consent, or on motion of a committee claiming jurisdiction, or on the report of the committee to which the bill has been erroneously referred.

4378. Motions to change the reference of public bills are not open to debate or subject to amendment.—On February 26, 1894,[1] Mr. William H. Hatch, of Missouri, on behalf of the Committee on Agriculture—which committee claimed jurisdiction of the bill (H. R. 5653) regulating the sale of certain agricultural products, defining options and futures, and imposing taxes thereon—moved to discharge the Committee on Ways and Means from the consideration of the bill, and that the same be referred to the Committee on Agriculture.

The Speaker[2] held that the motion was not subject to debate or amendment.[3]

4379. Errors in the reference of petitions and private bills are corrected at the Clerk's table, without action by the House, at the suggestion of the committee having possession.—Section 2 of Rule XXII[4] provides:

* * * petitions and private bills which have been inappropriately referred may, by the direction of the committee having possession of the same, be properly referred in the manner originally presented;[5] and an erroneous reference of a petition or private bill under this clause shall not confer jurisdiction upon the committee to consider or report the same.

4380. A bill for the payment or adjudication of any private claim against the Government must be referred to one of these committees: Claims, War Claims, Private Land Claims, Pensions, Invalid Pensions, Accounts.

Present form and history of section 3 of Rule XXI.

Section 3 of Rule XXI provides:

No bill for the payment or adjudication of any private claim against the Government shall be referred, except by unanimous consent, to any other than the following-named committees, viz: To the Committee on Invalid Pensions, to the Committee on Pensions, to the Committee on Claims, to the Committee on War Claims, to the Committee on Private Land Claims, and to the Committee on Accounts.

This rule dates from 1885, when it was adopted to prevent private claim bills from overburdening committees charged more properly with the examination of public questions.[6]

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[1] Second session Fifty-third Congress, Journal, p. 202; Record, p. 2423.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] Section 3 of Rule XXII then and now provided that this motion should not be debatable. (See section 3364 of this volume.)

[4] For full form and history of this rule see section 3364 of this volume.

[5] That is, the chairman of the committee having the bill indorses on it the fact that the jurisdiction belongs to another specified committee and delivers it to the Clerk. (See sec. 1 of Rule XXII; sec. 3364 of this volume.) Correction of error in case of public bills is made in accordance with section 3 of Rule XXII. (See section 3364 of this volume.)

[6] First session Forty-ninth Congress, Record, p. 170. Prior to the adoption of this rule, on July 14, 1852 (First session Thirty-second Congress, Journal, p. 897; Globe, p. 1778), Mr. Willis A. Gorman, of Indiana, from the Committee on Printing, reported a bill (H. R. 299) "to provide for executing the public printing and establishing the prices thereof, and for other purposes."

Mr. Edward Stanly, of North Carolina, made the point of order that under the joint rule defining the duties of the Committee on Printing it was not competent for that committee to report a bill of this character, and especially when that committee had not been regularly called for reports. The joint rule

4381. A bill to provide a commission to settle claims against the Government does not fall within the rule requiring private claims to be referred only to certain specified committees.—On July 18, 1894,[1] Mr. Joseph H. Outhwaite, of Ohio, presented for consideration the bill (H. R. 5939) to appoint a commission to report and determine upon certain damages done to citizens of Lauderdale County, Ala., by the building of the Muscle Shoals Canal.

Mr. Joseph D. Sayers, of Texas, made the point of order that the bill having been erroneously referred to the Committee on Military Affairs that committee had no jurisdiction to consider and report it, and that it should be committed to the proper committee.

After debate the Speaker[2] overruled the point, holding that inasmuch as the bill did not provide for the payment or adjudication of a claim against the Government it did not come within the purview of clause 4 of Rule XXI,[3] and that unanimous consent was not required to refer the same to the Committee on Military Affairs.

4382. The erroneous reference of a private bill to a committee not entitled to jurisdiction does not confer it, and a point of order is good when the bill comes up for consideration either in the House or in Committee of the Whole.—On September 28, 1893,[4] Mr. Thomas C. McRae, of Arkansas, on behalf of the Committee on the Public Lands, moved that the House resolve itself into Committee of the Whole House for the purpose of considering the bill (H. R. 1127) for the relief of Francis M. Tomlin.

Mr. Joseph D. Sayers, of Texas, made the point of order that the bill was improperly referred to the Committee on the Public Lands, and that under the rules that committee had no authority to report the bill, it being for the payment of a claim against the Government.

The Speaker[2] sustained the point of order, holding as follows:

The matter of the introduction, reference, and report of private bills under the rules of the House is important, and the Chair would like to call attention to it. The first clause of Rule XXII provides:

"1. Members having petitions or memorials or bills of a private nature to present may deliver them to the Clerk, indorsing their names and the reference or distribution to be made thereof; and said peti-

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referred to defined the jurisdiction of the committee as that of adopting measures to remedy neglect or delay on the part of the contractor and audit and pass on his accounts.

The Speaker (Linn Boyd, of Kentucky, Speaker) said: "During the last Congress the Committee on Printing reported what was regarded by many gentlemen as a private claim. The question was then made as it is now—that it was not competent for the committee to make such a report. It was decided, however, that as the subject had been referred by the House to the committee it was clearly in order. The Chair understands from the statement of the chairman of the committee that the matters embracing the provisions of this bill had been referred to that committee. Unless the Chair has been misled in regard to the facts, it seems to me there can be no doubt as to the right of the committee to report the bill. * * * The House has referred to the Committee on Printing matter precisely such as is embraced in the bill. There is a rule authorizing that committee to report at any time. The Chair therefore decides that the bill or report of the committee is in order."

Mr. Stanly having appealed, the appeal was laid on the table by a vote of yeas 108, nays 60.

[1] Second session Fifty-third Congress, Journal, p. 493; Record, p. 7661.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] Now section 3 of Rule XXI. (See sec. 4380 of this volume.)

[4] First session Fifty-third Congress, Journal, p. 118.

tions and memorials and bills of a private nature, except such as, in the judgment of the Speaker, are of an obscene or an insulting character, shall be entered on the Journal with the names of the Members presenting them," etc.

Now, a Member in the introduction of a private bill may cause its reference to any committee of the House by indorsing upon the bill an indication of the reference which he desires. That is a matter that the Representative must determine for himself, but he must determine it in view of the other rules of the House, which are really the only restriction upon a Member in the introduction and reference of a private bill. Clause 4 of Rule XXI provides that—

"No bill for the payment or adjudication of any private claim against the Government shall be referred, except by unanimous consent, to any other than the following-named committees, viz: To the Committee on Invalid Pensions, to the Committee on Pensions, to the Committee on Claims, to the Committee on War Claims, to the Committee on Private Land Claims, and to the Committee on Accounts."

No private bill shall be referred, except by unanimous consent, to any other committee than those enumerated in clause 4 of Rule XXI.

Clause 2 of Rule XXII provides that—

"Petitions and private bills which have been inappropriately referred may, by direction of the committee having possession of the same, be properly referred in the manner originally presented."

That is, by putting them in the box with an indorsement giving the correct reference—

"and an erroneous reference of a petition or private bill under this clause shall not confer jurisdiction upon the committee to consider or report the same."

Now, the limitation, it seems to the Chair, is clear. In the first place, a Member may indorse upon a bill the reference that he desires, but he can not by such indorsement give jurisdiction to a committee that under the rules has no jurisdiction of the subject-matter. Private bills must go to one of the committees enumerated in clause 4 of Rule XXI, and if they go anywhere else the committee that gets them has no authority either to consider them or to report them. That is the language of the rule, and really there would be no other way of protecting the jurisdiction of committees except in that way.

Therefore the Chair thinks that a private bill referred under clause 1 of Rule XXII to any other committee than one of those named in clause 4 of Rule XXI can not be considered or reported by such committee, and it seems to the Chair that the only time when the question can be raised is when the bill is called up for consideration, because these bills are reported just as they are introduced, through the box, and they do not come to the attention of the Chair at all until they are called up for consideration. The Chair never sees them or knows anything of them, because they are not presented as are reports or public bills in the open House, but they come in through the box.

The Speaker also stated that whenever a point of order shall be made that a private bill on the Calendar had been reported by a committee not authorized to report the same, the Chair would, if the point be made before the consideration of the bill had been entered upon, direct that such bill be recommitted to the committee improperly reporting it for appropriate action under the rules.

4383. On January 18, 1895,[1] Mr. John T. Heard, of Missouri, presented for consideration the bill (H. R. 5457) for the relief of Emmart Dunbar & Co.

Mr. Elijah V. Brookshire, of Indiana, made the point of order that the bill was in the nature of a claim, and was therefore, under clause 4 of Rule XXI,[2] improperly reported from the Committee on the District of Columbia.

The Speaker[3] sustained the point of order.

And the Committee of the Whole House was discharged from the consideration of the bill and the same was referred to the Committee on Claims.

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[1] Third session Fifty-third Congress, Journal, pp. 70, 71.

[2] Now section 3 of Rule XXI. (See see. 4380.)

[3] Charles F. Crisp, of Georgia, Speaker.

4384. On March 4, 1898,[1] the House was in Committee of the Whole House considering the Private Calendar. A bill (H. R. 4411) for the relief of James H. Birch being taken up, Mr. John Dalzell, of Pennsylvania, made the point of order that the bill was not one properly within the jurisdiction of the Committee on War Claims, which had reported it.

The Chairman[2] ruled:

The point of order is made against this bill that it is here on a report from the Committee on Wax Claims, and that, under the rule, that committee has no jurisdiction.

Clause 31 of Rule XI, which relates to the reference of claims, provides that—

"All proposed legislation shall be referred to the committees named in the preceding rule, as follows:

"Subjects relating to claims arising from any war in which the United States has been engaged, to the Committee on War Claims."

That hardly means any claims arising at a time contemporaneous with the war, as has been intimated by some gentlemen in arguing this matter, because a claim for recruiting Confederate soldiers was something that arose contemporaneously with the war. The only thing to show that this claim was connected with the war at all is the fact that it was at the time of the war. The whole claim is made against the State of Missouri or the provisional government of Missouri, for recruiting Missouri regiments—Missouri militia. It does not appear that they were used in the service of the Union outside of the State, or in the State, except incidentally in trying to keep the State from seceding, perhaps.

It does appear that some of these men, or most of them, were afterwards transmuted—I think that is the word used—to other United States regiments, but this claim is not for the transmuting of the men or the recruiting of the men into the United States regiment. It is for recruiting them into the militia of Missouri. Now, the Chair thinks that that does not come within this clause of the rule. The question has been raised as to what committee it should be referred to. There is no question about that.

Clause 30 of the rule says that subjects relating "to private and domestic claims and demands, other than war claims, against the United States" shall be referred "to the Committee on Claims."

There is no question about where the bill would go, and the Chair thinks that the Committee on Claims had jurisdiction of the subject and that the Committee on War Claims did not. The Chair sustains the point of order.

When the committee rose the Chairman reported this bill as having been improperly reported from the Committee on War Claims, and, therefore, as improperly before the Committee of the Whole.

The bill was then referred to the proper committee by the House.

4385. On March 4, 1898,[3] the House being in Committee of the Whole House on the state of the Union, considering bills on the Private Calendar, the Chairman ruled upon a point of order which Mr. Eugene F. Loud, of California, had made against a bill (H. R. 1935) for the relief of William B. Caldwell.

The Chairman[2] said:

Upon this bill a point of order is pending. The point of order was raised against this bill by the gentleman from California [Mr. Loud], on the ground that the bill had been referred to the Committee on War Claims, and referred improperly, the committee having no jurisdiction to report the bill, and claiming that the bill was improperly on the Calendar. At the time the point of order was raised the Chair had read from the Clerk's desk a decision of the Speaker of the present House. The attention of the Chair was then called to the fact that that decision referred to a public bill, and not to a private bill, and so the matter was postponed until this morning.

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[1] Second session Fifty-fifth Congress, Record, p. 2496.

[2] Sereno E. Payne, of New York, Chairman.

[3] Second session Fifty-fifth Congress, Record, p. 2483.

The Chair finds upon reading clauses 1 and 2 of Rule XXII that it is provided:

"Members having petitions or memorials or bills of a private nature to present may deliver them to the Clerk, indorsing their names and the reference or disposition to be made thereof; and said petitions and memorials and bills of a private nature, except such as, in the judgment of the Speaker, are of an obscene or insulting character, shall be entered on the Journal with the names of the Members presenting them, and the Clerk shall furnish a transcript of such entry to the official reporters of debates for publication in the Record,"

Clause 2 provides:

"Any petition or memorial or private bill excluded under this rule shall be returned to the Member from whom it was received; and petitions and private bills which have been inappropriately referred may, by the direction of the committee having possession of the same, be properly referred in the manner originally presented; and an erroneous reference of a petition or private bill under this clause shall not confer jurisdiction upon the committee to consider or report the same."

The last paragraph seems to effectually dispose of a bill which has been improperly referred to a committee where the bill is of a private character; but the Chair had more difficulty to get at the proper disposition of this bill on reference to the terms of the bill itself. The bill is threefold in its nature, being a bill for the relief of William B. Caldwell. In the first place, it provides that William B. Caldwell's name be entered "upon the muster rolls of said company as mustered into the service August 1, 1864, and honorably mustered out March 1, 1865, and to issue to him in honorable discharge accordingly."

Of course, if the bill ended there, it would have gone to the Committee on Military Affairs. The bill further provides:

"And the said William B. Caldwell shall be paid all the pay, allowances, and bounties due to a soldier regularly serving in said company between the dates aforesaid."

Under this language this claim in a bill belongs properly to the Committee on War Claims.

Now in determining the question as to whether the bill is properly referred or not, it seems there are different items in the bill that might carry it to one of two or three different committees, because there is a further item in this bill allowing a pension to this man from the date of his original application—that is, arrears of pension of course that would go to the Committee on Invalid Pensions, and no other committee would have jurisdiction. The question is whether this clause of the bill providing for back pay and bounty, which the existing law would give him, provided he is put on the muster roll and receives an honorable discharge according to the first clause of the bill, gives jurisdiction to the Committee on War Claims. The Chair hardly sees how that can be. If that were allowed, then that part of the bill that belonged to the Committee on Military Affairs for the granting of an honorable discharge would immediately have the jurisdiction changed from the Committee on Military Affairs to the Committee on War Claims by the addition of a purely superfluous clause.

The first clause of the bill itself having given an honorable discharge, under the present law, would give him back pay and bounty for the time he was on the muster roll of that company. There can be no question about that. Now, it can not be that a bill to reenact existing law shall give the Committee on War Claims jurisdiction. If that were true, it breaks up the whole foundation of the rules for the reference of the bills, and a bill could be referred to any committee if the Member who draws the bill puts in a clause, no matter whether it is necessary to the enactment or not, which gives jurisdiction to that particular committee, although the bill and the gist of the bill and the main object of the bill would take it to another committee.

Of course the main object of this bill is to give him a muster and honorable discharge. The other thing is incident to it, and it can not be that under the rules of the House—the proper enforcement of the rules of the House—this bill should go to the Committee on War Claims. The Chair has no doubt that a bill of this kind, being referred by the indorsement of the Member who introduces the bill, and not by the action of the House, that the question of the jurisdiction of the committee can be raised whenever the bill comes up for action, either in the House or in the Committee of the Whole. Therefore the Chair sustains the point of order made against this bill.

When the committee rose the Chairman reported that the bill had not been properly before it; the standing committee reporting it not having jurisdiction. The bill was referred to the proper committee.

4386. On December 4, 1894,[1] Mr. Joseph H. Outhwaite, of Ohio, on behalf of the Committee on Military Affairs, presented for consideration a bill for the relief of the legal representatives of Orsemus B. Boyd.

Mr. Joseph D. Sayers, of Texas, made a point that the Committee on Military Affairs had no jurisdiction to report the bill, inasmuch as it provided for the payment of a claim against the Government.

The Speaker[2] sustained the point, and the Committee of the Whole House was discharged from the consideration of the bill and the same was referred to the Committee on Claims.

4387. On October 13, 1893,[3] Mr. Thomas C. McRae, of Arkansas, on behalf of the Committee on the Public Lands, presented for consideration a bill for the relief of William P. Keady, on the Private Calendar.

Mr. Nelson Dingley, of Maine, made the point of order that the bill was a private bill and that the Committee on the Public Lands which reported it had no jurisdiction to report thereon.

The Speaker[2] sustained the point of order, and it was ordered that the Committee of the Whole House be discharged from the consideration of the bill, and that it be returned to the Committee on Public Lands for appropriate reference.

On October 16 the Speaker stated that upon a further examination of the bill for the relief of William P. Keady, which had been returned on Friday last to the Committee on the Public Lands in order that the committee might cause the bill to be appropriately referred, as in case of other private bills, he was of opinion that the questions arising on the bill were peculiarly within the province of the Committee on the Public Lands, and, while the bill was for the relief of an individual, the question involved was in its nature public—that is, whether certain lands had been restored to the public domain and were subject to entry by scrip; that the Committee on the Public Lands might therefore entertain jurisdiction of the bill.

4388. On July 18, 1894,[4] Mr. Joseph 1–1. Outhwaite, of Ohio, presented for consideration a bill for the relief of the owners of the schooner *Henry R. Tilton.*

Mr. Eugene F. Loud, of California, made the point that the bill was improperly reported by the Committee on Military Affairs and should, as it was in the nature of a claim, be reported by the Committee on Claims.

The Speaker pro tempore[5] sustained the point of order.

4389. On December 16, 1904,[6] on a day set apart by order for consideration of business reported from the Committee on Claims, the Committee of the Whole House was considering the bill (H. R. 8113) for the relief of Agnes W. Hills and Sarah J. Hills.

Mr. Sereno, E. Payne, of New York, made the point of order that the bill related to a war claim, and that the jurisdiction of it belonged to the Committee on War Claims.

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[1] Third session Fifty-third Congress, Journal, p. 15.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] First session Fifty-third Congress, Journal, p. 138.

[4] Second session Fifty-third Congress, Journal, p. 492.

[5] Alexander M. Dockery, of Missouri, Speaker pro tempore.

[6] Third session Fifty-eighth Congress, Record, pp. 379, 393.

After examination and debate, the Chairman [1] held:

It appears by the reading of the bill that it is a war claim. Reference to the Committee on Claims under the precedents of this House does not give jurisdiction to that committee. It appears that the precedent is as follows:

"The erroneous reference of a private bill to a committee not entitled to jurisdiction does not confer it, and a point of order is good when the bill comes up for consideration, either in the House or in Committee of the Whole."

So it is evident that the bill can not be considered at this time, and will have to be sent back.

Later, when the Committee of the Whole House rose, the Chairman reported—

That that committee had had under consideration the bin H. R. 8133, which was found to have been reported from a committee not having jurisdiction; that the committee also had had under consideration sundry bills and joint resolutions and had directed him to report the same back, some with amendment and some without, with the recommendation that the amendments be adopted and that the bills do pass.

The Speaker [2] said:

House bill 8113, reported by the committee that did not have jurisdiction, will, without objection, be referred to the Committee on War Claims.

There was no objection.

4390. The House having changed the reference of a private Senate bill from one committee to another, a point of order as to the jurisdiction of the latter committee, made after the bill was reported, was overruled.—On January 28, 1907,[3] a District of Columbia day, Mr. Joseph W. Babcock, of Wisconsin, proposed action to consider the bill (S. 3702) for the relief of the Gurley Memorial Presbyterian Church, of the District of Columbia, and for other purposes.

Mr. James R. Mann, of Illinois, made the point of order that this bill was not within the jurisdiction of the Committee on the District of Columbia under section 3 of Rule XXI,[4] and that under section 2 of Rule XXII [5] it was not in order for consideration.

After debate, the Speaker I held:

The Chair calls the attention of the gentleman also to the fact that this is a Senate bill, and a Member has nothing to do with the reference of it. Under the rule the Speaker, acting for the House, referred it to the Committee on Claims. The Committee on Claims brought it back to the House, and the House, by unanimous consent, changed the reference to the Committee on the District of Columbia. So that it is the action of the House; and it has been ruled that such action confers jurisdiction without regard to the rules in many cases, many precedents. * * *

But the gentleman will notice that the rule he now refers to seems to cover House bills referred by Members. This is a Senate bill, referred originally by the Speaker to the Committee on Claims under Rule XXIV,[6] reported back from the Committee on Claims with recommendations that it be referred to the Committee on the District of Columbia, and the House unanimously referred it to that committee. There are many precedents where, without regard to the rule, the House by a majority has referred bills to committees, thereby conferring jurisdiction.

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[1] Mr. P. P. Campbell, of Kansas, Chairman.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] Second session Fifty-ninth Congress, Record, p. 1849.

[4] See section 4380 of this volume.

[5] See section 3364 of this volume.

[6] See section 3089 of this volume.

Therefore the Speaker overruled the point of order.

4391. Where the House itself refers a private House bill to a committee, the point of order as to jurisdiction does not avail.—On February 11, 1905,[1] the House proceeded to the consideration of the bill (S. 3218) for the relief of Civil Engineer Peter C. Asserson, retired.

The Clerk read as follows:

Be it enacted, etc., That the Secretary of the Treasury be, and he is hereby, authorized and directed to adjust the pay of and pay to Civil Engineer Peter C. Asserson, United States Navy, retired, the full amount of the retired pay of a rear-admiral of the nine lower numbers for the time he has been on active duty since his retirement with that rank and whenever hereafter he shall be employed on active duty.

This bill had been reported by the Committee on Naval Affairs; and Mr. James R. Mann, of Illinois, made the point of order that, as the bill belonged to the jurisdiction of the Committee on Claims, it had been improperly reported to the House.

The Speaker I said:

The Chair will call the attention of the gentleman from Illinois [Mr. Mann] to the fact that this bill was referred by the Speaker to the Committee on Claims. Afterwards it was returned to the House with a request that the bill be referred to the Committee on Naval Affairs, and it was so ordered; so that the gentleman's point of order, the Chair believes, would be good were it not that the change of reference was made by the express order of the House. The Chair will state further that if this bill had been reported by the Committee on Claims it would not come within the terms of the order, but coming, as it does, from the Committee on Naval Affairs, it seems to the Chair that the point of order is not well taken, and that it does come within the terms of the order agreed to.

4392. A private bill reported from a committee not having jurisdiction of the subject was ordered by the Speaker to be recommitted, as a step preliminary to a change of reference.—On May 1, 1902,[3] Mr. Charles H. Grosvenor, of Ohio, called attention to the fact that the bill (H. R. 13480) to provide an American register for the steamer *Brooklyn,* had been reported by the Committee on Interstate and Foreign Commerce and was on the Private Calendar. In fact the jurisdiction of the bill belonged to the Committee on Merchant Marine and Fisheries, and it had not been reported properly by the other committee.

The Speaker[2] thereupon ordered the bill to be recommitted to the Committee on Interstate and Foreign Commerce.

Then, on request of Mr. Grosvenor, by unanimous consent, the House ordered the reference of the bill to be changed to the Committee on Merchant Maxine and Fisheries.

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[1] Third session Fifty-eighth Congress, Record, pp. 2417, 2418.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] First session Fifty-seventh Congress, Journal, p. 666.

[4] David B. Henderson, of Iowa, Speaker.

Chapter CIII.

SELECT AND JOINT COMMITTEES.

1. **Nature and duration of select committees. Sections 4393–4400.**[1]
2. **Select committees created by motion to refer. Sections 4401, 4402.**[2]
3. **Reports and dissolution of select committees. Sections 4403–4407.**
4. **Creation and use of joint committees. Sections 4408–4418.**[3]
5. **Joint committees created by statute. Section 4419.**
6. **Duration of joint select committees. Section 4420.**
7. **Instruction of a joint committee. Sections 4421–4423.**
8. **Procedure and membership. Sections 4424–4435.**
9. **Commissions created by law. Sections 4436–4447.**

4393. A select committee, when created by the House, is additional to and apart from the regular standing committees provided in the rules.—On February 25, 1882,[4] Mr. Thomas B. Reed, of Maine, as a privileged question, reported from the Committee on Rules the following resolution:

Resolved, That a select committee of nine Members be appointed, to whom shall be referred all petitions, bills, and resolves asking for the extension of suffrage to women or the removal of their legal disabilities.

Mr. William M. Springer, of Illinois, made the point of order that the resolution changed Rule X[5] by increasing the number of committees therein named.

The Speaker[6] overruled the point of order on the ground that the resolution provided only for the appointment of a select committee and did not increase or decrease the number of standing committees provided for in Rule X.

4394. A select committee expires at the end of a session, unless continued by order of the House or revived by the reference of a matter to

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[1] See also sections 5521–5528 of Vol. V.

[2] See also sections 5569 et seq. of Vol. V.

[3] Two Houses sometimes appoint separate committees to confer and report. (Sec. 1936 of Vol. III and sec. 3 of Vol. I.)

A joint committee of investigation. (Sec. 1763 of Vol. 111.)

The joint committee of 1821 to consider the admission of Missouri to the Union. (Sec. 4471 of this volume.)

The joint committee of 1877 to consider the conduct of the electoral count. (Sec. 1953 of Vol. III.)

[4] First session Forty-seventh Congress, Journal, p. 668; Record, pp. 1447, 1448.

[5] For this rule see section 4448 of this volume.

[6] J. Warren Keifer, of Ohio, Speaker.

it by the House.—On January 22, 1877,[1] Mr. Speaker Randall stated his opinion as to the duration of a select committee:

Under parliamentary rule a select committee expires at the end of a session of Congress; the appointment does not run through two sessions, as in the case with other committees, yet it has been uniformly held that the reference of any matter to a select committee that has expired has the effect to revive that committee, which is substantially the same as the creation of a new committee.

4395. On May 30,1866,[2] the House recommitted a bill to the Select Committee on the Wax Debts of the Loyal States, and at the same time ordered, on motion of Mr. James G. Blaine, of Maine, that the committee be continued as organized, with leave to report during the next session by bill or otherwise.

4396. On December 4, 1873,[3] at the beginning of a Congress, the Senate continuing by motion certain select committees.

4397. Select committees are quite commonly designated as for the Congress by the resolution creating them. Thus, an instance on December 19, 1885.[4]

4398. On July 7, 1838,[5] the House granted leave to two select committees "to adjourn at the close of the present session, and to resume their investigation and report at the next session of Congress." The report would be made at a session of the same Congress.

4399. On June 25, 1860,[6] a message having been received from the President protesting against certain action of the House, it was—

Ordered, That the said message be referred to a select committee of five Members, who shall report to the House at the next session of Congress.

4400. The continuance of a select committee revives all the business before it.—On May 26, 1868,[7] the House agreed to a resolution reviving the functions of the managers of the impeachment of the President so that they might continue the investigation of the charges that corrupt means had been used to influence the action of the court of impeachment.

Mr. Charles A. Eldridge, of Wisconsin, made the point of order that the revival of the committee did not give it jurisdiction of the matter which it was considering, as the adjournment of the court of impeachment terminated the functions of the managers.

The Speaker said:[8]

The Chair overrules the point of order on the ground that the continuance of any committee will revive all of its business. This has been the uniform decision of all Speakers and Congresses. For example, a special committee which expires with a session, revived at a succeeding session of that Congress, has all of its business revived, and has the same jurisdiction of business as was authorized by the original resolution.

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[1] Second session Forty-fourth Congress, Record, p. 815.

[2] First session Thirty-ninth Congress, Journal, p. 775.

[3] First session Forty-third Congress, Record, p. 57.

[4] First session Forty-ninth Congress, Journal, p. 129.

[5] Second session Twenty-fifth Congress, Journal, p. 1274.

[6] First session Thirty-sixth Congress, Journal, p. 1225.

[7] Second session Fortieth Congress, Globe, p. 2590.

[8] Schuyler Colfax, of Indiana, Speaker.

4401. Instance wherein a select committee was authorized by the adoption by the House of a motion to refer.—On March 11, 1904,[1] the House was considering a resolution providing for an investigation of the conduct of certain Members of the House in relation to the Post-Office Department. This resolution had been reported from the Committee on the Post-Office and the Post-Roads.

Mr. Samuel W. McCall, of Massachusetts, submitted the following motion, which was agreed to:

To commit the pending report of the Committee on the Post-office and Post-Roads and all accompanying papers and communications contained in House Report No. 1395, so far as same relates to Members of the House, to a select committee of seven, to be appointed by the Speaker, with instructions to consider said report and said papers and communications, so far as they relate to Members, and the origin of the said papers and communications, and that said select committee be authorized hilly to investigate the same, to hear Members and other persons named in said report, and any official of the Post-Office Department in respect to matters affecting Members of the House contained in said report, papers, and communications, and as soon as may be to report to the House the result of said investigation; and that said select committee is authorized to sit during the sessions of the House, examine witnesses on oath, compel the attendance of witnesses and the production of papers, and to employ such clerical assistance as may be necessary, and have such printing done as the needs of the committee may require.

4402. A motion to refer may specify that the reference be to a select committee of a stated number of Members, and may endow this committee with power to send for persons and papers.

Instance wherein a President's message was referred on motion to a select committee.

On January 24, 1877,[2] Mr. Fernando Wood, of New York, submitted the following resolution, and demanded the previous question thereon:

Resolved, That the message of the President and the accompanying documents, in answer to the resolution of the House calling for copies of all dispatches, orders, etc., relating to the use of troops in the States of Virginia, South Carolina, Louisiana, and Florida since the 1st August last, be referred to a select committee of eleven members, with instructions to report whether there has been any exercise of authority not warranted by the Constitution and laws of the United States in the use of the troops in the States referred to within the period stated, for which the President is justly responsible, with power to send for persons and papers, to administer oaths, and to report at any time.

Mr. Nathaniel P. Banks, of Massachusetts, made the point of order that the last clause of the resolution, viz, "to send for persons and papers," changed the rules of the House, and was not now in order.

After debate, the Speaker[3] overruled the point of order, on the ground that on the motion to commit or refer it was in the power of the House to commit or refer with instructions, and that conferring that power upon a committee was merely directing its mode of procedure. The Speaker said:

The Chair desires to read from the Manual in connection with this point:

"A motion to commit may be amended by the addition of instructions, also by striking out one committee and inserting another."

That is found decided in various places in the Journals of the House:

"A division of the question is not in order on a motion to commit with instructions, or on the different branches of instructions." (Journals, first session Seventeenth Congress, p. 507; first session Thirty-first Congress, pp. 1395, 1397; first session Thirty-second Congress, p. 611.)

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[1] Second session Fifty-eighth Congress, Record, pp. 3151, 3153.

[2] Second session Forty-fourth Congress, Journal, p. 297; Record, p. 926.

[3] Samuel J. Randall, of Pennsylvania, Speaker.

And further on in the Manual it is stated that "on a motion to commit the whole question is open to debate," and therefore open to instructions and open to amendments. The Chair thinks the House, having the power to commit a subject to a committee, has the power to instruct such committee how they shall proceed; and the Chair, if he had time, thinks he could show many instances of such action by the House. The question as to the right to report at any time is a very different one, because the question of the right to report at any time changes the order of committee reports and interferes with the rights of committees in that respect. Therefore he holds that the rule of the House which recognizes the order of reports from committees would be interfered with by permitting a special committee to report at any time, and such change of the rule would require a suspension of the rules.

The Chair overrules the point of order raised by the gentleman from Massachusetts (Mr. Banks) that it is not within the power of the House to commit with instructions.

Mr. Banks appealed from the decision of the Chair in so far as he decided that that part of the pending resolution which grants the power "to send for persons and papers" was in order.

The Speaker stated the question to be, Shall the decision of the Chair stand as the judgment of the House?

Mr. Cox moved that the appeal be laid on the table; and the question being put, it was decided in the affirmative, yeas 146, nays 78.

The resolution was then agreed to by the House.

4403. When a select committee reports in full on the subject committed, it is thereby dissolved; but it may be revived by a vote.—Jefferson's Manual, in Section XXVII, provides:

The report being made, the committee is dissolved, and can act no more without a new power. (Scob., 51.) But it may be revived by a vote, and the same matter recommitted to them.[1] (4 Grey, 361.)

4404. A select committee that has reported finally and become dissolved may be revived as to all its original powers by the action of the House in referring in open House a new matter to it.

Where a matter is recommitted with instructions the committee must confine itself within the instructions.

Where a committee had made a report which exceeded its instructions the Speaker ruled out the excess portion, but permitted the remainder of the report to stand.

On June 17, 1862,[2] Mr. James K. Moorhead, of Pennsylvania, under a call for reports from select committees, having proposed to report a joint resolution from the Select Committee on a National Armory, Mr. Charles Delano, of Massachusetts, made the point of order that the committee having heretofore made its report was thereby dissolved, and no matter having subsequently been referred to it by a vote of the House, it was not competent for the committee to make a report.

The Speaker[3] made inquiry as to whether, since the first report had been made, anything had been referred to the select committee in open House. Ref-

[1] This refers to special committees. The standing committees continue. On January 30, 1823 (second session Seventeenth Congress, Annals, p. 739), Mr. Speaker Barbour said: "It was unquestionably true that the select committee, having made a report in full upon the subject referred to it, was, ipso facto, discharged from further consideration of the subject."

[2] Second session Thirty-seventh Congress, Journal, p. 874; Globe, pp. 2764, 2790.

[3] Galusha A. Grow, of Pennsylvania, Speaker.

erence of petitions under the rules was not sufficient to revive a select committee. No one being able to specify the reference in open House of any matter to the select committee, the Chair said he should sustain the point of order.

Mr. Moorhead having appealed, the decision of the Chair was sustained, and the report was ruled to be out of order.

Then Mr. Thomas D. Eliot, of Massachusetts, from the Select Committee on the Confiscation of the Property of Rebels, etc., to whom was recommitted the bill of the House (H. R. 472) "to free from servitude the slaves of rebels engaged in abetting the existing rebellion against the Government of the United States," with instructions to report the same with a certain amendment in the nature of a substitute therefor, reported the same with the amendment, and also proposed to report an amendment in the nature of a substitute for the amendment.

Mr. John S. Phelps, of Missouri, made the point of order that the committee were limited, by the specific instructions of the House, to the report of the bill with the prescribed amendment, and that it was not competent for the committee to report any additional amendments.

The Speaker said:

The Chair will state that this being a case of recommitment with specific instructions, the Chair does not think it would revive the general powers of the committee. The Chair is satisfied, upon further consideration, that the committee could not make any report relative to the matter, except in strict conformity with their instructions.

The House acquiesced in this decision.

On the same day, the same question being under consideration, Mr. Eliot proposed to submit an amendment, in the nature of a substitute, to the amendment reported, under instructions, by the committee.

Mr. Robert Mallory, of Kentucky, made the point of order that the chairman of the select committee having reported the bill and amendments by instruction of the committee, and the amendments having been decided out of order by the Speaker, it is not in order for the chairman to withdraw the amendments, the bill and amendments being the report of the committee.

The Speaker overruled the point of order, saying:

The gentleman from Massachusetts sent the bill to the table, with these amendments, in the nature of a substitute, and the point of order being raised, the Chair ruled them out, because the report was not as the committee were instructed to report it. The committee report the bill with a substitute, to which the gentleman from Massachusetts, as an individual, moves certain amendments. The Chair, therefore, overrules the point of order raised by the gentleman from Kentucky.

Mr. Mallory having appealed, on the next day, June 19, the question came up and the Speaker stated the case as follows:

When the select committees were called yesterday the gentleman from Massachusetts [Mr. Eliot] reported, from the Select Committee on the Confiscation of Rebel Property, a bill, with a substitute, and to that substitute, he stated, the committee had instructed him to report sundry amendments in the nature of a substitute, satisfactory to the friends of the bill, naming some of them. The gentleman from Kentucky, on the right of the Chair, Mr. Wickliffe, raised the question of order that the committee, acting under special instructions from the House, and being a select committee, could not report an amendment to a substitute which they were instructed to report. The Chair sustained the point of order, so that the amendments which the gentleman from Massachusetts proposed to report from the committee were ruled out of order. The gentleman from Kentucky, Mr. Mallory, raised another

point; that the chairman of the committee being instructed to report a bill with amendments, and those amendments ruled out of order, the report itself should be rejected. The Chair overruled that point. From that decision the gentleman took an appeal.

With the indulgence of the House the Chair will have read an extract from Jefferson's Manual, not as application only to this point, but for the information of the House in reference to procedure in amending bills:

"The committee may not erase, interline, or blot the bill itself, but must, in a paper by itself, set down the amendments, stating the words which are to be inserted or omitted, and where, by reference to page, line, and word of the bill."

The Chair desires to have read from the same Manual an extract in reference to the powers of select committees, and a construction of the same from Barclay's Manual:

"The report being made, the committee is dissolved and can act no more without a new power. But it may be revived by a vote, and the same matter recommitted to them. This evidently refers to a select committee, and under the practice of the House a motion to recommit decided affirmatively has the effect of reviving the committee."

* * * The vote in this case restricted the committee to a particular act. * * * The only question now for the House to decide is whether the decision of the Chair shall stand as the judgment of the House upon the point of order that the committee, having directed one of its members to report a substitute, with amendments, and the amendments being ruled out of order, the committee can not make a report, which, I believe, is a statement of the point of order raised by the gentleman from Kentucky, Mr. Mallory.

Mr. Mallory here stated that his point of order was made in writing and the Speaker had stated it correctly, except as to the point that the chairman had no right to make a report without further consultation with or authority from the committee itself.

The Speaker said:

The Chair understands the point to be that where the amendments are ruled out of order the substitute alone would not be the report of the committee. The Chair would state, with the indulgence of the House, that, by the rule he had first read, committees must make all their amendments on a separate piece of paper. They are, therefore, reported distinctly by themselves and may, therefore, be rejected without rejecting the bill to which they are amendments; but the Chair decided that the committee could not report them, but that, nevertheless, the bill which they did report was before the House.

The appeal does not seem to have been decided, as modifications were made in the amendment and it was adopted and the bill was passed, the point of order being lost sight of.

4405. On February 25, 1863,[1] Mr. Albert S. White, of Indiana, from the Select Committee on Emancipation, reported a bill (H. R. 777) to aid the State of Missouri in the emancipation of the slaves therein.

Mr. Clement L. Vallandigham, of Ohio, made the point of order that the committee, being a select committee, and having some time before reported, and having been discharged, and only revived[2] by having the House bill with the Senate's amendment referred to it, its report now must be confined to that bill, and amendments to, or a substitute for, it; and that no reference of the subject generally to it, prior to its first report and consequent discharge, could authorize it to report a new bill disconnected from the bill and the Senate's amendment afterwards referred to it.

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[1] Third session Thirty-seventh Congress, Journal, pp. 487, 489; Globe, p. 1295.

[2] See section 4403 for rule of parliamentary law relating to discharge of a select committee.

The Speaker[1] overruled the point of order on the ground that even if the committee had been dissolved by the former report (which he did not admit to be the case with the present committee), the recommitment of the House bill and Senate's amendment had revived it with all the powers it possessed before said report, and its right to report a new bill, based upon the President's message heretofore referred to it, was as perfect now as it ever was.

Mr. Elijah H. Norton, of Missouri, having taken an appeal, the appeal was laid on the table by a vote of 79 yeas to 27 nays.

4406. At the first meeting of a select committee the resolution of the House creating it and defining its duties is spread on its Journal.—On March 20, 1860,[2] the committee appointed to investigate the subject of Executive influence in legislation, corruption in elections, etc., met, and the chairman first laid before the committee an attested copy from the Clerk's office of the resolution creating the committee and defining its duties. This was ordered to be spread on the journal of the committee.

4407. In the earlier practice a motion establishing certain select committees was held to be privileged at the time of organization of the House.—On December 10, 1841,[3] Mr. Millard Fillmore, of New York, submitted the following:

Resolved, That, for the further organization of the House, in addition to the standing committees for the session, the following be appointed, to consist of nine members each, to wit: A select committee on the plan of finance recommended in the President's message; a select committee on the apportionment of Representatives to Congress; a select committee on the Smithsonian legacy.

Mr. Charles H. Atherton, of New Hampshire, objected to the reception of the resolution because it was not in accordance with the routine of business established by the rules.

The Speaker[4] decided that it was in order to move the resolution, since it related to the organization of the House.[5]

An appeal being taken, the decision of the Chair was affirmed, yeas 104, nays 90.

4408. Joint committees are used infrequently in the legislative practice of the two Houses of Congress.—Joint committees are used infrequently in the practice of the two Houses of Congress.[6] Occasionally a joint select committee is created for a special purpose. Three standing committees, those on Printing, the Library, and Enrolled Bills, are mentioned in the rules as joint committees. The committees on Printing and the Library are joint committees in relation to certain administrative functions conferred by statute; but rarely act in a legislative capacity as joint committees. When the Senate revised its rules in 1877, on January 16,

[1] Galusha A. Grow, of Pennsylvania, Speaker.

[2] First session Thirty-sixth Congress, House Report No. 648, pp. 59, 60.

[3] Second session Twenty-seventh Congress, Journal, pp. 33, 34; Globe, p. 12.

[4] John White, of Kentucky, Speaker.

[5] The standing committees had not yet been appointed for the session, the practice then being to appoint them each session.

[6] Joint committees have, however, exercised important functions at times, as, for instance, the Joint Committee on the Conduct of the War and the Joint Committee on Reconstruction.

it agreed to a rule empowering the committees on Printing, Library, and Enrolled Bills to act conjointly with the similar House committees.[1]

4409. A joint committee should be provided for by a concurrent and not a joint resolution, and the resolution should not prescribe rules for the proceedings of either House.—On December 4, 1865,[2] the House agreed to a resolution, joint in form, for the appointment of a joint committee on reconstruction. The resolution also provided that all papers relating to the seceding States should be referred to the committee without debate. The Senate, after a very thorough discussion of the subject, decided to amend the resolution so that it should be concurrent and not joint in form, in order to obviate the necessity of its signature by the President, thereby becoming a law. They also struck out the provision about reference, in order that each House might control its own proceedings. As amended by the Senate, which form was concurred in by the House, the resolution was:

Resolved by the House of Representatives (the Senate concurring), That a joint committee of fifteen Members shall be appointed, nine of whom shall be Members of the House and six Members of the Senate, who shall inquire into the condition of the States which formed the so-called Confederate States of America, and report whether they, or any of them, are entitled to be represented in either House of Congress, with leave to report at any time by bill or otherwise.

4410. Form of concurrent resolution creating a joint committee.[3]

Instance wherein the Senate insisted on an equal representation on a joint committee.

On June 25, 1906,[4] the Senate returned to the House the following concurrent resolution, which it had passed with an amendment making the number of Senators on the proposed committee five instead of four:

Resolved by the Howe of Representatives (the Senate concurring), That a joint special committee be appointed, consisting of four Senators, to be appointed by the Vice-President, and five Members of the House of Representatives, to be appointed by the Speaker, to examine, consider, and submit to Congress recommendations upon the revision and codification of laws prepared by the statutory revision commission heretofore authorized to revise and codify the laws of the United States; and that the said joint committee be authorized to sit during the recess of Congress and to employ necessary clerical and other assistance; to order such printing and binding done as may be required in the transaction of its business, and to incur such expense as may be deemed necessary, all such expense to be paid in equal proportions from the contingent funds of the Senate and House of Representatives.

The House concurred in the Senate amendment.

4411. When a joint committee is authorized by simple resolution, the resolution itself does not have the concurrent action of the two Houses.—On April 25, 1828,[5] the House agreed to this resolution:

Resolved, That a committee on the part of the House of Representatives be appointed to join such committee as the Senate may appoint,[6] on their part, to consider and report what business is necessary to be enacted at the present session, and to fix on, and recommend, the day on which the President of the Senate and Speaker of the House of Representatives shall adjourn the present session of Congress.

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[1] Second session Forty-fourth Congress, Record, p. 656.

[2] First session Thirty-ninth Congress, Journal, pp. 10, 60; Globe, pp. 6, 24–30, 46, 47.

[3] See also section 4409.

[4] First session Fifty-ninth Congress, Record, pp. 9088, 9173.

[5] First session Twentieth Congress, Journal, p. 613.

[6] Joint committees are still created by resolutions of this kind for certain ceremonies like notifying the President that Congress is about to adjourn; but generally the concurrent form is used.

In the Senate[1] a question arose as to whether the proper course would be to concur in this resolution, but the Chair[2] decided that concurrence in such a resolution was not in accordance with the former practice. The appointment of a committee would be the proper act of concurrence.

4412. Sometimes the two Houses, by concurrent action, join two of their standing committees and constitute them a joint committee.—On February 6, 1865,[3] on motion of Mr. Elihu B. Washburne, of Illinois, the House agreed to the following:

Resolved (the Senate concurring), That the Committee on Commerce on the part of the Senate be joined to the Committee of Commerce on the part of the House in the investigation which said Committee on Commerce on the part of the House are now engaged in under the resolutions of the House of January 20, 1865, and January 25, 1865, in regard to trade with States in rebellion, to constitute a joint committee for the purpose of completing said investigation; and that the said joint committee have the same powers as the Committee of Commerce of the House now has on the subject of said investigation.

The Senate agreed to this, and on March 1, the committee reported a bill.

4413. On July 17, 1876,[4] the Senate's resolution for a committee to investigate Chinese immigration was made the basis for a resolution agreed to by the House for a committee to investigate the same subject, "conjointly with said Senate committee or otherwise."

4414. On March 29, 1869,[5] by concurrent resolution of the two Houses, the Committee on Audit and Control of the Contingent Expenses of the Senate, and the Committee on Accounts of the House, were made a joint committee to perfect and report a bill defining the number, duties, and compensation of employees of the Senate and House.

4415. On July 18, 1876,[6] the Senate agreed to a concurrent resolution, which made the two committees to investigate Chinese immigration a joint committee. It does not appear that the House acted further than in the resolution already agreed to. Such a committee acted as a joint committee.

4416. On December 6, 1876,[7] the Senate passed, in connection with the appointment of its standing committees, resolutions empowering the committees on Enrolled Bills, Printing, and Library to act in conjunction with the similar committees of the House. It was stated at the time that this was the usual resolution. These resolutions were in the House referred to the Committee on Rules on January 4, 1877.[8]

4417. Each House notifies the other by message of appointments of or changes in its membership on a joint committee.—When members of a joint committee authorized by concurrent resolution of the two Houses are appointed each House notifies the other of the appointment and the names of the appointees.

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[1] Debates, pp. 695, 696.

[2] John C. Calhoun, of South Carolina, Vice-President.

[3] Second session Thirty-eighth Congress, Journal, pp. 197, 203, 378; Globe, pp. 619, 1257.

[4] First session Forty-fourth Congress, Journal, p. 1277; Record, p. 4671.

[5] First session Forty-first Congress, Journal, p. 135; Globe, p. 336.

[6] First session Forty-fourth Congress, Record, p. 4678.

[7] Second session Forty-fourth Congress, Record, p. 47; Journal, p. 43.

[8] Second session Forty-fourth Congress, Journal, p. 155; Record, p. 422.

An instance occurred on December 18, 1861,[1] when the Senate notified the House of the appointment of the Senate members of the committee on the conduct of the war.

4418. On January 5, 1810,[2] a message was received from the Senate announcing that the Senate had "ordered that Mr. Whiteside be of the Joint Committee on Enrolled Bills on their part in the place of Mr. Condit, who has been excused on account of indisposition."

4419. The statutes provide for the appointment of a joint committee of the two Houses to consider reports as to destruction of useless papers in the Executive Departments.—The statutes[3] prescribe this method of disposing of useless papers in the Departments:

Whenever there shall be in any one of the Executive Departments of the Government, or in the various public buildings under the control of the several Executive Departments,[4] an accumulation of files of papers which are not needed or useful in the transaction of the current business of such Department and have no permanent value or historical interest, it shall be the duty of the head of such Department to submit to Congress a report of that fact, accompanied by a concise statement of the condition and character of such papers. And upon the submission of such report it shall be the duty of the presiding officer of the Senate to appoint two Senators and of the Speaker of the House of Representatives to appoint two Representatives, and the Senators and Representatives so appointed shall constitute a joint committee, to which shall be referred such report, with the accompanying statement of the condition and character of such papers, and such joint committee shall meet and examine such report and statement and the papers therein described, and submit to the Senate and House, respectively, a report of such examination and their recommendation. And if they report that such files of papers, or any part thereof, are not needed or useful in the transaction of the current business of such Department and have no permanent value or historical interest, then it shall be the duty of such head of the Department to sell as waste paper, or otherwise dispose of such files of papers, upon the best obtainable terms, after due publication of notice inviting proposals therefor, and receive and pay the proceeds thereof into the Treasury of the United States and make report thereof to Congress.[5]

4420. A joint select committee expires with the session.—On December 4, 1866,[6] Mr. Thaddeus Stevens, of Pennsylvania, offered the following:

Resolved (the Senate concurring), That the joint committee of fifteen on reconstruction, appointed during the last session of Congress, shall be reappointed under the same rules and regulations as then existed and that all the documents and resolutions which were referred then be now considered a referred to them anew.

Mr. John A. Bingham, of Ohio, asked whether the committee, under the rules of the House, did not continue until the close of the Congress.

The Speaker[7] said:

It does not; a joint select committee expires with the session.

4421. A joint committee may be instructed by the two Houses acting concurrently or by either House acting independently.—On December

[1] Second session Thirty-seventh Congress, Journal, p. 88.

[2] Second session Eleventh Congress, Journal, p. 163 (Gales & Seaton ed.)

[3] 25 Stat. L., p. 672.

[4] 28 Stat. L., p. 933.

[5] The joint committees on the Library and Printing are also to a certain extent creatures of statute. See sections 4337 and 4347 of this volume.

[6] Second session Thirty-ninth Congress, Journal, p. 30; Globe, p. 11.

[7] Schuyler Colfax, of Indiana, Speaker.

17, 1862,[1] the House agreed to a concurrent resolution, which had been received from the Senate, directing the joint committee on the conduct of the war, appointed at the last session, to make a report to the Senate and House of Representatives with all convenient speed.

4422. In 1862,[2] the joint committee on the conduct of the war were instructed by either House independently, and reported to either House, according to the source of the instructions. Thus the Senate directed an investigation into the treatment of dead soldiers at Manassas, and the report was made to the Senate.

The House frequently instructed the committee.[3]

4423. On February 29, 1864[4] the House, by a simple resolution, instructed the Joint Committee on the Conduct of the War.[4]

4424. The constitution of a joint committee, its quorum, chairman, etc.—The joint committee (of 1864) on the conduct of the war consisted of three Members of the Senate and four Members of the House. Mr. Benjamin F. Wade, of Ohio, first named of the Senate Members, acted as the chairman.

The clerk of the committee was appointed and duly sworn on the first session, January 25, 1864.[5]

On January 25, 1864,[6] it was ordered that less than a quorum should be sufficient for taking testimony.

On February 5 and 6, 1864,, the committee not only heard witnesses but passed votes, with two of the three Senate Members present and only two of the four House Members present by record. It is evident, therefore, that a quorum was assumed to be four of the whole seven rather than a majority of each branch of the committee.[7] This does not seem to be wholly conclusive, however, as on March 4[8] an order passed relating to the summoning by a witness, when only three members were present, and these two Senators and one Member.[8]

4425. A joint committee vote per capita and not as representatives of the two Houses.—On May 19, 1871,[9] the joint committee on affairs in the late Insurrectionary States took a vote by yeas and nays, the committee consisting of seven Senators and fourteen Representatives. This vote was taken per capita, no distinction as to Houses being made.

Thereafter on many other occasions votes were taken by yeas and nays and always per capita.

4426. Although a joint committee votes per capita, the membership from the House is usually larger than from the Senate.—In 1874,[10] the House agreed to a concurrent resolution providing for the appointment of a joint committee to investigate the affairs of the District of Columbia. The resolution as it passed

[1] Third session Thirty-seventh Congress, Journal, p. 85; Globe, p. 111.

[2] See Journal, p. 636, second session Thirty-seventh Congress.

[3] See Journal, pp. 122, 255, 864.

[4] First session Thirty-eighth Congress, Journal, p. 320.

[5] Second session Thirty-eighth Congress, Senate Report No. 142, Journal of the Committee, P.VIII.

[6] P. VIII.

[7] Page XI.

[8] Page XIX.

[9] Second session Forty-second Congress, House Report No. 22, pt. 1, pp. 590, 593, 621, 622.

[10] First session Forty-third Congress, Journal, p. 421; Record, p. 1212.

the House provided for five Representatives on the committee, and left the number of Senators in blank. The Senate, on February 5, filled the blank with five. This amendment was concurred in by the House.[1] The Speaker[1] appointed the committee as soon as the House had acted, not waiting for the Senate's concurrence.[2]

4427. On December 12 and 13, 1865,[3] the House and Senate authorized the joint committee on reconstruction, to consist of six Senators and nine Representatives. Objection was made to this committee, notably by Mr. James Doolittle, of Wisconsin, because the House Members would so outnumber the Senate Members on the committee. Mr. Doolittle said it was well understood that joint committees voted per capita, and not as representatives of the two Houses. Mr. Edgar Cowan, of Pennsylvania, for this reason, moved to reduce the number of House members to six. Thereupon Mr. Lyman Trumbull, of Illinois, inquired whether or not joint committees did not vote like conference committees, by Houses and not per capita. Mr. Cowan said he understood that this committee would not vote like a conference committee, but would be a joint committee voting per capita. Against Mr. Cowan's motion it was urged that the precedents all favored more Representatives than Senators on joint committees. The committee on the conduct of the war had been four to three. Mr. Cowan's amendment was disagreed to, yeas 14, nays 29.

4428. On March 9, 1869,[4] the House agreed to a concurrent resolution for the appointment of a joint select committee on retrenchment, to consist of four Members of the Senate and seven Members of the House.

On March 10, in the Senate, the resolution was considered, and the point was made by Mr. George F. Edmunds, of Vermont, that as this committee would have the duty of recommending legislation it would be better to make the number four from each House. Mr. Lyman Trumbull, of Illinois, urged this amendment, because, as the committee would vote per capita, the House would control the committee unless the amendment should be adopted. The amendment was agreed to.

On March 15 the House disagreed to the amendments of the Senate, and the Senate, having insisted, asked a conference, which was agreed to by the House.

The conferees brought in an amendment making the membership four from the Senate and five from the House. This report was agreed to by both Houses.

4429. On March 10, 1869,[5] we find a discussion in the Senate over the propriety of there being a larger number of Representatives than Senators on a joint committee, and it was stated, although the opinion was not unanimous, that the custom had been generally to have a larger number of Representatives, as the House was the most numerous body, and that the question of numbers was not material, as the function of a committee was recommendatory and not final.

4430. On June 25, 1879,[6] the Senate considered briefly the question of the numbers of Senators and Representatives, respectively, on a joint committee, and

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[1] James G. Blaine, of Maine, Speaker.

[2] Journal, pp. 360, 362; Record, pp. 1125, 1130.

[3] First session Thirty-ninth Congress, Globe, pp. 25–28.

[4] First session Forty-first Congress, Journal, pp. 22, 52, 58, 64, 80, 94; Globe, pp. 37, 42, 43, 79, 86, 125, 153, 198.

[5] First session Forty-first Congress, Globe, pp. 45, 46.

[6] First session Forty-sixth Congress, Record, p. 2312.

amended a proposition for a joint committee so as to make the number the same from each House. The reason was that the other arrangement would enable the House to outvote the Senate.[1]

This resolution was to raise a joint committee on the public service, to consist of three Senators and three Representatives. On June 26[2] the House passed it without amendment, according to the Record, but the Journal indicated that it did not pass, but was on June 30 referred to the Committee of the Whole.[3] It was in the form of a joint resolution.

4431. In the early days the House insisted on the larger portion of the membership of a joint committee and that the quorum and votes should be on a per capita basis.—On May 2, 1832[4] a message from the Senate asked the concurrence of the House in the following resolution of the Senate:

Resolved, That a committee to consist of three members, two from the Senate to be named by the President of the Senate, and one from the House of Representatives to be named by the Speaker, be appointed to prepare and report at the next session of Congress a system of civil and criminal law for the District of Columbia, and for the organization of the courts therein, and that the committee cause the said system to be printed in the recess.

On May 21 the House agreed to this resolution with an amendment increasing the number of the House Members of the Committee from one to three, and inserting the clause "a majority of whom may act," so that the resolution in this respect would read:

A committee to consist of five members, two from the Senate to be named by the President of the Senate, and three from the House of Representatives to be named by the Speaker, a majority of whom may act, be appointed to prepare, etc.

On May 22 the Senate announced their concurrence in this amendment:

4432. A joint committee may report in either House.—On January 7, 1907,[5] the House was considering this order:

Ordered, That the bill (H. R. 17984) to provide a code of penal laws for the United States is hereby committed to the Joint Committee on Revision of the Laws, and that the said joint committee have leave to report the said bill at any time, and that the bill shall have the privileges pertaining to bills so reported.

Mr. James R. Mann, of Illinois, rising to a parliamentary inquiry, asked:

Is it possible for a joint committee to make a report of a bill to the House, or would that be made by the House members of the committee?

The Speaker[6] said:

A joint committee, as the Chair understands it, can report to either House; that is, the section of the committee composed of Members of the House may report to this House, and the section of the committee on the part of the Senate may report to the Senate.

4433. It was held in order to refer a matter to a joint committee, although a law directed that such matters be referred to the House Mem-

[1] See also section 4410 of this chapter.

[2] Record, p. 2343.

[3] Journal, p. 598.

[4] First session Twenty-second Congress, Journal, pp. 696, 771, 778; Debates, p. 3077.

[5] Second session Fifty-ninth Congress, Record, pp. 698, 700.

[6] Joseph G. Cannon, of Illinois, Speaker.

bers of the said joint committee.—On May 5, 1852,[1] the House was considering the following resolution:

Resolved, That there be printed for the use of the House of Representatives fifty thousand copies of the mechanical part of the Patent Office report, and three thousand additional copies for the use of the Commissioner of Patents.

Mr. Thomas L. Clingman, of North Carolina, moved to commit the resolution to the Committee on Printing (which was a joint committee) with instructions to report as to what arrangements and contracts had been made for the public printing.

Mr. Frederick P. Stanton, of Tennessee, made the point of order that the motion submitted by Mr. Clingman was out of order, on the ground that, under the law on the subject of printing,[2] it was directed that all propositions to print an extra number of any document should be referred to the members of the Committee on Printing chosen by the House, and could not be referred to the joint committee.

The Speaker[3] said:

In regard to the point of order which has been raised, the Chair knows of no rule by which the House of Representatives could distinguish very clearly between the duties assigned to the Joint Committee on the Public Printing, and those assigned to any portion of the members of that committee. It Is rather an embarrassing question. By the joint resolution of the two Houses a joint committee on the public printing has been created. There is a clause in that resolution which the Chair begs leave to repeat. It is, that all motions to print extra numbers of any bill, paper, or document, in either House, shall be referred to the members of the committee of that House, who shall report upon the propriety of printing, and the probable expense therefor. The Chair has not had time to look to the whole law on the subject, and is therefore to some extent groping in the dark. The Chair, however, is not disposed to make that distinction between the committee and the members of the committee. * * * It makes no difference to the House whether this report came from the whole of the joint committee, or whether it emanated from the members of the committee on the part of the House. It is regularly here, and may be committed to the Committee on the Judiciary or any other committee.

Mr. Stanton having appealed, the appeal was laid on the table.

4434. Joint committees are authorized to sit during recess of Congress by concurrent resolution.—On June 23, 1874[4] by concurrent resolution, the Joint Committee on Printing of the two Houses was authorized to sit during the coming recess of Congress.

On the same day a concurrent resolution was agreed to authorizing the committees on appropriations of the two Houses to meet at the Capitol during the recess to make inquiry and report a method of reforms in the expenditures.

4435. On December 7, 1880,[5] the House agreed to a concurrent resolution from the Senate authorizing the Joint Committee on the Yorktown Centennial Celebration to sit during the recess of Congress. It was stated in debate that the coming holiday recess would be the only remaining recess of the existing Congress.

4436. For performing duties after the expiration of the term of a Congress commissions are created by law.—On February 16, 1905,[6] in the Sen-

[1] First session Thirty-second Congress, Journal, p. 675; Globe, p. 1252.

[2] The law on this subject has been changed since this time.

[3] Linn Boyd, of Kentucky, Speaker.

[4] First session Forty-third Congress, Journal, pp. 1309–1316; Record, pp. 5440, 5441.

[5] Third session Forty-sixth Congress, Record, p. 18.

[6] Third session Fifty-eighth Congress, Record, p. 2709.

ate, Mr. John Kean, of New Jersey, from the Committee to Audit and Control the Contingent Expenses of the Senate, reported a resolution, which was agreed to by the Senate, as follows:

Resolved by the Senate (the House of Representatives concurring), That the Committee on Printing of the Senate, with two Members of the present House of Representatives who are reelected to the next Congress, to be appointed by the Speaker of the House of Representatives, or any subcommittee of said special joint committee, are hereby authorized to examine into the numbers printed of the various documents, reports, bills, and other papers published by order of Congress, or of either House thereof, and of the Congressional Record, and if, in their judgment, the conditions as they find them warrant remedial legislation to report a bill at the next session of Congress making such reductions in the numbers and cost of printing and such changes and reduction in the distribution of said publications as they may deem expedient, with a report giving their reasons therefor; and that the said committee is also authorized to investigate the printing and binding for the Executive Departments executed at the Government Printing Office and at the branch printing offices and binderies in the various Departments, and if, in their judgment, the conditions as they find them warrant remedial legislation, to report a bill at the next session of Congress, making such reductions in expenses and imposing such checks as they may deem expedient, with a report giving their reasons therefor; and said committee is further authorized to make any other investigation calculated, in their opinion, to reduce the cost of the public printing, and report the result thereof; and in making the inquiries required by this resolution said committee shall have power to send for persons and papers, to administer oaths, to employ a stenographer to report its hearings, to call on the heads of Executive Departments and the Public Printer for such information in regard to the preceding matters as they may desire, to do whatever is necessary for a thorough investigation of the subject, and to sit during the recess of Congress. Any subcommittee may exercise the powers hereby granted to said committee, and the expenses of said investigation shall be paid one-half from the contingent fund of the Senate upon vouchers duly approved by the chairman of the Committee on Printing and one-half from the contingent fund of the House of Representatives.

On March 1,[1] while the general deficiency appropriation bill was under consideration in the House, Mr. John Dalzell, of Pennsylvania, offered an amendment embodying the substance of the above resolution, which had been referred to the Committee on Rules in the House. The amendment proposed by Mr. Dalzell was agreed to, and became law, as follows:

That the Committee on Printing of the Senate, with three Members of the present House of Representatives who are reelected to the next Congress, to be appointed by the Speaker of the present House of Representatives, shall constitute a commission, and they, or any subcommittee of said special joint commission, are hereby authorized to examine into the numbers printed of the various documents, reports, bills, and other papers published by order of Congress, or of either House thereof, and of the Congressional Record, and if, in their judgment, the conditions, as they find them, warrant remedial legislation to report a bill at the next session of Congress making such reductions in the numbers and cost of printing and such changes and reduction in the distribution of said publications as they may deem expedient, with a report giving their reasons therefor; and that the said commission is also authorized to investigate the printing and binding for the Executive Departments executed at the Government Printing Office and at the branch printing offices and binderies in the various Departments, and if, in their judgment, the conditions as they find them warrant remedial legislation to report a bill at the next session of Congress, making such reductions in expenses and imposing such checks as they may deem expedient, with a report giving their reasons therefor; and said commission is further authorized to make any other investigation calculated, in their opinion, to reduce the cost of the public printing and report the result thereof, and in making the inquiries required by this resolution said commission shall have power to send for persons and papers, to administer oaths, to employ a stenographer to report its hearings, to call on the heads of Executive Departments and the Public Printer for such information in regard to the

[1] Record, p. 3814; 33 Stat. L., p. 1249.

preceding matters as they may desire, to do whatever is necessary for a thorough investigation of the subject, and to sit during the recess of Congress. Any subcommittee may exercise the powers hereby granted to said commission, and the expenses of said investigation shall be paid one-half from the contingent fund of the Senate, upon vouchers duly approved by the chairman of the Committee on Printing, and one-half from the contingent fund of the House of Representatives.[1]

4437. The two Houses, by concurrent resolution, have assumed to extend the powers of a joint committee beyond the adjournment of Congress, but later action seems to recognize a law as the proper instrumentality for such purpose. On March 2, 1863,[2] the Senate agreed to the following:

Resolved by the Senate of the United States (the House of Representatives concurring), That in order to enable the joint committee on the conduct of the war to complete their investigations of certain important matters now before them, and which they have not been able to complete by reason of inability to obtain important witnesses, they be authorized to continue their sessions for thirty days after the close of the present Congress, and to place their testimony and reports in the hands of the Secretary of the Senate.

On the same day the House agreed to the resolution.

4438. In 1865[3] the joint committee on the conduct of the war was continued beyond the session and the Congress by a concurrent resolution extending their powers "for thirty days after the close of the present Congress." The committee went right on under this authority examining witnesses, etc. On March 13, 1865, the joint committee passed an order authorizing a less number than a quorum to act as well as examine witnesses, and on March 15, three members ordered the Secretary of War to furnish the committee with copies of certain papers.[4]

4439. On March 1, 1865,[5] a proposition to continue the power of the Joint Committee on Commerce after the end of the Congress was put in the form of a joint resolution, which passed the House but apparently failed in the Senate to be acted on.

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[1] The reason for this action was a doubt of the power of the two Houses, by concurrent resolution, to endow a committee with power for a period beyond the life of the Congress.

[2] Third session Thirty-seventh Congress, Journal, p. 563; Globe, pp. 1454, 1489.

[3] Second session Thirty-eighth Congress, Report No. 142; Journal of the Committee, pp. 33, 35.

[4] The monetary commission of 1877, consisting of Members of the two Houses and other persons, was created by a concurrent resolution of the two Houses, and so was on the same basis as to authority as a joint committee. But the monetary commission did not sit beyond the life of the Congress which created it. (First session Forty-fourth Congress, House Journal, pp. 1393, 1509; Record, p. 5218; Second session Forty-fourth Congress, House Journal, p. 627; Record, p. 2125; House Report No. 185.)

In 1880 a joint committee of the two Houses was in existence for arranging the Yorktown centennial; but as that Congress expired the joint committee was by law made a joint commission. (Third session Forty-sixth Congress, Record, p. 18; 21 Stat. L., pp. 163, 522.)

In 1893 the Congress desired to have the Executive Departments investigated by a joint committee of three Members of each House, to be appointed by the presiding officers thereof. But as it was desirable that the joint committee should sit after the expiration of the Fifty-second Congress, a law was passed creating a commission. (27 Stat. L., p. 682.)

Other commissions of recent creation, although of not precisely the same function, are:

The Industrial Commission (30 Stat. L., p. 476). This consisted of five Senators and five Representatives and nine other persons.

The American Merchant Marine Commission (33 Stat. L., p. 561). This consisted of five Senators and five Representatives; but it reported before the expiration of the Congress creating it, and perhaps a joint committee would have done as well.

[5] Second session Thirty-eighth Congress, Journal, p. 378; Globe, p. 1258.

4440. In 1893[1] the legislative appropriation bill conferred on the Speaker and President of the Senate the appointment of a joint commission to investigate the Executive Departments of the Government. This commission consisted of three from each House.

4441. On July 8, 1882,[2] the Speaker announced the committee provided for in the joint resolution of July 1, 1882, providing for erection of the memorial column at Washington's headquarters, at Newburg, N. Y.

4442. The act of March 10, 1882,[3] authorized the appointment of a joint committee to authorize the erection of a statue of Chief Justice Marshall. This committee consisted of three Members from each House, to be appointed by the President of the Senate and Speaker of the House.

In this case the House appointing to the committee notified the other House of its action.[4]

4443. In 1882[5] the joint select committee to inquire into the subject of the American merchant marine was authorized, to consist of three Senators and six Representatives. This was provided for by a resolution specifying nothing which could not be provided for by the ordinary concurrent resolution, yet it was put in joint resolution form, and was approved by the President of the United States.

4444. The act of June 8, 1880,[6] "to provide additional accommodations for the Library of Congress," provided for a joint select committee to consist of three Senators and three Representatives.

4445. Instance wherein a joint rule provided a joint committee for the next Congress.—On March 2, 1869,[7] a concurrent resolution was agreed to providing that at the beginning of the next session, which would be the first session of the next Congress, a joint committee on the civil service should be appointed. At the beginning of the next Congress this concurrent resolution was assumed to have the force of a joint rule; and other conditions having arisen which seemed to make the committee unnecessary, the Senate originated and sent to the House a resolution rescinding the joint rule or provision. The House at first refused to agree to this resolution to rescind, and nonconcurred and asked a conference. Later the House decided to have a committee of its own on the subject, and a motion to reconsider the action of the House on the Senate resolution to rescind was entered. This seems to have ended the matter, for the Committee on Civil Service does not appear as a joint committee.[8]

4446. A Senator, member of a joint commission created by law and appointed by the presiding officers of the two Houses, respectively, ten-

[1] Second session Fifty-second Congress, Record, pp. 2549, 2617; 27 Stat. L., p. 682.

[2] First session Forty-seventh Congress, Journal, pp. 1611, 1612.

[3] 22 Stat. L., p. 28.

[4] First session Forty-seventh Congress, Journal, p. 844.

[5] First session Forty-seventh Congress, Record, pp. 6959, 6991, 7019.

[6] 21 Stat. L., p. 165.

[7] First session Forty-first Congress, Journal, p. 104; Globe, pp. 45, 63, 228, 248.

[8] The question of the continued existence of the Senate as an organized body and the temporary existence of each House was discussed at length when the joint rules were under consideration on January 17, 1876. (First session Forty-fourth Congress, Record, pp. 434–438.)

dered his resignation in the Senate.—On March 3, 1905,[1] in the Senate, Mr. Francis M. Cockrell, of Missouri, said:

I tender my resignation as a member of the Senate building commission authorized by the sundry civil act of April 24, 1904, to secure a site and superintend the construction of a fireproof building for the use of the Senate.

The President pro tempore said:

The Senator from Missouri resigns as one of the commission to procure a site and erect a building for the use of the Senate. The Chair hears no objection by the Senate. The Chair appoints in the place made vacant by the resignation of the Senator from Missouri the Senator from Colorado [Mr. Teller].

4447. An instance in which a joint select committee elected its chairman.—On April 20,1871,[2] the joint select committee on affairs in the late insurrectionary States, organized. This committee was composed of seven Senators and fourteen Representatives. It was

Ordered, That Mr. Scott, chairman of the committee on the part of the Senate, be chairman of the joint committee.

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[1] Third session Fifty-eighth Congress, Record, p. 3952.

[2] Second session Forty-second Congress, House Report No. 22, pt. 1, p. 590.

Chapter CIV.

APPOINTMENT OF COMMITTEES.

1. The rule as to standing committees. Section 4448.
2. The Speaker the appointing agent. Sections 1149–4457.[1]
3. Filling vacancies. Sections 4458–4460.
4. Privilege of a resolution relating to. Sections 4461, 4462.
5. General decisions. Sections 4463–4469.[2]
6. Rules as to select and conference committees. Section 4470.[3]
7. Instances of appointment by House. Sections 4471–4476.
8. Members appointed before taking the oath. Sections 4477–4483.
9. As to absent Members. Sections 4484–4487.
10. Members whose seats are contested. Section 4488.[4]
11. Rank on committee designated by Speaker. Section 4489.
12. Members relieved of service by consent of House. Sections 4490–4512.

4448. Unless otherwise specially ordered by the House the Speaker appoints the standing committees at the commencement of each Congress.

Under the modern practice the Speaker appoints the standing committees at his convenience, without specific direction by the House.

Form and history of section 1 of Rule X.

Section 1 of Rule X provides for the appointment of the standing committees, enumerates them, and fixes the number of Members composing each. The first clause of the rule, introductory to the enumeration,[5] provides as follows:

> Unless otherwise specially ordered by the House the Speaker shall appoint, at the commencement of each Congress, the following standing committees, viz:

This form dates from the revision of 1880. When the first rules were adopted, on April 7, 1789,[6] it was provided that the Speaker should appoint all the com-

[1] When the Speaker's seat is contested he does not appoint the Committee on Elections. Section 809 of Vol. I.

[2] As to minority representation. Section 2342 of Vol. III.

Appointment of Delegates. Sections 1297–1301 of Vol. II.

[3] As to former practice of appointing the mover of a select committee its chairman. Sections 1827, 2342 of Vol. III.

[4] See also section 1018 of Vol. II.

[5] The enumeration is not given here, as the committees are again enumerated for definition of their powers and duties. See Chaps. XCIX–CI, sec. 4019, etc., of this work.

[6] First session First Congress, Journal, p. 9. (Gales & Seaton ed.)

mittees except such as consisted of more than three Members, which were to be chosen by ballot. On January 13, 1790,[1] this form was adopted:

All committees shall be appointed by the Speaker, unless otherwise specially directed by the House, in which case they shall be appointed by ballot.

As the number of standing committees began to increase, another rule provided that "the standing committees shall be appointed at the commencement of each session."[2] In addition to this it was customary to adopt a resolution directing the Speaker to appoint the committees pursuant to the rules; and sometimes the resolution presented was so urgent as to embarrass the Speaker.[3] At the time of the revision of 1860 Mr. Israel Washburn, jr., of Maine, reported from the Committee on Rules and the House adopted an amendment providing that the committees should be appointed at the first of each Congress instead of the first of each session.[4] The resolution or order authorizing or directing the Speaker to appoint the standing committees was proposed as usual at the organization of the House on July 5, 1861, by Mr. Schuyler Colfax, of Indiana, but Mr. Speaker Grow declared that under the rules which the House had just adopted the Speaker was already authorized to appoint the standing committees.[5] So the resolution was not passed, and since then has been omitted.

When the rules were revised in 1880,[6] the two old rules were united in the present form of the first clause. Of course, the other clauses of the section have been modified to conform to increases in the number and membership of the committees.

On June 14, 1813,[7] Mr. Cyrus King, of Massachusetts, presented a proposition for the choice of the Committee on Elections by lot, the Speaker to draw the names from a box prepared by the Clerk. On December 7, 1813,[8] at the beginning of the next session, the House considered the proposition. Mr. William Findley, of Pennsylvania, having questioned the Constitutional power of the House to adopt such a rule, consideration was postponed until December 9, when the proposition was defeated.[9]

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[1] First session First Congress, Journal, p. 140.

[2] See Rule 76, Appendix to Journal of second session Thirty-fifth Congress.

[3] See Debates, second session Twenty-first Congress, pp. 347–350.

[4] First session Thirty-sixth Congress, Globe, pp. 1181, 1209.

[5] First session Thirty-seventh Congress, Globe, p. 11; also first session Thirty-sixth Congress Globe, p. 176. On February 27, 1880 (second session Forty-sixth Congress, Record, pp. 1207–), during the revision of the rules, Mr. Edward H. Gillette, of Iowa, proposed to amend the then existing rules, providing that the rules should be the rules of the succeeding Congress, so it should provide that "no Speaker shall be authorized to construct the committee of any future Congress without direct authority by vote of the House of Representatives." This amendment was disagreed to by the House without division. The theory that one House could impose rules on the succeeding House did not, however, survive long after this time. (See secs. 6743–6755 of Vol. V of this work.)

[6] Second session Forty-sixth Congress, Record, p. 200.

[7] First session Thirteenth Congress, Journal, p. 32 (Gales & Seaton ed.); Annals, p. 155.

[8] Second session, Journal, pp. 162, 168; Annals, pp. 783, 786.

[9] In the Senate, for a time about 1833, the committees were appointed by the President pro tempore. (First session Twenty-third Congress, Debates, pp. 27–29.)

The present practice of the Senate in appointing committees is shown by the following resolutions, agreed to December 18, 1905 (first session Fifty-ninth Congress, Senate Journal, p. 61):

Ordered, That so much of Rule XXIV of the Senate as provides for appointment of the standing and other committees of the Senate by ballot be suspended.

Resolved, That the following shall constitute the standing and select committees of the Senate of the Fifty-ninth Congress: [Here follows list of the committee assignments.]

4449. The motion directing the Speaker to appoint the committees has been the subject of an amendment proposing their appointment by the House.—On December 27, 1849,[1] Mr. Armistead Burt, of South Carolina, offered this resolution:

Resolved, That the Speaker do now appoint the standing committees of the House.

The Speaker[2] stated that, while the rules of the House required the appointment of standing committees by the Speaker, the invariable practice had been that the Speaker did not appoint them until a resolution to that effect had been adopted by the House.[3]

Mr. William A. Sackett, of New York, proposed an amendment, striking out all after the word *"Resolved,"* and inserting the following: "That the committees of this House be appointed by the House, under the provisions of the seventh rule.[4]" * * *

After debate, involving the slavery question, the amendment was rejected, and the original resolution was agreed to.[5]

4450. Although the rules permit the House to direct the appointment of the standing committees otherwise than by the Speaker, the House has always declined to exercise its power in this respect. The phrase of Rule X, which provides that the Speaker shall appoint the standing committees "unless otherwise specially ordered[6] by the House," has been construed as contemplating a motion at the time of organization of the House to order another method of selection.

On December 1, 1806,[7] an issue was made as to whether or not the committees should be appointed by the Speaker. Mr. Willis Alston, jr., of North Carolina, moved that they be appointed by ballot. This proposition was defeated, 44 votes to 42; and the committees were appointed pursuant to the standing rules and orders of the House. On October 28, 1807,[8] the motion that the standing committees be appointed by ballot was again offered, on the ground that it would relieve the Speaker of an unpleasant duty and be more pleasing to the House. On the other hand it was urged that in selection by ballot there was no responsibility, such as the Speaker felt, that a House with many new Members could not ballot intelligently, that the balloting would consume much time, etc. Finally the motion to appoint by ballot was negatived, yeas 24, nays 87, and the House ordered the appointment of the committees in accordance with the rules.

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[1] First session Thirty-first Congress, Journal, pp. 185, 186; Globe, pp. 79–85.

[2] Howell Cobb, of Georgia, Speaker.

[3] On January 17, 1882 (first session Forty-seventh Congress, Record, pp. 463–467, 492) the House, after full debate, voted down a proposition that the committees be appointed by a board of eleven Members, to be chosen by viva voce vote of the House. The vote came on a question of order, deciding that the proposition was not in order as an amendment to the pending subject. The vote was yeas 162, nays 74, sustaining the point of order that the amendment was not in order.

[4] This was the rule providing for election of committees by ballot by the House. See section 6003 of Vol. V of this work.

[5] Also, for further statement on this point, see Globe, p. 75.

[6] The old form of the rule used the word "directed," and provided that if not appointed by the Speaker the election should be by ballot. The present form of rule does not restrict the House to ballot.

[7] Second session Ninth Congress, Annals, pp. 110, 111.

[8] First session Tenth Congress, Journal, p. 10; Annals, pp. 790, 794.

4451. On May 23, 1809,[1] Mr. Willis Alston, jr., of North Carolina, moved that the standing committees of the House be now appointed.

Mr. Matthew Lyon, of Kentucky, moved to amend by specifying that they should be appointed by ballot. This motion was supported by Mr. Barent Gardenier, of New York, on the ground that such proceeding was more in harmony with republican institutions than the more monarchical method of appointment by the Speaker.

The amendment was disagreed to, 67 nays to 41 yeas. The original motion of Mr. Alston was then agreed to.

4452. The delay of the Speaker in appointing the standing committees having occasioned criticism, a resolution directing the appointment was offered, but was disagreed to by the House.

Mr. Speaker Reed in a ruling referred to the power of the Speaker in relation to the House itself.

Dates at which the standing committees have been appointed in the last fifty years. (Footnote.)

On April 7, 1897,[2] Mr. Jerry Simpson, of Kansas, claiming the floor for a question of privilege, called attention to the fact that the committees of the House had not been appointed, and demanded that this should be done.

The Speaker[3] said:

The House will perceive that the gentleman from Kansas [Mr. Simpson] has made no proposition whatever upon the subject. He has simply stated his own views, and the Chair has thought perhaps it was best the matter should be stated and that the House should consider it.

So far as the power of the Speaker is concerned, everyone who has made the subject a matter of consideration understands that his power is solely the power of the House, and the House can at any moment change the action which its representatives sees fit to indulge in. The House has the power at all times. And while the rules of the House require certain committees to be appointed, there has always been allowed to the Chair a reasonable amount of discretion as to the time when they should be appointed. Opportunity is always allowed the Chair to find out something about Members, so that he may do the duties which are imposed upon him in the most intelligent way of which he is capable. It is not a rare case that the Speaker has not appointed committees at once.

A Congress which was called together under circumstances something like the present, the Forty-second, was presided over by a very eminent man, Mr. Blaine, and he declined—not declined, but did not see fit to appoint committees. The matter was brought up in the House, and he gave his reasons therefor; and those reasons were approved by the House; at least no action was taken by the House on the subject. There are about 150 new Members in the House. Under ordinary circumstances the occupant of the chair has time from the 4th day of March until the first Monday in December to obtain information in regard to his fellow-Members; but under the present circumstances there has been no opportunity. We have been called together in extraordinary session, and the question was, What was the best course for us to pursue, whether we should wait in appointing the committees until such times as would make the appointments more suitable or whether the public service was in such a condition that that ought to be done?

Now, the Chair has had full consultation with the various Members, as he has met them, upon the subject, and until this morning he supposed that it was the unanimous feeling of the House that it was not necessary to appoint the committees in haste, because the public service did not require it. The Chair is sorry to see that any gentleman in the House has lent himself to the suggestions which are sometimes made outside of the House with regard to the power of the occupant of the Chair. It is a power that

[1] First session Eleventh Congress, Journal, p. 9 (Gales and Seaton ed.); Annals, pp. 58, 59.

[2] First session Fifty-fifth Congress, Record, p. 651.

[3] Thomas B. Reed, of Maine, Speaker.

is given to him by the House for its purposes, and its purposes alone; not for any selfish purposes; not for him to carry out any personal desires or designs of his own, but to carry out the wishes of the House as he understands them after a faithful and conscientious examination of the subject. If the House thinks that any occupant of the chair is not carrying out its wishes, is not acting as its representative, the remedy is in the hands of the House at any time. And the Chair cheerfully welcomes any action on the part of the House, whose representative he is.

4453. On May 3, 1897,[1] the Speaker not having appointed the committees, Messrs. James Hamilton Lewis, of Washington, and William H. Fleming, of Georgia, proposed action by the House declaratory of the duty of the Speaker to appoint the committees withiil a reasonable time after the commencement of the Congress.

For the purpose of testing the will of the House more definitely, Mr. Nelson Dingley, of Maine, presented this resolution as a substitute:

Resolved, That the Speaker be directed to immediately appoint the committees of the House.

On a yea-and-nay vote this proposition was rejected by 125 yeas to 50 nays, 13 answering "present."[2]

4454. In the Fortieth Congress the Speaker did not appoint the committees, except a few, until the closing days of the first session.—The first session of the Fortieth Congress met on March 4, 1867, and adjourned November 30, 1867, there being two recesses in the meanwhile. The committees were not appointed by the Speaker[3] until November 25,[4] but in the early portion of the session the Speaker, by special direction of the House, appointed the Judiciary Committee in order that it might pursue the investigations of the conduct of the President,[5] also the Committee on Foreign Affairs,[6] to deal with the northern boundary question, the Committee on Rules,[7] on Enrolled Bills,[8] and a few other committees especially called for.

[1] First session Fifty-fifth Congress, Record, p. 874.

[2] The committees were appointed on July 24, the last day of the session. The dates of the appointment of the committees by Speakers in the last fifty years have been as follows:

Congresses.	Sessions begin.	Committees appointed.	Days of elapsed time.	Congresses.	Sessions begin.	Committees appointed.	Days of elapsed time.
Thirty-fifth	Dec. 7, 1857	Dec. 14, 1857	7	Forty-eighth	Dec. 3, 1883	Dec. 24, 1883	21
Thirty-sixth	Dec. 5, 1859	Feb. 9, 1860	66	Forty-ninth	Dec. 7, 1885	Jan. 7, 1886	31
Thirty-seventh	July 4, 1861	July 8, 1861	4	Fiftieth	Dec. 5, 1887	Jan. 5, 1888	31
Thirty-eighth	Dec. 7, 1863	Dec. 14, 1863	7	Fifty-first	Dec. 2, 1889	Dec. 21, 1889	19
Thirty-ninth	Dec. 4, 1865	Dec. 11, 1865	7	Fifty-second	Dec. 7, 1891	Dec. 23, 1891	16
Fortieth[a]	Mar. 4, 1867[a]	Nov. 25, 1867	266	Fifty-third	Aug. 7, 1893	Aug. 21, 1893	14
Forty-first	Mar. 4, 1869	Mar. 15, 1869	11	Fifty-fourth	Dec.2, 1895	Dec 21, 1895	19
Forty-second[a]	Mar. 4, 1871[c]	Dec. 4, 1871	275	Fifty-fifth	Mar. 15, 1897[d]	July 24, 1897	131
Forty-third	Dec. 1, 1873	Dec. 5, 1873	4	Fifty-sixth	Dec. 4, 1899	Dec. 18, 1899	14
Forty-fourth	Dec. 6, 1875	Dec. 20, 1875	16	Fifty-seventh	Dec. 2, 1901	Dec. 10, 1901	8
Forty-fifth	Oct. 15, 1877	Oct. 29, 1877	14	Fifty-eighth	Nov. 9, 1903	Dec. 5, 1903	26
Forty-sixth	Mar. 18, 1879	Apr. 11, 1879	24	Fifty-ninth	Dec. 4, 1905	Dec. 11, 1905	7
Forty-seventh	Dec. 5, 1881	Dec. 21, 1881	16				

[a] Held in pursuance of the act of Jan. 22, 1867; Mr. Colfax, Speaker.
[b] This session was in adjournment from July 20 to Nov. 21 and from Mar. 30 to July 3. Recesses are counted in the elapsed time.
[c] This session lasted from Mar. 4 to Apr. 20. The recess is counted in the elapsed time.
[d] The duration of this session was from Mar. 15 to July 24. See also Record, p. 1387, first session Fifty-fliftli Congress.

[3] Schuyler Colfax, of Indiana, Speaker.

[4] Journal, p. 260.

[5] Journal, pp. 19, 20.

[6] Journal, p. 28.

[7] Journal, p. 21.

[8] Journal, p. 34.

4455. Before the adoption of rules the House sometimes authorizes the Speaker to appoint certain necessary committees.—In 1889,[1] before the adoption of rules, the House by resolution authorized the Speaker to appoint committees on Rules, Accounts, Enrolled Bills and Mileage.

4456. On December 6, 1887,[2] before the adoption of rules, the House agreed to a resolution authorizing the Speaker to appoint certain committees—Enrolled Bills, Mileage, Rules, and Accounts, of which the numbers should be the same as in the last Congress.

4457. Although the rules required the Speaker to appoint the standing committees, yet it was the invariable practice in former years for him not to appoint until directed by order of the House.—On December 9, 1829,[3] Mr. Lewis Condict, of New Jersey, offered this resolution:

Resolved, That the standing committees be now appointed, pursuant to the rules and orders of the House.

Mr. James Buchanan, of Pennsylvania, objected that the adoption of such a resolution would not give the Speaker proper time to make up his committees. It was the third day of the session, and if the resolution could go over and be adopted on the following day, the House might then adjourn over and give the Speaker until the first of the next week.

This course was adopted. The resolution was agreed to on December 10, but the Speaker immediately announced the committees before the House adjourned.[4]

4458. In the earlier but not in the later practice the Speaker filled vacancies on committees only by the special direction of the House.—On January 24, 1833,[5] the House ordered a member of the Committee on Commerce to be appointed in place of Mr. John Davis, of Massachusetts, who had resigned his seat.

4459. On September 26, 1850,[6] the Speaker was authorized by order of the House to fill the vacancies on the Committees on Ways and Means, three in number.

4460. On January 7, 1858,[7] Mr. Speaker Orr filled several vacancies on standing committees without special action of the House authorizing him so to do.[8]

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[1] First session Fifty-first Congress, Journal, p. 6.

[2] First session Fiftieth Congress, Journal, p. 17; Record, p. 12.

[3] First session Twenty-first Congress, Journal, pp. 28, 29; Debates, p. 472.

[4] On January 29, 1853, Mr. Speaker Boyd said that he did not feel authorized to appoint certain special committees which had existed at the preceding session, and which by implication seemed to have been continued by the House, without the action of the House authorizing him. (Second session Thirty-second Congress, Journal, pp. 206, 207; Globe, p. 444.)

[5] First session Twenty-third Congress, Journal, p. 236.

[6] First session Thirty-first Congress, Journal, p. 1541.

[7] First session Thirty-fifth Congress, Journal, p. 145; Globe, p. 226.

[8] In the year 1900, during the recess between the first and second sessions of the fifty-sixth Congress, Mr. Speaker Henderson asked of the clerk at the Speaker's table (Asher C. Hinds) an opinion as to whether or not the Speaker might fill an existing vacancy on the Ways and Means Committee before the assembling of Congress. Following is the opinion, to the reasoning of which the Speaker agreed: "It seems that the appointment of a Member on a committee is an act of the Speaker which is in order only as a part of the business of the House. It is, to use the technical term, the 'transaction of business.' The Speaker would not think of appointing a Member on a committee at a time when the House was without a quorum. It is one of those acts that are always recorded in the Journal, and if an appointment

4461. A question as to the privilege of resolutions directing the Speaker as to the appointment of committees in a certain way or for certain purposes.—In 1867, at the extraordinary session convened by law, the Speaker did not appoint the committees of the House until the end of the session, except in certain cases where he was directed by the House to appoint particular committees.

On March 15, 1867,[1] a resolution was presented requesting the Speaker to appoint the Committee on Public Expenditures, in order that it might proceed with the investigation of the administration of the New York custom-house.

The resolution having been presented as privileged, the Speaker[2] said:

The Chair rules that a resolution directing the Speaker to appoint one of the standing committees of the House is a question of privilege, and the resolution is in order and before the House.

4462. On March 7, 1871,[3] on the second legislative day of the session, Mr. William E. Niblack, of Indiana, as a question of privilege, offered the following:

Resolved, That the Speaker be, and he is hereby, requested to proceed at once to appoint the standing committees of this House, reserving such vacancies as in his judgment may be proper for Representatives not yet elected.

Mr. Luke P. Poland, of Vermont, raised a question of order as to whether or not the resolution was privileged.

The Speaker[4] said:

It is not.

The resolution was received by unanimous consent, and after debate was laid on the table.

4463. An order providing for the appointment on a committee of two Members of the House "by that body," the Speaker declined to appoint

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should be made in recess there would be no Journal record, unless the fact should be announced after the meeting of the House. The appointment of a Member on a committee is an act of the same class as the administering of the oath to a Member. The Speaker may not do it away from the House, even at a time when Congress is in session, except by permission of the House. It seems by a fair analogy that the Speaker should not appoint a Member of a committee at a time when he is away from the House and the House is not in session, unless the House has previously given permission. Suppose the House were in session and the Speaker were away from it. The appointment of Members on committees (as conference committee, for instance) would be a function of the Speaker pro tempore in the chair and not of the real Speaker out of the chair. Moreover, the parliamentary system of the House presupposes that there shall ordinarily be no occasion for such an act. Committees become moribund so soon as the session finally adjourns, even when there is to be another session of the same Congress, and they may exercise life only when the House votes special permission, as it did to Ways and Means at the recent session. It might seem at first that on a committee so endowed with power to act in recess a vacancy might be filled, for it is conceivable that enough vacancies might occur to destroy a quorum and thus defeat the wish of the House that the committee act. But further reflection makes it plain that such a contingency would be something for the House to foresee and guard against by voting to the Speaker the power to act during recess as it did vote the power to the committee. In such matters as are involved here the rules of the House are the law for Speaker as well as for the committees, and if a committee may not exercise its functions in recess, why should the Speaker be able to?"

[1] First session Fortieth Congress, Globe, p. 120.

[2] Schuyler Colfax, of Indiana, Speaker.

[3] First session Forty-second Congress, Journal, p. 15; Globe, pp. 16–18.

[4] James G. Blaine, of Maine, Speaker.

unless specially directed by the House.—On February 9, 1853,[1] the House agreed to a resolution providing that "two Members of the House be appointed by that body" to join a committee on the part of the Senate to notify the President-elect of his election.

The Speaker[2] held that from the language of the resolution he could not appoint the committee unless directed by the House.

This direction was thereupon given by motion made and carried.

4464. In 1877, in accordance with a provision of law, the House elected, by viva voce vote, five members of the electoral commission.—On January 30, 1877,[3] Mr. Henry B. Payne, of Ohio, as a question of privilege, submitted the following resolution, which was agreed to:

Resolved, That the House do now proceed by viva voce vote to appoint five members of the commission provided for in the act approved January 29, 1877, entitled "An act to provide for and regulate the counting of votes for President and Vice-President and the decisions of questions arising thereon, for the term commencing March 4, A. D. 1877."

Mr. Lucius Q. C. Lamar, of Mississippi, nominated Messrs. Payne, Hunton, J. G. Abbott, of Massachusetts, James A. Garfield, of Ohio, and George F. Hoar, of Massachusetts.

The aforesaid were elected. the Journal recording the names of the Members voting for each.

Then, on motion of Mr. Payne,

Ordered, That the Speaker appoint two tellers on the part of the House of Representatives, as provided for in the aforesaid act.

4465. The law providing that a committee of the House be "chosen," the Speaker never appointed without special sanction of the House.—On December 22, 1847,[4] the following resolution was offered by unanimous consent, and agreed to:

Resolved, That the Speaker be authorized to appoint a committee on public printing, according to the provisions of the joint resolution entitled "A joint resolution directing the manner of procuring the printing for the two Houses of Congress, approved August 3, 1846."

The Speaker,[5] explained, when this resolution was adopted, that the joint resolution used the word 'chosen' in regard to this committee, and he was therefore in some doubt as to whether he was authorized to appoint without the sanction of the House.

4466. On April 13, 1852,[6] during consideration of a report from the Committee on Printing, Mr. Thaddeus Stevens, of Pennsylvania, called attention to the following provision of law, which also was the provision of a joint rule of the two Houses at that time:

A committee, consisting of three Members of the Senate and three Members of the House of Representatives, shall be chosen by their respective Houses, which shall constitute a committee on printing.

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[1] Second session Thirty-second Congress, Journal, p. 265; Globe, p. 550.

[2] Linn Boyd, of Kentucky, Speaker.

[3] Second session Forty-fourth Congress, Journal, pp. 331–338; Record, p. 1113–1114.

[4] First session Thirtieth Congress, Journal, p. 144; Globe, p. 64.

[5] Robert C. Winthrop, of Massachusetts, Speaker.

[6] First session Thirty-second Congress, Globe, p. 1059.

Mr. Stevens made the point of order that a committee appointed by the Speaker did not satisfy the requirement of this provision.

The Speaker[1] said:

The joint resolution authorizes the two Houses to choose this committee. The House of Representatives passed a resolution authorizing their organ, the Speaker, to appoint the committee on their part. Even if that had not been done, the seventh rule of the House authorizes the Speaker to appoint the committee. But to remove all doubt about it, the House of Representatives, at the beginning of this session, ordered the Speaker to appoint the committee on their part. Such has been the practice of this body in every Congress since the joint resolution has been adopted. The Chair hopes that every gentleman will understand the course of the Speaker, and that the Committee on Printing of this body is duly authorized to act under the joint resolution.

4467. Certain committees were increased in size in the Fifty-ninth Congress.

Creation of the Committee on Expenditures in the Department of Commerce and Labor.

As to proper ratio of majority and minority representation on committees.

On December 11, 1905,[2] the House agreed to the following:

Resolved, That section 1 of Rule X be, and hereby is, amended as follows:

By increasing by one member each of the following-named committees: Ways and Means, Judiciary, Banking and Currency, Interstate and Foreign Commerce, Rivers and Harbors, Merchant Marine and Fisheries, Agriculture, Foreign Affairs, Military Affairs, Naval Affairs, Post-Office and Post-Roads, Public Lands, Indian Affairs, Territories, Insular Affairs, Railways and Canals, Mines and Mining, Public Buildings and Grounds, Militia, Patents, Invalid Pensions, Pensions, District of Columbia, Irrigation of Arid Lands, Census, Industrial Arts and Expositions.

By increasing by two members the Committee on Manufactures and by three members the Committee on Immigration and Naturalization.

By inserting after the designation of the Committee on Expenditures in the Department of Agriculture the following:

"On Expenditures in the Department of Commerce and Labor, to consist of seven members."

Resolved, That Rule XI be amended as follows:

By inserting after paragraph 50 a new paragraph, as follows:

"51. In the Department of Commerce and Labor; to the Committee on Expenditures in the Department of Commerce and Labor."

And by renumbering the succeeding paragraphs of Rule XI, and by amending in accordance with such renumbering the reference to clause 60 of Rule XI contained in paragraph 2 of Rule XIII.

Mr. John S. Williams, of Mississippi, leader of the minority, stated that his party would acquiesce in the arrangement, which would permit the Speaker, in adjusting majority and minority representation on the committees, to approximate the ratio to that of the respective sizes of the two parties in the House.[3]

4468. Instances wherein Members have not been appointed on committees.—On March 4, 1867,[4] at the organization of the House, Mr. John Morrissey, of New York, appeared and answered on the call of the roll by States, and continued a Member during the Congress.

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[1] Linn Boyd, of Kentucky, Speaker.

[2] First session Fifty-ninth Congress, Record, p. 296.

[3] On January 17, 1882 (First session Forty-seventh Congress, Record, p. 457 et seq.), the general subject of the size of the committees and an increase thereof was discussed.

[4] First session Fortieth Congress, Journal, p. 3.

On November 25, 1867,[1] the Speaker[2] announced his committees, but the name of Mr. Morrissey does not appear as receiving an appointment.[3]

On December 11, 1905,[4] at the announcement of the committees, Mr. Claude A. Swanson, of Virginia, who had been elected governor of that State and was soon to retire from the House, was not appointed to any committee by the Speaker.[5]

In rare instances Members have been left off of committees by inadvertence.[6]

4469. On March 3, 1843,[7] Mr. Charles Brown, of Pennsylvania, in giving his reason for opposing a motion thanking Mr. Speaker White for his impartial administration of the office, said that at the previous session he had been assigned to an obscure committee place, from which he had resigned. When the committees were made up for the present session his name did not appear. He considered this an injustice to his constituents.[8]

4470. Since 1880 the appointment of select committees has by rule rested solely with the Speaker.

Since 1890 the rule has provided that conference committees be appointed by the Speaker, although such has been the practice since the earliest days of the House.

Form and history of section 2 of Rule X.

Section 2 of Rule X, in further specifying the powers of the Speaker in the appointment of committees, provides:

> He shall also appoint all select and conference committees which shall be ordered by the House from time to time.

This, so far at it applies to select committees, was reported as a new rule in the revision of 1880, and was apparently the result solely of an effort to improve the arrangement of the old rules by including the enumeration of the standing committees with the clause authorizing the Speaker to appoint unless otherwise ordered.[9] After the enumeration it was necessary to add a new clause:

> He shall also appoint all select committees which shall be ordered by the House from time to time.

As the words "unless otherwise specially ordered by the House" were not included, the apparent effect is to deprive the House of the authority which the rule gives it as to standing committees. While the House has not cared to exercise the authority as to standing committees, it did formerly exercise it on important occasions as to select committees; and on other occasions the exercise has been attempted.[10]

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[1] Journal, pp. 261–265.

[2] Schuyler Colfax, of Indiana, Speaker.

[3] Mr. Morrissey, according to report, had requested that he be given no committee assignment.

[4] First session Fifty-ninth Congress, Journal, p. 120.

[5] Joseph G. Cannon, of Illinois, Speaker.

[6] Case of Mr. Robert L. Henry, of Texas, in the first session of the Fifty-fifth Congress.

[7] Third session Twenty-seventh Congress, Globe p. 397.

[8] In the Senate May 21, 1880 (second session Forty-sixth Congress, Record, p. 3601), Mr. George F. Hoar, of Massachusetts, recalled how early Republicans in the Senate were denied committee places as being "outside of any healthy political organization." Of course such instances are extremely rare.

[9] See first session Forty-sixth Congress, Journal, p. 624, and Journal of second session, p. 1541.

[10] See sections 4471–4476 for instances.

The provision as to conference committees was added in the revision of 1890,[1] the Committee on Rules deeming the provision necessary and proper, as a conference committee was neither a standing nor a select committee. Conference committees were omitted from the rule in the Fifty-second and Fifty-third Congresses, but restored in the Fifty-fourth and Fifty-fifth Congresses.[2]

4471. In 1821 the House ordered that its members of the select committee on the admission of Missouri be elected by ballot.

A joint committee was chosen in 1821 to consider and report to the two Houses whether or not it was expedient to make provision to admit Missouri to the Union.

During the second session of the Sixteenth Congress there was a prolonged parliamentary struggle over the passage of a joint resolution admitting Missouri into the Union. A resolution originating in the House for that purpose had, after long debate, been disagreed to by the House, and the same fate had befallen a joint resolution passed by the Senate and sent to the House. After the House had finally rejected the resolution sent from the Senate, Mr. Henry Clay, of Kentucky, on February 22, 1821,[3] proposed in the House this resolution:

Resolved, That a committee be appointed on the part of this House, jointly with such committee as may be appointed on the part of the Senate, to consider and report to the Senate and to the House, respectively, whether it be expedient or not to make provisions for the admission of Missouri into the Union, on the game footing as the original States, and for the due execution of the laws of the United States within Missouri; and if not, whether any other, and what, provision adapted to her actual condition ought to be made by law.

This resolution having been agreed to, on motion of Mr. Clay it was—

Ordered, That the said committee consist of twenty-three members; and that they be elected by ballot, pursuant to the rules and orders of the House.

On motion of Mr. Samuel C. Allen, of Massachusetts, the House voted to proceed to the election on the succeeding day at 12 o'clock.

On February 23 the ballot was taken, a committee of three being appointed to count the ballots and report the result to the House. This committee retired by leave of the House as soon as the ballot had been taken, and the House proceeded with business, resolving itself into Committee of the Whole.

The Committee of the Whole having risen, the committee made report of the result of the ballot. Seventeen members had received a majority of the whole number of votes cast, and there remained six members to be chosen. Mr. Clay, in order to avoid the delay of another ballot, asked unanimous consent that the remaining six be selected from those standing next highest of the ballot already taken. It was suggested that the Speaker appoint the remaining six, and the

[1] See House Report No. 23, first session Fifty-first Congress.

[2] Conference committees have been appointed by the Speaker from the earliest years. Thus, in 1798 Mr. Speaker Dayton said that the managers of conferences were appointed like other committees, i. e., by the Speaker (second session Fifth Congress, Annals, Vol. I, p. 952), and this seems to have been the unbroken practice from that time, whether the rule existed or not. The omission of the rule in the Fifty-second and Fifty-third Congresses resulted in no change in the practice.

[3] Second session Sixteenth Congress, Journal, pp. 70, 227, 262–264, 266, 267 (Gales & Seaton ed.); Annals, pp. 1219, 1223

Speaker having intimated that he should, were the duty to devolve on him, select the six from those standing highest among the names of those balloted for but not elected, it was so arranged, and the Speaker made the appointment.

The resolution of the House was taken up in the Senate on February 24,[1] and some question was raised as to the course of procedure. Mr. William Smith, of South Carolina, said that if the House had sent back the resolution of the Senate with an amendment on which the two Houses could not agree, a committee of conference would be proper on the disagreeing votes; but a conference on an original proposition seemed to him a novelty. Mr. James Barbour, of Virginia, denied that the course proposed by the other House was a novelty, either in the proceedings of Congress or of the English Parliament. It was proper that when the two Houses could not agree on the principles of a public act there should be a joint committee to devise a course in which the two Houses would probably meet.

The Senate then agreed to the proposition—yeas 29, nays 7. A committee of seven were then appointed on the part of the Senate to join the committee of twenty-three on the part of the House.

On February 26[2] Mr. Clay, chairman of the joint committee, reported a joint resolution providing for the admission of Missouri into the Union. Mr. Clay said the committee on the part of the Senate was unanimous on the subject and that on the part of the House nearly so.[3] The resolution was considered by the House and on its final passage received 87 yeas, 81 nays.

The bill being carried to the Senate, was considered there, and passed on February 28,[4]—yeas 28, nays 14.

4472. In 1839 and 1840 committees of investigation were elected by ballot.—On January 17, 1839,[5] the House agreed to the following resolution:

> *Resolved,* That the communication from the President of the United States of December 8, 1838, relating to the defalcation of the late collector of the port of New York, except so much as relates to the modification of the revenue laws, be referred to a select committee of nine members, to be appointed by the House by ballot, whose duty it shall be to inquire into the causes and extent of the late defalcations, etc.

As originally presented this resolution provided for the appointment of this committee by a viva voce vote, but an amendment striking out that provision and providing for the appointment of the committee by ballot was agreed to—yeas 113, nays 106.

The House having agreed to a motion to proceed to ballot for the committee, the committee were elected in accordance with the provisions of the rule relating to balloting. Several who had been chosen were, at their own request, excused from serving, and their successors were elected by additional ballotings.

4473. On January 30, 1840,[6] the House agreed to the following resolution:

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[1] Annals, p. 382.

[2] Journal, pp. 270, 277; Annals, pp. 1228, 1236–1238.

[3] This indicates what must have been the fact, that the two portions of the joint committee voted separately.

[4] Annals, pp. 388, 390.

[5] Third session Twenty-fifth Congress, Journal, pp. 312–320; Globe, pp. 123, 126.

[6] First session Twenty-sixth Congress, Journal, pp. 260, 266, 268; Globe, pp. 158, 160.

Resolved, That the House proceed instanter to the election of a printer, and that as soon as the election shall have taken place a committee of five members be elected viva voce by the House to consider and investigate the subject of public printing, etc.

On January 31 and February 3 the election of the committee took place, a majority of the whole number of votes being required for the choice of members. Three members were elected on the first vote and two on the second.

4474. In 1832 a motion that the committee to investigate the Bank of the United States be chosen by ballot was defeated by a tie vote.

The report of the select committee on the Bank of the United States, submitted to the House in 1832, was accompanied by minority views and individual views.

On February 23, 1832,[1] Mr. Augustin S. Clayton, of Georgia, presented this resolution:

Resolved, That a select committee be appointed to examine into the affairs of the Bank of the United States, with power to send for persons and papers, and to report the result of their inquiries to this House.

On March 7[2] Mr. Erastus Root, of New York, moved to amend the resolution so that the committee therein proposed to be appointed should be chosen by ballot[3] and consist of seven members.

Mr. Root explained that he intended to express no distrust of the Speaker, but he thought the resolution ought to go to a committee the majority of whom were friendly to the institution of some national bank. It was argued, on the other hand, that the investigation should be in the hands of those favoring the inquiry. Some argued that the attitude of the majority of the committee was not material, since, under the custom that had pertained of late on important matters, it had been usual to have reports both from the committee and the minority of the committee. The rule of Jefferson's Manual was quoted as to the constitution of committees, and it was alleged that the intention of the amendment proposed by Mr. Root was to violate the parliamentary usage by electing a committee friendly to the bank, and therefore not in sympathy with the purposes of the resolution.[4]

On March 8 Mr. Root's amendment was decided in the negative—yeas 88, nays 92. But on March 9 the House reconsidered this vote, 98 yeas to 93 nays, and on March 13[5] the question was taken again on the proposition to appoint the committee by ballot and limit it to seven members. And there were, yeas 100, nays 100. Thereupon the Speaker voted with the nays.[6]

On March 14,[7] after the resolution had been amended, it was agreed to, and the Speaker appointed a committee of seven. Mr. Clayton was made chairman, and Mr. John Quincy Adams, of Massachusetts, who had proposed an essential amendment (which had been agreed to) was named second.

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[1] First session Twenty-first Congress, Journal, p. 402; Debates, p. 1846.

[2] Journal, p. 449; Debates, p. 2042.

[3] On May 14, 1832, on another question, a motion was made that a committee be chosen by ballot, but the House decided adversely. Journal, p. 740, first session Thirty-second Congress.

[4] For this debate see pages 2098, 2101, 2103, 2113.

[5] Journal, p. 479; Debates, p. 2128.

[6] This was unnecessary.

[7] Journal, p. 494; Debates, p. 2163.

On May 1[1] Mr. Clayton presented the report of the committee; and Mr. Adams, in the course of debate, announced his intention of submitting his observations in the form of a report.

On May 11,[2] Mr. George McDuffie, of South Carolina, from the minority, presented a statement of their grounds of dissent.

A motion to print an extra number of the report and the views of the minority was withheld until Mr. Adams should present his views.

On May 14,[3] Mr. Adams presented his views, and the whole matter[4] was ordered printed.

Mr. Adams, besides presenting his own views, signed the minority views with Messrs. McDuffie and Watmough. Mr. Watmough also signed a note of concurrence in the individual views presented by Mr. Adams.

The majority of the committee presented a report not friendly to the bank.

4475. Instances wherein the House declined to take from the Speaker the appointment of select committees.—On March 31, 1808,[5] the House having authorized a select committee to inquire into the conduct of Judge Inness, Mr. Richard Stanford, of North Carolina, moved that the committee be appointed by ballot. After discussion as to former practice, the motion was disagreed to.

On April 4, 1810,[6] the House having authorized a select committee to inquire into the conduct of Gen. James Wilkinson, Mr. Timothy Pitkin, jr., of Connecticut, moved that the committee be appointed by ballot. This motion was decided in the negative, yeas 52, nays 64.

On April 19, 1824,[7] a motion that a committee be appointed by ballot and not by the Speaker was negatived.

4476. On February 9, 1827,[8] the House had voted to refer to a select committee the message of the President communicating a letter of the Governor of Georgia in relation to the Creek treaties, when Mr. Wiley Thompson, of Georgia, moved that the committee be appointed by ballot. He declared that the motion proceeded from a sense of the importance of the subject and not from lack of confidence in the Speaker.

Mr. Joseph Vance, of Ohio, opposed the motion, as tending to unnecessary delay.

The question being taken by yeas and nays, the motion was disagreed to, yeas 90, nays 104.

The Speaker[9] thereupon appointed the committee.

On September 19, 1837,[10] a proposition was made that an investigating committee be appointed by ballot, Mr. Henry A. Wise, of Virginia, the mover, saying that the rules provided that the Speaker should appoint only when not otherwise specially directed by the House. The motion was not carried.

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[1] Journal, p. 676; Debates, pp. 2651, 2663.

[2] Journal, p. 720; Debates, p. 2940.

[3] Journal, p. 744; Debates, p. 3036.

[4] For these reports, see Appendix of Debates, pp. 33, 46, 54.

[5] First session Tenth Congress, Annals, p. 1886.

[6] Second session Eleventh Congress, Journal, p. 347 (Gales & Seaton ed.); Annals, p. 1756.

[7] First session Eighteenth Congress, Annals, p. 2455.

[8] Second session Nineteenth Congress, Journal, p. 273; Debates, pp. 1052, 1053.

[9] John W. Taylor, of New York, Speaker.

[10] First session Twenty-fifth Congress, Journal, p. 76; Globe, p. 46.

4477. A Member may be named of a committee before he is sworn.

The old rule of Parliament that none but those friendly to a bill should be of the committee and the practice of party representation on the standing committees of the House. (Footnote.)

The ratios of majority and minority representation on the committees is determined by the Speaker. (Footnote.)

Jefferson's Manual has the following provisions as to the appointment of committees:

Section. III. Before a return be made a Member elected may be named of a committee, and is to every extent a Member, except that he can not vote until he is sworn.[1]

Section XXVI. Those who take exceptions to some particulars in the bill are to be of the committee, but none who speak directly against the body of the bill, for he that would totally destroy will not amend it (Hakew., 146; Town., col. 208; D'Ewes, 634, col. 2; Scob., 47); or, as is said (5 Gray, 145), the child is not to be put to a nurse that cares not for it (6 Gray, 373). It is therefore a constant rule "that no man is to be employed in any matter who has declared himself against it." And when any Member who is against the bill hears himself named of its committee he ought to ask to be excused.[2]

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[1] It is the general practice for the Speakers in appointing the standing committees to name the Members who have been returned, without inquiry as to whether or not they have yet taken the oath.

[2] This is not the practice of the House at present, nor has it been for many years. The standing committees are made up on party lines, the majority party in the House having a majority of the membership of each committee, and the minority representation being arranged in proportion to the relative size of the minority. In recent Congresses the ratio of majority and minority representation on the Ways and Means Committee as related to party majorities on the floor of the House shows in a general way the usage in this matter:

Congress.	Party majority on floor.	Proportion on committee.	Congress.	Party majority on floor.	Proportion on committee.
Fifty-first	6	8 to 5	Fifty-sixth	13	10 to 7
Fifty-second	129	10 to 5	Fifty-seventh	34	11 to 6
Fifty-third	84	11 to 6	Fifty-eighth	30	11 to 6
Fifty-fourth	133	11 to 6	Fifty-ninth	116	12 to 6
Fifty-fifth	50	11 to 6			

The same ratios have not been followed exactly in other committees; but the ratios on the Ways and Means Committee are a fair example of the divisions.

In select and conference committees the party divisions are not considered so strictly, but the principle that the opposition, whether of party or principle, should be represented, is always followed in making up the committees.

The arrangement of the proportion of majority and minority members on committees is made by the Speaker, and party considerations have entered into the exercise of this duty for many years. As early as January 28, 1828 (first session Twentieth Congress, Debates, p. 1222): the debates contain intimations that the Speaker had in constituting the principal committees considered somewhat the lines of difference between those who favored and those who opposed the Administration. On April 8, 1836 (first session Twenty-fourth Congress, Journal, p. 653; Debates, p. 3226), a rule was proposed that it should be the duty of the Speaker to appoint a majority, at least, of the members of each standing committee, without respect to party, and of competent individuals. This rule was not adopted. At this time (Debates, p. 3228) a brief debate indicates that the drawing of party lines in making up the committees was at that time recognized as a long-established usage. On March 3, 1843 (third session Twenty-seventh Congress, Globe, p. 398), Mr. Charles J. Ingersoll, of Pennsylvania, said that the committees had been selected on party and political grounds during the thirty years in which he had had experience of the House. On March 3, 1839 (third session Twenty-fifth Congress, Globe, p. 236), Mr. Sargent S. Prentiss, of Mississippi, criticised Mr. Speaker Polk, not for making up partisan committees, for that was admitted to have been the custom; but for having given too small minority representation.

Thus, March 7, 1606, Mr. Hadley was, on the question being put, excused from being of a committee, declaring himself to be against the matter itself. (Scob., 46.)

4478. On January 14, 1902,[1] in the Senate, while discussing a resolution proposing a committee to investigate the condition of affairs in the Philippines, Mr. George F. Hoar, of Massachusetts, said:

I do not expect, and I do not think it would be reasonable to desire, that a committee of that kind should be appointed by the Senate which did not represent in its formation the prevalent opinion on the subject with which it has to deal of the majority of the Senate, let that opinion be right or wrong. It is of course proper that in all legislative bodies great public questions should be committed to instrumentalities composed of persons in accord with the prevalent policy, and I do not expect anything else.

4479. Instance wherein Members-elect were appointed on committees before taking the oath.

Members-elect unofficially known to be under indictment or actually convicted after indictment were yet appointed on committees.

Instance wherein a Senator accused of crime was omitted from committees at his own request.

A Senator having died while under conviction of crime no announcement of his death was made to the Senate.

Instance wherein a Senator's name was dropped from the roll on unofficial information of his death.

At the beginning of the fifty-ninth Congress, when the House assembled on December 4, 1905,[2] two Members-elect of the House from Oregon—Messrs. Binger Hermann and John N. Williamson—did not appear. It was generally known, through the public prints, that Mr. Hermann was under indictment in Oregon and that Mr. Williamson had been convicted, after indictment, and was awaiting the result of an appeal.

When the Speaker[3] announced his committees on December 11[4] it appeared that he had named Mr. Hermann as a member of the Committee on Election of President, Vice-President, and Representatives in Congress, and Indian Affairs, and Mr. Williamson on Mines and Mining and Irrigation of Arid Lands.[5]

Mr. John H. Mitchell, a Senator from Oregon, had been indicted and convicted of an offense similar to that alleged against Messrs. Hermann and Williamson, but had died pending an appeal and after the assembling of the Senate. Also Mr. Joseph R. Burton, a Senator from Kansas, had been tried and convicted and was awaiting the result of an appeal when, on December 18,[6] certain proceedings took place in the Senate.

Mr. Eugene Hale, of Maine, had reported the assignment of Senators to committees, saving:

Mr: President, every Senator upon the roll has been assigned upon different committees by the committees from both sides to make up the committees, with the exception of the Senator from Kansas

[1] First session Fifty-seventh Congress, Record, p. 649.

[2] First session Fifty-ninth Congress, Record, p. 40.

[3] Joseph G. Cannon, of Illinois, Speaker.

[4] Record, p. 297.

[5] Of course these Members had not taken the oath. Mr. Hermann appeared and took the oath January 15, 1906. (First session Fifty-ninth Congress, Record, p. 1110.) Mr. Williamson did not appear during the session.

[6] Record, pp. 538–544.

[Mr. Burton], who himself desired—and made his wish known to the committee having the matter in charge—that during the pendency of examination into the case against him no assignment be made him upon any committee; and upon that no assignment was made in his case. That is the only exception.

Mr. Joseph W. Bailey, of Texas, announced that he was opposed to the English practice of allowing the courts to dispose of such a matter before the taking of it up by the legislative body. Mr. Bailey said also:

Mr. President, it is an exceedingly disagreeable duty to raise a question as to the rights of any Senator in this body, but I am not able to see how the Senate can leave a Senator upon the roll of the Senate and still not assign him to a committee. So long as a man is a Senator he ought to be permitted to exercise his privileges as a Senator and he ought to be required to perform the duties of a Senator.

I sympathize with the delicacy of the task which the committee had before it. I also appreciate the force of the argument that when a question affecting the character and conduct of a Senator is under investigation by the courts it might be well for the Senate to withhold any judgment or proceeding until the final disposition of the criminal charge in the courts of the country. But, sir, there is another side of that question. Whenever a Senator can not come to his seat in this Chamber, can not attend the meetings of our committees, and can not answer to his name on the roll call, the effect of it is to deprive the State which he represents of at least a part of its representation in this body.

I believe the rule ought to be that when a charge affecting the fitness of a Senator to continue in this body is made in such a way as to challenge the attention of the Senate, a committee ought to be appointed, or the matter ought to be referred to some standing committee of the Senate, and they ought to report without delay upon the right of that Senator to continue as a Member of this body. If he is found unfit, the Senate owes it to the State which he represents, the Senate owes it to the country which it represents, and the Senate, most of all, owes it to itself to dispose of that question without the least delay.

I do not concede to any court the right to decide who is entitled to a seat in this body. The Constitution commits that to us in the first instance and in the last instance. We are to judge of their election and qualifications when they come; and, under our power of expulsion, we are to judge how long they may remain.

The rule is different here from that which prevails in the courts. There, as a safeguard for the liberty of the citizen, he must have his guilt established beyond a reasonable doubt; here the rule ought to be that he must free himself from all appearance of wrongdoing beyond reasonable doubt.

Mr. President, this is not the time to discuss this question on its merits. I simply embrace the opportunity to declare my belief that the Senate should determine this question without waiting longer on the courts.

We are already in a most awkward attitude. The death of a Member of this body has not yet been announced to it. His successor will soon appear at that bar to take upon himself the obligations of the office, and yet the credentials of that successor will be the first formal notice the Senate will have received of the death of the predecessor.

Mr. President, we can not afford to be too tender with these questions. I would be the last man here or elsewhere to stain an honorable name by even proposing an unjust inquiry; but Senators who do behave themselves ought not to rest under the shadow of a suspicion cast upon the Senate by those who do not behave themselves.

Without any formal motion, I protest against recognizing the right of a Senator to remain upon the roll and yet denying him the right of an assignment to a committee.

Mr. John C. Spooner, of Wisconsin, said:

The embarrassment and mortification arising through the indictment of Senators for violating the law of the land are of course confined to no Senator nor to one side of the Senate. It is a feeling which is shared by all of us. The subject, to my knowledge, has had much consideration on the other side of the Chamber and on this side, as to the proper course which in dignity and justice the Senate should pursue in such cases.

I agree with the Senator from Texas [Mr. Bailey] that the action of the committee and the Senate, if the report shall be adopted, in omitting the Senator from Kansas from all committees is anomalous, for he is a Member of the Senate. His name is on the roll—as legally there as that of any other Senator.

He is entitled to vote; he is entitled to act upon committees, for a State which is entitled to send a Senator into this body, as all the States are—and it can not be deprived of that right by the Senate or by any law—is entitled to have the Senator it sends here participate in the important legislative duties involved in committee action. But this is all changed by the request of the Senator not to be included in committee assignments.

So when it was suggested to this committee that the Senator from Kansas should, under the circumstances, be omitted from the list of committees, we were confronted at once by the suggestion which his been made by the Senator from Texas, and we were only relieved from the embarrassment by the request of the Senator from Kansas. The Senator from Kansas has acted with great propriety in absenting himself from the Senate under the circumstances. It has been, I am bound to assume and believe, out of a proper sense of delicacy and deference to his colleagues. No Senator is ever displaced from a committee, when once placed there by the Senate, without his consent, except, so far as I remember, Mr. Sumner; and we were relieved and gratified that the Senator from Kansas should have supplemented his absence from the Senate Chamber, pending the determination in the courts of his case, by a request that he be not assigned, until that determination, to any positions on committees.

Now, if the State of Kansas is deprived for the time of a Senator it is not by the Senate. She is deprived of a part of her representation here for a time by the position in which one of the Senators finds himself. That is embarrassing. There is only one man I know who can relieve the Senate in such a case of its embarrassment, unless we abandon the English rule on the subject, and that is the Senator who is involved. A Senator might leave his place in the Senate, if he were so minded, fight out the battle in the courts, establish his innocence, if possible, and then go to his State and ask to be returned in vindication to this body. That is a remedy we can not control.

The Senator from Texas referred to the case of Senator Dietrich, of Nebraska. Senator Dietrich asked for no investigation by the Senate while his case was *sub judice*. After the circuit court of the United States for the district of Nebraska had dismissed the indictment and discharged Senator Dietrich, holding the indictment to be bad, he came into the Senate, made a statement, and presented a resolution for the appointment of a select committee to investigate his case. * * *

Mr. President, whatever the Senate might do, whatever its determination might be, the jurisdiction of the court would remain unaffected. The officers of another branch of the Government would not deem themselves obstructed in the regular prosecution of that indictment. This indicted Senator, with his case prepared to be presented in the usual way in a court of justice, would be summoned to his defense before a committee of the Senate and called upon to give to the committee and to his prosecutors in the court all the evidence gathered for his defense. That, Mr. President, would be unjust. it would handicap him in his defense unless there were some way to bring about an acquiescence by the other department of the Government, the judicial, in the action or judgment of the Senate.

Then, too, in prosecuting this investigation the Senate would be entitled, and ought to be entitled, to the evidence possessed by the Government against the Senator. We could not very well ask the Department of Justice to send here the whole case. And the whole case ought to be before the Senate—just as it should be before a court—before judgment, either of acquittal or condemnation. We could not very well summon the Department of Justice and the district attorney of the district to bring before a Senate committee all the evidence gathered by the Government and upon which it relied for conviction. That would embarrass the judicial and executive departments of the Government in the discharge of public duty.

And, Mr. President, there is another and worse feature about such a course. Men sometimes are indicted not so much upon the truth as by way of conspiracy or in obedience to public clamor. In a criminal case, pending trial before a common-law jury in the tribunal created by the Constitution for the determination of such cases, an expulsion from the Senate and judgment arrived at upon a partial knowledge of the case would go with crushing and inexpressible weight against a possibly innocent man.

In support of the English rule, what the Senator from Texas says is absolutely true, that this body in determining who shall leave it and who may remain in it is above the courts and it is above the Congress. It is a part of the penalty denounced by the statute in cases like the one pending in Missouri that upon conviction the defendant shall be disqualified forever from holding any office of trust, honor, or profit under the United States. Of course, as to a Senator or a Member of the House of Representatives, that part of the penalty denounced by the statute is absolutely void and ineffective.

* * * This provision of the statute can not by any human possibility operate to vacate a Senator's seat or the seat of a Member of the House, because the Constitution has made each body the sole judge of the election, qualifications, and return of its Members. It requires two-thirds to expel a Member and two-thirds to expel a Senator, and a majority only to enact this law. It is impossible that it could apply or could operate to vacate the seat of a Senator.

Mr. Bailey, as to this part of the argument, said:

I thoroughly agree with the Senator from Wisconsin that it is beyond the power of the Congress to prescribe who is qualified and who is disqualified to sit in this Chamber. The Constitution fixes that, and under the Constitution the Senate is the judge of it. All that the law meant—I assume all that the lawmakers intended it to mean—is that if a Senator or Representative should be convicted under that statute he is disqualified forever after, not to sit in this body or in the House at the other end of this Capitol—because Congress had no power to determine that—but he is disqualified from holding any other office of profit or trust. If the judgment of a court were, brought to the bar of this Senate and tendered as a reason why we should unseat one Senator and seat another I would never recognize the validity of that statute to such an extent. If a Senator or a Member, having been convicted of a violation of that statute, sought an appointment under the Government to some other place then I should say the statute would operate as a bar against him. I admit the right of no court to determine who may or who may not sit in this Chamber.

Mr. Spooner in conclusion said:

So, Mr. President, if the court acquitted a Senator the Senate would be entirely at liberty, and if the circumstances seemed to justify it would be shamefully derelict if it failed to investigate the Senator acquitted by a jury and to try the case for itself, and if convinced that the man was unworthy of a seat in the body to pronounce and execute that judgment against him. That affords the remedy without at the same time prejudicing either the Government or the defendant by an abandonment of the English rule.

Of course, every Member of this body wishes there were no such questions possible to be suggested. Now, as to the failure of the Senator from Oregon [Mr. Fulton]—for it was his duty under the custom—to announce the death of the late Senator from Oregon. He consulted his colleagues about it. It is just to him to say that in this public way since the question has been raised.

No action was taken by the Senate on Senator Mitchell's death; and no announcement was made of it; but on a roll call of December 11, 1905,[1] it appears that his name had been dropped from the roll.

4480. On December 11, 1905,[2] the Speaker[3] named Mr. Joseph C. Sibley, of Pennsylvania, as chairman of the Committee on Manufactures and a member of the Committee on Post-Office and Post-Roads; Mr. Binger Herman, of Oregon, a member of Indian Affairs and Election of President, etc.; and Mr. John N. Williamson, of Oregon, a member of Mines and Mining and Irrigation of Arid Lands. None of these gentlemen had taken the oath. Mr. Sibley took the oath on December 18.[4] Mr. William G. Brantley, of Georgia, was appointed a member of Judiciary and Public Buildings and Grounds, although he did not appear to take the oath until December 19.[5] Mr. Williamson did not appear during the session.

4481. On February 3, 1902,[6] Mr. Melville Bull, of Rhode Island, appeared and took the oath of office prescribed by law.

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[1] First session Fifty-ninth Congress, Senate Journal, p. 42.

[2] First session Fifty-ninth Congress, Record, p. 297.

[3] Joseph G. Cannon, of Illinois, Speaker.

[4] Record, p. 546.

[5] Record, p. 591.

[6] First session Fifty-seventh Congress, Journal, p. 298; Record, p. 1249.

Mr. Bull was on the roll of Members elect at the organization of the House, and had been appointed to committee places, including the chairmanship of the Committee on Accounts, before being sworn.

4482. On January 5, 1903,[1] Mr. De Witt C. Flanagan, of New Jersey, was sworn in. He had previously been appointed a member of the Committee on Claims.

4483. An instance wherein a Member-elect was appointed on a committee long before he took the oath.—On March 15,1869,[2] Mr. Samuel S. Cox, of New York, was appointed a member of the Committee on Banking and Currency by Mr. Speaker Blaine, although he had not appeared and taken the oath or his seat. He was not on the roll during that session. At the beginning of the second session, when the roll of Members was called by States, Mr. Cox was not called, as the Clerk had not placed him on the roll, the authority of the Clerk to place names on the roll being given for the time of the organization of the House only. So, after the roll had been called, the credentials of Mr. Cox were presented, and he was sworn.[3]

4484. A Member-elect who had been appointed on a committee before taking the oath, not having appeared, the Speaker, with the consent of the House, appointed another Member to the vacancy.

Instance wherein a Member elect, being convicted in the courts on indictment, did not take his seat during the Congress. (Footnote.)

On January 4, 1907,[4] the Speaker[5] made this announcement:

The Chair appoints Mr. Englebright, of California, a member of the Committee on Mines and Mining in the place of Mr. Williamson, of Oregon, who has not appeared and taken his seat in this House.

In connection with this appointment the Chair desires to say that Mr. Williamson was appointed as a member of the Committee on Mines and Mining at the beginning of the first session of this Congress. In accordance with the parliamentary law, as laid down in Jefferson's Manual, a Member elect may be named on a committee before he has qualified. There are quite a number of early precedents in similar cases where Members had been appointed to committees before taking their seats and afterwards were removed from the committees by the Speaker because of nonappearance, and in order to make room for the appointment of other Members in their places. The Chair is inclined to the opinion on all of the precedents that this appointment is in harmony with the precedents, but prefers to say that if there be no objection the appointment will stand. [After a pause.] The Chair hears no objection.[6]

4485. In the early days the House was often particular that an absent Member should not be appointed or retained on a committee.—On February 10, 1804[7]—

Ordered, That Mr. Baldwin be appointed of the Committee of Elections, in the room of Mr. Goddard, who hath obtained leave of absence for the remainder of the session.

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[1] Second session Fifty-seventh Congress, Journal, pp. 24, 75; Record, p. 501.

[2] First session Forty-first Congress, Journal, p. 46.

[3] Second session Forty-first Congress, Journal, p. 7. Globe, p. 9.

[4] Second session Fifty-ninth Congress, Record, p. 635.

[5] Joseph G. Cannon, of Illinois.

[6] Mr. J. N. Williamson, of Oregon, had been indicted in Oregon for an offense before the assembling of the Congress, and had been convicted. He had appealed, and that appeal was pending during the Congress. He had not appeared to take the oath in the House at the time the Speaker took this action; but the House had taken no action in relation to his case. Mr. Williamson did not appear during the Congress. No other action was taken by the House in his case.

[7] First session Eighth Congress, Journal, p. 572 (Gales and Seaton ed.).

A similar instance is noted on March 10, 1804, when a vacancy on the Committee on Enrolled Bills was filled.[1]

4486. On December 15, 1842,[2] Mr. William A. Harris, of Virginia, was appointed of the Committee on Indian Affairs, in place of Mr. William M. Gwin, of Mississippi, "who has not appeared in the House at the present session."

Mr. Gwin appeared December 17.[3]

4487. On December 6, 1836,[4] the usual order was presented "that the standing committees be now appointed, according to the standing rules and orders of the House."

Thereupon a question arose as to the appointment of Members to committee places who had not yet attended.

The Speaker[5] declared that he could not appoint an absent Member to a committee.

Thereupon Mr. Charles F. Mercer, of Virginia, moved to amend the proposed order by adding the words: "and that the absence of a Member shall not be regarded as a disqualification for an appointment upon a committee."

The consideration of the matter being postponed until the next day, Mr. Mercer did not press his amendment, as more Members had arrived, and there seemed less need of it.[6] So the amendment was disagreed to.

4488. The fact that a Member's seat is contested is not necessarily taken into account in appointing him to committees.—On January 12, 1897,[7] Mr. Charles J. Boatner, of Louisiana, who had been unseated at the preceding session, and whose seat was again contested because of alleged frauds and irregularities at the second election, was appointed a member of the Committee on Ways and Means.

4489. The Speaker in filling vacancies on a committee sometimes designates the rank of the appointee on the committee list.—On December 2, 1902,[8] the Speaker[9] announced the following committee appointments:

Mr. Ebenezer J. Hill, of Connecticut, as a member of the Committee on Ways and Means, to be numbered 11 on the list, and the majority members below the vacancy caused by the death of Mr. Russell to be advanced one number each.

Mr. Henry W. Palmer, of Pennsylvania, as a member of the Committee on the Judiciary, to be numbered 11 on the list, and the other majority members to be advanced one number each.

4490. A Member may decline to serve on a committee only with permission of the House.—On August 11, 1842,[10] Mr. W. W. Irwin, of Pennsylvania, asked to be excused from serving on the select committee appointed on the message

[1] Journal, p. 632.

[2] Third session Twenty-seventh Congress., Journal, p. 65.

[3] Journal, p. 67.

[4] Second session Twenty-fourth Congress, Journal, pp. 8, 9, 32; Debates, pp. 1043, 1046, 1047.

[5] James K. Polk, of Tennessee, Speaker.

[6] At this time it was the usage to appoint the committees at each session of Congress.

[7] Second session Fifty-fourth Congress, Journal, pp. 20, 78, 86.

[8] Second session Fifty-seventh Congress, Journal, p. 8; Record, p. 19.

[9] David B. Henderson, of Iowa, Speaker.

[10] Second session Twenty-seventh Congress, Globe, p. 882.

of the President returning with his objections the bill (H. R. 472) to provide revenue from imports, etc. Mr. Irwin asked if he was not at liberty to decline serving on the committee.

The Speaker[1] replied that he was not, and that it was for the House to say whether or not the gentleman was to be excused from serving.

4491. On July 15, 1870[2] Mr. Noah Davis, of New York, resigned his position as a member of the Judiciary Committee, and the Speaker[3] appointed another Member in his place without putting any question on allowing Mr. Davis to decline.

Mr. Davis resigned from the House before the next session.[4]

4492. On March 24, 1864,[5] Mr. William H. Wadsworth, of Kentucky, resigned his position on the Committee on Public Lands under the then existing rule,[6] that "any Member may excuse himself from serving on any committee at the time of his appointment, if he is then a Member of two other committees."

4493. On June 8, 1860,[7] Mr. George S. Houston, of Alabama, offered his resignation as a member of the Committee on the Judiciary.

The Speaker[8] said:

> In the opinion of the Chair no member can withdraw from a committee without the consent of the House, unless he is at the same time a member of two other committees.[9]

Mr. Miles Taylor, of Louisiana, moved that Mr. Houston and himself be excused from further service on the Committee on the Judiciary.

On June 9 the House laid this motion on the table, ayes 62, noes 57, thus in effect denying to the two Members their requests that they be allowed to resign.

4494. While the House has usually granted requests of Members that they be excused from committee service, it has sometimes refused.—On November 2, 1807,[10] on motion made by himself, Mr. David Thomas, of New York, was by the House excused from service on the Committee on Commerce and Manufactures.

4495. On January 19, 1827,[11] the Speaker laid before the House a letter from Mr. Louis McLane, of Delaware, asking that on account of ill health he be excused from service on the Committee on Ways and Means, of which he was chairman.

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[1] John White, of Kentucky, Speaker.

[2] Second session Forty-first Congress, Journal, p. 1290; Globe, p. 5655.

[3] James G. Blaine, of Maine, Speaker.

[4] Third session Forty-first Congress, Journal, pp. 23, 24.

[5] First session Thirty-eighth Congress, Journal, pp. 425, 1042.

[6] Adopted April 13, 1789.

[7] First session Thirty-sixth Congress, Journal, pp. 1042, 1045; Globe, pp. 2776, 2777, 2797.

[8] William Pennington, of New Jersey, Speaker.

[9] Rule 69 at that time provided: "Any Member may excuse himself from serving on any committee at the time of his appointment if he is then a member of two other committees." This rule, which dated from April 13, 1789, is no longer in force. Mr. Houston had been serving for some time on the Committee on the Judiciary. In fact, his resignation was prompted by certain proceedings relating to a report of that committee.

[10] First session Tenth Congress, Journal, p. 15 (Gales & Seaton ed.); Annals, p. 800.

[11] Second session Nineteenth Congress, Journal, p. 181; Debates, p. 751.

After debate the House, by a large majority—

Ordered, That Mr. McLane be excused from further service on the Committee on Ways and Means, and that another member be appointed on said committee.

And thereupon Mr. George McDuffie, of South Carolina, was appointed.

4496. On December 14,[1] the Speaker laid before the House a letter from Mr. John Randolph, of Virginia, asking to be excused from service on the Ways and Means Committee. The question being put, the House voted to excuse him. His letter is printed in full in the Journal.

4497. On May 19, 1840,[2] the House excused Mr. David Petrikin, of Pennsylvania, from service on the joint committee on the subject of the documentary history of the revolution.

4498. On May 9, 1846,[3] Mr. John Pettit, of Indiana, from the select committee appointed to investigate certain charges brought against the late Secretary of State, Daniel Webster, presented a resolution providing for a clerk for the committee.

This proposition was disagreed to by the House.

Thereupon Mr. Pettit asked to be excused from service on the committee; but the House declined to excuse him.

On May 12 the Speaker laid before the House the following letter, which appears in full in the Journal:

HOUSE OF REPRESENTATIVES, *May 12, 1846.*

SIR: Having been by the House refused a clerk to assist in doing the manual labor in the committee to investigate the charges against Mr. Webster, and the House having refused to excuse me from further service on that committee, thus seeming disposed to impose on me an undue degree of labor, I have felt it due to myself to refuse to serve on that committee. And I again most respectfully ask the House to excuse me, and that another may be appointed in my place.

Your obedient servant,

JOHN PETTIT.

To HON. JOHN W. DAVIS, *Speaker, etc.*

On motion of Mr. Jacob Brinkerhoff, of Ohio, Mr. Pettit was excused from further service on the said committee.

4499. On January 13, 1886,[4] Mr. Andrew G. Curtin, of Pennsylvania, asked to be excused from service as chairman of the Committee on Banking and Currency. Mr. Richard P. Bland, of Missouri, objected, but the House on a vote excused Mr. Curtin. This was an excuse from the position of chairman merely. The Journal does not indicate how his successor as chairman was selected.

4500. On January 19, 1839,[5] Mr. David D. Wagener, of Pennsylvania, asked to be excused from service on the select committee elected by ballot to consider the subject of the defalcation of the late collector of the port of New York.

After debate the question was put: "Will the House excuse Mr. Wagener from serving as a member of the select committee on the subject of defalcations of public officers?" and there were, yeas 102, nays 106. So Mr. Wagener was not excused.

4501. On June 3, 1858,[6] the House excused Mr. James B. Clay, of Kentucky,

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[1] First session Twentieth Congress, Journal, p. 55; Debates, p. 819.

[2] First session Twenty-sixth Congress, Journal, p. 963.

[3] First session Twenty-ninth Congress, Journal, pp. 774, 775, 804; Globe, p. 782.

[4] First session Forty-ninth Congress, Journal, p. 357; Record, p. 638.

[5] Third session Twenty-fifth Congress, Journal, p. 324; Globe, p. 127.

[6] First session Thirty-fifth Congress, Journal, pp. 1013, 1071 , Globe, p. 2904.

from service on the Committee on Foreign Affairs. On the succeeding day a motion was entered to reconsider that vote, and on June 10 the House reconsidered its action and decided the motion to excuse in the negative.

4502. On December 6, 1860,[1] the Speaker announced the select committee of one from each State to whom had been referred those portions of the annual message of the President relating "to the present perilous condition of the country," whereupon Mr. George S. Hawkins, of Florida, who had been named as one of the committee, moved that he be excused from serving on the committee. Mr. Hawkins said that, after consultation with the oldest Members of the House, he had learned that a Member could not, without the liability of incurring rebuke, decline to serve where assigned by the House, unless excused by the House.

After debate the motion to excuse Mr. Hawkins was decided in the negative, on December 11, by a vote of, yeas 95, nays 101.[2]

On December 11, also, Mr. William W. Boyce, of South Carolina, asked to be excused from service on the committee, and after debate the question was taken, and it was decided in the negative, yeas 100, nays 100.

4503. On January 26, 1863,[3] the House declined to excuse Mr. Henry L. Dawes, of Massachusetts, from service on the Committee on Elections, of which he was chairman.

4504. On December 15, 1864,[4] Mr. Henry Winter Davis, chairman of the Committee on Foreign Affairs, asked to be excused from service on that committee. After debate the House declined to excuse him.

4505. On December 2, 1872,[5] Mr. Nathaniel P. Banks, of Massachusetts, presented his resignation of his appointment as a member of the Committee on Foreign Affairs, of which committee he was chairman.

After debate the House voted, ayes 59, noes 76, that Mr. Banks should not be excused.

4506. A Member may be excused from service on a conference as on committees only by permission of the House.—On February 28, 1883,[6] Mr. Samuel J. Randall, of Pennsylvania, as a privileged question, asked to be excused from service on the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill of the House (H. R. 5538) to reduce internal-revenue taxation.

The Chair thereupon presented the request to the House, and it was granted.

4507. The request of a Member that he be relieved from service on a committee is submitted to the House for approval.—On June 12, 1890,[7] the Speaker laid before the House a communication from Mr. Roger Q. Mills, of Texas, in which the latter resigned his position as a member of the Committee on Rules.

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[1] Second session Thirty-sixth Congress, Journal, pp. 49, 57; Globe, pp. 22, 59–61.

[2] After the House had declined to excuse him, Mr. Hawkins declared that be would not serve on the committee. (Globe, p. 60.)

[3] Third session Thirty-seventh Congress, Journal, pp. 227, 230; Globe, pp. 491, 518.

[4] Second session Thirty-eighth Congress, Journal, p. 50; Globe, pp. 48–53.

[5] Third session Forty-second Congress, Journal, p. 7; Globe, pp. 10, 11.

[6] Second session Forty-seventh Congress, Journal, p. 522; Record, p. 3409.

[7] First session Fifty-first Congress, Record, p. 5981.

The communication having been read, the Speaker[1] said:

The question before the House is, "Shall Mr. Mills be excused from service on the committee?"

The question was taken and Mr. Mills was excused.

On January 16, 1900,[2] the Speaker laid before the House a communication from Mr. Loren Fletcher, of Minnesota, in which the latter requested that he be relieved from further service on the Committee on Claims.

The communication having been read, the Speaker[3] put the question and Mr. Fletcher was excused.

4508. The request of a Member that he be excused from committee service has generally been treated as privileged, but as debatable to a very limited extent only.—On February 9, 1842,[4] five members of the Committee on Foreign Affairs asked to be excused from service on the Committee on Foreign Affairs, because they did not approve the conduct of the chairman, Mr. John Quincy Adams, of Massachusetts. A question was raised as to whether or not the applications to be excused constituted a question of privilege, but the Speaker[5] declined to entertain them as such. The House voted to excuse the five Members.

4509. On January 13, 1853,[6] Mr. John A. Wilcox, of Mississippi, claiming the floor for a question of privilege, moved that he be excused from service on the Committee on Military Affairs. The Speaker,[7] while not disputing his claim to the floor, held that he could speak in explanation of his motion only by unanimous consent. Mr. Wilcox having explained, the House voted not to excuse him.

4510. On January 29, 1855,[8] Mr. Thomas H. Bocock, of Virginia, moved that he be excused from further service on the Committee on Naval Affairs and proceeded to explain his reasons for the motion.

Mr. Frederick P. Stanton, of Tennessee, raised the question of order as to the propriety of entertaining this motion.

The Speaker[7] said:

The Chair decides that, according to the practice of the House since he has served in this body, a gentleman is allowed at any time to ask to be excused from serving on a committee. It is a convenient rule, at least; and, in the opinion of the Chair, it is courteous and proper that the question should be put whether the gentleman from Virginia will be excused.

A question being raised as to the range of debate proper, the Speaker decided that it must be very limited.

After debate as to the propriety of excusing Mr. Bocock, the House decided his motion in the negative.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] First session Fifty-sixth Congress, Record, p. 885; Journal, p. 166.

[3] David B. Henderson, of Iowa, Speaker.

[4] Second session Twenty-seventh Congress, Globe, p. 222.

[5] John White, of Kentucky, Speaker.

[6] Second session Thirty-second Congress, Journal, p. 126, Globe, p. 287.

[7] Linn Boyd, of Kentucky, Speaker.

[8] Second session Thirty-third Congress, Journal, p. 261; Globe, p. 448.

4511. The Speaker may not relieve a Member from service on the committee to which he has appointed him.—On March 16, 1832,[1] Mr. John Quincy Adams, of Massachusetts, stated that in addition to his position on the Committee; on Manufactures he had been appointed a member of the Committee to Investigate the Bank of the United States. He has asked the Speaker to relieve him from the duties of the former committee, but the Speaker[2] had informed him that it was not in his power to change the designation, and that it could be done only by application to the House itself.[3] Therefore he asked to be excused from service on the Committee on Manufactures.

Objections were made because of the need of Mr. Adams's services on the committee, and many Members announcing their intention of opposing the request Mr. Adams withdrew it.

4512. The election of a Member as Speaker is assumed to vacate any positions on committees held by him previously.—On January 21, 1814,[4]

Ordered, That Mr. Loundes be appointed on the joint committee of the two Houses to have the application of the moneys appropriated for the Library of Congress, in the place of Mr. Cheves, elected Speaker.

The Speaker does not appear by the Journal to have asked to be excused, and it seems to have been assumed that his election as Speaker vacated his committee place.

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[1] First session Twenty-second Congress, Journal, p. 502; Debates, p. 2175.

[2] Andrew Stevenson, of Virginia, Speaker.

[3] Mr. Speaker Keifer took the view that the Speaker himself might excuse a Member from service on a committee, and acted on this view at least once. (First session Forty-seventh Congress, Record, p. 248.) But such has not been the practice.

[4] Second session Thirteenth Congress, Journal, p. 243 (Gales and Seaton ed.); Annals, p. 1093.

Chapter CV.

ORGANIZATION AND PROCEDURE OF COMMITTEES.

1. **Rule as to chairman. Section 4513.**
2. **Earlier and later usage as to chairmanship of select committees. Sections 4514–4523.[1]**
3. **Election of chairman by the committee. Sections 4524–4530.**
4. **Resignation as chairman. Sections 4531, 4532.**
5. **Clerks of committees. Sections 4533–4539.**
6. **Sittings of committees, Sections 4540–4549.**
7. **Special authorizations to committees. Sections 4550–4554.[2]**
8. **Reference of Bills to committees. Sections 4555, 4556.**
9. **Procedure of committees. Section 4557.[3]**
10. **Secret sessions. Sections 4558–4565.[4]**
11. **Hour of meeting, recess, voting, journal, etc. Sections 4566–4579.**
12. **Oaths taken by committee clerks. Sections 4580–4582.**

4513. The chairmanship of a committee is determined by seniority, by election by the committee, or, in case of the death of the chairman, by appointment by the Speaker.

Form and history of section 3 of Rule X.

Section 3 of Rule X provides:

> The first-named member of each committee shall be the chairman; and in his absence, or being excused by the House, the next-named member, and so on, as often as the case shall happen, unless the committee by a majority of its number elect a chairman; and in case of the death of a chairman, it shall be the duty of the Speaker to appoint another.

This rule, with a few changes, dates from November 23, 1804. Previous to that time the first-named member had acted as chairman, but only by usage. A vacancy which occurred in the chairmanship of the Committee on Claims on November 6, 1804, and the refusal of another member of the committee to accept the vacant

[1] See also sections 1827, 2342 of Vol. III.

[2] As to committees of investigation. Chapter LV, sections 1750–1826 of Vol. III.

When appointed merely to ascertain facts do not report recommendations. Section 1649 of Vol. II.

[3] Motion to lay on table in. Section 1737 of Vol. III.

Subjects relating to, as questions of privilege. Sections 2603–2611 of Vol. III.

[4] See also section 1732 of Vol. III.

chairmanship, caused the matter to be brought before the House,[1] with the result that a rule was adopted as follows:[2]

> That the first-named member of any committee appointed by the Speaker or the House shall be the chairman, and in case of his absence, or being excused by the House, the next-named member, and so on, as often as the case shall happen, unless the committee shall, by a majority of their number, elect a chairman.[3]

This rule was reported in a form modified as at present by the Committee on Rules who made the revision of 1880.[4] The clause relating to filling a vacancy caused by the death of a chairman dates from the revision of 1890,[5] and was retained in the Fifty-second Congress,[6] but not in the Fifty-third. It was restored in the Fifty-fourth Congress.

4514. It was the earlier usage of the House that the Member moving a select committee should be appointed its chairman.—On January 11, 1825,[7] Mr. Samuel D. Ingham, of Pennsylvania, moved that a message of the President be referred to a select committee, but debate arising, he said:

> It could not be expected, from his situation, as having brought forward the present motion, that he should press for the appointment of a select committee.

Here the editor of the debates appends this footnote:

> By custom of the House, the person moving such a committee is usually put at the head of it.

4515. On January 16, 1833,[8] in the debate on the message of President Jackson relating to the nullification controversy with South Carolina, Mr. William S. Archer, of Virgina, mentioned that had he moved reference to a select committee, he would, by the courtesy of the House, have been chairman.

4516. On February 8, 1847,[9] Mr. Stephen A. Douglas, of Illinois, who had moved that a select committee be appointed, said that by the courtesy of the House the mover of a select committee was usually appointed its chairman, but requesting in this instance to be excused. The Speaker appointed him chairman, however.

4517. The inconvenience of the usage that the proposer of a committee should be its chairman has caused it to be disregarded in modern practice.—December 7, 1876,[10] Mr. George W. McCrary, of Iowa, a member of the minority party of the House, offered a resolution providing for a special committee

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[1] See Constitution, Manual, and Rules, edition of 1859, p. 159.

[2] Journal, second session Eighth Congress, p. 22; Annals, pp. 698, 699. On December 20, 1805, the rule was again adopted, with an additional clause relating to the calling of meetings. First session Ninth Congress, Journal, p. 209; Annals, p. 300.

[3] The Committee on Claims availed themselves of the authority conferred by the last clause to elect as chairman the member who had previously refused the chairmanship, Mr. Samuel W. Dana, of Connecticut. (See Constitution, Manual, and Rules, ed. 1859, p. 159.) According to present usage, the first-named member is always chairman.

[4] Second session Forty-sixth Congress, Record, p. 205.

[5] House Report No. 23, first session Fifty-first Congress.

[6] First session Fifty-second Congress, Record, p. 86.

[7] Second session Eighteenth Congress, Debates, p. 178.

[8] Second session Twenty-second Congress, Debates, p. 1086.

[9] Second session Twenty-ninth Congress, Globe, p. 352.

[10] "Second session Forty-fourth Congress, Journal, pp. 44, 45.

of five Members to report a measure to provide for counting the electoral votes. This resolution was referred to the Committee on Judiciary, which reported December 14,[1] two resolutions providing two committees to consider the subject. These committees were appointed December 22, 1876.[2] Mr. McCrary was chairman of neither, but had fifth place on the second.[3]

4518. On February 11, 1858,[4] Mr. Speaker Orr appointed Mr. Thomas L. Harris, of Illinois, chairman of the committee to whom was referred the message of the President relating to the Lecompton constitution of Kansas. Mr. Harris, though a member of the majority party, acted with the minority party in defeating Mr. Alexander H. Stephens's motion to refer the message to the Committee on Territories, and it was his proposition to refer to a select committee with instructions that finally prevailed. He seems to have been appointed chairman because of the adoption of his proposition, but it is evident that Mr. Speaker Orr constituted the majority of the committee to be in sympathy with the supporters of the Administration, for eight of the fifteen members were men who are recorded against the resolution of reference, which passed the House by a vote of 115 to 111. Moreover, on March 11, we find Mr. Harris, on behalf of himself and the others of the minority, complaining to the House that the majority of the committee were failing to execute the order of the House, and had adjourned.

4519. On December 1, 1856,[5] Mr. James L. Orr, a Democrat, of South Carolina, made the motion that a committee be appointed on the part of the House to notify the President that the Congress is ready for business; and Mr. Speaker Banks, a Republican, made Mr. Orr chairman of the committee.

4520. In appointing committees of investigation it is evidently necessary to disregard the former usage that the proposer of the committee should be its chairman.—On April 4, 1810,[6] Mr. Joseph Pearson, of North Carolina, offered a resolution directing an investigation of the conduct of Brig. Gen. James Wilkinson, Commander in Chief of the Army. The resolution being agreed to, Mr. Pearson was not appointed chairman, but was the last-named Member.

4521. On March 3, 1864,[7] Mr. Frank P. Blair, Jr., of Missouri, proposed a resolution of investigation of certain charges which had been made against himself, and the resolution was agreed to by the House, and the Speaker[8] proceeded to appoint the committee called for by the resolution. The Speaker said that under the practice of the House the Speaker would have to appoint Mr. Blair chairman of the committee unless he should decline to serve in that capacity. Mr. Blair asked that the formality be dispensed with, and the Speaker accordingly named another Member chairman, not naming Mr. Blair on the committee at all.

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[1] Journal, p. 78.

[2] Journal, p. 137.

[3] Instances occurred in this Congress where the Member proposing committee was appointed its chairman. (Second session Forty-fourth Congress, Journal, pp. 174, 183, 285, 305.)

[4] First session Thirty-fifth Congress, Journal, pp. 345–349, 369, 477; Globe, p. 1075.

[5] Third session Thirty-fourth Congress, Globe, p. 2; Journal, p. 8.

[6] Second session Eleventh Congress, Journal, p. 348 (Gales and Seaton ed.).

[7] First session Thirty-eighth Congress, Journal, p. 421; Globe, p. 1253.

[8] Schuyler Colfax, of Indiana, Speaker,

4522. On January 23, 1865,[1] Mr. Robert C. Schenck, of Ohio, offered a resolution providing for an investigation of an assault upon the Hon. William D. Kelley, of Pennsylvania. This resolution having been agreed to, the Speaker, on January 24, appointed on the committee Messrs. Beaman, Edward H. Rollins, Robinson, John D. Baldwin, and Townshend.[2]

4523. On March 20, 1879,[3] on motion of Mr. John A. McMahon, of Ohio, a Member of the majority of the House, a resolution was introduced for the investigation of the operation of the election law in Cincinnati. On March 29, Mr. Speaker Randall appointed the committee, making Mr. John G. Carlisle, of Kentucky, chairman, but explaining that Mr. McMahon had declined to serve as chairman.

4524. A committee, having elected a chairman, has sometimes reported that fact to the House.—On December 1, 1806,[4] it being ordered that a Committee on Ways and Means be appointed pursuant to the standing rules and orders of the House, a committee was appointed, Mr. Joseph Clay, of Pennsylvania, being chairman.

On December 5, on motion, it was—

Ordered, That Mr. Garnett be excused from serving on the Committee on Ways and Means, and that Mr. John Randolph be appointed on the said committee, in his place.

On December 9,[5] Mr. Clay reported to the House that under the existing rule[6] the Member first named on a committee was chairman, unless another Member was chosen by the committee; and he was instructed to state that in virtue of the last provision the Committee, on Ways and Means had appointed Mr. J. Randolph, chairman.

It does not appear that Mr. Clay had asked to be excused from the chairmanship.

4525. On December 27, 1847,[7] Mr. Meredith P. Gentry, of Tennessee, from the Committee on Indian Affairs, reported that at a meeting of the committee held at their committee room this day, on motion of Mr. Gentry, chairman of the committee, Daniel M. Barranger, of the State of North Carolina, was unanimously appointed chairman of said committee.

This report was read and laid on the table.

4526. It has been decided that it is not necessary for a committee to report to the House the election of a chairman.—On January 21, 1835,[8] Mr. John Quincy Adams, of Massachusetts, offered the following:

Ordered, That the name of the present chairman of the Committee on Foreign Affairs be entered upon the Journals of the House.

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[1] Second session Thirty-eighth Congress, Journal, pp. 135, 138.

[2] On March 1 and 5, 1872 (second session Forty-second Congress, Record, pp. 1321, 1417), the Senate by ballot elected a committee to investigate the sale of arms to France, and chose of that number not a single Member who had prominently urged the investigation. It had been proposed to put Mr. Charles Sumner, of Massachusetts, at the head, as he had instigated the investigation, but his health prevented his serving. Mr. Sumner and others protested against the one-sided constitution of the committee, but without avail.

[3] First session Forty-sixth Congress, Journal, pp. 23, 34; Record, pp. 29, 126.

[4] Second session Ninth Congress, Journal, pp. 465, 473 (Gales and Seaton ed.).

[5] Annals, p. 130. The Journal does not mention this report by Mr. Clay.

[6] See section 4513 of this volume for form of rule then and now.

[7] First session Thirtieth Congress, Journal, p. 149; Globe, p. 64.

[8] Second session Twenty-third Congress, Journal, p. 252; Debates, p. 7825.

The debate developed the following fact:

When the Committee on Foreign Affairs was appointed on December 4[1] Mr. James M. Wayne, of Georgia, was named first, and Mr. Edward Everett, of Massachusetts, second. On January 13, Mr. Wayne resigned his seat in the House[2] and Mr. Churchill C. Cambreleng, of New York, was "appointed on the Committee on Foreign Affairs, in place of Mr. Wayne, resigned."

As appears from the debate, Mr. Everett assumed the position of chairman, the Speaker considering him the successor of Mr. Wayne in that position, although Mr. Everett expressed some doubts as to the propriety of his acting as chairman for the reason that he was not in sympathy with the Administration. Subsequently the committee, by a vote of four to three, Messrs. Everett and Cambreleng not voting, elected Mr. Cambreleng chairman over Mr. Everett.

Mr. Adams, in presenting his order, referred to the fact that Mr. Cambreleng received the votes of only four of the committee, the total membership of nine being present. While it seemed to him that the minority in this case had assumed to elect a chairman, he was not disposed to question the validity of the election. But the election of Mr. Cambreleng had been in derogation of the ordinary usages of the House, according to which the person first named on a committee was ex officio chairman, and in the event of his absence or resignation the next named. It was true that Jefferson's Manual gave to the committee the power to elect their own chairman, but he did not believe that there was a single instance where this had been done. He thought that the name of the chairman ought to be placed in the Journal so that the House might know who was chairman in its dealings with the committee.

Mr. William S. Archer, of Virginia, replying to Mr. Adams, said that the committee constituted one undivided organ of the House, and they were in the habit of making reports through other members as well as the chairman. In a parliamentary sense neither the individual members of a committee nor the chairman were known to the House. A committee could certainly elect a chairman for itself, and the House could take no cognizance of what passed in the committee in this respect unless the committee choose to inform them. A precedent was to be found in the case of Mr. John Randolph, of Virginia, who had been displaced as chairman of the Ways and Means Committee by Mr. Speaker Macon, and afterwards reelected chairman by the committee.

The order proposed by Mr. Adams was laid on the table.

4527. On December 19, 1861,[3] in the committee appointed to investigate Government contracts, a select committee, Mr. E. B. Washburne, of Illinois, was chosen temporary chairman, and the Sergeant-at-Arms of the House (who was liable to be called on to summon witnesses) was informed. On February 26 the committee chose Mr. Washburne chairman, and directed that the action be entered on the journal of the committee. There is no record, however, that the committee informed the House of its action.

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[1] Second session Thirty-seventh Congress, pt. 2 of House Report No. 2, journal of the committee, pp. 2, 10.

[2] Journal, p. 34.

[3] Journal, p. 213.

4528. The select committee created January 17, 1839,[1] for the investigation of the defalcation in the New York custom-house, was chosen by ballot by the House. The committee, in turn, elected their own chairman by ballot. Notice of this election of a chairman does not appear to have been given to the House by the committee.

4529. The chairman of a committee having resigned his seat in the House the committee elected a chairman and reported to the House.—On December 14, 1898,[2] the Speaker submitted to the House the following communication:

COMMITTEE ON RIVERS AND HARBORS,
HOUSE OF REPRESENTATIVES UNITED STATES,
Washington, D. C., December 7, 1898.

At a meeting of the Committee on Rivers and Harbors this day held, at which the following members were present, to wit: Walter Reeves, R. P. Bishop, Ernest F. Acheson, Page Morris, William L. Ward, Thomas C. Catchings, Rufus E. Lester, John H. Bankhead, Philip D. McCulloch, Albert S. Berry, Stephen M. Sparkman, and Thomas H. Ball, by unanimous vote Mr. Theodore E. Burton, of Ohio, was elected chairman of said committee, to take the place of Mr. Warren B. Hooker, resigned, and, on motion, voted that the Speaker be notified of the action of this committee.

WALTER REEVES, *Acting Chairman.*

Attest:
L. L. HANCHETT, *Clerk.*

4530. The chairman of a committee having resigned his seat in the House, the Speaker, by consent of the House, appointed a chairman.—On March 28, 1904,[3] the Speaker,[4] by consent of the House, appointed Mr. Edward DeV. Morrell, of Pennsylvania, chairman of the Committee on Militia, in place of Mr. Charles Dick, of Ohio, who had resigned his seat as a Member. Mr. Morrell was not a member of the Committee on Militia previous to this appointment.

4531. The chairman of a committee, with the permission of the House, may resign as chairman, still remaining a member of the committee.—On December 5, 1900,[5] the Speaker announced that Mr. Charles A. Boutelle, of Maine, had resigned his place as chairman of the Committee on Naval Affairs. The House, without objection, allowed the resignation by unanimous consent.

This was a resignation as chairman only, Mr. Boutelle still remaining a member of the committee.

4532. On December 13, 1888,[6] Mr. James B. McCreary, of Kentucky, asked to be relieved of the chairmanship of the Committee on Private Land Claims, and the House excused him.

Thereupon Mr. James B. Weaver, of Iowa, stated that this action would cause the chairmanship to devolve on him, and he asked to be excused, as he was already chairman of the Committee on Patents. Whereupon Mr. Weaver was excused.

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[1] Third session Twenty-fifth Congress, House Report No. 313, p. 293.
[2] Third session Fifty-fifth Congress, Record, p. 195; Journal, p. 30.
[3] Second session Fifty-eighth Congress, Journal, p. 502; Record, p. 3824.
[4] Joseph G. Cannon, of Illinois, Speaker.
[5] Second session Fifty-sixth Congress, Journal, p. 25; Record, p. 66.
[6] Second session Fiftieth Congress, Journal, p. 81; Record, p. 235.

Thereupon the Speaker[1] appointed the member next in order, Mr. John M. Glover, of Missouri, as chairman.[2]

Mr. McCreary had asked to be excused because the resignation of the chairman of the Committee on Foreign Affairs had left him as chairman of that committee. He did not resign from the committee, but only from the chairmanship.

Mr. McCreary's request was journalized as a privileged matter.

4533. Clerks of committees are appointed by the chairmen, with the approval of the committee, and are paid at the public expense.

Present form and history of section 4 of Rule X.

Section 4 of Rule X provides:

> The chairman shall appoint the clerk or clerks of his committee, subject to its approval, who shall be paid at the public expense, the House having first provided therefor.

This rule dates from December 14, 1838,[3] when Mr. Samuel Cushman, of New Hampshire, proposed that no committee should be permitted to employ a clerk at the public expense without first obtaining leave of the House for that purpose. This suggestion was adopted and became old rule No. 73. In the revision of 1880[4] the present form of the rule was adopted.[5]

4534. An annual clerkship of a committee is authorized by a resolution reported by the Committee on Accounts and agreed to by the House.—On August 23, 1888,[6] Mr. M. M. Boothman, of Ohio, from the Committee on Accounts, presented for the action of the House this resolution:

> *Resolved,* That the Committee on the Merchant Marine and Fisheries be allowed an annual clerk, to be paid out of the contingent fund of the House, until March 3, 1889, at the rate of $2,000 per annum; and the Committee on Appropriations are hereby instructed to make provision for such clerk at the said rate of $2,000 per annum, from said March 3, 1889.[7]

4535. Session clerks are assigned to committees by resolution reported from the Committee on Accounts and agreed to by the House.

Reference to statutes fixing the pay of session clerks of committees. (Footnote.)

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[1] John G. Carlisle, of Kentucky, Speaker.

[2] The power of the Speaker to make this appointment may be doubted in view of section 3 of Rule X.

[3] Third session Twenty-fifth Congress, Globe, p. 32; Journal, p. 80.

[4] Second session Forty-sixth Congress, Record, p. 205.

[5] On January 28, 1803 (second session Seventh Congress, Journal, p. 311), the House disagreed to a proposition to authorize "two additional clerks to be denominated 'committee clerks,'" whose duties it should be to attend to the business of the several committees.

[6] First session Fiftieth Congress, Record, pp. 7884, 7885.

[7] The following committees have permanent or annual clerkships: Ways and Means (also an assistant clerk and stenographer), Appropriations (also an assistant clerk and an assistant clerk and stenographer), Accounts, Agriculture, Banking and Currency, Census, Claims, District of Columbia, Elections Numbers One, Two, and Three, Foreign Affairs, Interstate and Foreign Commerce (also an additional clerk), Immigration and Naturalization, Indian Affairs, Insular Affairs, Invalid Pensions (also an assistant clerk), Irrigation of Arid Lands, Judiciary (also an assistant clerk), Labor, Library, Merchant Marine and Fisheries, Military Affairs, Naval Affairs, Patents, Pensions, Post-Office and Post-Roads (also an assistant clerk), Printing, Public Buildings and Grounds, Public Lands, Rivers and Harbors (also an assistant clerk), Revision of the Laws, Territories, War Claims (also an assistant clerk).

On December 10, 1897,[1] Mr. Benj. B. Odell, jr., of New York, obtained unanimous consent for the consideration of this resolution:

Resolved, That the Committee on Accounts is hereby authorized and directed to designate the committee to which the clerks provided for by the legislative, executive, and judicial appropriation bill for the fiscal year ending June 30, 1898, should be allowed and assigned for the present Congress, and to report by resolution to the House for its action thereon.

It having been explained that it was in accordance with the usual custom for the Committee on Accounts to assign these clerks, the resolution was adopted.[2]

4536. A session clerk is entitled to compensation only from the date when he enters upon the discharge of his duties with the committee.—On June 23, 1896, the Comptroller of the Treasury decided[3] that, under the joint resolution of June 28, 1886, providing that the pay of session clerks to committees of the House of Representatives should begin from the time such clerks entered upon the discharge of their duties, to be ascertained and evidenced by certificate of the chairmen of the several committees, such clerk was not entitled to compensation from the beginning of the session on the certificate of the chairman, but only from the date when he enters upon the discharge of his duties as clerk to the committee, which can in no event be prior to the appointment of the committee by the Speaker.

4537. A clerk of a committee who ceased to hold office on December 21 was held not to be entitled to the salary for the remainder of the month, under the terms of a resolution directing the payment of salaries of employees for that month on the 20th.—On January 22, 1896, the Comptroller of the Treasury decided[4] that the clerk of a committee of the House of Representatives who ceased to hold the office on December 21, 1895, was not entitled, under the resolution directing payment of salaries of clerks and employees for the month of December on the 20th day of that month, to the salary for the whole month, payment not having been made to him until after he had vacated the office.

4538. The clerk of a committee being appointed a postmaster, was held to be entitled to his salary as clerk until his successor was appointed, although his salary as postmaster had already begun.—Mr. A. H. Boyden, holding the position of clerk to the Committee on Post-Office and Post-Roads, House of Representatives, in Washington, was commissioned and entered upon the discharge of his duties as postmaster at Salisbury, N. C., on July 1, 1893. His salary as postmaster was $1,800 a year. On August 29 his successor as clerk to the committee was appointed. The question arose whether or not he could

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[1] Second session Fifty fifth Congress, Record, p. 79.

[2] The pay of the clerks to committees of the House of Representatives, heretofore authorized by the House, who are paid during the session only, shall begin from the time such clerks entered upon the discharge of their duties as clerks to committees, which shall be ascertained and evidenced by the certificates of the chairmen of the several committees employing clerks for the session only. (22 Stat. L., p. 378.)

Hereafter clerks of committees of either branch of Congress (except those whose salaries are fixed by specific appropriations) shall be paid not more than six dollars per day, and during the session only. (18 Stat. L., p. 345.)

[3] Decisions of the Comptroller of the Treasury (Bowler), Vol. II, p. 638.

[4] Decisions of the Comptroller of the Treasury (Bowler), Vol. II, p. 359.

be paid the salary of both offices for the period from July 1 to August 29; and the First Comptroller decided,[1] on September 29, 1893, that the two positions were compatible, and that Mr. Boyden was entitled to the compensation of both.

4539. There is no legal power to fill a vacancy in the clerkship of a committee after one Congress has expired and before the next House has been organized.—Hon. James Kerr, Clerk of the House of Representatives, in 1893 requested the opinion of the Comptroller of the Currency on the following points: (1) Whether or not there was any legal power to fill a vacancy in the clerkship to the River and Harbor Committee where such vacancy occurred after the expiration of the Fifty-second Congress and before the organization of the Fifty-third Congress; (2) in whom was such power vested, if it existed; and (3) could the name of a certain individual be legally placed on the rolls of the House as clerk of that committee; could he be paid the salary belonging to the appointment; and if so, from what date would he be entitled to pay?

The Comptroller, in reply, decided:

There is no legal power to fill a vacancy in the clerkship to the Rivers and Harbors Committee where such vacancy occurred after the expiration of the Fifty-second Congress and before the organization of the Fifty-third Congress; and, therefore, the name of Mr. William P. Hickman, who was designated by the Hon. N. C. Blanchard, chairman of the Committee on Rivers and Harbors of the Fifty-second Congress, to take the place of James Hickman, deceased, can not legally be placed upon the rolls of the House of Representatives as the clerk of said committee.

The reasons for this decision,[2] summarized, are as follows:

There appears to be no precedent for such appointment, but there are two precedents of places remaining vacant under similar circumstances; neither House can continue any portion of itself in any parliamentary function beyond the close of the session without the consent of the other two branches (Jefferson's Manual, Rules of House No. XLIV); the chairman may only appoint his clerk subject to the approval of the committee (House Rule X, see. 4); the clerk of a committee is not in general entitled to compensation unless he takes the oath of office under and by authority of the House.[3]

4540. In absence of direction of the House committees meet when and where they please, but may only act when together.

A majority of a committee is the quorum.

Rule of parliamentary law as to right of a Member to attend on a committee to which he does not belong.

Jefferson's Manual, in Section XXVI, provides:

In some cases the House has ordered a committee to withdraw immediately into the committee chamber and act on and bring back the bill, sitting the House. (Scob., 48.) A committee meet when and where they please[4] if the House has not ordered time and place for them (6 Grey, 370); but they can only act when together, and not by separate consultation and consent—nothing being the report of the committee but what has been agreed to in committee actually assembled.

A majority of the committee constitutes a quorum for business. (Elsynge's Method of Passing Bills, 11.)

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[1] Decisions of the First Comptroller (Bowler), 1893–94, p. 61.

[2] Decisions of the First Comptroller (Bowler), 1893–94, p. 2.

[3] 5 Lawrence, Comp. Dec., 400.

[4] A committee may not sit during sessions of the House without leave. (See see. 4545 of this volume.)

Any Member of the House may be present at any select committee, but can not vote, and must give place to all of the committee and sit below them.[1] (Elsynge, 12; Scob., 49.)

4541. The House may empower a committee to sit during a recess which is within the constitutional session of the House.—On December 14, 1877,[2] Mr. Fernando Wood, of New York, from the Committee on Ways and Means, reported a resolution directing a general investigation by committees of the House into the conduct of the Executive Departments of the Government, the following being one of the provisions of the resolution: "And said committees are authorized to send for persons and papers, and also to sit in any recess which may occur during the session."

Against this provision Mr. Horatio C. Burchard, of Illinois, made a point of order:

This resolution is equivalent to a proposition to change or suspend the rules of the House. The jurisdiction of these various committees that are recited in the resolution reported from the Committee of Ways and Means is expressly defined in the rules of the House. This resolution proposes to change the rules of the House so as to enlarge the powers of those various committees and to give them leave to sit during the recess of the House. It is, in fact, a change of the rules of the House, and I hold that it can not be entertained at this time.

The Speaker[3] said, after debate:

There is a rule that committees can not be permitted to sit during the sessions of the House, which would imply they could sit at any other time when Congress is in session under law. * * * The Chair sees no rule which prohibits a committee from sitting during the recess within the limits of the constitutional session of the House.

4542. On May 22, 1872,[4] Mr. Luke P. Poland, of Vermont, submitted the following resolution, which was agreed to:

Resolved, That the Committee on the Revision of the Laws of the United States are hereby authorized to meet in committee on the 11th day of November next, and to continue in session to the beginning of the next session of Congress for the purpose of examining the revision of the statutes of the United States now being prepared by commissioners appointed for that purpose.

4543. On May 23, 1900,[5] Mr. Sereno E. Payne, of New York, presented, and the House, by unanimous consent, considered and agreed to this resolution:

Resolved, That the Committee on Ways and Means have leave to sit during the recess to consider the subject of the revision and reduction of the war-revenue taxes.

4544. The Senate, as a continuing body, may continue its committees through the recess following the expiration of a Congress.—On March 2, 1907,[6] Mr. William B. Allison, of Iowa, in the Senate, offered this resolution, which was agreed to:

Resolved, That the standing and select committees of the Senate as constituted at the end of this session be, and they are hereby, continued until the next regular session of Congress, or until their successors are elected.

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[1] Committees frequently exercise the right of making their sessions executive, excluding persons not members thereof.

[2] Second session Forty-fifth Congress, Journal, p. 132; Record, pp. 228, 231.

[3] Samuel J. Randall, of Pennsylvania, Speaker.

[4] Second session Forty-second Congress, Journal, p. 928; Globe, p. 3743.

[5] First session Fifty-sixth Congress, Record, p. 5923; Journal, p. 614.

[6] Second session Fifty-ninth Congress, Record, p. 4453.

The committees of each House, of course, cease with the expiration of the constitutional term of the House.

4545. Committees may not sit during sessions of the House.

Committees may by the House be empowered to sit during a recess that is within the term of the Congress, but not after the expiration of the term.

Committees are created commissioners by law if their functions are to extend beyond the term of the Congress.

Jefferson's Manual has the following provisions:

Section XI. So soon as the House sits and a committee is notified of it, the chairman is in duty bound to rise instantly, and the Members to attend the service of the House. (2 Nals., 310.)

Section LI. Committees may be appointed to sit during the recess by adjournment, but not by prorogation. Neither House can continue any portion of itself in any parliamentary function beyond the end of the session without the consent of the other branch.[1] When done, it is by a bill constituting them commissioners for that particular purpose.[2]

Commissions are sometimes created by joint or concurrent resolutions, which are independent of the life of the Congress creating them. (28 Stat. L., p. 392, and App., p. 18.)

4546. No committee, except the Committee on Rules, may, without leave, sit during the sitting of the House.

Present form and history of section 62 of Rule XI.

Section 62 of Rule XI provides:

No committee, except the Committee on Rules, shall sit during the sitting of the House without special leave.

The old rule of November 13, 1794,[3] provided that "No committee shall sit during the sitting of the House without special leave." When the Committee on Rules reported the revision of 1880, they omitted it, thinking that section 1 of Rule VIII requiring every Member to be present within the Hall during the sitting, was sufficient; but during the consideration of the report in the House the old rule was inserted on motion of Mr. George D. Robinson, of Massachusetts.[4] The exception in regard to the Committee on Rules was made on September 6, 1893.[5]

4547. A request that a committee have leave to sit during the sessions of the House has no privileged status in the order of business and may be prevented by a single objection.—On January 15, 1907,[6] Mr. James E. Watson, of Indiana, asked unanimous consent that the Committee on Merchant Marine and Fisheries have authority to sit during sessions of the House.

Mr. John S. Williams, of Mississippi, objecting, the privilege was not given.

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[1] The Senate, however, being a continuing body, gives authority to its committees during the recess after the expiration of a Congress.

[2] This is the law of Parliament. It has been construed not to restrain a committee of the House, with the leave of the House, from sitting during a recess between the first and second session of Congress. On August 28, 1852, the House, without question as to its right so to do, gave to the committee appointed to investigate the conduct of Secretary Corwin leave "to sit in the vacation." (See first session Thirty-second Congress, Journal, p. 1119 1 Globe, pp. 2414, 2418.)

[3] Second session Third Congress, Journal, p. 228 (Gales and Seaton ed.).

[4] Second session Forty-sixth Congress, Record, p. 827.

[5] First session Fifty-third Congress, Vol. I of House Reports, No. 2.

[6] Second session Fifty-ninth Congress, Record, p. 1168.

4548. A subcommittee is sometimes authorized to sit during sessions of the House.—On March 11, 1876,[1] Mr. Rezin A. De Bolt, of Missouri, by unanimous consent, submitted the following resolution, which was read, considered, and agreed to:

Resolved, That a subcommittee of the Committee on Reform in the Civil Service be authorized to sit during the sessions of the House, and that its chairman be, and he is hereby, authorized to administer oaths.

4549. In 1877 the House authorized its Members of the Electoral Commission to sit during sessions of the House.—On January 31, 1877,[2] Mr. Eppa Hunton, of Virginia, offered the following resolution, which was agreed to:

Resolved, That the members of the commission on the part of the House of Representatives appointed under provisions of the bill entitled, "An act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, for the term commencing March 4, A. D. 1877," have permission to sit as members of said commission during the sessions of this House.

4550. Instance wherein the House authorized two standing committees to sit as one committee for the consideration of a specified bill.—On January 23, 1907,[3] Mr. Henry C. Loudenslager, of New Jersey, offered this resolution, which was agreed to by the House:

Resolved, That the Committee on Invalid Pensions and the Committee on Pensions be, and hereby are, authorized to sit as one committee for the purpose of considering Senate bill No. 976, an act granting pensions to certain enlisted men, soldiers, and officers who served in the civil war and the war with Mexico, and that such committee have leave to sit during the sessions of the House.

4551. In 1870 the Committee on Elections was divided into subcommittees, to each of which was given the power of reporting directly to the House.—On February 19, 1870,[4] Mr. James A. Garfield, of Ohio, from the Committee on Rules, reported the following:

Resolved, That the following be adopted as the rule of the House, namely:

The Committee of Elections for the Forty-first Congress shall consist of fifteen members; and each contested case may be assigned by the chairman to a special committee of three members thereof for their exclusive consideration, and such special committee shall report their decision in the case directly to the House.

Mr. Garfield explained that the Committee of Elections was confronted with an unusual amount of work and that this method of meeting the difficulty seemed the best. He said that each of the subcommittees, under the comity of committees, would consist of two Republicans and one Democrat. He and others of the House deplored the partisan method of settling election contests, but thought that no better system was practicable at that time.

The resolution was agreed to.

4552. A majority of a committee constitutes a quorum for business.—On August 25, 1842,[5] a question arose as to whether or not the Committee on Public

[1] First session Forty-fourth Congress, Journal, p. 555.

[2] Second session Forty-fourth Congress, Journal, pp. 344, 345; Record, p. 1139.

[3] Second session Fifty-ninth Congress, Record, p. 1587.

[4] Second session Forty-first Congress, Journal, p. 350–1 Globe, p. 1439.

[5] Second session Twenty-seventh Congress, Journal, pp. 1410, 1682., Globe, p. 940.

Lands had reported properly the bill to amend the act "to appropriate, the proceeds of the sale of the public lands and to grant preemption rights." Mr. Henry A. Wise, of Virginia, stated that a quorum of the committee was not present, since actually only four members were present when the report was authorized. The committee under the rules consisted of nine members. Therefore the assumption underlying this question of order was that a majority of the committee was required to constitute a quorum, and nothing appears to controvert this assumption.

On February 8, 1875,[1] in the Senate, Mr. Oliver P. Morton, of Indiana, presented the report of the Committee on Privileges and Elections in the case of P. B. S. Pinchback. Mr. William T. Hamilton, of Maryland, made the point that the report was not authorized, since only seven of the nine members of the committee had been present, and only four of the seven voted for the report. Mr. George F. Edmunds, of Vermont, argued that as the whole membership of the committee was nine the seven present constituted a quorum and four was a majority of the seven. The Presiding Officer, Mr. Henry B. Anthony, of Rhode Island, sustained this contention of Mr. Edmunds. Here the fundamental assumption, not questioned, was that a majority of the committee is required for a quorum.

In addition Jefferson's Manual, which is authority in the House when its own rules are silent, declares that "a majority of the committee constitutes a quorum for business."[2]

4553. The House sometimes authorizes less than a quorum of a committee (a quorum being a majority) to act.—On April 28, 1858,[3] Mr. Benjamin Stanton, of Ohio, from the select committee of which he was chairman, offered the following, resolution:

Resolved, That the select committee appointed to investigate the expenditure of money to procure the passage of the tariff of 1857 have power to authorize any two members of said committee to take the testimony of any witnesses who, by reason of sickness or any other cause, can not be brought before said committee at such time and place as the members so authorized may deem expedient, and that they shall have leave to sit during the sittings of the House.

Mr. Stanton explained that this virtually made a quorum of two instead of three, as at present in the committee. Objections were urged on the ground that the procedure was unusual, but the resolution was agreed to without division.

4554. On May 18, 1860,[4] Mr. John Hickman, of Pennsylvania, by unanimous consent, reported from the Committee on the Judiciary, the following resolution:

Resolved, That a minority of the Committee on the Judiciary be, and are hereby, authorized to take the testimony of all witnesses in the matter of the petitions heretofore referred to said committee praying the impeachment of Hon. John C. Watrous, a judge of the United States for the eastern district of Texas.

Mr. Hickman explained that the authority was necessary because of the difficulty of keeping a quorum of the committee present.

The resolution was agreed to.

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[1] Second session Forty-third Congress, Record, p. 1063.

[2] Jefferson's Manual, Chapter XXVI.

[3] First session Thirty-fifth Congress, Journal, p. 722; Globe, p. 1906.

[4] First session Thirty-sixth Congress, Journal, p. 856; Globe, p. 2171.

4555. It is in order to refer a matter to a committee before its members have been appointed.—On December 7, 1863,[1] Mr. Thaddeus Stevens, of Pennsylvania, moved that the credentials of two Members from Louisiana be referred to the Committee, on Elections.

Mr. S. S. Cox, of Ohio, made the point of order that the committee had not yet been appointed.

The Speaker[2] said:

The Chair overrules the point of order. The uniform practice of the House has been to refer matters to committees before they were raised.

4556. Rule for delivery of bills referred to a committee.—Jefferson's Manual, in Section XXVI, provides:

The clerk may deliver the bill to any member of the committee (Town., col. 138); but it is usual to deliver it to him who is first named.[3]

4557. Committees may not change the title or subject of bills committed to them, and must set down on a separate paper the amendments which they recommend.

When a report is recommitted, the committee must take up the subject anew, the former action being of no further account.

The proceedings of a committee, having no force until confirmed by the House, are not to be published, according to the parliamentary law.

A committee may receive a petition only through the House.

When an inquiry by a committee involves a Member, the committee may only report to the House, whereupon the Member is heard or the committee is given authority to inquire concerning him.

Jefferson's Manual, in Section XXVI, provides:

The committee have full power over the bill or other paper committed to them, except that they can not change the title or subject. (8 Grey, 228.)

The committee may not erase, interline, or blot the bill itself; but must, in a paper by itself, set down the amendments, stating the words which are to be inserted or omitted, and where, by reference to page, line, and word of the bill.[4] (Scob., 50.)

And in Section XXVIII:

If a report be recommitted before agreed to in the House, what has passed in committee is of no validity; the whole question is again before the committee, and a new resolution must again be moved, as if nothing had passed.

In Section XI:

Their proceedings are not to be published,[5] as they are of no force till confirmed by the House (Rushw., part 3, vol. 2, 74; 3 Grey, 401; Scob., 39); nor can they receive a petition but through the House (9 Grey, 412).

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[1] First session Thirty-eighth Congress; Globe, pp. 7, 8.

[2] Schuyler Colfax, of Indiana, Speaker.

[3] Where the committee has a clerk, the distributing clerk of the House delivers the bill to him at the committee room, taking a receipt therefor.

[4] It is the present practice for committees to set forth their amendments in the report, and also in italicized words in a reprint of the bill as reported.

[5] Committees frequently open their meetings to the public, which results in wide publicity before their recommendations are presented to the House, but in general the old practice of Parliament is followed and committee meetings are not public.

When a committee is charged with an inquiry, if a Member prove to be involved, they can not proceed against him, but must make a special report to the House; whereupon the Member is heard in his place, or at the bar, or a special authority is given to the committee to inquire concerning him. (9 Grey, 523.)

4558. It is entirely within rule and usage for a committee to conduct its proceedings in secret.—On January 23, 1858,[1] in the select committee appointed to investigate the accounts of the late Clerk, William Cullom, the following was offered by Mr. Valentine B. Horton, of Ohio, and agreed to by the committee:

Ordered, That the proceedings of this committee be kept secret until the committee are prepared to report.

4559. On December 14, 1860,[2] the select committee of thirty-three, to whom had been referred so much of the President's message as related to the perilous condition of the country, adopted the following order:

That, in the opinion of this committee, its proceedings should not be disclosed to others, except when, in any particular case, it may permit such disclosure.

On December 29, 1860, and at other dates, the committee removed the injunction of secrecy from various proceedings.

4560. On January 19, 1861,[3] in the select committee on the seizure of forts, arsenals, etc., Hon. Isaac Toucey, Secretary of the Navy, appeared in attendance in accordance with previous arrangement.

The clerk of the committee retired from the committee room at the request of the chairman.

After some time spent by the committee in consultation with the Secretary of the Navy, the clerk was recalled and the committee adjourned.

Again, on January 26,[4] the same proceeding took place.

4561. In 1839,[5] during the investigation made by the select committee appointed by the House to inquire into the defalcations in the New York customhouse, a resolution was moved by a member of the committee that all the proceedings of the committee should be open and public. This proposition was amended by a resolution declaring that the committee had in no wise departed from the long established and uniformly observed rules of conducting business by the standing and select committees, and that in respect to secrecy the committee ought to conform to the rules and usages which govern standing and select committees. Having thus amended the resolution, a majority of the committee laid it on the table.

4562. In 1878,[6] the committee appointed "to inquire into the alleged fraudulent canvass and return of votes at the last Presidential election in the States of Louisiana and Florida," in the report said: "Since it was unavoidable in an investigation of this magnitude that much secondary testimony should be received, some of which might thus unjustly involve the fair fame of individuals, we thought

[1] Second session Thirty-fifth Congress, journal of the select committee, Report No. 188, p. 209.

[2] Second session Thirty-sixth Congress, House Report No. 31, journal of the committee, pp. 8, 21.

[3] Second session Thirty-sixth Congress, House Report No. 91, p. 35.

[4] Report, p. 48.

[5] Third session Twenty-fifth Congress, House Report No. 313, pp. 414, 415, 430.

[6] Third session Forty-fifth Congress, House Report No. 140, p. 3.

it proper that the Republican members of the committee should decide whether the sessions of the committee should be private or open, and on their determination at last, that the sessions of the committee should be open, it was so ordered."[1]

4563. On May 1, 1876,[2] on motion of Mr. William R. Morrison, of Illinois, and under suspension of the rules, the House agreed to the following:

Resolved, That the several committees of this House charged with investigations be, and are hereby, directed to conduct such investigations with open doors, unless, in the opinion of such committees, the public interests will be prejudiced thereby; but any person accused before any committee shall have a right to be heard in his own defense in person or by counsel, or both.

4564. On December 16, 1878,[3] the Senate were considering a resolution proposed by Mr. James G. Blaine, of Maine, for the investigation of the conduct of the recent elections, when Mr. M. C. Butler, of South Carolina, moved as an amendment "that said committee be instructed to sit with open doors." This amendment was rejected, yeas 30, nays 30. Then Mr. Henry G. Davis, of West Virginia, moved an amendment that the committee "shall sit with open doors if any member of the committee desires."

Mr. Thomas F. Bayard, of Delaware, advocated this, saying that courts of justice were invariably open. Furthermore, the testimony often assailed men who were absent, and who should be permitted to appear and explain, but who would not know of it if the investigations were secret. Mr. Bayard said that he had been assigned to committees making such investigations since 1870, and the inquiries were made in secret, and he thought many men were unjustly assailed.

Mr. George F. Hoar, of Massachusetts, said that in every instance of investigations in recent years, with the single exception of the Credit Mobilier investigation in the House, it had been left to the committee itself to determine whether or not the investigation should be secret or open. And in the Credit Mobilier investigation the publicity had been detrimental. It might be very important to keep secret testimony which gave clews to new evidence, since publicity gave opportunity to persons who might testify to important facts to put themselves beyond reach of the committee.

After considerable debate, in which reference was made to the investigations into the New York custom-house, into affairs in Louisiana, in North Carolina, in Mississippi, and the investigation by the joint committee of the two Houses into affairs in all the Southern States, the Senate disagreed to the amendment proposed by Mr. Davis, yeas 28, nays 29.

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[1] On June 27, 1906 (first session Fifty-ninth Congress, Record, p. 9373), in the Senate, Mr. Joseph W. Bailey, of Texas, said:

"Every man who knows anything about tariff legislation knows perfectly well that for many years the practice has been that the majority members of the Committee on Ways and Means in the House of Representatives first make the tariff bill, and only submit it to the full committee after they have completed it. The minority is then permitted to read it and to criticise it, but they are not permitted to change it. The majority being responsible for the bill make it to suit themselves and take their responsibility before the country. The same course of procedure is followed in the Senate, and neither Senator Aldrich nor any other Republican Senator was permitted to even see the amendments to the Wilson tariff bill which were agreed upon by the Democratic majority until after they had finished their work."

[2] First session Forty-fourth Congress, Journal, p. 898; Record, p. 2862.

[3] Third session Forty-fifth Congress, Record, pp. 203–212.

4565. The rules do not permit the House to abrogate the secrecy of a committee's proceedings; but it was done by suspension of the rules.—On January 6, 1873,[1] Mr. William P. Frye, of Maine, proposed the following:

Resolved, That the committee of this House appointed to investigate charges of corruption in the matter of stock in the Credit Mobilier be, and they are hereby, instructed to continue such investigation without secrecy as to either their past or future proceedings.

Mr. Luke P. Poland, of Vermont, having raised a question of order,

The Speaker[2] held that inasmuch as it is provided in Jefferson's Manual that "the proceedings of a committee are not to be published, as they are of no force till confirmed by the House," and by rule 144 that "the rules of parliamentary practice comprised in Jefferson's Manual shall govern the House in all cases to which they are applicable, and in which they are not inconsistent with the standing rules and orders of the House," etc., and whereas the provision of the Manual was not contravened by any rule or practice of the House or joint rule of the two Houses, the said resolution was virtually a change of the rules, and could not be submitted under the present calls.

The House acquiesced, but subsequently, at the suggestion of the Speaker, an appeal was taken and the decision of the Chair was sustained.

The resolution was subsequently offered under suspension of the rules and agreed to.

4566. A committee may fix its hour of meeting.—On January 21, 1861,[3] the Select Committee on the Seizure of Forts, Arsenals, etc., adopted an order fixing the daily hour of meeting at 10.30 a. m.

4567. A committee takes a recess.—On January 25, 1861,[4] the Select Committee on Seizure of Forts, Arsenals, etc., took a recess from 12 m. to 2 p. m.

4568. In standing or select committees of the House the motions to lay on the table and to take from the table are admitted.—On January 29, 1840,[5] in the Committee on Elections during the consideration of the contested-election case of five New Jersey Members, a motion was made to lay on the table a pending resolution relating to the method of consideration of the case.

The chairman[6] "decided the motion to lay on the table not to be in order.

An appeal being taken the chairman was overruled by a vote of 3 to 4, and the motion to lay on the table was admitted.

On January 31[7] Mr. Millard Fillmore, of New York, moved to take the resolution from the table, and the motion was agreed to.

On February 11[8] the motion to lay on the table was used in the committee without question.

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[1] Third session Forty-second Congress, Journal, pp. 121, 122; Globe, pp. 353, 354–357.

[2] James G. Blaine, of Maine, Speaker.

[3] Second session Thirty-eighth Congress, House Report No. 91, p. 41.

[4] Second session Thirty-sixth Congress, House Report No. 91, p. 46.

[5] First session Twenty-sixth Congress, House Report No. 506, pp. 38, 39, 40.

[6] John Campbell, of South Carolina, chairman.

[7] Page 47.

[8] Page 250.

4569. On an appeal from a decision of the chairman in a committee the chair voted to sustain his ruling, thereby producing a tie, and so the decision was sustained.—On February 1, 1840,[1] in the Committee on Elections during consideration of the New Jersey cases, an appeal was taken from a decision of the chairman[2] on a question of order, and there appeared on the question of sustaining the decision, ayes 3, noes 4. Thereupon the chairman was counted as adhering to his decision, the result thereby being ayes 4, noes 4, and the entry appears in the journal of the committee that the chair was sustained.

So, also, in the same way on February 6 and 10, the decision of the chair was sustained.

4570. The motion to reconsider is in order in a standing or select committee of the House.[3]—On January 29, 1840,[4] in the Committee on Elections during the consideration of the election case of the five New Jersey Members, a motion was made to reconsider a vote taken at the sitting of the committee on the preceding day.

Mr. John M. Botts, of Virginia, made the point of order that the motion to reconsider was not in order in a committee.

The chairman[2] overruled the point of order.

Mr. Botts having appealed, the decision of the chair was sustained—yeas 7, nays 1.

4571. On April 6, 1860,[5] in the select committee appointed to investigate the subject of Executive influence over legislation, corruption in elections, etc., a motion made to reconsider a vote was made and objected to for the reason that it was not in order to move reconsideration in a committee. The motion to reconsider was thereupon abandoned and the object was attained in another way.

4572. The yeas and nays are taken in committees.—The journal of committees show that the yeas and nays are taken in committees frequently. A notable instance is afforded in the case of the committee of thirty-three to whom was referred so much of the message of the President in 1860 as related to the perilous condition of the country. The yeas and nays were taken on nearly all the votes, apparently, as a matter of course, the journal showing no record that they were demanded by one-fifth or any other number of members. On January 2, 1861, there occurs also an instance where a member, who was unable to be present when certain votes were taken, was allowed to record his vote.[6]

In 1861,[7] in the Select Committee on the Seizure of Forts, Arsenals, etc., the yeas and nays were taken frequently. There is no indication as to how they were ordered.[8]

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[1] First session Twenty-sixth Congress, House Report No. 506, pp. 48, 226, 234, 246.

[2] John Campbell, of South Carolina, chairman.

[3] See section 4596 of this volume for a discussion of this question.

[4] First session Twenty-sixth Congress, House Report No. 506, pp. 38, 39.

[5] First session Thirty-sixth Congress, House Report No. 648, p. 69.

[6] Second session Thirty-sixth Congress, House Report No. 31, journal of the committee, p. 25.

[7] Second session Thirty-sixth Congress, House Report No. 91, pp. 32, 55, etc.

[8] Mr. James C. Courts, for many years clerk of the Committee on Appropriations, states that the yeas and nays in that committee are always taken on the demand of a single member.

Reed's Parliamentary Rules, section 232, says "that when there is no constitutional provision or special rule the assembly by majority can order a vote by yeas and nays."

4573. A committee may limit the time of debate in the committee.—On December 17, 1860,[1] the select committee of thirty-three, appointed to take into consideration so much of the President's message as related to the perilous condition of the country, adopted the following:

Ordered, That no member of the committee should occupy the floor in addressing the chair for a longer time than ten minutes on any one proposition.

4674. Instructions or privileges given to a committee by the House are transmitted to the committee under the hand of the Clerk of the House.—Instructions given by the House to a committee or other action taken by the House affecting a committee or its procedure are transmitted to that committee under the hand of the Clerk of the House. Thus, on January 19, 1857,[2] when the House gave the committee appointed to investigate certain alleged corrupt combinations among Members of the House leave to sit during the sessions of the House, an attested copy of the resolution was transmitted to the committee by the Clerk. So also was the action of the House, on January 12, 1857, in broadening the scope of the committee's authority, transmitted.

4575. The journal of a committee shows those present at each meeting.—The journal of the select committee appointed to consider so much of the President's message as related to the perilous condition of the country (called the Committee of Thirty-three) records each day those present and absent. The journal begins with the certified copy of the resolution creating the committee and the list of the members.[3]

And such is the usual practice.

4576. It is not the right of a member to enter on the journal of a committee his reasons for objecting to certain procedure.—On January 28, 1839,[4] in the course of an examination before the select committee appointed to investigate the defalcations in the New York custom-house, Mr. Owens, a member of the committee, objected to a certain question put to a witness.

Later Mr. Owens moved that a paper purporting to contain the grounds of his objection be entered on the journal.

Mr. Wise raised the question whether it was in order to enter on the journal the paper stating the ground of objection to the interrogatory.

The chairman[5] decided it to be out of order to enter such a paper on the journal.

Mr. Owens having appealed, the committee sustained the chairman.

4577. Rights of a member of a committee in relation to papers referred to one of its subcommittees.—On July 21, 1866,[6] Mr. Andrew J. Rogers, of New Jersey, rising to a question of privilege, asked for a definition of his rights, as a member of the Judiciary Committee, to examine in that committee

[1] Second session Thirty-sixth Congress, House Report No. 31; journal of the committee, p. 9.

[2] Third session Thirty-fourth Congress, House Report No. 243, p. 40.

[3] Second session Thirty-sixth Congress, House Report No. 31; journal of the committee, p. 1.

[4] Third session Twenty-fifth Congress, House Report No. 313, p. 319.

[5] James Harlan, chairman.

[6] First session Thirty-ninth Congress, Globe, pp. 4018, 4019.

testimony taken by order of the House in relation to the alleged connection of Jefferson Davis and others with the assassination of President Lincoln.

After debate, the Speaker [1] held:

Committees, in order to facilitate their business, often appoint subcommittees to examine into bills or other subject-matters which may be referred to them and to make report to the committee in full session before they report to the House. When they do, the papers pertinent to the subject are put in the hands of the subcommittee, and no member has a right to demand to see those papers until the subcommittee reports to the committee. When the subcommittee reports to the committee, the gentleman, in common with the other members, has a right to demand to see the papers for examination.

4578. A committee sometimes makes its clerk custodian of its papers, allowing possession to members only by permission of the committee.—On April 9, 1860,[2] the committee appointed to investigate Executive influence on legislation, corruption in elections, etc., voted that "the clerk of this committee be directed to retain in his own possession hereafter the records of this committee of every kind unless otherwise directed by this committee."

On April 27 [3] the committee voted that a certain member be allowed possession of copies of certain testimony.

4579. A committee controls its journal, and sometimes grants leave to members to incorporate in it signed statements of their views.—On January 11, 1861,[4] the select committee of thirty-three, appointed to consider so much of the message of the President as related to the perilous condition of the country, granted leave to various members to record in the journal signed statements giving their reasons for a certain line of action.

4580. Forms of oaths taken by clerks of committees.—On January 21, 1837,[5] the select committee appointed to inquire into the condition of the various Executive Departments of the Government met according to a notice from the chairman.[6] The members present and absent having been noted, the committee proceeded to the election of a clerk, and B. F. Hallett was chosen, receiving a majority of the votes cast.

The clerk-elect having appeared, took the following oath:

You solemnly swear that, as clerk of the select committee of the House of Representatives, to which place you have been duly elected, you will faithfully record the proceedings of said committee and discharge all other duties which may be assigned you, according to the best of your abilities and understanding, and that you will not communicate or disclose the proceedings of said committee enjoined to be kept secret unless required to give evidence thereof as a witness in the course of legal proceedings. So help you God.

4581. On January 16, 1861,[7] in the select committee on seizure of forts, arsenals, etc., the reporter of the committee took the following affirmation:

I, William Blair Lord, do solemnly affirm that I will support the Constitution of the United States, and to the best of my ability perform the duties of reporter and clerk to this committee and keep its secrets.

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[1] Schuyler Colfax, of Indiana, Speaker.

[2] First session Thirty-sixth Congress, House Report No. 648, p. 73.

[3] Page 75.

[4] Second session Thirty-sixth Congress, House Report No. 31, journal of the committee, pp. 34, 35.

[5] House Report No. 194, second session Twenty-fourth Congress, journal of the committee, p. 4.

[6] Henry A. Wise, of Virginia, chairman.

[7] Second session Thirty-sixth Congress, House Report No. 91, p. 26.

4582. On March 3, 1838,[1] the following oath was administered to the clerk of the select committee appointed to investigate the circumstances of the death of Jonathan Cilley, of Maine:

You do solemnly swear that, as clerk of a select committee of the House of Representatives, to which place you have been elected, you will faithfully record the proceedings of said committee and discharge all other duties which may be assigned you, according to the best of your abilities, and that you will not communicate or disclose the proceedings of said committee enjoined to be kept secret unless required to give evidence thereof as a witness in due course of legal proceedings. So help you God.[2]

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[1] Second session Twenty-fifth Congress, House Report No. 825, p. 149.

[2] This also is the form of oath taken by the clerk of the committee which in 1839 investigated the defalcations in the New York custom-house. (Third session Twenty-fifth Congress, House Report No. 313, p. 293.)

Chapter CVI.

REPORTS OF COMMITTEES.

1. **Committee act together on the report. Sections 4583–4584.**
2. **Majority vote, a quorum being present, authorizes report. Sections 4585–4587.**[1]
3. **Doubt as to authorization of a report. Sections 4588–4599.**[2]
4. **Minority views. Sections 4600-4619.**
5. **Rule as to presenting reports. Section 4620.**
6. **Privileged reports from certain committees. Sections 4621–4623.**
7. **Privilege of Ways and Means Committee. Sections 4624–4628.**
8. **Privilege of Committee on Appropriations. Sections 4629–4632.**
9. **Privilege of the Committee on Public Lands. Sections 4633–4639.**
10. **Privilege of the Committee on Accounts. Sections 4640–4645.**
11. **Privilege of the Committee on Enrolled Bills. Section 4646.**
12. **Privilege of the Committee on Printing. Sections 4647–4649.**
13. **Privilege of the Committee on Rules. Section 4650.**
14. **Reports are in writing. Sections 4651–4655.**
15. **General decisions. Sections 4656–4666.**[3]
16. **Process of authorization. Sections 4667–4679.**
17. **As to reporting the committee's journal. Sections 4680–4686.**
18. **Reports after instruction of committees. Sections 4687–4691.**[4]
19. **Discharging a committee. Sections 4692–4697.**[5]
20. **Reports of Commission. Sections 4698–4703.**

4583. No committee report is valid except what has been agreed to in committee actually assembled.—Section XXVI of Jefferson's Manual provides:

A committee meet when and where they please, if the House has not ordered time and place for them, 6 Grey, 370; but they can only act when together, and not by separate consultation and consent—nothing being the report of the committee but what has been agreed to in committee actually assembled.

4584. Committees can only agree to a report acting together.—On January 9, 1905,[6] Mr. John S. Williams, of Mississippi, asked unanimous consent

[1] Less than majority of whole committee may authorize, quorum being present. Section 986 of Vol. I.

Report sustained by majority may be signed by a less number. Section 1091 of Vol. II.

[2] Instances of evenly divided committees unable to submit recommendations. Sections 347, 364 of Vol. I, 945 of Vol. II, 2497 of Vol. III.

[3] Reports of subcommittees made a part of a report. Section 1801 of Vol. III.

[4] House fixes date for a report. Section 1731 of Vol. III.

Committee directed to file report with Clerk. Section 1741 of Vol. III.

[5] In order as to a question of privilege. Section 2709 of Vol. III.

[6] Third session Fifty-eighth Congress, Record, p. 602.

for the present consideration of House resolution No. 415, relating to statistics of the ginning of cotton; and the following paper was presented, Mr. Williams speaking of it as "a unanimous report" from the Committee on the Census.

COMMITTEE ON THE CENSUS, *January 9, 1905,*

We, the undersigned members of the Committee on the Census, agree to a favorable report on House resolution No. 415, and further agree that its author, Mr. Williams, of Mississippi, may call up same when the opportunity presents itself.

E. D. CRUMPACKER, *Chairman.*
JAMES KENNEDY.
F. M. GRIFFITH.
G. B. PATTERSON.
A. S. BURLESON.
JOE T. ROBINSON.
JAMES HAY.

The Speaker[1] said:

The Chair understands that, in point of fact, the formal report has not been made from the Committee on the Census, although there is a paper on the Clerk's desk signed by a majority of the members of that committee. The Chair supposes that the proper form would be to ask unanimous consent that the Committee on the Census be discharged from the further consideration of the resolution, as the formal report has not been made, and that the same be considered in the House.

4585. In a committee a majority vote, a quorum being present, is sufficient to authorize a report, even although later, by action of absentees, those signing minority views outnumber those who voted for the report.—In a committee a majority vote, a quorum being present, is sufficient to authorize a report. It sometimes happens that those voting "nay" and those absent, taken together, outnumber those of the committee who authorize the report. The absentees may concur with those who voted in the minority in submitting minority views, and thus the minority views may be signed by a larger number of members than those who voted to authorize the report. Thus, on August 2, 1876,[2] a report was submitted from the Committee on the Judiciary relating to charges against Hon. Charles Hays. An extract from the records of the committee is appended to the views of the minority, showing that four members voted for the report, and two against, while one was excused and four were absent. The report was not signed. The minority views were signed by the two who voted nay, and by three of the absentees.

4586. A quorum of a committee may transact business and a majority of that quorum, even though it be a minority of the whole committee, may authorize a report.—On February 8, 1875,[3] in the Senate, Mr. Oliver P. Morton, of Indiana, presented the report of the committee in the Louisiana election case relating to the claim of P. B. S. Pinchback to a seat.

Mr. William T. Hamilton, of Maryland, raised a question of order. He stated that the whole membership of the committee was nine, that seven were present when the report was ordered, and that only four of the seven voted for it. Therefore he questioned whether or not four members might make a report from a committee of nine.

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] First session Forty-fourth Congress, House Report No. 792. See also Record, p. 5083; Journal, p. 1373.

[3] Second session Forty-third Congress, Record, p. 1063.

It was developed that the report was not signed.

Mr. George F. Edmunds, of Vermont, argued that seven being a quorum and four a majority of the quorum, the report was properly authorized.

The Presiding Officer [1] held:

The Chair understands that a quorum of a committee is competent to transact business, and that a majority of that quorum represents that committee. The Chair therefore thinks that the point of order is not well taken.

4587. A report signed by a majority of a committee is valid although a necessary one of that majority may not concur in all the statements.—On March 29, 1836,[2] Mr. Balie Peyton, of Tennessee, raised a question of order on the pending report from the Committee on Elections, alleging that it had never been properly reported from the committee, a majority not having agreed to it.

The fact was developed that the report was signed by five of the nine members of the committee. One of the five signing the report did not concur in all the propositions laid down in the report, but did agree to the conclusions as embodied in the resolutions recommended by the report.

The Speaker [3] decided that the report, signed by the majority of the committee, was properly before the House.

4588. Objection being made that a report has not been properly authorized by a committee, and there being doubt as to the validity of the authorization, the question as to the reception of the report is submitted to the House.—On August 25, 1842,[4] Mr. Meredith P. Gentry, of Tennessee, from the Committee on the Public Lands, proposed to report a bill to repeal the proviso to the sixth section of the act entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant preemption rights," approved September 4, 1841.

When the bill was about to be handed in, Mr. Henry A. Wise, of Virginia, objected to its reception as a report of the committee, for reasons which he stated, in writing, as follows:

That a quorum of that committee was not present when the report was ordered to be made. The facts, as stated by three of the members of the committee, were, that but five of the members of the committee were in the city; that these five members met in the committee room on the morning of this day; that they discussed this report until after the meeting of the House; that after the meeting of the House, and before any vote was put or taken in committee upon the bill, one of the members (Mr. Jacob Thompson, of Mississippi) retired, to leave the committee without a quorum, because he could not obtain a postponement to a fuller meeting of the committee, and actually left the committee to consist of but four members; and, after his retiring, these four members decided to make this report, and accordingly have done so, to the House.

Mr. Wise, on this statement of facts, submitted by Messrs. Gentry, Thompson, and Jacob M. Howard, of Michigan, of the committee, objected that this was no report, on the ground (1) that there was no quorum when the report was ordered by the four members of the committee only, and (2) that the committee, even though

[1] Henry B. Anthony, of Rhode Island, presiding officer.

[2] First session Twenty-fourth Congress, Journal, pp. 586, 587; Debates, pp. 3005, 3006.

[3] James K. Polk, of Tennessee, Speaker.

[4] Second session Twenty-seventh Congress, Journal, p. 1410; Globe, p. 940.

there was a quorum present at the time of the decision to report, had no authority to sit during the session of the House without its special leave.

Mr. Howard stated that before Mr. Thompson left the room three of the five members present had given their opinion in favor of reporting the bill to the House and two (one of whom was Mr. Thompson) against reporting it.

The Speaker[1] stated that no question of order was involved; that the question "Shall the bill be received as the report of the committee?" was for the House alone to decide; and, as the reception of the bill was objected to, that question would be put to the House.

The House voted to receive it—90 yeas to 78 nays; so the report was received.[2]

4589. On June 8, 1868,[3] Mr. Benjamin F. Butler, of Massachusetts, from the committee of investigation of alleged corruption in regard to the impeachment of the President, proposed to report a resolution relating to a contumacious witness, C. W. Woolley.

Mr. Charles A. Eldridge, of Wisconsin, made the point of order that the gentleman from Massachusetts had no right to report the resolution, since the committee had not adopted it, a majority of the committee not being present in the city.

The Speaker[4] held that, as the gentleman from Massachusetts had stated that he made the report by authority of the committee, and as others had questioned this statement, it was not for the Chair to decide. The rule of the digest was:

> If it is disputed that a report has been ordered to be made by a committee, the question of reception must be put to the House.

Therefore, he would put the question to the House.

The House decided, yeas 86, nays 37, to receive the report.

4590. On February 19,1869,[5] Mr. Austin Blair, of Michigan, from the Select Committee on Alleged Election Frauds in the State of New York, proposed to submit a resolution providing for the arrest of two recalcitrant witnesses.

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[1] John White, of Kentucky, Speaker.

[2] While a majority must agree to a report, it is often signed by not more than one member. On April 30, 1838 (second session Twenty-fifth Congress, Globe, pp. 343, 349), during the discussion of the report of the committee which had investigated the duel between Messrs. Graves and Cilley, Mr. Isaac Toucey, of Connecticut, called for the reading of the journal of the select committee to show that the resolution declaring Messrs. Graves, Wise, and Jones guilty of a breach of privilege had been adopted unanimously by the committee. Mr. Richard H. Menefee, of Kentucky, took the ground that the report was not the report of the majority, Mr. William W. Potter, of Pennsylvania, not having assented to it while the committee was in session. Mr. John Quincy Adams, of Massachusetts, also took the ground that the report was not signed, in support of Mr. Menefee, Mr. Francis Thomas, of Maryland, denied a statement made by Mr. Adams that the report of the Bank Committee made by the majority in 1832 had been signed by those who sanctioned it. Judge Clayton, of Georgia, handed in the majority report. Mr. Thomas said that some of the reasoning of the report had not met his approbation, and, if he had prepared it, some of the arguments by which the conclusions were sustained would have been omitted. It was almost invariably the case in reports that they were not signed by all who agreed to them, but the majority concurred in the conclusion-the result. The chairman alone was held to be responsible for the language and illustrations. On May 1, Mr. Adams admitted the correctness of Mr. Thomas's statement in regard to the bank report.

[3] Second session Fortieth Congress, Journal, p. 816; Globe, pp. 2938, 2939.

[4] Schuyler Colfax, of Indiana, Speaker.

[5] Third session Fortieth Congress, Globe, p. 1385.

Mr. Michael C. Kerr, of Indiana, made the point of order that the report was not authorized by the committee. Mr. Kerr stated that neither himself nor his colleague, Mr. Lewis W. Ross, of Indiana, received notice of the meeting, and therefore that the report was not made by the committee.

The Speaker[1] had read the following from the Manual:

> If it is disputed that a report has been ordered to be made by the committee the question of reception must be put to the House.

And then put to the House the question of the reception of the report.

The House voted to receive the report, 114 yeas to 33 nays.

4591. On February 1, 1895,[2] Mr. William M. Springer, of Illinois, from the Committee on Banking and Currency, submitted a privileged report (No. 1749) on the bill (H. R. 8705) to authorize the Secretary of the Treasury to issue bonds to maintain a sufficient gold reserve and to redeem and retire United States notes, and for other purposes.

Mr. Nicholas N. Cox, of Tennessee, a member of the committee, made the point that the report just presented did not fully and accurately represent the action of the committee.

The Speaker[3] stated that if objection were made the question would be: Shall the report be received by the House?

Mr. Cox then declined to make such objection; and the report was received, and bill and report were ordered to be printed and referred to the Committee of the Whole House on the state of the Union.

4592. The Speaker being satisfied of the correctness of the authorization of a report, may decide that it shall be received.

As to validity of action of a committee at an adjourned meeting, whereof some members were not notified.

On August 12, 1856,[4] Mr. David S. Walbridge, of Michigan, from the Committee on Public Lands, to whom was referred the bill of the House (H. R. 14) for the benefit of the Pacific Railroad Company, incorporated by the State of Missouri, reported the same with an amendment in the nature of a substitute therefor.

The amendment having been read, and question having been made as to the report, Mr. Walbridge protested that no one had a right to question a report which he presented as a report of the Committee on Public Lands, and explained that every member of the committee was notified of the evening meeting, and a quorum attended. Not reaching the bill that evening, they adjourned until the next morning. At the adjourned meeting a quorum was present and ordered the bill to be reported.

Mr. James L. Orr, of South Carolina, made the point of order that, inasmuch as it appeared from the statement of the gentleman (Mr. Walbridge) that the report was agreed upon at an adjourned meeting, of which all the members of the committee were not notified, the committee did not properly authorize the report to be made.

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[1] Schuyler Colfax, of Indiana, Speaker.

[2] Third session Fifty-third Congress, Journal, p. 99.

[3] Charles F. Crisp, of Georgia, Speaker.

[1] First session Thirty-fourth Congress, Journal, pp. 1433, 1434; Globe, p. 2069.

The Speaker[1] stated that it also appeared that a quorum of the committee were present, and a majority had authorized the report to be made. He therefore overruled the point of order.

From this decision of the Chair Mr. Orr appealed. The appeal was laid on the table, 134 yeas to 35 nays.

4593. On July 1, 1856[2] Mr. William A. Howard, of Michigan, from the select committee which had been appointed to investigate the troubles in Kansas, submitted, as a question of privilege, a report in writing.

Mr. George S. Houston, of Alabama, made the point of order that, inasmuch as it had been admitted that the paper presented had not been acted upon at a full meeting of the committee, it could not be received as the report of the committee.

The Speaker[1] overruled the point of order, on the ground that it was competent for a majority of the committee to act.

From this decision of the Chair Mr. Hendley S. Bennett, of Mississippi, appealed. The appeal was laid on the table.

4594. It being shown that a majority of a committee had met and authorized a report, the Speaker did not heed the fact that the meeting was not regularly called.—On June 7, 1906,[3] Mr. James A. Tawney, of Minnesota, proposed to report from the Committee on Appropriations a bill to supply a certain deficiency in an appropriation.

Mr. John J. Fitzgerald, of New York, made the point of order that the report was not properly authorized.

It appeared in debate, by the undisputed statement of Mr. Tawney, that the committee was not formally called together, but that a majority of the committee were present at the time and authorized the report.

On this statement the Speaker[4] overruled the point of order.

Mr. Oscar W. Underwood, of Alabama, having appealed, the appeal was laid on the table.

4595. Additional members of a committee having been authorized but not appointed, it is in order for the committee to report as usual.—On January 12, 1877,[5] Mr. J. Proctor Knott, of Kentucky, from the Select Committee on the Privileges, Powers, and Duties of the House of Representatives in Counting the Votes for President and Vice President of the United States, reported the following preamble and resolution, which were agreed to:

Whereas additional duties have been devolved by resolution of the House upon the select committee of seven appointed to inquire and report upon the privileges, powers, and duties of the House of Representatives in counting the electoral votes for President and Vice-President of the United States: Therefore,

Resolved, That two additional members be appointed by the Speaker to serve on said committee.

The Speaker appointed Mr. David Dudley Field, of New York, and Mr. William Lawrence, of Ohio, the additional members.

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[1] Nathaniel P. Banks, of Massachusetts, Speaker.

[2] First session Thirty-fourth Congress, Journal, p. 1144; Globe, pp. 1529, 1530.

[3] First session Fifty-ninth Congress, Record, p. 8002.

[4] Joseph G. Cannon, of Illinois, Speaker.

[5] Second session Forty-fourth Congress, Journal, pp. 215, 216; Record, pp. 608, 609, 613.

After the additional members had been authorized, but before the Speaker had appointed them, a report was made from the committee.

Mr. Omar D. Conger, of Michigan, made the point of order that it was not in order for the committee to make a report which had not been submitted to the members just authorized.

The Speaker [1] overruled the point of order, saying that the additional members had not been announced, and that the committee making the report had full power in the premises.

4596. A committee having authorized one report, and then, after reconsideration, having authorized another, the House, when both reports were offered, voted to receive the first.

Discussion as to whether or not the motion to reconsider applies in a committee.[2]

On May 26, 1840,[3] Mr. Solomon Hillen, jr., of Maryland, from the Committee on Commerce, offered a report from that committee, accompanied by a bill, to repeal the law of March 2, 1837, concerning pilots.

Mr. Edward Curtis, of New York, objected to its reception, on the ground (as a question of order) that it was not the report of the majority of the committee, he himself having been instructed by the majority of that committee to make a report of a directly contrary character. The report submitted by the gentleman from Maryland (Mr. Hillen) had once been the report of the majority of the committee, but before the report had been made to the House the committee had reconsidered its action. Mr. Curtis referred to the parliamentary law which provides—

> When a vote is once passed in a committee, it can not be altered but by the House, their votes being binding on themselves.[4]

Mr. Curtis contended that this rule applied, not to standing committees, but to committees of the whole.

The question came up again May 27, when Mr. David Russell, of New York, argued that it had been the custom to reconsider in committees. The rule in the Manual was adopted two hundred and thirty-three years before in the British Parliament. At the time the rule was adopted there was no such thing as a standing committee in Parliament. He also inferred from the terms of the resolution adopting the Manual for the government of the House that the rule was not applicable to standing committees.

Mr. George C. Dromgoole, of Virginia, contended that a standing committee was bound by an action once taken, alluding to the parliamentary law of 1607.

On May 28, Mr. Joseph L. Tillinghast, of Rhode Island, contended that the House had abrogated the principle of parliamentary law that committees might not reconsider, and had adopted the principle of reconsideration. The Manual would not apply when opposed by the principles of the standing rules of the House.

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[1] Samuel J. Randall, of Pennsylvania, Speaker.

[2] See also sections 4570, 4571 of this volume.

[3] First session Twenty-sixth Congress, Globe, pp. 419, 426, 428, 429.

[4] See Section XXVI of Jefferson's Manual.

Mr. D. B. Ryall, of New Jersey, suggested that the memorials which had caused the reconsideration had been received after the first report had been made up. It would have been very inconvenient not to be able to reconsider.

On May 29 Mr. Philemon Dickerson, of New Jersey, argued that the right to reconsider was inherent in a committee. The rules merely regulated the natural powers of the committees. In practice the committees had exercised the power of reconsideration. At the present session the Committee on Elections had decided by a vote of 7 to 1 that they had the power to reconsider. He thought that since the formation of the Government no case could be found where a committee had asked the privilege of the House to reconsider a vote. The right was as important to the committee as to the House. He did not believe that Mr. Jefferson ever intended this principle of the Manual to be binding on standing committees.

On May 30 the question was put whether the report presented by Mr. Hillen should be received as the majority report. Mr. Curtis had a report of a directly opposite character, which the committee, after reconsideration, had directed him to make.

On a yea-and-nay vote the House decided—86 yeas to 83 nays—to receive the report of Mr. Hillen as the report of the committee.

4597. Four members of a committee composed of nine having been authorized by the committee to submit to the House a report, a question arose as to whether or not the matter submitted by the four was the report of the committee.—On April 13, 1898,[1] Mr. E. D. Crumpacker, of Indiana, announced that "by order of the Committee on Elections No. 3," he submitted the report in the case of Brown *v.* Swanson, signed by four members of that committee, and asked "that the dissenting members have ten days to file their report or views."

Mr. Charles L. Bartlett, of Georgia, made the point of order that a report by four members was not a report of the committee.

In the course of the debate Mr. Galusha A. Grow[2] of Pennsylvania, said:

> Mr. Speaker, I take it there is no question that a majority of a committee can direct the chairman or any member to make a report upon any subject submitted to it. In the first session of the Thirty-seventh Congress, a session more important than any other session of Congress ever held, its Judiciary Committee never made a report, if I recollect aright, on a measure before them that a majority of the committee signed. The only way they got anything before the House was to direct the chairman to make a report, and he would report, asking permission for the members of the committee, within a certain time, to file their views upon the question.
>
> I call attention to the precedent that for two Congresses the Judiciary Committee of the House never did agree and a majority never signed any proposition that they reported to the House.

The Speaker,[3] during the consideration of the case, said that the paper presented might not be the report of the committee recommending action, but for all that it might be the report of the committee. It was not a report of the committee for action; it did not recommend action; but this report to the House of the four members, submitted as per manuscript, was a presentation of their views; and the other five members who might desire to express theirs asked unanimous consent that ten days be allowed them for that purpose.

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[1] Second session Fifty-fifth Congress, Record, pp. 3800, 3804.

[2] Speaker of the Thirty-seventh Congress, 1861–63.

[3] Thomas B. Reed, of Maine, Speaker.

A question arising as to the opportunity of the other members for filing their views, the Speaker said:

The committee are supposed to understand the rule, and if they propose to make a report unconditionally as to the opinion of four of their members, and then ask unanimous consent that the others may present their views, why, they must take their chance of the House granting it, and it may not interfere with their right to make a report of the views of four of their number. Still the Chair would rather this question would be settled by unanimous consent, because that will save any question of precedent in the matter.

The Speaker then suggested that by unanimous consent the committee be allowed to present the opinion of four of its members, and that the other gentlemen be allowed ten days in which to prepare their views.

This was agreed to.

4598. The House having voted to consider a report, it is too late to question whether or not the report has been made properly.—On the calendar day of June 9, 1896,[1] and the legislative day of June 6, Mr. Charles Daniels, of New York, from the Committee on Elections No. 1, proposed to call up the Alabama election case of Aldrich v. Underwood. On the previous day the question of consideration had been raised and the House had voted to consider the case.

On this day, before consideration had begun, Mr. Benton McMillin, of Tennessee, made the point of order that the report in the case had been concurred in by only four members, whereas the committee was composed of nine, of whom five were required for a majority.

The Speaker[2] said:

The House has voted to consider the case, and it is too late now to make the point which the gentleman is trying to raise. If the gentleman had wished to make that point of order, supposing it was tenable, he should have made it before raising the question of consideration.

4599. The validity of a committee's action in reporting a bill may not be questioned after actual consideration of the bill has begun in the House.—On December 15, 1890,[3] Mr. Francis B. Spinola, of New York, from the Committee on Military Affairs, moved to suspend the rules so as to discharge the Committee of the Whole House on the state of the Union from the further consideration of the bill (H. R. 3887) for the erection of a monument to the victims on prison ships, and pass the same.

A second having been ordered by tellers, Mr. Joseph G. Cannon, of Illinois, made the point of order that the committee had not authorized the making of such a motion in regard to the bill, no quorum of the committee having been present at the time such action was claimed to have been taken.

After debate on the point of order the Speaker[2] overruled it for the following reasons, viz:

The Chair desires to say in regard to this matter, unless the gentleman from New Jersey desires to be heard further upon the point of order, that while it is perfectly true that the action of the House is dependent upon the prior action of the committee, nevertheless there must of necessity be always a point beyond which a challenge to the fact can not go. This matter was brought before the House

[1] First session Fifty-fourth Congress, Record, p. 6331; Journal, p. 595.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Second session Fifty-first Congress, Journal, p. 55; Record, pp. 487, 488.

upon the personal declaration of a member of the Committee on Military Affairs, and the proceeding was sustained by the chairman of that committee. The commencement of the debate occurred after a second had been ordered upon the motion. The Chair thinks, under rulings hitherto made, that the preliminary facts on which the jurisdiction was dependent can not be contested after the debate begins, and the Chair sees no other way by which such questions could possibly be settled. The Chair, however, has less reluctance in making the decision because it is a matter entirely within the power of the House, which can always take such action as the House deems suitable with regard to the disposition of the bill itself. The Chair overrules the point of order.

4600. Unless filed with the report, minority views may be presented only by the consent of the House.—On June 4, 1896,[1] the contested election case of Martin *v.* Lockhart, from North Carolina, was about to be called up, when Mr. Joseph W. Bailey, of Texas, expressed the desire to present the views of the minority of the committee, which had not been filed with the report.

The Speaker[2] said:

The Chair will submit a request for unanimous consent to file the views of the minority. * * * The Chair will state to the House that the rules[3] require that the views of the minority shall be presented at the same time as the report of the committee, and it is only a question of delay on which the unanimous consent of the House is asked.

4601. The minority of a committee may not make a report or present a proposition of legislation, but in later years the rules have given them the right to file views to accompany the report.

Evolution in House and Senate of the practice of filing minority views with reports of committees.

On March 25, 1836,[4] Mr. Hiland Hall, of Vermont, a member of the Committee on the Post-Office, and Post-Roads, to which was referred so much of the message of the President of the United States at the commencement of the session as related "to the report of the Postmaster-General, the condition and operation of the Post-Office Department, and everything connected therewith," offered to submit to the House a paper, in the form of a report, which, he stated, contained the views of the minority of the committee on that part of the message which suggested "the propriety of passing such a law as will prohibit, under severe penalties, the circulation in the Southern States, through the mail, of incendiary publications, intended to instigate the slaves to insurrection." It appears that in this case the majority of the committee had not at this time either submitted a report or agreed upon one.

The Speaker[5] decided that when reports from committees are called for[6] a report can not be made from a minority of a committee, as a minority is not a committee; that the paper offered was not a report authorized to be made to the House by authority of the committee, and could not be received as a report from the minority; and that, consequently, it was not in order to offer the same.[7]

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[1] First session Fifty-fourth Congress, Record, p. 6112.

[2] Thomas B. Reed, of Maine, Speaker.

[3] See section 3116 of this volume for the rule.

[4] First session Twenty-fourth Congress, Journal, p. 561; Globe, p. 261; Debates, pp. 2944–2946.

[5] James K. Polk, of Tennessee, Speaker.

[6] Reports are now filed with the Clerk, and the views of the minority may have a place on the Calendar. See section 3116 of this volume.

[7] Not long before this, on February 24, 1836 (first session Twenty-fourth Congress, Journal, p. 389), the views of the minority in an election case were presented "by leave of the House."

Mr. Hall then asked unanimous consent to submit the views of the minority. The House refused consent.

4602. On February 17, 1841,[1] Mr. Caleb Cushing, of Massachusetts, chairman of the Select Committee on Finance and Currency, made from that committee a report in part, accompanied by a bill "amendatory of the several acts establishing the Treasury Department."

Mr. Garrett Davis, of Kentucky, as a member of the committee not concurring in the bill and report of the majority, asked leave to file a counter report. Mr. John P. Kennedy, of Maryland, also asked the same leave, saying as he did so that it was necessary, according to parliamentary rule, to obtain leave of the House to make a counter report.[2]

4603. On July 6, 1850,[3] the House was considering the report of the committee which had investigated the relations of the Secretary of War to the Galphin claim. Mr. David T. Disney, of Ohio, who was one of the committee who had joined in the views of the minority, made the point that the resolutions proposed by the minority came up of themselves as an amendment to the resolutions of the majority.

The Speaker[4] said:

> The parliamentary law, as the Chair understands it, does not recognize the report of the minority of a committee as a report; it contains the views of the minority, and whenever they report resolutions or a bill they are not before the House for its action until they are submitted by some Member, either of that minority or by some other Member. The report of the minority of itself does not bring the question before the House for its action. The Chair would state to the gentleman from Ohio that, so far as he is informed, such has been the uniform practice of the House; whatever may be the practice of other parliamentary bodies the Chair is not prepared to say.

4604. On February 1, 1870,[5] Mr. Robert C. Schenck, of Ohio, from the Committee on Ways and Means, reported a bill (H. R. No. 1068) to amend existing laws relating to the duty on imports, and for other purposes. Mr. James Brooks, of New York, proposed to submit as a question of privilege a report from a minority of the committee.

The Speaker[6] said:

> There is no right recognized on the part of a minority of a committee to make a report. It is a question for the House to determine whether such a report shall be received.

The minority report having been objected to, Mr. Brooks made the point of order that no single Member could prevent the reception of the report, and that the question was one to be determined by the majority of the House.

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[1] Second session Twenty-seventh Congress, Globe, p. 248.

[2] Prior to the Fifty-first Congress the views of the minority were generally accepted by unanimous consent as minority reports. The rules of the Fifty-first Congress, section 2 of Rule XIII, made a provision for printing and placing upon the Calendar the views of the minority, which is retained in the present rules. (See sec. 3116 of this volume.)

[3] First session Thirty-first Congress, Globe, p. 1343.

[4] Howell Cobb, of Georgia, Speaker.

[5] Second session Forty-first Congress, Globe, p. 954.

[6] James G. Blaine, of Maine, Speaker.

The Speaker said:

The Chair would state that there is no such thing as the right on the part of a minority of a committee to make a report. The gentleman from New York is too old a parliamentarian not to be aware that a committee have no right to report except as a committee. The receiving of a minority report is a mere matter of courtesy.

4605. On July 24, 1882,[1] Mr. Lewis E. Payson, of Illinois, submitted the views of a portion of the minority of the Committee on the Judiciary on the bill (H. R. No. 6390) relating to land grants to the Northern Pacific Railroad.

Mr. J. Proctor Knott, of Kentucky, offered additional views on the part of himself and several of his colleagues, accompanied by a joint resolution, which he asked to have placed on the Calendar.

Objection being made, Mr. Richard W. Townshend, of Illinois, made the point of order that it was the right of a member of the committee to move that the joint resolution be placed on the Calendar; and Mr. Knott made such a motion.

After debate the Speaker[2] ruled:

The gentleman from Kentucky [Mr. Knott] presented the views of certain members of the Committee on the Judiciary, not a majority of the committee, under permission granted when the report of the committee on this subject was presented, and moves to have a resolution accompanying the views placed upon the Calendar. Now, there is no doubt but this belongs to the minority of the committee as a matter of right if it is to be regarded as a report at all. This question has frequently been raised, where a minority of a committee proposed to make a report and claimed the right to bring a subject before the House; but it has been always rejected and treated as though no such right existed, the majority of the committee alone being competent to bring in a report and submit it to the House for its consideration.

There is no case known to the Chair, and certainly none has been cited in the discussion of this point of order, to indicate that under any circumstances these views of the minority are to be regarded as a report.

As Cushing says, in his admirable work on parliamentary law, "these views are sometimes submitted under the somewhat incongruous name of minority reports when they are in no sense reports."

Now, to go back, at the time the report was made upon this subject the gentleman from Massachusetts [Mr. Robinson] stated to the House that there were certain views of the minority which they might desire to present to the House, and asked, on behalf of the minority, that these should be printed, which request was granted. It was then ordered, not that they should come in as a report, but that their views, dissenting from the report of the committee, should be received and printed, and, to use the exact language of the record, "the views will be received and be printed with the report of the majority." Consent was given for this and nothing more.

Now, the gentleman from Illinois [Mr. Townshend] has cited Cushing's Manual of Parliamentary Law, and the Chair thinks it would be well enough to examine it further and have read a little more from the same paragraph and sentence from which the gentleman has already quoted. The Clerk will read:

They [minority views] are received by the courtesy of the House, expressed by the ordinary vote of a majority, and usually receive the same destination with the report; that is, they are printed, postponed, and considered in the same manner. But they are not in any parliamentary sense reports, nor entitled to any privilege as such; and their only effect is, in the first place, to operate upon the minds of Members as arguments, and, secondly, to serve as the basis for amendments to be moved on the resolution or other conclusion of the report. If they contain or recommend a bill, it is read, not as a bill, but as a part of the report and for the information of the House."

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[1] First session Forty-seventh Congress, Record, pp. 6417–6419; Journal, p. 1709.

[2] J. Warren Keifer, of Ohio, Speaker.

The Chair will state that the portion of the paragraph just read which used the word "majority" has distinct reference to a majority of the House as a matter of courtesy, having the right and power to allow the views of the minority to be presented, and had no reference to the disposition of them on the House Calendars.

The Chair will cause the Clerk to read now from the House Journal proceedings in 1836, where the question was made whether or not the minority of a committee could make a report.[1]

The Chair thinks that under what seems to be the uniform practice all the Chair can do is to indicate that the action shall be taken which was directed to be taken on the 6th of June last, when the majority report was introduced; and that is that the views of the minority shall be printed with the majority report.

The joint resolution presented by the minority has no possible parliamentary status, except that when the majority report shall come up for consideration it might be referred to only as a matter of information to the House; and it might furnish a basis upon which amendments might be offered to the action of the majority, if action can ever be taken on that. It is. now on the table and it seems to call for no action on the part of Congress.

An appeal, taken by Mr. S. S. Cox, of New York, was laid on the table, yeas 97, nays 71.

In this case the majority report had not recommended any legislative proposition; but merely concluded that no action was necessary.[2]

4606. A resolution or bill accompanying minority views has no standing thereby, but must be offered by a Member on the floor.—On May 27, 1868,[3] Mr. Speaker Colfax held: "The rule declares that when the views of the minority are accompanied by a resolution or a bill such resolution or bill is not thereby brought before the House for action, but must be submitted by some member."

4607. Views of the minority may not include transcripts of testimony or other matters not strictly in the nature of argument.—On June 5, 1900,[4] Mr. James Hay, of Virginia, rising to a question of privilege, raised a question relating to the views of the minority of the Committee on Military Affairs on the subject of the investigation of the Coeur d'Alene disturbances in Idaho.

Mr. Charles Dick, of Ohio, objected to the minority including in their views the printed hearings and the argument of the attorneys.

Debate arising as to the nature of the views filed by a minority, the Speakers said:

The Chair will state that he has ordered the Clerk to strike from the minority views those things which are not strictly the views of the minority. The Chair will advise the gentleman from Virginia that his instructions to the Clerk are that the views should not include arguments and testimony. * * * The committee has the right to make its own report; there is no doubt about that; but the views of the minority are not a report. * * * The Chair has stated that question is not now before the House; but the Chair is clear, if called upon to rule, that he has the right to direct the Clerk to expunge everything except the views of the minority. The argument which has just been submitted by the gentleman from Virginia to the Chair is a proper argument to make to the committee when making up the majority report.

4608. Minority views were not permitted previous to 1822, but the present practice began to develop soon after that date.—On March 29, 1822,[6]

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[1] See section 4601.

[2] House Report No. 1283.

[3] Second session Fortieth Congress, Globe, p. 2611.

[4] First session Fifty-sixth Congress, Record, pp. 6759, 6760.

[5] David B. Henderson, of Iowa, Speaker.

[6] First session Seventeenth Congress, Annals, p. 1414.

Mr. Lewis McLane, of Delaware, submitted a report from a select committee to whom had been referred a communication of the Secretary of the Treasury relating to inspection of land offices.

Mr. Daniel P. Cook, of Illinois, who was the chairman of the committee, was proceeding to state that the committee were not unanimous and to explain his own dissenting views.

Mr. McLane deprecated any statement of a division in the committee. He said it would be an encroachment on propriety to suffer a committee to make a report and accompany it with another report which might possibly be of a very different tendency.

Mr. Charles F. Mercer, of Virginia, cited a case in the Fifteenth Congress,[1] when a counter report had not been received until after considerable discussion, and afterwards it was a subject of regret that it had been received at all.

The Speaker[2] said that nothing could be received as the act of a committee but the report, and that a committee could make but one report. Nothing, therefore, but the report of the committee was now under consideration. He referred to the precedent cited by Mr. Mercer, but considered it an erroneous proceeding and not to be drawn into precedent.

4609. On May 15, 1828,[3] Mr. James Hamilton, of South Carolina, from the Committee on Retrenchment in the Expenditures of the Government, presented a report, and moved its reference to the Committee of the Whole House on the state of the Union.

Mr. John Sergeant, of Pennsylvania, from the same committee, presented a paper containing the views of the minority of the committee on the subject and moved the same reference.

Mr. Hamilton expressed his acquiescence in this, saying that Mr. Sergeant had notified the committee that he should present such a paper, but had not read it.

The report and views of the minority were referred and ordered printed.

Again, on May 16,[4] the views of the minority were presented with the report on the assault on the secretary of the President. No question was made as to the presentation of the views.

4610. On February 27, 1833,[5] Mr. John Quincy Adams, of Massachusetts, from the minority of the Committee on Manufactures, submitted a report on domestic manufactures and protection necessary to be afforded them.

This report was made from the minority, while the majority made no report whatever on the subject, having been discharged from its consideration by the House.

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[1] This occurred on January 12, 1819 (Second session Fifteenth Congress, Journal, p. 173 (De Krafft ed.); Annals, pp. 515, 518), when Mr. Thomas M. Nelson, of Virginia, submitted a report of the committee on Military Affairs on proceedings of General Andrew Jackson in Florida. Mr. Richard M. Johnson of Kentucky, also of that committee, submitted a paper drawn up in the shape of a report from that committee, which he stated the committee had refused to accept by a majority of one vote. He offered it as a substitute. After debate on the point of order—which the Annals do not give—both the report and the proposed substitute, were referred to Committee of the Whole.

[2] Philip P. Barbour, of Virginia, Speaker.

[3] First session Twentieth Congress, Journal, p. 763; Debates, p. 2714.

[4] Journal, p. 764; Debates, p. 2718.

[5] Second session Twenty-second Congress, Journal, pp. 435, 443, 451; Debates, pp. 1817, 1865, 1902.

When the minority report was read and a motion made to print it a question was made as to the procedure and it was urged that the report was only a speech. But it was ordered printed.

The report[1] made no recommendation of action. It was signed by J. Q. Adam and Lewis Condict.

4611. On March 3, 1837,[2] Mr. Henry A. Wise, of Virginia, from the select committee appointed on so much of the President's message as relates to the condition of the various Executive Departments, "made three several reports, viz, one from the majority of said committee; one expressing the views of the minority of the committee, and one expressing the views of Mr. Wise himself; which reports were ordered to lie on the table, and, with the documents accompanying the same, and the journal of the committee, were ordered to be printed."

4612. In the earlier practice of the House there was a disposition to consider the views of the minority the "report" of the minority. Thus, the report of the select committee appointed in 1837[3] to investigate the Executive Departments of the Government is printed as "Views of the majority, "and "Views of the minority," while over the views of Mr. John A. Wise, of Virginia, one of the minority, appears the heading "Report of Mr. Wise."

4613. In 1842[4] President Polk's veto of the tariff bill was referred to a select committee which reported, the members of the committee concurring in the report signing it. The paper is also accompanied by the "Protest and counter report" of Thomas W. Gilmer, one of the minority, and by the "Report of the minority."

4614. In the Journal of 1842[5] the minority views are spoken of as a "counter report," as well as "views."

4615. On March 18, 1830,[6] a select committee presented a report on the subject of the public lands, accompanied by a bill (H. R. 367) "appropriating the net proceeds of the public lands to the use of the several States and Territories."

Mr. William D. Martin, of South Carolina, from the same committee, also presented a bill setting forth the views of the minority of the said committee.

Both bills were referred to the Committee of the Whole House on the state of the Union.[7]

4616. On July 7, 1866,[8] the subject of the presentation of minority views was discussed somewhat in the Senate on the occasion of the presentation of the minority views from the Committee on Reconstruction, by Mr. Reverdy Johnson, of Maryland. Several precedents were cited in the course of the discussion. It was objected that the minority could not present a report, and that the views should be presented at the time the report of the committee was presented. Finally, on motion of Mr. Lyman Trumbull, of Illinois, the Senate agreed to a resolution receiving the paper,

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[1] See House Report No. 122, second session Twenty-second Congress.

[2] Second session Twenty-fourth Congress, Journal, p. 587.

[3] Second session Twenty-fourth Congress, House Report No. 194.

[4] Second session Twenty-seventh Congress, House Report No. 998, pp. 36, 47.

[5] Second session Twenty-seventh Congress, Journal, pp. 409, 544, 694, 785.

[6] First session Twenty-first Congress, Journal, p. 429 1 Debates, p. 626.

[7] Under the later practice the minority may not report a legislative proposition in the sense that it may be placed on the Calendar for consideration.

[8] First session Thirty-ninth Congress, Globe, pp. 3646–3649.

but declaring that "in receiving said paper subsequent to the time when the majority report was received the Senate does not mean to sanction the right to present said paper at this time, nor to establish a precedent for its future action."

4617. On March 4, 1834,[1] Mr. Henry Clay, of Kentucky, spoke in the Senate of the presentation of minority views as unwarranted except in recent usage, especially in the House of Representatives. He had no doubt that the practice was unwarranted in the parliamentary usage of other countries. A single precedent was cited of such action in the Senate, and Mr. John C. Calhoun, of South Carolina, said that in that case the minority were allowed to present not a report, but "a paper."

4618. On April 1 and 4, 1834,[2] the Senate discussed and finally admitted views of the minority of a committee. The custom of the other House was referred to in support of the action, which seems to have been unusual with the Senate at this time.

The debate on April 4[3] shows that Mr. Clay opposed the reception of the minority views, which were presented by Mr. Silas Wright, of New York. He said it would produce confusion. It was true that on the occasion of the Seminole wax minority views had been presented; but the practice was unknown in England. Mr. Clayton, of Delaware, recalled a case in 1831 when minority views had called out a rejoinder from the majority. Reference was made to the bank report in the House and Mr. Adams's views. The paper was ordered to be printed, which was virtually an admission of Mr. Wright's request.

4619. A minority of a committee, as a question of privilege, having charged the committee with neglect of duty, it was held that the minority not being competent to make a report might not thus present a question of privilege.

It is not in order for the minority to present to the House the records of a committee to show that the committee is disregarding its duty.

On March 11, 1858,[4] Mr. Thomas L. Harris, of Illinois, arose and stated in behalf of himself and six other members of the select committee appointed under the order of the House of the 8th of February last, to whom was referred the President's message concerning the Lecompton constitution with instructions, that in their opinion said committee had failed and refused to execute the order of the House contained in the resolution of their appointment, and had adjourned. As a proof thereof Mr. Harris proposed, as a question of privilege, to read the journals and minutes of said committee and a written statement thereto.

The question raised thus by Mr. Harris was debated on this and the succeeding day, such light being cast upon it as could be found in the precedents of Parliament.

The Speaker[5] having made his decision, an appeal was taken by Mr. Harris, and on this appeal the Speaker gave his decision and the reasons therefor at length:

The Speaker decided that the opinion merely of the minority of a committee could not present a care involving the privileges of the House, and that inasmuch as it is not competent, except by the

[1] First session Twenty-third Congress, Debates, p. 806.

[2] First session Twenty-third Congress, Debates, pp. 1229, 1252–1257.

[3] Debates, pp. 1252–1257.

[4] First session Thirty-fifth Congress, Journal, pp. 477, 490, 491; Globe, pp. 1075, 1103.

[5] James L. Orr, of South Carolina, Speaker.

courtesy of the House, for a minority of a committee to submit a report, the facts upon which such a opinion is based could not be ascertained in the manner proposed. In the opinion of the Chair, the instructions in the present case having reference neither to the time nor the manner of making the report, the House could not know whether there had been a failure or refusal to execute its order until the report of the committee had been submitted. He therefore decided that no question of privilege was presented by the gentleman from Illinois.

The proposition of the gentleman from Illinois was to read the Journal and to submit a written statement. The Chair decided that it was not in order, and that it would not be in order even if the committee had been called, if there was objection. The Chair refers to a precedent exactly in point in the first session of the Twenty-fourth Congress.[1]

Not only do the precedents show that a report from the minority of a committee is not in order, but they go so far as to show that it is not competent to refer in debate in the House to what transpires before a committee, much less bring the matter in the form in which it is proposed to be brought here by a minority, before the majority has reported. The Chair asks to refer to the Journal of the first session of the Twenty-sixth Congress.

In the Thirty-first Congress, in a similar case, there was pending a proposition to authorize the taking of testimony in a contested-election case from Iowa.

So that, in the opinion of the Chair, the question of privilege does not arise in the case presented. If the majority of the committee had submitted the report and it was proposed by the minority to submit a report, it, as the Chair decided yesterday, would be received as a matter of courtesy—universally granted, I concede, because it was with difficulty that I found the precedent which I have already read. It is generally received, and it is in this point of view that the Chair decided that the House could not know whether the committee had or had not discharged its duty until the committee reported, and there was no time fixed in the instructions requiring the committee to report at a particular time or in a particular way.

The question on the appeal was not taken, as Mr. Harris withdrew it in order to attain his object in another way.[2]

4620. Reports of committees, except privileged reports, are submitted to the House by delivering them to the Clerk.—Section 2 of Rule XIII[3] provides:

2. All reports of committees, except as provided in clause 61 of Rule XI,[4] together with the views of the minority, shall be delivered to the Clerk for printing and reference to the proper Calendar under the direction of the Speaker, in accordance with the foregoing clause, and the titles or subjects thereof shall be entered on the Journal and printed in the Record.

4621. The Committees on Rules, Elections, Ways and Means, Rivers and Harbors, Public Lands, Territories, Enrolled Bills, Invalid Pensions, Printing, and Accounts may report at any time on certain matters.

Revenue and general appropriation bills, river and harbor bills, certain bills relating to the public lands, for the admission of new States, and general pension bills may be reported at any time.

The privilege of the Committee on Printing is confined to printing for the two Houses, and of Accounts to expenditures from the contingent fund.

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[1] See section 4601 for this precedent in full.

[2] On April 9 and 10, 1860, by order of the House, Mr. Miles Taylor, of Louisiana, was permitted to read his minority views on the subject of the President's message protesting against certain action of the House (first session Thirty-sixth Congress, Journal, pp. 700, 702; Globe, p. 1638); but under the rules in force at that time all reports were offered from the floor. Under the present rules all reports, except such as are privileged to be made at any time, are filed with the Clerk.

[3] See section 3116 of this volume for history of this rule.

[4] This clause refers to privileged reports, which are made on the floor. See section 4621 of this volume.

A report from the Committee on Rules has a special and high privilege, and one motion to adjourn, but no other dilatory motion, may be entertained during its consideration.

Form and history of section 61 of Rule XI.

Section 61 of Rule XI provides:

The following-named committees shall have leave to report at any time on the matters herein stated, viz: The Committee on Rules, on rules, joint rules, and order of business; the Committee on Elections, on the right of a Member to his seat; the Committee on Ways and Means, on bills raising revenue; the committees having jurisdiction of appropriations, the general appropriation bills; the Committee on Rivers and Harbors, bills for the improvement of rivers and harbors; the Committee on the Public Lands, bills for the forfeiture of land grants to railroad and other corporations, bills preventing speculation in the public lands, and bills for the reservation of the public lands for the benefit of actual and bona fide settlers; the Committee on Territories, bills for the admission of new States; the Committee on Enrolled Bills, enrolled bills; the Committee on Invalid Pensions, general pension bills; the Committee on Printing, on all matters referred to them of printing for the use of the House or two Houses; and the Committee on Accounts, on all matters of expenditure of the contingent fund of the House.

It shall always be in order to call up for consideration a report from the Committee on Rules, and, pending the consideration thereof, the Speaker may entertain one motion that the House adjourn; but after the result is announced he shall not entertain any other dilatory motion until the said report shall have been fully disposed of.

The principles of this rule have been developed through a series of years to meet the necessity that certain important classes of bills should be allowed precedence, in order that they might not fail in the press of matters before the House. Very early the Committee on Enrolled Bills,[1] from the very nature of the case, exercised the right. The Committee on Elections also claimed the right as a matter of privilege, and it was conceded by the House, which overruled the Speaker.[2] On March 16, 1860, the Committee on Printing,[3] which had the privilege under the joint rules much earlier[4] than this, secured the right by a rule of the House; and at the same time an unsuccessful effort was made to secure for the Ways and Means Committee the right to report appropriation bills at any time.[5] On March 2, 1865, the privilege was given to both the Ways and Means and Appropriations Committees of reporting their bills at any time for commitment to the Committee of the Whole.[6] On April 9, 1879, the same privilege that the Appropriations Committee had for reporting

[1] Former rule No. 101 of the House gave this privilege to the Committee on Enrolled Bills, and dated back to a period as early as 1824. The privilege appears in Rule No. 86 of the Eighteenth Congress (first session Eighteenth Congress, Journal, p. 734), and still earlier in 1812 (first session Twelfth Congress, Journal, p. 532).

[2] Ruling of Speaker Hunter in 1840.

[3] The original privilege of the committee was somewhat broader than is now allowed by the rule (first session Thirtieth Congress, Journal, p. 1288).

[4] On February 17, 1848, Mr. Thomas J. Henley, of Indiana, secured the adoption of a joint rule conferring this privilege, in which the Senate later concurred. The object was to expedite business (first session Thirtieth Congress, Journal, p. 425; Globe, p. 368).

[5] First session Thirty-sixth Congress, Globe, p. 1211. At that time the Ways and Means Committee reported appropriation bills. On September 21, 1850 (first session Thirty-first Congress, Journal, p. 1499; Globe, p. 1899) this privilege was given the Ways and Means Committee for the remainder of the session. Also in 1851 (second session Thirty-first Congress, Journal, p. 394).

[6] Second session Thirty-eighth Congress, Globe, p. 1317; second session Forty-fifth Congress, Record, p. 227.

general appropriation bills was given to the Committee on Commerce for reporting river and harbor appropriation bills.[1]

The revision of 1880 first made these privileges the subject of a single, distinct rule,[2] which, as section 47 of Rule XI, was in a form similar to the present, although the privilege of the river and harbor bill continued to be provided for in another rule until 1885. Elections, Ways and Means, Appropriations, Enrolled Bills, Printing, and Accounts were the committees included in the rule in 1880. When the appropriation bills were distributed in the Forty-ninth Congress the rule was changed accordingly, and also the clause relating to the Public Lands Committee was added,[3] although there had been a special rule for the same purpose in the preceding Congress. In the revision of 1890,[4] the Committees on Rules,[5] Territories, and Invalid Pensions were added. In the Fifty-second Congress Territories and Invalid Penons were dropped. In the Fifty-third Congress Banking and Currency and Coinage, Weights, and Measures were added.

In the Fifty-fourth and Fifty-fifth Congresses the form of 1890 was restored.

The paragraph relating to reports from the Committee on Rules and dilatory motions during the consideration thereof dates from February 4, 1892.[6]

At the time these privileges originated reports were made in the morning hour and often with great difficulty. Now unprivileged reports are filed through the Clerk's desk and there is no delay. But the privilege remains useful, since it has long been established that the right of reporting at any time carries with it the right of consideration.[7]

4622. In exercising the right to report at any time, committees may not include matters not specified by the rule as within the privilege.—On February 4, 1896,[8] the Committee on Ways and Means reported a resolution directing an investigation of the importation and exportation of certain products, and providing for defraying the expenses of the investigation from the contingent fund of the House. Objection being made to the consideration of the resolution, it was referred to the Committee on Accounts. On February 15[9] the latter committee reported the resolution, asking immediate consideration.

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[1] First session Forty-sixth Congress, Record, p. 338. This bill was originally reported by the Commerce Committee.

[2] Second session Forty-sixth Congress, Record, p. 205.

[3] First session Forty-ninth Congress, Record, pp. 323–326.

[4] See House Report No. 23, first session Fifty-first Congress.

[5] Previous to this time, however, the Committee on Rules had exercised this privilege "by uniform practice of the House," as stated by Speaker Carlisle in a ruling. (See Journal, first session Fiftieth Congress, p. 2605; Record, p. 7641.) In 1889 Mr. Speaker Carlisle said: "While there is nothing in the rules themselves giving to the Committee on Rules the privilege of reporting at any time, either for consideration or otherwise, the uniform practice of the House has been to receive reports of that committee for immediate consideration if they related to changes of the rules (second session Fiftieth Congress, Record, p.538). But this usage did not prevail as far back as February 4, 1836, on which date we find an attempt to suspend the rules in order to take up a report of the Committee on Rules (first session Twenty-fourth Congress, Journal, p. 292). (See also section 4650 of this volume.)

[6] First session Fifty-second Congress, Record, pp. 734, 862.

[7] See sections 3142–3147 of this volume.

[8] First session Fifty-fourth Congress, Record, p. 1294.

[9] Record, pp. 1757–1760.

Mr. Charles F. Crisp, of Georgia, made the point of order that the Committee on Accounts had authority to report only on matters relating to the contingent fund, and that the portion of the resolution directing an investigation to be made destroyed its privilege.

After debate the Speaker [1] ruled in regard to the resolution:

The Chair desires to say that the form is very distinct. It has within it the conferring of authority upon a committee that is certainly not a privileged matter upon which the Committee on Accounts can report; and the fact that they have the privilege of reporting on expenditures out of the contingent fund does not give them the privilege of reporting upon nonprivileged matters. That is the general principle that runs through the rules of the House.

4623. The text of a bill containing nonprivileged matter, privilege may not be created by a committee amendment in the nature of a substitute not containing the nonprivileged matter.—On February 11, 1905,[2] the House was considering bills under the following order:

That hereafter on any Saturday during the session a motion to consider in the House as in Committee of the Whole House on the Private Calendar bills of the classes hereinafter described shall have the same privilege as is given by the rules on Friday to motions to go into Committee of the Whole House to consider bills on the Private Calendar.

All bills reported from the committees, other than the Committees on Pensions, Invalid Pensions, Claims, and War Claims, but such as may involve promotions of persons already in the Army or Navy, or the placing of persons on the retired list of either service, shall not be considered under this order.

Under this order the following bill was called up:

A bill (H. R. 6826) for the relief of Creighton Churchill, an ensign on the retired list of the Navy.

Whereas the retiring board in the case of Ensign Creighton Churchill, United States Navy, found him incapacitated for active service, said incapacity being the result of an incident of the service; and

Whereas said incapacity no longer exists, as shown by a recent examination of the eyes, said examination showing vision to be normal with the use of glasses: Therefore, that the Navy Department may be enabled to command the services on the active list of the said Creighton Churchill,

Be it enacted, etc., That the action of the retiring board in the case of Creighton Churchill, now an ensign on the retired list of the Navy, be hereby set aside, and the President, by and with the advice and consent of the Senate, is hereby authorized to appoint him a lieutenant on the active list of the Navy, as of date of March 3, 1899, to take rank next after that of his classmate, Ford Hopkins Brown: *Provided,* That the said Churchill shall establish to the satisfaction of the Secretary of the Navy, upon examination provided by law for the promotion of officers, his mental, moral, professional, and physical fitness to perform the duties of a lieutenant on the active list of the Navy: *And provided further,* That he shall receive no pay or emoluments by reason of such reappointment to the active list of the Navy except from date of such reappointment, and that he shall be additional to the number of officers prescribed by law for the grade of lieutenant in the Navy and in any grade to which he may hereafter be promoted.

The bill had been reported with amendment, which was pending, to strike out the preamble, and also the entire text of the bill and insert:

That the President be, and he is hereby, authorized, by and with the advice and consent of the Senate, to restore Creighton Churchill, now an ensign on the retired list, to the active list of the Navy: *Provided,* That the said Churchill shall, upon examination in accordance with regulations to be prescribed by the Secretary of the Navy, before an examining board composed of five members, of whom three shall be line officers his senior in rank and the remaining two medical members, satisfactorily establish his mental, moral, professional, and physical fitness to perform active service, the place to which he shall be

[1] Thomas B. Reed, of Maine, Speaker.

[2] Third session Fifty-eighth Congress, Record, pp. 2422, 2423.

restored to be determined by the Secretary of the Navy after recommendation with regard thereto by said board: *And provided further,* That the said Churchill shall be carried as additional to the number of the grade to which he may be restored or at any time thereafter promoted.

Mr. Oscar W. Underwood, of Alabama, raised the question of order that the bill involved the promotion of a naval officer, and therefore was not in order under the terms of the special order.

Mr. Alston G. Dayton, of West Virginia, said:

Do I understand that the original bill governs instead of the one reported by the committee? I call the Speaker's attention to the fact that the original bill did attempt to fix his rank, and therefore was subject to the point of order, but a substitute was reported in lieu of that by the committee.

The Speaker [1] said:

The substitute is a mere proposition of no higher grade than an amendment that might be offered by any Member. Perhaps the House might agree to the amendment and it might not. The bill itself involves a promotion, and in construing this order the Chair must go by its terms. * * * The Chair will say to the gentleman from West Virginia that "bills" are referred to in the order that was agreed to this morning. Now, this bill was reported back from the committee and an amendment proposed. (The amendment can have no status and if it gets consideration at all it gets consideration by virtue of the bill which was referred to the Committee on Naval Affairs and reported back.) The Chair does not pass upon the question of the merit of the proposition. From the statement made here, it seems to the Chair that it has great merit, but it does not come within the terms of the order.

4624. The words "raising revenue" in the rule giving privilege to the Ways and Means Committee are broadly construed to cover bills relating to the revenue.

The including of matter not privileged destroys the privileged character of a bill.

On February 12, 1906,[2] Mr. Sereno E. Payne, of New York, moved that the House now resolve itself into Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 7114) to provide for the consolidation and reorganization of customs collection districts.

Mr. Augustus P. Gardner, of Massachusetts, demanded the regular order, and raised the question that the motion was not privileged under any rule of the House—first, because the only ruling to justify such a motion was made by Mr. Speaker Reed in the statement from the floor as to precedents which had since been found to be erroneous; [3] and second, because the pending bill referred not only to the collection of the revenue, but also to certain interests of commerce and shipping, like the registry of vessels, which have nothing to do with the revenue.

After debate the Speaker [1] said:

The Chair would be ready to follow, touching the first point of order made by the gentleman from Massachusetts [Mr. Gardner], the ruling by Mr. Speaker Reed, in which ruling the Chair concurs. Even without that ruling the Chair would be inclined to hold that this bill under the rule was privileged. But the bill does more than that, as it seems to the Chair. It says that—

"The President is hereby authorized to establish convenient districts and to discontinue or consolidate ports and subports therein for the collection of revenue from customs and for the interest of commerce and shipping."

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] First session Fifty-ninth Congress, Record, pp. 2453–2455.

[3] See section 4625.

There are two objects to be accomplished by this bill if enacted into legislation.

One, collection of revenue; the other in the interest of commerce and shipping. The first is privileged under the rule. The second, as it seems to the Chair, is not privileged. Uniform rulings, so far as the Chair knows or has been informed, seem to be, without exception, that a nonprivileged proposition coupled with the privileged, even if slight and incidental, destroys the privilege. That is quite familiar to gentlemen on resolutions making inquiry from the heads of the Departments. When they go beyond the question of inquiry as to a matter of fact, it destroys the privilege. The Chair does not think it necessary to amplify. It seems to the Chair quite plain that this nonprivileged matter destroys the privilege; and therefore the Chair sustains the point of order.

4625. Under later decisions the words "raising revenue" in the rule giving privilege to the Ways and Means Committee is broadly construed to cover bills relating to the revenue.—On May 4, 1898,[1] Mr. Charles H. Grosvenor, of Ohio, called up as a privileged matter the joint resolution (H. Res. 27) to repeal the joint resolution in reference to the Free Zone on the frontier of Mexico, the subject involved being the transportation of dutiable goods and its relations to smuggling.

Mr. Samuel W. T. Lanham, of Texas, made the point of order that this was not a bill "raising revenue."

After debate, the Speaker[2] ruled:

The gentleman from Texas [Mr. Bailey] has really stated the identical point involved here; and that is as to the words "raising revenue" for the support of the Government. The gentleman admits that if the bill were a bill affecting the raising of revenues, he would regard the question of order as decided.

The Chair thinks that the interpretation always given, with reference to the pending point, is such as to make it quite the equivalent of a bill "affecting revenues," as suggested by the gentleman from Texas, and that the mere language used of "raising revenue," instead of "affecting revenue," can have no material application to the question of order.

Not only in the opinion cited by the gentleman from Maine [Mr. Dingley], where Mr. Carlisle agreed that an administration bill was privileged in the same sense as the bill now presented,[3] but in almost every other instance every tariff bill which has been considered by the House has contained, necessarily, some administration measures, pure and simple, which the bill would not have been entitled to carry unless in order and privileged under the rule, inasmuch as any unprivileged feature would necessarily take away from the bill the effect of such privileged matter as it might carry; and the Chair thinks that it has been the universal construction that all measures affecting the revenue or the methods of collection of revenue are understood to affect the raising of revenue. While it is true that any Speaker, when this question is raised, might construe the rules very strictly, nevertheless after they have been reenacted they are understood to be reenacted as carrying with them the construction placed upon the rules, just as the reenactment of a statute after a decision of the court is understood to be reenacted with the approval of that provision.

So it seems to the Chair that, this being a measure relating to the revenues and the collection of the revenues, and without determining whether it increases or decreases the revenue, it is a matter that comes strictly within the rules and can be considered under the rules.

The Chair therefore overrules the question of order raised by the gentleman from Texas.[4]

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[1] Second session Fifty-fifth Congress, Record, p. 4581.

[2] Thomas B. Reed, of Maine, Speaker.

[3] This opinion of Mr. Carlisle seem to have been given informally, and not from the chair.

[4] On December 14, 1877, Mr. Speaker Randall held that "a proposition to inquire into frauds committed on the revenue" came within the spirit of the rule as it then existed. (Second session Forty-fifth Congress, Journal, p. 131.) For the form of the rule at that time see section 4020 of this volume.

4626. A bill providing for a tariff commission was held not to be a revenue bill within the meaning of the rule giving such bills privilege.—On March 7, 1882,[1] the House being in Committee of the Whole House on the state of the Union, Mr. John A. Kasson, of Iowa, moved that the committee proceed to the consideration of the bill (H. R. 2315) to provide for the appointment of a commission to investigate the question of the tariff and internal-revenue law, which had been reported from the Committee on Ways and Means.

Mr. Edward K. Valentine, of Nebraska, made the point of order that this bill might not be taken up out of order since it was neither a revenue bill nor an appropriation bill, nor a bill for the improvement of rivers and harbors.[2]

After debate, the Chairman[3] ruled—

The motion is made in Committee of the Whole that the bill which has just been read be taken up for consideration. The point of order is made by the gentleman from Nebraska [Mr. Valentine] that this motion cannot be entertained because the bill named has not precedence under the rules to the other measures upon the Calendar of the Committee of the Whole House on the state of the Union. The Chair is under great obligations to the gentlemen who have spoken upon this point, and would have been very glad to have heard further in explanation of what is deemed to be the proper procedure under this clause of the rule. So far as the Chair has been able to find there has been no ruling on this clause heretofore, and while it may be deemed to be one of great importance in the character of the subject, the Chair is only bound to rule upon the language before the committee in clause 4 of Rule XXIII.

The Chair finds on inspection of the bill, in the first instance, that it provides for a commission called the "tariff commission;" that in the second section it gives the number of such commissioners, provides for their salaries, and the payment of such officers and assistants as may be provided. In the third section the duty of such commission is prescribed. It is to take into consideration and thoroughly investigate all the various questions relating to the agricultural, commercial, mercantile, manufacturing, mining, and industrial interests of the United States so far as the same may be necessary to the establishment of a judicious tariff, or a revision of the existing tariff; and for the purpose of fully examining the matters which may come before it, such commission, in the prosecution of its inquiries, is empowered to visit such different portions and sections of the country as it may deem advisable. The fourth section provides that the commission shall make to Congress final report of the result of its investigation at certain times prescribed in the bill.

The Chair finds in the memoranda of the bill it was introduced and referred to the Committee on Ways and Means January 9, 1882, and on February 8, 1882, was reported back with amendments, committed to the Committee of the Whole House on the state of the Union, and ordered to be printed.

Reference has been made in the course of the debate to a certain clause of the rules in order to assist a proper decision. Rule XI provides:

"All proposed legislation shall be referred to the committees named in the preceding rule, as follows, namely: Subjects relating to the revenue and the bonded debt of the United States, to the Committee on Ways and Means."

Under clause 4 of the same rule committees are given leave to report at any time on matters therein stated. The Committee on Ways and Means is authorized to report on bills raising revenue.

In clause 6 of Rule XXI there is a provision for the call of the yeas and nays on the passage of revenue bills. Then clause 4, which has been read, has been submitted to the committee.

The single question the Chair is called on to decide is this: Is the present bill one entitled to precedence under clause 4 of Rule XXIII in its consideration before the Committee of the Whole? If it is entitled to such precedence it is entitled because of the language of the rule, and that language is "bills for raising revenue."

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[1] First session Forty-seventh Congress, Record, pp. 1681–1687.

[2] See section 4020 for the form of the rule at that time. It is now the usage under the rule to move to take up any bill.

[3] George D. Robinson, of Massachusetts, Chairman.

The Chair would suggest no light is thrown on the subject, in his judgment, by the citation of Rule XI regulating the submission of certain matters to the committee. Nor, again, is any help derived by the rule which relates to the report of the committee. Plainly the consideration of those is quite immaterial at the present moment.

Is this a bill for raising revenue? It is a bill to instruct a commission to investigate the various great interests of the country and to report the result of these investigations to Congress.

It will be noticed the language of the fourth clause is not bills relating to revenue; it will be noticed it is not subjects relating to revenue; nor is it revenue bills, but bills for raising revenue. In other words, to carry out the provisions and power expressed in the Constitution authorizing Congress to lay and collect taxes, duties, and imposts. The Chair understands the words "bills raising revenue" to mean bills laying taxes, authorizing duties and imposts within the provisions of the Constitution; and the Chair believes that that is the proper construction of this rule.

The question is one simply of the precedence of business. The other questions which have been alluded to as of great importance, the problem whether or not in certain stages of consideration amendments might be offered, are not material to that discussion of consideration. It is sufficient to decide those when they are reached.

But the Chair believes that the purpose of the House in adopting the rule in the clause named was to specify certain bills which should have consideration before others.

Now, it is not to be understood of this class of bills that they are bills relating to these subjects. As an instance it may be recalled: In the Forty-fifth Congress a bill was under consideration, which afterwards became a law, for the appointment of the Mississippi River Commission, providing for their duties, salaries, and report. True, the ultimate object was something that should result in the improvement of the Mississippi River; but the Chair is of the opinion it could not be claimed that bill in itself was a bill for the improvement of the Mississippi River, and therefore entitled under the same clause to have consideration in precedence.

It is of no assistance that we find this bill in the Committee of the Whole, because it is sufficient to say it has gone to the Committee of the Whole plainly for the reason it provides for a charge on the public Treasury.

The Chair therefore sustains the point of order, and rules this bill has not precedence under the rule for consideration at the present time.

4627. A declaratory resolution on a subject relating to the revenue is not within the privilege given the Ways and Means Committee to report at any time.—On December 21, 1882,[1] Mr. William D. Kelley, of Pennsylvania, reported from the Committee on Ways and Means the following resolution:

Resolved, That it is the sense of this House that in case the internal-revenue laws be so amended as to abolish the tax on tobacco, snuff, and cigars, or either, provision should be made for allowing a rebate of tax paid on stock on hand at the time such law goes into effect, provided such stock is stamped and in unbroken packages.

Mr. John A. Kasson, of Iowa, made the point of order that the resolution was not privileged, being not a bill but only a declaratory resolution.

After debate the Speaker[2] held that the rule gave the Committee on Ways and Means right to report at any time only bills raising revenue, and sustained the point of order.

4628. The right to report at any time a bill raising revenue belongs only to the Ways and Means Committee.—On July 22, 1886,[3] Mr. William H. Hatch, of Missouri, rose for the purpose of submitting a report which he claimed was privileged. The bill (H. R. 6569) to prevent the illegal sale of all imitations of dairy products, and for other purposes, had been returned from the Senate with amendments and with a request for a conference, and had been referred to the Committee on Agriculture. From that committee Mr. Hatch now proposed to report the bill and amendments with certain recommendations.

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[1] Second session Forty-seventh Congress, Record, p. 529.

[2] J. Warren Keifer, of Ohio, Speaker.

[3] First session Forty-ninth Congress, Record, pp. 7331, 7332; Journal, pp. 2292, 2293.

Mr. Ransom W. Dunham, of Illinois, made the point of order that the bill, while it raised revenue, was not privileged to be reported at any time, as only the Ways and Means Committee had that authority under the forty-ninth section of Rule XI.[1]

After debate the Speaker[2] ruled:

It will be remembered by the House that when this bill, or a bill upon this subject, was first introduced, the Chair decided that it belonged under the rules to the Committee on Ways and Means, but the House by a vote referred it to the Committee on Agriculture[3] in other words, made a special order of reference without changing in any way whatever any of the rules of the House. Clause 49 of Rule XI, which has already been referred to, provides:

"The following-named committees shall have leave to report at any time on the matters herein stated, namely, the Committee on Elections, on the right of a Member to his seat; the Committee on Ways and Means, on bills raising revenue, etc."

Under another rule of the House it is provided that at any time after the expiration of the morning hour it shall be in order to move that the House resolve itself into Committee of the Whole on the state of the Union for the purpose of considering bills raising revenue or general appropriation bills.

The difference as to the privileges of this class of bills under these two rules is simply this: The privilege to report a revenue bill at any time applies only to the Ways and Means Committee, while the privilege to consider revenue bills in Committee of the Whole on the state of the Union in preference to other bills applies to all revenue bills, whether reported from the Committee on Ways and Means or not. Therefore, when the question was raised as to the right of the Committee on Agriculture to call up in the Committee of the Whole on the state of the Union the bill imposing a tax upon oleomargarine, it made no difference from what committee it was reported; it had that privilege of consideration under the rules.

But the point now made by the gentleman from Illinois [Mr. Dunham] is that this privilege to report at any time bills raising revenue belongs to only one committee, the Committee on Ways and Means; and the Chair does not see how, under the order which was made, a simple order referring the bill to the Committee on Agriculture, without giving to that committee any privilege which it did not already possess, carries with it necessarily this right to report at any time.

The Speaker therefore sustained the point of order.

4629. The right of the Committee on Appropriations to report at any time is confined strictly to the general appropriation bills.

Enumeration of the appropriation bills considered "general." (Footnote.)

On February 7, 1877,[4] Mr. Henry Waldron, of Michigan, from the Committee on Appropriations, to whom was referred the bill of the Senate (S. 1222) to provide for a deficiency in the appropriation for the public printing and binding for the current fiscal year, reported the same without amendment.

The House having proceeded to consideration of the bill as in Committee of the Whole, Mr. John Vance, of Ohio, submitted an amendment providing that no greater wages should be paid in the Government Printing Office than were paid for work of the same description in New York, Philadelphia, and Baltimore.

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[1] Now section 61 of Rule XI. (See sec. 4621.)

[2] John G. Carlisle, of Kentucky, Speaker.

[3] Bills are now referred by rule under direction of the Speaker, the House having the right of correction. (See sec. 3364 of this volume.)

[4] Second session Forty-fourth Congress, Journal, p. 394; Record, p. 1320.

Mr. Omar D. Conger, of Michigan, made the point of order that the amendment changed existing law and was not in order, the pending bill being a general appropriation bill.[1]

The Speaker[2] overruled the point of order on the ground that the pending bill was not one of the general appropriation bills indicated in Rule 77,[3] and that therefore the restrictive clause in Rule 120[4] did not apply to the same.

4630. During the consideration of the sundry civil appropriation bill in July, 1892,[5] dilatory proceedings took place, and on July 30 Mr. William S. Holman, of Indiana, submitted as a privileged proposition the following resolution, which was read:

Resolved by the Senate and Home of Representatives of the United States of America in Congress assembled, That the provisions of the joint resolutions approved June 30 and July 16, 1892, providing temporarily for the expenditures of the Government, be, and the same are hereby, extended and continued in full force to and including the 4th day of August, 1892.

Mr. Albert J. Hopkins, of Illinois, objected to its consideration, and made the point of order that the resolution was not privileged.

The Speaker[6] sustained the point of order, holding:

As the Chair is informed, the only privilege that would attach to this resolution would be by reason of its being in the nature of an appropriation bill reported from the Committee on Appropriations and the House was now considering a proposition of that sort. The Chair has not been able so far to find any decision which would give this resolution priority over the pending proposition.

4631. On February 9, 1898,[7] Mr. Joseph G. Cannon, of Illinois, from the Committee on Appropriations, reported a bill making appropriations to supply the following deficiencies: Fees of jurors and witnesses in United States courts; in all, $375,000.

The bill having been reported, the Speaker[8] said it was not a privileged report, and recognized Mr. Cannon to ask for unanimous consent for its consideration.

4632. On May 2, 1898,[9] Mr. Joseph G. Cannon, of Illinois, from the Committee on Appropriations, reported an urgent deficiency bill appropriating many millions of dollars for supplying deficiencies in the appropriations for the Army; but although larger than some general appropriation bills, this measure was brought up by a request for unanimous consent for its consideration.

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[1] Amendments changing law are not in order on general appropriation bills. (See Sec. 3578 of this volume.)

[2] Samuel J. Randall, of Pennsylvania, Speaker.

[3] Rule 77 enumerated ten general appropriation bills at the time it was dropped in the revision of 1880—legislative, sundry civil, consular and diplomatic, army, navy, Indian, pensions, Military Academy, fortifications, post-office. At present the rules mention general appropriation bills, but no rule enumerates them. They are understood in practice to be the foregoing, with the District of Columbia, agricultural, and general deficiency added. The river and harbor bill is not a general appropriation bill. For history of the development of the appropriation bills, see Congressional Record, first session Forty-ninth Congress, p. 170.

[4] Now section 2 of Rule XXI. (See sec. 3578 of this volume.)

[5] First session Fifty-second Congress, Journal, p. 348; Record, p. 6966.

[6] Charles F. Crisp, of Georgia, Speaker.

[7] Second session Fifty-fifth Congress, Record, p. 1589.

[8] Thomas B. Reed, of Maine, Speaker.

[9] Second session Fifty-fifth Congress, Congressional Record, p. 4500.

Again, on July 5, 1898, a small deficiency bill was considered by unanimous consent.

4633. Construction of the rule giving privilege to the Committee on Public Lands.

The insertion of matter not privileged with privileged matter destroys the privileged character of a bill.

On March 17, 1888,[1] Mr. William S. Holman, of Indiana, from the Committee on the Public Lands, reported to the House the bill (H. R. 7901) to secure to actual settlers the public lands adapted to agriculture, to protect forests on the public domain, and for other purposes, and asked for its immediate consideration.

Mr. George E. Adams, of Illinois, raised the point of order that the bill contained matter not privileged, and therefore had no privileged character.

The Speaker[2] held:

The Chair thinks that is a correct proposition: That a bill which contains two separate matters, one of which is privileged under the rules of the House and the other is not, is subject to the point of order; that is to say, the insertion of matter which was not privileged destroys the privileged character of the other, and therefore subjects the entire proposition to the point of order. As, for instance, when the Committee on Public Printing reports a resolution providing for printing for use of the two Houses and in the same resolution inserts a provision for printing for the use of the Departments of the Government, the latter part of the resolution not being privileged destroys the privileged character of the whole.

This is quite a long bill. The Chair has given it some attention, but may not thoroughly understand its purposes and provisions. It seems to be a bill the principal object of which is to preserve the public lands for actual settlers. It is true the bill relates also to timber lands, mineral lands, and desert lands; but, so far as the Chair has been able to ascertain from such examination of the bill as he has been able to make, these provisions simply enlarge the area of the public domain subject to entry and settlement under the homestead law. In other words, a part of the lands which can now be taken up under existing law as timber lands, or mineral lands, or desert lands, will, if this bill passes, be subject to entry hereafter under the homestead law only.

The Chair does not think that such a provision as that would destroy the privileged character of the bill, because a bill might be introduced which simply related to the timber lands, making all that class of lands subject to entry under the homestead law only; or a similar bill relating exclusively to the mineral lands might also be introduced, making all that class of lands subject to entry under the homestead law only, and such bills would be privileged. In other words, it is impossible to enlarge the area of the public lands subject to entry under the homestead law without in some way legislating in respect to lands that are not now subject to homestead entry.

Mr. Adams having called the attention of the Chair to the title of the bill, which specified one of its objects as the protection of the forests on the public domain, and it having been explained that the bill provided only for selling timber on the timber lands and not the lands themselves, the Speaker continued:

And even that land may be entered afterwards under the homestead law. As the law now exists, these lands may be acquired either under the homestead law or under the preemption law, but if this bill passes they will be preserved for actual settlers. Therefore the bill aims to preserve the public land for actual settlers and comes within the rule. The Chair is not under the necessity of deciding whether the bill will prevent speculation or not. It may or may not do that. But unless the Chair misunderstands the provisions of the bill it comes within the last clause of the rule; that is, it is a bill to preserve the public lands for actual settlers. The Chair therefore thinks the bill is privileged.

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[1] First session Fiftieth Congress, Record, p. 2195; Journal, p. 1216.

[2] John G. Carlisle, of Kentucky, Speaker.

4634. On August 7,1890,[1] Mr. Hosea Townsend, of Colorado, as a privileged question, from the Committee on the Public Lands, to which was referred the bill of the Senate (S. 2805) to provide for the disposal of the Old Fort Lyon and Fort Lyon and Pagosa Springs military reservations in the State of Colorado, to actual settlers, under the provisions of the homestead laws, reported the same with amendment.

Mr. John H. Rogers, of Arkansas, made the point of order that the report was not a privileged report.

The Speaker[2] overruled the point of order on the ground that bills of that character were specially privileged by clause 51 of Rule XI[3] to be reported at any time.

4635. On February 25, 1893,[4] Mr. Thomas C. McRae, of Arkansas, from the Committee on the Public Lands, submitted, as a privileged report, a report on the bill (S. 3643) to provide for the disposal of the Fort Bridger Military Reservation in the State of Wyoming.

Mr. Joseph H. Outhwaite, of Ohio, made the point of order that the report was not privileged under the rule.

The Speaker[5] overruled the point of order.

4636. On February 17, 1891,[6] Mr. William J. Stone, of Missouri, as a privileged question, from the Committee on the Public Lands, to which was referred the bill of the House (H. R. 8739) providing in certain cases for the forfeiture of certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes, reported the same without amendment.

Mr. George E. Adams, of Illinois, made the point of order that the House having passed at the last session a general bill on the same subject, the power of privilege of the committee on bills of that kind was exhausted.

The Speaker pro tempore[7] overruled the point of order.

4637. The rule giving privilege to reports from the Committee on Public Lands permits the including of matters necessary to accomplishment of the purposes for which privilege is given.

The decisions of the Speaker on questions of order are not like judgments of courts which conclude the rights of parties, but may be reexamined and reversed.

On December 5, 1888,[8] Mr. Lewis E. Payson, of Illinois, from the Committee on Public Lands, reported the bill (H. R. 1368) to quiet title of settlers on the Des Moines River lands in the State of Iowa, and for other purposes, and asked for its consideration.

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[1] First session Fifty-first Congress, Journal, p. 928; Record, p. 8305.

[2] Thoma B. Reed, of Maine, Speaker.

[3] Now section 61 of Rule XI. (See section 4621 of this volume.)

[4] Second session Fifty-second Congress, Journal, p. 114; Record, p. 2177.

[5] Charles F. Crisp, of Georgia, Speaker.

[6] Second session Fifty-first Congress, Journal, p. 255; Record, p. 2799.

[7] Lewis E. Payson, of Illinois, Speaker pro tempore.

[8] Second session Fiftieth Congress, Record, pp. 47, 48; Journal, pp. 49, 50.

Mr. Jonathan H. Rowell, of Illinois, raised the point of order that the bill was not privileged, and that such a decision had been made during the preceding session of Congress.

Such a decision had been made by Mr. Samuel S. Cox, of New York, as Speaker pro tempore, and, being present, Mr. Cox on this day submitted an argument in favor of the point of order, and also on the point that a decision once made should not be overruled by another occupant of the chair.

The Speaker [1] said:

The Chair thinks that questions of order which affect merely the proceedings in the House and do not, like judgments of courts, conclude the rights of parties, are always open for reexamination and decision; and therefore the present occupant of the Chair has never hesitated to overrule his own decisions when convinced that they were wrong.[2]

The point made by the gentleman from New York is that this is not a bill for the reservation of public lands for the benefit of actual settlers. That is a question which has arisen very frequently under the fiftieth clause of Rule XI of the House, and the Chair has invariably placed a very liberal construction upon that rule. In view of the object which the rule was intended to accomplish, the Chair thought that was the proper policy to be pursued, leaving to the House at all times the right to pass or reject any bill upon which the question might arise. Of course it is not the province of the Chair to express any opinion as to the merits of this bill or as to whether, if passed, it will accomplish the object contemplated by it.

It is sufficient, in the judgment of the Chair, if the bill shows upon its face that its purpose is to reserve public lands for the benefit of actual settlers. The bill refers to, and if passed can affect only, those lands which were "improperly certified" by the Secretary of the Interior to the State of Iowa. Even if the Chair were called upon to decide whether the lands affected by the bill are public lands or not, it appears it would affect none except those, as the Chair has already said, which were improperly certified, and of course if they were improperly certified they are still public lands of the United States.

The second section, which directs the Attorney-General to institute suits, provides simply a means for the accomplishment of the object which the bill contemplates, and the Chair thinks that the point raised by the gentleman from New York, that nonprivileged matter can not be connected with privileged matter in a bill, does not arise in this instance. The Chair has always held, and will continue to hold, that nonprivileged matter can not be connected with privileged matter, unless it be something which is essential to the accomplishment of that part of the bill which is privileged, and the Chair thinks that is the case here. With great respect for the opinion of the gentleman from New York who presided when this question was presented before, the Chair feels constrained to hold that this is a matter of privilege, and so decides.[3]

4638. On February 15, 1896,[4] Mr. John F. Lacey, of Iowa, from the Committee on Public Lands, reported a bill to provide for the extension of time within which suits may be brought to vacate and annul patents upon public lands, and for other purposes.

Mr. Eugene F. Loud, of California, made the point of order that the bill did not present a question of privilege.

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[1] John G. Carlisle, of Kentucky, Speaker.

[2] Thus, Mr. Speaker Stevenson, on April 11, 1828, announced that on more mature consideration he had concluded that a decision made by him on the preceding day was wrong, and he deemed it his duty to so state to the House. (First session Twentieth Congress, Debates, p. 2291.)

[3] The opinion of Mr. Cox was given in a decision of March 8, 1888, holding that the section relating to the initiation of legislation by the Attorney-General destroyed the privilege of the bill. (First session Fiftieth Congress, Journal, pp. 1090, 1091; Record, pp. 1876, 1877.)

[4] First session Fifty-fourth Congress, Record, p. 1763.

The Speaker[1] said:

The Chair thinks that this provision has always had a liberal construction, and will decide that it is a privileged matter.[2]

4639. On July 10, 1894,[3] Mr. Thomas C. McRae, of Arkansas, presented for consideration the bill (H. R. 121) to amend an act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes, approved September 29, 1890.

Mr. Thomas B. Reed, of Maine, made the point of order that the bill having been reported on June 27, and its consideration not having been called for when reported, had lost its privilege.

It appearing from the Journal of the 27th, that said bill, when it was reported, was "laid on the table, with leave to present the same for consideration at any time," the Speaker pro tempore held that it was in order to proceed with its consideration.

4640. The privilege of the Committee on Accounts is confined to resolutions making expenditures from the contingent fund.

The including of matter not privileged destroys the privileged character of a bill.

On June 14, 1906[4] Mr. H. Burd Cassel, of Pennsylvania, from the Committee on Accounts, offered as privileged the following:

Resolved, That the chairman of the Committee on Irrigation of Arid Lands is hereby authorized to appoint a clerk to said committee, who shall be paid out of the contingent fund of the House at the rate of $2,000 per annum from and after July 1, 1906, unless otherwise provided for by law, and the Committee on Appropriations is hereby authorized and directed to provide for the salary of said clerk in one of the general appropriation bills: *Provided,* That the same shall be in lieu of the session clerk assigned to said committee.

Mr. Sereno E. Payne, of New York, objected to the resolution on the ground that there was in it nonprivileged matter.

The Speaker[5] held, after debate:

The Chair is of the opinion that a nonprivileged provision in a privileged resolution vitiates the whole resolution. The Chair calls the attention of the gentleman from Georgia to the language of this resolution:

"Is hereby authorized to appoint a clerk to said committee, who shall be paid out of the contingent fund of the House at the rate of $2,000 per annum from and after July 1, unless otherwise provided by law; and the Committee on Appropriations is hereby authorized and directed to provide for the salary of said clerk in one of the general appropriation bills: *Provided,* That the same shall be in lieu of the session clerk assigned to said committee."

Now it seem that there is a session clerk assigned to said committee under the law and under the rules, but that assignment is silent. * * * This substitutes an annual clerk for a session clerk.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Mr. Speaker Carlisle held that the privilege belonged to a bill repealing the preemption laws, the timber-culture laws, and the laws authorizing the sale of desert lands, since the repeal of these laws would leave in operation no method of acquiring public lands except the homestead laws which were for the actual benefit of actual settlers. (First session Forty-ninth Congress, Journal, p. 2077; Record, p. 6447.)

[3] Second session Fifty-third Congress, Journal, p. 475; Record, p. 7261.

[4] First session Fifty-ninth Congress, Record, pp. 8485, 8486.

[5] Joseph G. Cannon, of Illinois, Speaker.

Two things are accomplished. Now, the Chair will be inclined to hold that the grant of $2,000 to this session clerk for the coming fiscal year, or pay at that rate for the remainder of the Congress from the contingent fund would be in order under the rules, because expenditures from the contingent fund are privileged. But it goes further, and provides what the Committee on Appropriations is authorized to do; and it does seem to the Chair that that vitiates the privileged character of the resolution. * * * The Chair is quite aware that under the practice of the House resolutions of this character have been reported and passed, but that is where the point has not been made, and the Chair can not rule without the point of order is made. * * * The Chair would have very great respect for a ruling made by Mr. Speaker Carlisle on what would be construed as a precedent, but the Chair does not say that it would necessarily control the matter.[1]

4641. On June 27, 1906,[2] Mr. H. Burd Cassell, of Pennsylvania, presented as privileged, from the Committee on Accounts, a resolution providing a clerk for the Committee on Immigration and Naturalization.

Mr. Sereno E. Payne, of New York, made the point of order that the resolution was not privileged.

After debate the Speaker[3] said:

The Chair understands the gentleman from New York claims that this is not provided under the rule. Yet the Chair will call the attention of the gentleman to the rule:

"The following-named committees shall have leave to report at any time on the matters herein stated: * * * and the Committee on Accounts, on all matters of expenditure of the contingent fund of the House."

* * * the Chair will call the attention of the gentleman from New York to the language of the resolution:

"That during the remainder of the present Congress, or until otherwise provided by law, there shall be paid out of the contingent fund of the House, for the services of a clerk to the Committee on Immigration and Naturalization, a sum equal to the rate of $2,000 per annum, payable monthly."

* * * May the Chair ask the gentleman would it not be in order, on a report of the Committee on Accounts—would it not be privileged—to pay one thousand or two thousand dollars for a clerk to a committee that has not a clerk even? In other words, under the rule, has not the House plenary powers over its contingent fund? * * * The Chair will again say, take a committee that has no clerk; to illustrate, the Committee on Mileage, which, I believe, has no clerk. But let that be as it may; is not, under the rule, a resolution from the Committee on Accounts privileged that would provide $1,000 or $100 or $2,000 to be paid to a clerk during this Congress from the contingent fund? Would not that be in order? * * * Now, the effect of the resolution, if indorsed, would be to pay the clerk monthly at the rate of $2,000 per annum from the adoption of the resolution, from the contingent fund, until the 4th day of March next. It seems to the Chair that the resolution is privileged under the rules. It does not violate the privilege.

4642. On March 2. 1899,[4] Mr. Benjamin B. Odell, jr., of New York, as a privileged matter, presented the following resolution:

Resolved, That the Clerk of the House of Representatives be, and is hereby, authorized to pay out of the contingent fund of the House the sum of $266.19 to William Keith for services rendered in the folding room from July 9, 1898, to December 5, 1898, this amount being at the rate of $60 per month.

Mr. Joseph W. Bailey, of Texas, raised the question of order that this resolution was not privileged as the employment had not been authorized by the House.

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[1] In the debate a precedent had been cited which on examination is found to have no relation to this question.

[2] First session Fifty-ninth Congress, Record, pp. 9388, 9389.

[3] Joseph G. Cannon, of Illinois, Speaker.

[4] Third session Fifty-fifth Congress, Record, p. 2761.

The Speaker[1] said:

It is a report of the Committee on Accounts to the House. * * * The distinction is as to its being an expenditure out of the contingent fund of the House. * * * "The Committee on Accounts on all matters of expenditure of the contingent fund of the House" is the language. If the House does not approve of this resolution, of course it is within its power to vote it down. The Chair thinks the language seems to cover all such questions, and that the House has to dispose of them when presented. * * * The Chair concurs in the proposition made in opposition, that only the House can name its employees, or the House in conjunction with the Senate, in a proper appropriation bill. But it is for the House to judge whether these expenditures are satisfactory to the House or not. Therefore the Chair thinks it is privileged, the House having complete control over it, and if not satisfied with the action that has taken place, or does not desire, so to speak, to condone it, it can so express itself by its vote. The question is on agreeing to the resolution.

4643. On March 26,1904,[2] Mr. James A. Hughes, of West Virginia, from the Committee on Accounts, submitted several resolutions of tenor like the following:

Resolved, That the Committee on Appropriations is authorized to provide in the general deficiency appropriation bill for the payment to D. S. Porter of the sum of $500 for extra and expert services to the Committee on Pensions as assistant clerk of said committee by detail.

The resolutions were presented as privileged under Rule X1, but upon ascertaining that they provided for no expenditure out of the contingent fund of the House the Speaker[3] quoted the rule:

The following-named committees shall have leave to report at any time on the matters herein stated, viz: * * * the Committee on Accounts, on all matters of expenditure of the contingent fund of the House.

And said:

The Chair thinks this is not a privileged resolution. Is there objection to the present consideration?

4644. A resolution from the Committee on Accounts providing for payment from the contingent fund is privileged, although the House on the merits may decline to approve the expenditure.—On April 21, 1904,[4] the House considered the following resolution, which came over from the preceding day with a point of order reserved as to the right of the Committee on Accounts to report it as privileged.

Resolved, That the Clerk of the House is hereby authorized and directed to pay, out of the contingent fund of the House, to Campbell Slemp, the sum of $1,500, being the amount expended by and recommended to be paid to him, as shown in House report from the Committee on Claims, No. 2374, second session Fifty-eighth Congress, on account of mandamus proceedings before the supreme court of the State of Virginia in the case of Slemp against Rhea, growing out of the election in 1902 of a Representative to the Fifty-eighth Congress from the Ninth Congressional district of said State of Virginia, said amount to be paid upon vouchers to be approved by the Committee on Accounts.

After debate the Speaker[3] said:

The Chair desires to read from Rule XI, clause 60:

"The following-named committees shall have leave to report at any time on the matters herein stated: * * * The Committee on Accounts, on all matters of expenditure of the contingent fund of the House."

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Fifty-eighth Congress, Record, pp. 3763, 3764.

[3] Joseph G. Cannon, of Illinois, Speaker.

[4] Second session Fifty-eighth Congress, Record, p. 5281.

This is a report of the Committee on Accounts. It provides for the payment of the amount specified from the contingent fund. As to the effect of the resolution in the event that it should be passed; as to whether the payment would be audited by the accounting officers of the Treasury Department; as to the propriety of adopting the resolution; as to whether it comes within the terms of the statute referred to by the gentleman from Georgia—those are matters upon which it is not the province of the Chair to rule.

It is the duty of the House to determine the effect of the resolution and the propriety of its passage. The Chair holds that it comes here under the rule, and therefore is before the House.

The resolution was then debated on its merits and opposed as not a proper expenditure from the contingent fund of the House, and was disagreed to, ayes 84, noes, 124.

4645. A resolution from the Committee on Accounts to authorize an appropriation for extra compensation to an employee is not privileged.—On February 2, 1905,[1] Mr. Charles Q. Hildebrant, of Ohio, from the Committee on Accounts, called up the following:

Resolved, That the Committee on Appropriations is authorized to provide in the general deficiency appropriation bill for the payment to D. S. Porter of the sum of $500 for extra and expert services to the Committee on Pensions as assistant clerk of said committee by detail.

The Speaker said:[2]

Is there objection to the present consideration of the resolution? It seems to the Chair it is not privileged.

4646. The privilege of the Committee on Enrolled Bills to report at any time has been long confined to the reporting of enrolled bills.—On March 2, 1831,[3] Mr. Joseph Richardson, of Massachusetts, from the Committee on Enrolled Bills, reported a resolution for suspending one of the joint rules relating to presentation of bills to the President.

The Speaker[4] decided that the rule that "it shall be in order for the Committee on Enrolled Bills to report at any time" referred only to the presentation of enrolled bills to the House, and that the hour for presenting reports having passed, this report was not in order.[5]

On appeal the decision of the Chair was sustained.

4647. The privilege of the Committee on Printing is confined to printing for the use of the two Houses, and the presence of matter not privileged destroys the privileged character of the report.—On July 14, 1892,[6] Mr. William M. McKaig, of Maryland, submitted a privileged report on the following resolution:

Resolved, That there be printed 10,000 copies of the bill of the House of Representatives No. 11045, first session of the Fifty-first Congress, entitled "An act to amend and supplement the election laws of the United States," etc., the said bill to be printed in pamphlet form, with marginal notes, as it passed the House, with the amendment proposed by the Senate committee in italics; and the copies shall be distributed from the House folding room pro rata among the Members of the House.

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[1] Third session Fifty-eighth Congress, Record, p. 1781.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] Second session Twenty-first Congress, Journal, p. 413; Debates, p. 848.

[4] Mr. George McDuffie, of South Carolina, appears by the Debates to have been in the chair when this decision was rendered.

[5] Reports are presented differently now. (See see. 3116 of this volume..)

[6] First session Fifty-second Congress, Journal, p. 292; Record, p. 6166.

Mr. Nelson Dingley, jr., of Maine, made the point of order that the resolution was not privileged, for the reason that the printing authorized by the resolution was not for the use of the House.

The Speaker [1] overruled the point of order, holding that inasmuch as the matter proposed to be printed was to be distributed, according to the resolution, pro rata among the Members of the House, it was therefore for the use of the House, and the resolution authorizing it was privileged under Rule XI, clause 51.[2]

4648. On September 13, 1893,[3] Mr. James D. Richardson, of Tennessee, from the Committee on Printing, reported as a privileged proposition the bill (H. R. 2650) providing for the printing and binding and the distribution of public documents.

Mr. Nelson Dingley, jr., of Maine, submitted the question of order that the report was not privileged.

The Speaker [1] sustained the point of order, holding as follows:

Whilst the Chair has not read with care all the provisions of the bill called up by the gentleman from Tennessee [Mr. Richardson], he has looked at it sufficiently to see that it deals not only with the question of printing for either House or for both Houses of Congress, but also with the printing for the various Departments of the Government. It regulates leaves of absence from the Printing Office, and the number of documents to be printed for the various Departments, and, generally, it may be said that it proposes to revise the laws on the whole subject of public printing, not only for the two Houses of Congress but for all the Departments of the Government. Therefore, although a part of this bill might be held to be privileged, a very large part, and, the Chair thinks, not an incidental part, is not privileged under the rule. It was held in the Fiftieth Congress that, as a general rule, the insertion of matter not privileged in a proposition otherwise privileged destroys the privileged character of the report, and therefore it seems to the Chair that under the rule of the House this measure is not privileged. The provision of the rule is that reports as to matters of printing for the use of either House, or of both Houses, shall be privileged, so that the House may have an opportunity at any time to consider and pass upon them; but this bill the Chair understands to cover much broader ground and to revise the whole printing system. The Chair therefore must hold that it is not privileged under the rule.

4649. On May 18, 1876,[4] Mr. Otho R. Singleton, of Mississippi, from the Committee on Printing, reported a resolution instructing the Committee on Appropriations to insert certain sections in the sundry civil appropriation bill relative to the management of the Government Printing Office.

Mr. James Wilson, of Iowa, made the point of order that the report was not one that could be made at any time, it proposing a change of existing law, the privilege to report at any time extending only to matters of printing.

The Speaker pro tempore [5] overruled the point of order, holding that the report could now be made under the "leave to report at any time" given that committee under the rules.

4650. In the early practice the privilege of the Committee on Rules was specially given for each Congress.—On December 5, 1853,[6] the House by the resolution creating the Select Committee on Rules, gave that committee power to report at any time, and also gave their report high privileged when made. The

[1] Charles F. Crisp, of Georgia, Speaker.

[2] Now section 61 of Rule XI. (See see. 4621 of this volume.)

[3] First session Fifty-third Congress, Journal, p. 80.

[4] First session Forty-fourth Congress, Journal, p. 973; Record, p. 3149.

[5] Samuel S. Cox, of New York, Speaker pro tempore.

[6] First session Thirty-third Congress, Journal, pp. 11, 550; Globe, p. 715.

committee exercised this privilege by reporting on a single proposition at a time when such course seemed advisable.

4651. Privileged reports are sometimes printed and recommitted.—On June 6, 1896,[1] Mr. Thomas B. Catron, of New Mexico, presented a privileged report from the Committee on the Territories on the bill (H.R. 7909) to enable the people of New Mexico to form a constitution and State government, and moved that it be printed and recommitted to the committee.

The motion was agreed to.

4652. Reports of committees are required to be submitted in Writing. Forms of written reports submitted by committees.

Section 2 of Rule XVIII[2] provides:

* * * All bills, petitions, memorials, or resolutions reported from a committee shall be accompanied by reports in writing[3] which shall be printed.

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[1] First session Fifty-fourth Congress, Record, p. 6197.

[2] See section 5647 of Vol. V, of this work for full form and history of this rule.

[3] Where a bill is reported without amendment the form of report is as follows (House Report No. 591, first session Fifty-ninth Congress):

"The Committee on Interstate and Foreign Commerce, to whom was referred H. R. 184, introduced by Mr. Russell; 278, introduced by Mr. Candler; 296, introduced by Mr. Richardson; 468, introduced by Mr. Hearst; 469, introduced by Mr. Hearst; 4425, introduced by Mr. Townsend; 5966, introduced by Mr. Adamson; 6019, introduced by Mr. Sheppard; 8414, introduced by Mr. Sulzer; 8437, introduced by Mr. Smith; 8999, introduced by Mr. Olcott; 9972, introduced by Mr. Williams; 10097, introduced by Mr. Hogg; 10098, introduced by Mr. Hogg; 10099, introduced by Mr. Hepburn; 11488, introduced by Mr. Hepburn; 12220, introduced by Mr. McCall; 12312, introduced by Mr. Davey, and 12987, introduced by Mr. Hepburn, have had the same under consideration and instruct me to report back to the House H. R. 12987, 'To amend an act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven. and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission,' without amendment, and to recommend its passage."

[Then follows an explanation of the bill.]

When a bill is reported with amendment this form is used (House Report No. 583, first session Fifty-ninth Congress):

"The Committee on Ways and Means, to whom was referred the bill (H. R. 7114) to provide for the consolidation and reorganization of customs collection districts, having considered the same, report it back with the following amendment, viz:

"On page 1, line 4, after the word 'districts' insert the words 'and to discontinue or consolidate ports and subports therein,' and recommend that the bill as amended do pass.

"The reasons given for the enactment of this measure are well stated in the accompanying memorandum from the Treasury Department, which is adopted as a part of this report."

A report on a general appropriation bill, which is originated in a committee from the estimates, is as follows (House Report No. 5328, first session Fifty-ninth Congress):

"In presenting the bill making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1908, the Committee on Appropriations submit the following in explanation thereof," etc.:

A report from a committee to which matters have been referred with instructions to make examination, reports in form as follows (House Report No. 377, first session Thirty-fifth Congress):

"The select committee of fifteen appointed under the resolution of the House of the 8th of February, to whom was referred the message of the President of the United States of the 2d of February , "concerning the constitution framed at Lecompton, in the Territory of Kansas, by a convention of delegates thereof, and the papers accompanying the same," with instructions "to inquire into all the facts connected with the formation of said constitution, and the laws under which the same originated; and into all such facts and proceedings as have transpired since the formation of said constitution having

4653. While a rule requires that every bill reported from a committee shall be accompanied by a written report, the sufficiency of that report is passed on by the House and not the Speaker.—On February 6, 1884,[1] Mr. Judson C. Clements, of Georgia, as a privileged question from the Committee on Foreign Affairs, to which was referred a resolution inquiring as to the absences of United States ministers and consuls from their posts, reported the same without amendment.

The House having proceeded to its consideration, Mr. William H. Calkins, of Indiana, made the point of order that the report accompanying the resolution was not a substantial compliance with the requirements of the rule [2] requiring that "all resolutions reported from a committee shall be accompanied by reports in writing."

The Speaker[3] overruled the point of order on the ground that it was not the duty of the Chair to pass upon the question of the character of a report, that properly belonging to the House to decide. The rule had been complied with by the committee, which had submitted a report in writing, and beyond that the Chair was not called upon to rule.

4654. A verbal statement may not be received in the House as the report of a committee.—On June 11, 1850,[4] Mr. Thomas H. Bayly, of Virginia, called attention to the then existing seventy-ninth rule, which was:

> It shall be the duty of the Committee of Ways and Mean , within thirty days after their appointment, at every session of Congress, commencing on the first Monday of December, to report the general appropriation bills, for the civil and diplomatic expenses of the Government, for the Army, for the Navy, and for the Indian department and the Indian annuities; or, in failure thereof, the reasons for the failure.

Mr. Bayly thereupon, by direction of the committee, proceeded to make a verbal statement of the causes of the delay of the committee in reporting the appropriation bills as required by the rule.

Mr. Robert C. Schenck, of Ohio, made the point of order that a verbal statement could not be received as the report of a committee, and that therefore Mr. Bayly was not in order. For the verbal statement was not capable of being laid on the table, recommitted, or otherwise acted on by the House.

The Speaker[5] decided that a report from a committee must be in writing, and that Mr. Bayly was not in order in making a verbal statement as a report from the Committee of Ways and Means.

Mr. Jacob Thompson, of Mississippi, having appealed, a motion was made to lay this appeal on the table. Pending this motion Mr. Thompson withdrew the appeal.

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relation to the question or propriety of the admission of said Territory into the Union under said constitution; and whether the same is acceptable and satisfactory to the majority of legal voters of Kansas," have had all the matters committed to them under consideration, and now present the following report."

A report is often unsigned, but sometimes is signed by the Member submitting it, or by all the members of the committee who concur in it.

[1] First session Forty-eighth Congress, Journal, p. 516.

[2] Section 2 of Rule XVIII provides: "All bills, petitions, memorials, or resolutions reported from a committee shall be accompanied by reports in writing, which shall be printed."

[3] John G. Carlisle, of Kentucky, Speaker.

[4] First session Thirty-first Congress, Journal, pp. 1011, 1012; Globe, p. 1207.

[5] Howell Cobb, of Georgia, Speaker.

4655. The House always insists that reports on bills, resolutions, petitions, and memorials shall be in writing.—On February 5, 1884,[1] Mr. Judson C. Clements, of Georgia, as a privileged question from the Committee on Foreign Affairs, reported a resolution of inquiry in relation to the absence of foreign ministers, consuls, etc., of the United States from their posts of duty.

Mr. William H. Calkins, of Indiana, made the point of order that there should be a written report accompanying the resolution.

The Speaker[2] said:

Under the rules of the House the report can not be received unless there is a written report accompanying it. The Chair sustains the point of order.[3]

4656. A committee having reported a public bill grouping together the authorization of several distinct works, all within the jurisdiction of the committee, it was held that no point of order could be sustained when the bill came up in Committee of the Whole.—On July 14, 1892,[4] Mr. George D. Wise, of Virginia, from the Committee on Interstate and Foreign Commerce, called up the bill (H. R. 8002) providing authorization for the construction of a long list of lighthouses and other aids to navigation, and it was considered in Committee of the Whole House on the state of the Union.

Mr. William S. Holman, of Indiana, made the point of order that it was not competent for the committee to report a bill providing for so many different works.

After debate, the Chairman[5] held:

The Chair will again state that this bill was referred under the rules of the House to the Committee on Interstate and Foreign Commerce. That action, in the judgment of the Chair, gave the committee absolute jurisdiction and control of the bill and its several items, which could only be taken from it in the manner prescribed in section 3 of Rule XXII.[6]

Not only this, but the committee having jurisdiction reported the bill to the House, and the House referred the bill to the Committee of the Whole House on the state of the Union; and, in the judgment of the Chair, therefore, it is not within the province of this committee to change or impair that reference. The policy of grouping bills into one measure is pernicious, but the question of policy should not influence the consideration and determination of a question of order. The Chair overrules the point of order.[7]

4657. On April 29, 1902,[8] the House considered and passed the bill (H. R. 14018), an "omnibus" public building bill, reported from the Committee on Public Buildings and Grounds. No question was raised as to the character of the bill.

4658. Instance wherein a committee submitted a report on one feature of a bill with recommendation that it be referred to another com-

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[1] First session Forty-eighth Congress, Journal, pp. 502, 503; Record, p. 895.

[2] John G. Carlisle, of Kentucky, Speaker.

[3] See Rule XVIII, section 2. The Speaker again made a similar ruling February 12, 1884 (first session Forty-eighth Congress, Journal, p. 566; Record, p. 1056).

[4] First session Fifty-second Congress, Record, pp. 6168, 6173.

[5] Alexander M. Dockery, of Missouri, Chairman.

[6] See section 3364 of this volume.

[7] It is by no means uncommon for committees to group several objects in one bill. Thus, on April 1, 1902, the committee on Territories, to whom had been referred three bills to admit severally to statehood New Mexico, Arizona, and Oklahoma, reported in lieu thereof the bill (H. R. 12543) providing for the admission of the three Territories. (First session Fifty-seventh Congress, House Report No. 1309.)

[8] First session Fifty-seventh Congress, Journal, p. 659; Record, p. 4820–4841.

mittee for examination as to another feature.—On January 9, 1906,[1] Mr. Frederick C. Stevens, of Minnesota, from the Committee, on Interstate and Foreign Commerce, reported the bill (H. R. 8103) to authorize the construction of a bridge between Fort Snelling and St. Paul, Minn., and asked unanimous consent that the bill be committed to the Committee on Military Affairs.

This was a report on one feature of the bill, that relating to the question of navigation. The object of referring the bill and report to Military Affairs was in order to obtain a report on the features of the bill affecting the military reservation.

On February 24,[2] the Committee on Military Affairs reported on the military questions involved in the bill.

4659. A committee having jurisdiction of the subject may originate a bill and report that bill adversely.—On June 8, 1852,[3] Mr. Henry Bennett, of New York, from the Committee on the Public Lands, to whom was referred the petition of G. W. Sumner and others, made an adverse report thereon, accompanied by a bill (No. 280) making grants of land to aid in the construction of railroads, and for other purposes. This report was as follows:

> The Committee on the Public Lands, to whom was referred the memorial of George W. Sumner, and others, asking that grants of land, for railroad and school purposes, may be made equally to all the States on some fair and just principle of apportionment, accompanied by a bill for that purpose, have, according to order, had the same under consideration, and report the said bill without amendment to the House; a majority of said committee direct that said report be made, accompanied by a recommendation that said bill do not pass.

Mr. George W. Jones, of Tennessee, made the point of order that it was not competent for a committee to report a bill to the House accompanied by a recommendation. that it do not pass, as had been done in the present case; consequently that the bill was not before the House.

The Speaker[4] overruled the point of order on the ground that the bill was based upon a petition regularly referred to the committee, a mode of bringing bills before the House recognized by the rules,[5] and that, the committee having such right to report a bill, he did not consider it affected by the recommendation which might accompany the report.

Mr. Jones having appealed, the appeal was laid on the table.

4660. A committee may submit a report which does not contain a recommendation of action, and the House may agree to such report, in which case it appears in the Journal.—The report of a committee does not necessarily include a recommendation for action. It may report simply a finding of facts. Thus, on June 12, 1876,[6] Mr. Hiester Clymer, of Pennsylvania, submitted, from the Committee on Expenditures in the War Department, a report on certain charges made against Hon. M. C. Kerr, then Speaker of the House. The report exonerates Mr. Kerr by stating that nothing had been found reflecting on his integrity and simply submits this conclusion, with a transcript of the evidence. The charges in this case related to the conduct of Mr. Kerr in a former Congress.

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[1] First session Fifty-ninth Congress, Record, p. 880.

[2] House Report No. 1714.

[3] First session Thirty-second Congress, Journal, p. 785; Globe, p. 1537.

[4] Linn Boyd, of Kentucky, Speaker.

[5] At this time a bill could be introduced in the House and referred only by getting the consent of the House. (See sec. 3364 of this volume for the rule and usage.) In this case the text of the bill was suggested in the memorial. Of course the committee, by virtue of having the memorial before it, might have reported a bill without any bill being referred or suggested.

[6] First session Forty-fourth Congress, House Report No. 654.

Although this report recommended no action, the question was put on agreeing to it, and the House so voted unanimously.[1]

The report appears in full in the Journal, although no order to that effect appears to have been passed.

4661. A committee may report a bill to the House with no recommendation for action.—On March 8, 1898, Mr. D. A. De Armond, of Missouri, from the Committee on the Judiciary, submitted the following report:[2]

The Committee on the Judiciary, having had under consideration the bill (S. 224) entitled "An act to limit the effect of the regulations of commerce between the several States and with foreign countries in certain cases," recommend that the accompanying amendments to said bill be adopted, and make no further recommendation, each member of the committee reserving to himself the right to take such course in the House concerning the bill and amendments as to him shall seem proper.

4662. On February 6, 1906,[3] Mr. Edward DeV. Morrell, of Pennsylvania, from the Committee on the District of Columbia, submitted a report,[4] as follows:

The Committee on the District of Columbia, to whom was referred the bill (H. R. 8133) to provide for the infliction of corporal punishment upon all male persons convicted of willfully beating their wives, and the manner and place of inflicting the said punishment, and the officers by whom the same is to be inflicted, report the same back to the House without recommendation.

4663. Instance wherein a privileged report which presented facts and conclusions but no legislative proposition was read to the House.—On April 12, 1904,[5] Mr. Samuel A. McCall, of Massachusetts, claiming the floor for a privileged report, presented the report of the select committee appointed to investigate charges against certain Members in connection with the administration of the Post-Office Department.

The report, which was simply a statement of results and presented no legislative proposition, was directed to be read.

At the close of the reading Mr. Allan L. McDermott, of New Jersey, presented minority views. The reading of these was permitted by unanimous consent.

The report was then, under the rule, referred to the House Calendar by direction of the Speaker.

4664. A committee, being equally divided on a question of impeachment, authorized the chairman to report the evidence and two resolutions representing, respectively, the two opinions dividing the committee.—On June 2, 1858, Mr. George S. Houston, of Alabama, from the Committee on the Judiciary, reported the following resolutions:[6]

Resolved, That the chairman be authorized to report to the House the memorials, answer, and testimony taken by the Judiciary Committee on the charges against the Hon. John C. Watrous, district judge of the district court of the United States for the district of Texas.

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[1] Record, pp. 3766–3768; Journal, pp. 1098–1100.

[2] House Report No. 667, second session Fifty-fifth Congress.

[3] First session Fifty-ninth Congress, Record, p. 2192.

[4] House Report No. 1057.

[5] Second session Fifty-eighth Congress, Record, pp. 4716, 4719, 4721.

[6] First session Thirty-fifth Congress. House Reports Nos. 540 and 548.

Resolved, That the chairman be further authorized to report the two following resolutions offered in committee, each of which failed to receive the sanction of the committee by an equally divided vote, viz:

"*Resolved,* That John C. Watrous, United States district judge for the district of Texas, be impeached of high crimes and misdemeanors."

"*Resolved,* That in the opinion of the Judiciary Committee there are not sufficient grounds furnished by the testimony in the case against Judge John C. Watrous, district judge of the United States for the district of Texas, to authorize his impeachment for high crimes and misdemeanors."

Resolved, That the chairman ask leave of the House for each minority of the committee to submit their views to the House by Saturday next.[1]

4665. A committee, being unable to agree on a recommendation for action, may submit a statement of this fact as their report.

Although the report of a committee may not contain a proposition for action, the House may predicate action upon it.

On May 13, 1858, Mr. Thomas L. Harris, of Illinois, from the Committee on Elections, reported,[2] in the election case of Vallandigham *v.* Campbell, of Ohio, that a majority of the committee had been unable to agree upon a proposition for the action of the House. "Four members of the committee," says the report, "are of opinion that the contestant is entitled to the seat. Four, likewise, are of opinion that the sitting Member is legally elected and should be retained in the seat; and one member of the committee recommends that the seat be declared vacant and the governor of Ohio be informed thereof. The committee ask that the views of the minorities, respectively, accompanying this report, may be received by the House."

This report was received[3] and the views of the minorities were at the same time received, apparently by unanimous consent. A question was raised as to there being a report of the committee, but the Speaker[4] held that the paper presented by the gentleman from Illinois was a report. Whether the report was satisfactory to the House was another question.

On May 22[5] the case was called up, and the resolution proposed by one of the minorities was read.

Thereupon Mr. William H. Kelsey, of New York, raised the question of order that, as the committee had reported they were unable to agree, the case was not before the House for action.

The Speaker said:

The only irregularity connected with the report is that the committee have not accompanied their report with a recommendation in the shape of a resolution. It is, however, unquestionably, such a report from the Committee of Elections as the House can predicate action upon.

4666. On May 27, 1902,[6] in the Senate, Mr. Julius Caesar Burrows, of Michigan, reported verbally from the Committee on Privileges and Elections that the

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[1] Thirty-fifth Congress, first session, Journal, p. 1004; Globe, p. 2659; second session, Journal, pp. 56, 69; Globe, pp. 13, 102.

[2] First session Thirty-fifth Congress, House Report No. 380.

[3] Globe, p. 2112.

[4] James L. Orr, of South Carolina, Speaker.

[5] Globe, p. 2316.

[6] First session Fifty-seventh Congress, Record, pp. 5953, 5954.

committee was "adverse to the joint resolution (H. J. Res. 41) proposing an amendment to the Constitution providing for the election of Senators of the United States, and that a majority of the committee favored an amendment to the resolution, known as the Depew amendment, which provides that—

"The qualifications of citizens entitled to vote for United States Senators and Representatives in Congress shall be uniform in all the States, and Congress shall have power to enforce this article by appropriate legislation and to provide for the registration of citizens entitled to vote, the conduct of such elections, and the certification of the result.

"And, thirdly, I am directed to report that a majority of the committee is opposed to the joint resolution when thus amended.

"I make the report for such action as the Senate may see fit to take."

The joint resolution itself was not reported out from the committee.

After debate as to the proper procedure, a motion to discharge the committee was entertained.

4667. When a committee conclude consideration of a bill, a motion to rise and direct the chairman to report is in order.

In considering a bill the committee should set down the amendments on a separate paper.

Section XXVI of Jefferson's Manual provides:

When the committee is through the whole, a Member moves that the committee may rise and the chairman report the paper to the House, with or without amendments, as the case may be. (2 Hats., 289, 292; Scob., 53; 2 Hats., 290; 8 Scob., 50.)

When a vote is once passed in a committee, it can not be altered but by the House, their votes being binding on themselves. (1607, June 4.)

The committee may not erase, interline, or blot the bill itself; but must, in a paper by itself, set down the amendments, stating the words which are to be inserted or omitted (Scob., 50), and where, by references to page, line, and word of the bill. (Scob., 50.)

4668. The report of a committee is regularly read and agreed to in committee, and a member of the committee is ordered to report it to the House.—On Saturday, February 26, 1859,[1] the select committee appointed to investigate the accounts of the late Clerk, William Cullom, met pursuant to adjournment; all the Members present.

The reading of the report was concluded,[2] and the report, with sundry resolutions, was agreed to.

The chairman was instructed to submit the report and testimony to the House forthwith.

4669. A committee may order its report to be made by the chairman or by any other of its members.—A committee does not always report through its chairman. It may order any member to make a report. Thus, on February 19, 1857,[3] the select committee on certain alleged corrupt combinations among Members of the House found itself about to make several reports, each relating to a different Member, as well as a general report on the whole subject. By vote of the committee these reports were assigned to different members, the general

[1] Second session Thirty-fifth Congress, journal of the select committee, Report No. 188, p. 223.

[2] The chairman had been instructed at a previous meeting to draw up this report and to submit it to the committee. (journal of the committee, p. 222.)

[3] Third session Thirty-fourth Congress, House Report No. 243, pp, 53, 54.)

report being assigned to the chairman. In these cases the chairman had voted against the reports relating to the individual Members, and the other members of his committee had voted for them, while the general report was drawn by the chairman.

4670. The chairman of a committee, acting as its organ, sometimes submits a report in which he has not concurred.—On March 30, 1836,[1] Mr. George C. Dromgoole, of Virginia, chairman of the select committee on so much of the President's message as related to the Constitution, reported joint resolutions proposing amendments to the Constitution. In making this report he said that he acted as the organ of the committee; but he differed with the majority of the committee, and should move at the proper time a substitute for the proposition of the committee.

4671. On January 17, 1837,[2] the House agreed to a resolution submitted originally by Mr. Henry A. Wise, of Virginia, and providing for an investigation of the Executive Departments of the Government.

Of this committee Mr. Wise was appointed chairman.

On March 3 Mr. Wise submitted the report of the committee to the House. He did this as the chairman of the committee, however, and not as one agreeing to the report, for with it he submitted the views of himself as one of the minority dissenting from the report.

The majority report is not signed at all, but the minority views are signed by two of the three dissenting members, and Mr. Wise adds:

> I concur fully in the foregoing, except in the opinion that the committee should have reported only its journal of proceedings.

Then Mr. Wise submits in addition his own views at length, over his own signature.

4672. A member of the minority party on a committee is sometimes ordered to make the report.—Sometimes, though not frequently in later years, the minority members of a committee present the report to the House. Thus, on January 3, 1889,[3] Mr. Thomas B. Reed, of Maine, presented to the House a report from the Committee on Rules, although he was a minority member.

4673. Instance in the Senate wherein a member of the minority portion of a committee was directed by major vote of the committee to report a bill.[4]—On February 26, 1906,[5] in the Senate, Mr. Benjamin R. Tillman, of South Carolina, said:

> I am instructed by the Committee on Interstate Commerce to report back favorably House bill 12987 as it passed the House of Representatives, it being understood that the members of the committee reserve the right to offer amendments to the bill and vote for the same while it is under consideration in the Senate.

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[1] First session Twenty-fourth Congress, Journal, pp. 72, 601; Debates, p. 3015.

[2] Second session Twenty-fourth Congress, House Report No. 194; also Globe, pp. 104, 108.

[3] Second session Fiftieth Congress, Record, p. 511.

[4] The Republican party at this time had a majority in the Senate and in the Committee on Interstate Commerce; but the Democratic members of the committee, reenforced by two Republicans, controlled the committee as against the remaining Republican members. The result of this was that a majority of the committee ordered that the report be made, not by the Republican chairman, Mr. Stephen B. Elkins, of West Virginia, but by Mr. Tillman, the first of the minority members.

[1] First session Fifty-ninth Congress, Record, pp. 2968, 2969.

In the course of an ensuing debate Mr. Nelson W. Aldrich, of Rhode Island, said:

Mr. President, a majority of the Republican members of the committee did not join in the favorable report which has just been made by the Senator from South Carolina for the reason that, in their judgment, an attempt should have been made by the committee to remedy, by proper amendments, some of the obvious and admitted defects and omissions of the House bill, and that clear and adequate provision should have been made for subjecting the orders of the Commission affecting rates to judicial review. They believed that these amendments were not only necessary to protect the rights of all the parties in interest, but that they were essential to the vitality and efficiency of the measure. With these amendments the minority members, with the possible exception of the Senator from Ohio [Mr. Joseph B. Foraker] * * * with the actual exception of the Senator from Ohio, who is opposed, as I understand, to all Government rate making, were ready to give their support to the House bill.

Mr. Charles A. Culberson, of Texas, said:

Mr. President, the entire committee reserved the right to offer such amendments to the bill as they may think fit hereafter. I take it, therefore, that in a large degree this is no more nor less than a transfer of this controversy from the committee to the Senate Chamber.

4674. The report of a committee is in the nature of an argument or explanation and does not by itself come before the House for amendment or other action.—On May 9, 1900,[1] the House was proceeding to the consideration of the contested election case of Pearson *v.* Crawford, from North Carolina, the resolutions of the majority and minority having been read.

Mr. Ernest W. Roberts, of Massachusetts, moved to strike out of the report of the committee in this case certain words relating to the vote of Asheville.

Mr. James D. Richardson, of Tennessee, made the point of order that the report was simply an argument, and was not before the House to be voted on; and therefore that the motion to amend the report was not in order.

The Speaker[2] sustained the point of order.

4675. The House may by vote agree to the report of a committee, in which case it appears in the Journal.—On August 17, 1842,[3] Mr. John Quincy Adams, of Massachusetts, from the select committee to whom was referred the message of the President returning without his approval the tariff bill, made a report accompanied by a joint resolution providing for an amendment to the Constitution of the United States. The question was taken on agreeing to this report, and it was agreed to, yeas 100, nays 80. The report appears in full in the Journal. The House then voted on the joint resolution accompanying the report.

4676. The House sometimes orders a committee's report to be made in recess by handing it to the Clerk of the House.—On March 3, 1851,[4] at the end of the Congress, the House adopted a resolution that the standing committees of the House might make reports by handing them to the Clerk and indorsing thereon that they be laid on the table and printed.

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[1] First session Fifty-sixth Congress, Record, pp 5328, 5329; Journal, p. 555.

[2] David B. Henderson, of Iowa, Speaker.

[3] Second session Twenty-seventh Congress, Journal, pp. 1346–1352; Globe, pp. 894–901.

[4] Second session Thirty-first Congress, Journal, p. 418.

4677. On August 30, 1852,[1] on motion of Mr. Andrew Johnson, of Tennessee, by unanimous consent:

Ordered, That the resolution of the House of Saturday last, giving leave to the select committee on the Gardiner claim to sit during the vacation, be amended by adding thereto, "and the said committee is hereby authorized to make their report to the Clerk during the recess."

4678. The House sometimes orders the Clerk to transmit a committee report to the House in the next Congress.—On January 12, 1874,[2] the Clerk of the House transmitted to the House testimony taken before the Committee on Ways and Means during the preceding Congress, and then ordered by the House to be transmitted to the next House.

4679. The House may refer to a committee a report made in a preceding Congress.—On December 19, 1825,[3] at the beginning of a Congress, the House took the following action in relation to a subject considered by the House in the last session of the preceding Congress:

Resolved, That the report of a select committee made to the House of Representatives, at their last session, in relation to the claims of the late President of the United States, be referred to the Committee on Claims.

On December 23 the House discharged the Committee on Claims from the consideration of this matter and referred it to a select committee.

4680. The House may direct a committee to submit its journal to the House, but the proper method seems to be by a motion to recommit the pending report with instructions to incorporate in it the desired record.—On April 10, 1846,[4] the House agreed to this resolution:

Resolved, That the chairman of the Committee of this House on Foreign Affairs submit to the House the journal or minutes of that committee during the last session of the Twenty-seventh Congress.

4681. On February 23, 1866,[5] during the consideration of the contested election case of Washburn *v.* Voorhees, a controversy arose as to the votes of certain members in the Committee on Elections, and a motion was made that the chairman of the committee produce the record of the committee.

Mr. Nathaniel P. Banks, of Massachusetts, raised the question of order that such a motion might not be entertained, since the only parliamentary way would be to move to recommit the report with instructions that the record of votes be incorporated in it. As it was the House had before it only what was reported.

The Speaker[6] I held that the motion to direct the chairman to report the record could be entertained only by unanimous consent.

4682. The House sometimes orders the journal of a committee to be printed with the report.—Committees keep journals of their proceedings, and sometimes the House orders these journals printed in full or in part in connection

[1] First session Thirty-second Congress, Journal, p. 1121; Globe, p. 2471.

[2] First session Forty-third Congress, Journal, p. 226.

[3] First session, Nineteenth Congress, Journal, pp. 72, 90.

[4] First session Twenty-ninth Congress, Journal, p. 654; Globe, p. 643.

[5] First session Thirty-ninth Congress, Globe, pp. 997, 998.

[6] Schuyler Colfax, of Indiana, Speaker.

with the report of the committee. Thus may be cited the instances wherein the journals were ordered printed for the two select committees in 1837,[1] one making inquiries into the management of the deposit banks and the other into the conduct of the Executive Departments of the Government.

4683. On July 16, 1840,[2] the House ordered printed both the report and the journal of the Committee on Elections on the New Jersey contested cases.

4684. In 1838[3] the journal of the select committee appointed to investigate the circumstances of the death of Jonathan Cilley, of Maine, was published as a part of the report of the committee.

4685. In 1839[4] the select committee appointed to investigate the defalcation in the New York custom-house printed its journal as a part of its report.

4686. On February 20, 1857,[5] the House ordered that the report of the select committee on the investigation of certain alleged corrupt combinations be printed with the journal of the committee.

4687. The House may direct a committee to withdraw immediately and bring in a bill.—Section XXVI of Jefferson's Manual provides:

> In some cases the House has ordered a committee to withdraw immediately into the committee chamber, and act on and bring back the bill, sitting the House. (Scob., 48.)

4688. The House has instructed a committee to report forthwith a bill in certain exactly specified phraseology.—On January 16, 1843,[6] Mr. Nathan Clifford, of Maine, moved the following resolution,[7] which was agreed to by the House:

> *Resolved,* That the Committee on the Judiciary be instructed to report, forthwith, the following bill to repeal the bankrupt act, to wit:
>
> "A bill to repeal the bankrupt act.
>
> *"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the act entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' approved on the 19th day of August, 1841, be, and the same hereby is, repealed."

As soon as this resolution had been adopted Mr. Daniel A Barnard, of New York, Chairman of the Committee on the Judiciary, asked the instruction of the Chair, inasmuch as the rule of the House prevented the committee sitting during the session of the House, and so it would be impossible to carry out the order of the House without violating a rule.

Thereupon Mr. Joshua L. Lowell, of Maine, offered the following resolution, which was agreed to:

> *Resolved,* That the Committee on the Judiciary have leave to sit during the session of the House for the purpose of obeying the order of the House in relation to the repeal of the bankrupt act.

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[1] Second session Twenty-fourth Congress, Journal, pp. 339, 356, Report No. 194.

[2] First session Twenty-sixth Congress, Journal, pp. 1288–1290.

[3] Second session Twenty-fifth Congress, House Report No. 825, p. 148.

[4] Third session Twenty-fifth Congress, House Report No. 313, p. 292.

[5] Third session Thirty-fourth Congress, Journal, p. 479.

[6] Third session Twenty-seventh Congress, Journal, pp. 193, 198; Globe, pp. 162, 163.

[7] Of course such a resolution would not be admitted in the order of business now, except by unanimous consent.

4689. The Speaker may not rule out a report because the committee have failed to comply with their instructions in relation to it.—On February 28, 1851[1] the House was considering a joint resolution for the relief of Thomas Ritchie, which had been reported from the Committee on Printing, to which it had been committed with the following instructions: "To inquire whether Mr. Ritchie has executed the public printing, having regard to the quality of the work and to time, agreeably to his contract, and what sum he has lost by his contract."

Mr. John Wentworth, of Illinois, made the point of order that the committee were bound, under these instructions, to specify the amount which had been lost and which it was proposed to give.

The Speaker[2] overruled the point of order, on the ground that the House had instructed the committee to make a report, and that that report had been made and could not be rejected upon the point of order raised by the gentleman from Illinois. The reason given by him might be a very good reason why the House should not concur in the resolution, but it could not be made a point of order.

4690. The chairman of a committee, having made a report to the House in accordance with the instruction of his committee, may not withdraw it, except by consent of the House.—On January 22, 1886,[3] Mr. Hilary A. Herbert, of Alabama, as a question of privilege, reported back, with amendments, from the Committee on Naval Affairs a resolution of inquiry calling on the Secretary of the Navy for information as to the alleged obliteration of certain inscriptions at the Norfolk Navy-Yard.

Mr. Herbert having asked for the previous question on the report and amendments, no quorum voted. Thereupon Mr. Herbert proposed to withdraw the report.

Mr. Thomas B. Reed, of Maine, made the point of order that the report could not be withdrawn, except by unanimous consent.

The Speaker[4] sustained the point of order on the ground that this was a report under instructions from a committee, and was, immediately upon being made, in the possession of the House, being in that respect unlike an amendment which under clause 2 of Rule XVI could be withdrawn at any time before a decision on amendment.

The record of the debate[5] shows that the Speaker, after causing the rule to be read, said:

> The Chair thinks a proper construction of this rule is that it applies only to those motions made by Members personally, on the floor, over which the Member himself ought, as a matter of justice, to have control until a decision has been reached upon them by the House. Such a motion may be modified by the Member introducing it at any time before final action is taken, and its character may be changed. But this is a report of a committee of the House, made to the House by the authority of the committee, and the Chair thinks that the gentleman himself can not withdraw it without the leave of the House.

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[1] Second session, Thirty-first Congress, Globe, p. 748.

[2] Howell Cobb, of Georgia, Speaker.

[3] First session Forty-ninth Congress, Journal, p. 442; Record, pp. 836, 837.

[4] John G. Carlisle, of Kentucky, Speaker.

[5] First session Forty-ninth Congress, Record, pp. 836, 837.

4691. A bill having been recommitted to a committee with leave to report at any time, and being reported immediately by the chairman, was held to be subject to the point of order that the committee had not considered it.—On February 18, 1889,[1] the House was considering a bill relating to the leasing of the privileges of taking fur seals, and the question was pending on the passage.

Thereupon Mr. Francis B. Spinola, of New York, moved to recommit the bill with certain instructions. Pending the vote on this motion, Mr. Nelson Dingley, jr., of Maine, asked unanimous consent that, in case the motion to recommit with instructions should prevail, the committee should have leave to report the bill back at any time.

This request was granted; and then the motion to recommit with instructions was agreed to.

Thereupon Mr. Poindexter Dunn, of Arkansas, chairman of the committee to which the bill had been recommitted, announced immediately:

> I now report back the bill with the amendments for the consideration of the House.

Mr. John A. Anderson, of Kansas, made a point of order against this action. The Speaker[2] held:

> The gentleman from Kansas makes the point that the committee has not had a meeting, and that the report of the gentleman from Arkansas [Mr. Dunn] can not now be submitted. The gentleman will have to defer the report till some other time. * * * Unanimous consent was given that the committee be allowed to report back at any time, but the gentleman from Kansas makes the point that the committee has not yet had a meeting, and that the gentleman from Arkansas can not now make the report.

4692. A motion directing a committee of the House to report a matter before them is not in order, such motion having no privileged place in the order of business.—On January 19, 1898,3 Mr. F. Brucker, of Michigan, presented this resolution:

> *Resolved,* That the Committee on Foreign Affairs be, and they are hereby, directed to report to this House without further delay Senate resolution No. 26 declaring that a condition of public war exists in Cuba and that strict neutrality should be maintained.

Mr. Robert R. Hitt, of Illinois, made a point of order against the resolution. The Speaker[4] sustained the point of order.[5]

On an appeal the decision of the Chair was sustained, 169 yeas to 125 nays.

4693. A motion to discharge a committee from the consideration of an ordinary legislative proposition is not privileged.—On December 17, 1867,[6] Mr. Speaker Colfax stated incidentally that a motion to discharge a committee was not a privileged motion.

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[1] Second session Fiftieth Congress, Journal, p. 536; Record, p. 2028.

[2] John G. Carlisle, of Kentucky, Speaker.

[3] Second session Fifty-fifth Congress, Record, p. 760.

[4] Thomas B. Reed, of Maine, Speaker.

[5] The objection to such a resolution is that the order of business contains no provision establishing a time for the offering of business of that character. Under the rules a resolution of that nature would be referred to the Committee on Rules. If reported favorably by that committee, it might then be agreed to by a majority vote of the House.

[6] Second session Fortieth Congress, Globe, p. 229.

On February 7, 1884,[1] a proposition was made that when any bill referred to a committee should not be reported therefrom within thirty days a motion to discharge the committee should be in order. Messrs. Thomas B. Reed, of Maine, and Samuel J. Randall, of Pennsylvania, pointed out the impracticability of the proposed rule, and it was disagreed to, ayes 56, noes 115.[2]

4694. A request of the Senate for the return of a bill, no error being alleged, does not make in order a motion in the House to discharge the committee having possession of the bill.—On April 23, 1906,[3] the Speaker before the House the following request from the Senate:

Resolved, That the Secretary be directed to request the House of Representatives to return to the Senate the bill (S. 4886) to simplify the issue of enrollments and licenses of vessels of the United States.

The Speaker[4] then said:

Is there objection to the discharge of the Committee on Merchant Marine and Fisheries from the further consideration of the Senate bill, and returning the bill according the the request of the Senate?

Mr. John S. Williams, of Mississippi, objected.

Thereupon Mr. Williams proposed a motion to comply with the request of the Senate.

The Speaker said, before entertaining the motion:

This involves discharging the committee from consideration of the bill. * * * The Chair would like to examine the question raised by the motion submitted by the gentleman from Mississippi.

On April 25[5] the Speaker gave his decision:

At the adjournment of the House on Monday a motion was pending, submitted by the gentleman from Mississippi [Mr. Williams], to discharge the Committee on the Merchant Marine and Fisheries from further consideration of the bill (S. 4886) to simplify the issue of enrollments and licenses of vessels of the United States, and agree to the request of the Senate for the return of the bill. The Chair did not rule upon the motion, but is prepared to do so now.

The Chair has ascertained that the custom of requesting the return of a bill already passed and sent to the other House is very old, beginning as early as 1810 at least.

In 1856 an order making a request of this sort was considered in the House by unanimous consent and not as privileged. Again in 1862 proceedings asking for and granting the return of bills from and to the Senate were journalized as by unanimous consent. So also in 1886, when the fortifications appropriation bill was pending in the House with Senate amendments, on which the previous question had been ordered, the Senate requested its return, and the House granted the request by unanimous consent. In 1896 (sec. 483 of Parliamentary Precedents) a request for the return of a bill to the Senate was laid

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[1] First session Forty-eighth Congress, Record, pp. 964, 973.

[2] In the Senate a resolution to discharge a committee may be presented and after a day may be called up and considered. Thus it is always possible for the majority to discharge a committee. (See Senate proceedings on resolution proposing a constitutional amendment to provide for election of Senators by the people, first session Fifty-seventh Congress, May 9, 1902.)

Again on June 23, 1902, the Senate considered a proposition to discharge the Committee on Territories from the consideration of the bill (H. R. 12543) for the admission of New Mexico, Arizona, and Oklahoma as States.

At the close of a session it was sometimes ordered in the early days of the House that the several committees be discharged from all matters and things, to them respectively referred, upon which reports had not been made, and that all petitioners have leave to withdraw their petitions. Thus, on May 29, 1830. (First session Twenty-first Congress, Journal, p. 773.)

[3] First session Fifty-ninth Congress, Record, pp. 5768, 5769.

[4] Joseph G. Cannon, of Illinois, Speaker.

[5] Record, pp. 5816, 5817.

before the House as privileged; but the actual return was ordered by unanimous consent, as the Journal shows. Again, in 1896, a resolution directing the return of a bill to the Senate was treated as privileged (Parliamentary Precedents, sec. 484), but this was a case where a Senate bill with House amendments disagreed to had been sent to the House and referred to a committee. The resolution which provided for discharging the committee and returning the bill was not offered from the floor as an original proposition, but had been referred to the committee having the bill.

In none of the proceedings referred to did a question of order arise, calling for a formal and well considered ruling; and even these records of procedure do not justify a motion from the floor to discharge the committee from the consideration of the Senate bill on which the two Houses have not reached the stage of disagreement. While it seems to the Chair desirable that the two Houses should maintain conditions of courtesy respecting the requests of the one upon the other, yet the Chair hesitates to make by a formal ruling motions privileged which are not made privileged by the rule, and this reluctance is increased by the fact that requests of this nature may be granted with a reasonable degree of celerity in the regular order by referring the Senate request to the committee having the bill, leaving that committee to report the bill with the recommendation that it be returned to the Senate. The bill will then go to the Calendar, where it may be reached and acted on in regular order, or by suspension of the rules out of the regular order. Of course in a case where an error was alleged, thereby bringing into question the integrity of the proceedings of the House or the Senate as to a bill, a different principle might prevail.

The Chair directs that the request of the Senate be referred to the Committee on the Merchant Marine and Fisheries.

4695. A motion to discharge a committee from the consideration of a matter, when in order, is not debatable.—On June 4, 1900,[1] Mr. Robert W. Miers, of Indiana, moved to discharge the Committee on Invalid Pensions from the consideration of a resolution of inquiry relating to the pensions of certain widows. This resolution had not been reported back by the committee within one week,[2] and Mr. Miers's motion was offered and entertained as privileged.

Debate having begun, Mr. Sereno E. Payne, of New York, made the point of order that the motion was not debatable.

The Speaker[3] said:

It is a question involving the priority of business, and it has been decided more than once that that is not debatable. The Chair will refer the gentleman to page 254 of Hinds's Book of Precedents, section 428, where it was squarely decided. Rule XXV[4] provides that questions relating to the priority of business shall be decided by a majority without debate. This is such a question. There is no question but that the point of order is well taken. The question will be put to the House.

4696. On a motion to discharge a committee the merits of the main question may not be debated.—On April 18, 1825,[5] Mr. Peter Little, of Maryland, moved to discharge the Committee[6] of the Whole House on the state of the Union from the consideration of the report of the Committee on Foreign Relations approving the mission to Panama.

Mr. Louis McLane, of Delaware, asked if the motion was debatable.

The Speaker[7] said that it was providing the gentleman did not enter into the merits of the main question.

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[1] First session Fifty-sixth Congress, Record, p. 6445.

[2] Section 5 of Rule XXII. See section 1856 of Vol. III of this work.

[3] David B. Henderson, of Iowa, Speaker.

[4] See section 3061 of this volume.

[5] First session Nineteenth Congress, Debates, p. 2371.

[6] Such a motion is not now privileged.

[7] John W. Taylor, of New York, Speaker.

4697. The House, but not the Committee of the Whole, may, by unanimous consent, discharge a standing committee from the consideration of a bill.—On February 28, 1902,[1] in Committee of the Whole House, Mr. George W. Steele, of Indiana, asked unanimous consent to take up the bill (H. R. 9848) granting an increase of pension to Joseph Cowgill, which had once been on the calendar of the Committee of the Whole House, but had been recommitted to the Committee on Invalid Pensions, and had not again been reported and placed on the calendar.

The Chairman[2] held that under the parliamentary condition the Committee of the Whole House could not take up the bill.

Later, after the Committee of the Whole House had risen, the House, by unanimous consent, discharged the Committee on Invalid Pensions from the further consideration of the bill, and it was considered and passed by the House.

4698. There is some question as to the status of a report made from a commission constituted by law.—On December 19, 1893,[3] a question arose as to the bill (H. R. 4340) relating to the accounts of postmasters. This bill was one reported from the commission of Senators and Representatives appointed in the preceding Congress under authority of a clause in an appropriation bill, which constituted the commission for the purpose of investigating the Executive Departments. The Senate discussed on this date the question as to the standing of a bill presented by such a commission, there being a strong feeling that it should be referred to a committee of the Senate like any other legislation, and that there was no particular authority in a commission.

The bill was referred in the Senate to the Committee on Post-Offices and Post-Roads, and, after consideration, reported by that committee on January 9, 1894,[4] and later passed.

This bill was reported in the House on December 12, 1893,[5] directly from the Commission, and was immediately passed. No question was made.

4699. On December 9, 1880,[6] the annual report of the commission for the completion of the Washington Monument was referred in the House to the Committee on Library.

4700. On January 14, 1901,[7] Mr. Eugene F. Loud, of California, presented to the House the report of the Joint Postal Commission, appointed under the act of June 30, 1898. No bill accompanied the report.

Mr. Loud asked unanimous consent that the report be printed, and that Senator Chandler, a member of the Commission, have leave to file his views within twenty days.

The House granted both branches of the request.

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[1] First session Fifty-seventh Congress, Record, pp. 2256, 2259.

[2] Adin B. Capron, of Rhode Island, Chairman.

[3] Second session Fifty-third Congress, Record, pp. 389–395.

[4] Record, pp. 565, 852.

[5] Journal, p. 26; Record, p. 170.

[6] Third session Forty-sixth Congress, Journal, p. 44.

[7] Second session Fifty-sixth Congress, Record, p. 985; Journal, p. 116.

In 1905[1] the commission constituted by law to examine as to the merchant marine, composed of members of the House and Senate, transmitted its reports by letter addressed to the Speaker and laid before the House with other communications.

4701. On January 30, 1904,[2] Mr. William P. Hepburn, of Iowa, by unanimous consent, submitted, as a report from the commission to acquire a site for and direct and supervise construction of the office building for the House of Representatives, a documentary history of the construction and development of the United States Capitol building and grounds.

The report was ordered printed and laid on the table.

4702. The report of a commission constituted by law is referred to a committee when presented in the House.—On January 4, 1905,[3] Mr. Charles H. Grosvenor, of Ohio, presented the report of the Commission[4] on Merchant Marine. At the same time Mr. Thomas Spight, of Mississippi, also a member of the Commission, obtained leave to file minority views at a future time.

The Speaker[5] thereupon said:

Under the rule the report, and the minority views when presented, will be referred to the Committee on the Merchant Maxine and Fisheries.

On January 9, 1905,[6] in the Senate, on motion of Mr. Jacob H. Gallinger, of New Hampshire, the report was referred to the Committee on Commerce.

4703. A commission, created by concurrent resolution, and including persons not Members of Congress in its membership, reported like a committee.

Members of a Congressional commission, who were not Members of the House or Senate, exercised the privilege of filing minority views when the report was made.

On March 2, 1877,[7] the report of the Monetary Commission was presented to the House. This Commission consisted, under the terms of the concurrent resolution[8] by which it was created, "of three Senators to be appointed by the Senate; three Members of the House of Representatives, to be appointed by the Speaker; and experts, not exceeding three in number, to be selected by and associated with them," and was directed as to the lines of inquiry to be pursued by it. The Commission was also given authority to determine the time and place of meeting and to take evidence. When the Commission reported, the two experts, who were neither Senators nor Representatives, participated on an equal footing with the other Members, filing minority views individually. The Commission was created in the first session of the Forty-fourth Congress, and reported in the second session of the same Congress.

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[1] First session Fifty-ninth Congress, Journal, p. 75; House Executive Documents, Nos. 56, 564, 876, 895.

[2] Second session Fifty-eighth Congress, Journal, p. 224; Record, p. 1421.

[3] Third session Fifty-eighth Congress, Record, pp. 449, 450.

[4] This Commission was created by law.

[5] Joseph G. Cannon, of Illinois, Speaker.

[6] Record, p. 571.

[7] Second session Forty-fourth Congress, Journal, p. 627; Record, p. 2125; House Report No. 185.

[8] The report speaks of the Commission as created by a "joint resolution." In fact, it was created by a concurrent resolution. (See first session Forty-fourth Congress, Record, p. 5218; Journal, pp. 1393, 1509, 1514.)

Chapter CVII.

THE COMMITTEE OF THE WHOLE.[1]

1. **Rule for forming committee. Section 4704.**
2. **Origin and development of. Section 4705.**
3. **Nature and powers of. Sections 4706–4715.[2]**
4. **Certain motions not in order in. Sections 4716–4721.**
5. **Yeas and nays not taken in. Sections 4722–4724.**
6. **After voting to go into committee no motions in order. Sections 4725–4728.**
7. **Order of business in. Sections 4729–4734.**
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10. **Reading of bills, Sections 4738–4741.**
11. **Amendment under five-minute rule. Sections 4742–4751.**
12. **Rising and reporting. Sections 4752–4766.**
13. **The simple motion to rise. Sections 4767–4773.**
14. **Various motions for disposition of a bill. Sections 4774–4782.**
15. **Questions of order. Sections 4783, 4784.[4]**
16. **Informal rising.Sections 4785–4791.[5]**

4704. In forming a Committee of the Whole, the Speaker leaves the chair, after appointing a Chairman to preside.

The Chairman of the Committee of the Whole may cause the galleries or lobby to be cleared in case of disturbance or disorderly conduct therein.

Present form and history of section 1 of Rule XXIII.

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[1] In early practice given power to take testimony. (Sec. 1804 of Vol. III.) Subjects once considered in, irrespective of appropriations or revenue. (Sec. 1984 of Vol. III.) House sometimes attends impeachment trials in. (Secs. 2027, 2374 of Vol. III.) Motions to go into, to consider revenue and appropriation bills. (Secs. 3072–3085 of this volume.) Motions to go into, after call of committees. (Secs. 3134–3141 of this volume.) Relations to special orders. (Secs. 3214–3230 of this volume.) Conference reports not considered in. (Secs. 6559–6561 of Vol. V.) Relations to Congressional Record. (Secs. 6986–6988 of Vol. V.) Rule of admission to floor applies to. (Sec. 7285 of Vol. V.)

[2] In early years matters originated in. (Secs. 1507, 1541 of Vol. II.) Articles of impeachment considered in. (Secs. 2415, 2420 of Vol. III.)

[3] As to debate in. (Chapter CXV, secs. 5203–5211 of Vol. V.) Failure of quorum in. (Secs. 2966–2979 of this volume.)

[4] See also sections 6927–6937 of Vol. V. Speaker sometimes takes the chair to restore order. (Secs. 1348–1351 of Vol. II.) Extreme disorder in. (Secs. 1649–1653, 1657 of Vol. II.) Questions of privilege in. (Secs. 2540–2544 of Vol. III.)

[5] Reception of messages while sitting. (Sec. 6590 of Vol. V.)

Section 1 of Rule XXIII provides:

In all cases, in forming a Committee of the Whole House, the Speaker shall leave his chair after appointing a Chairman [1] to preside, who shall, in case of disturbance or disorderly conduct in the galleries or lobby, have power to cause the same to be cleared.

This form of the rule was adopted in the revision of 1880.[2] It was derived from two old rules, each dating from 1794: [3]

RULE 105. In forming a Committee of the Whole House, the Speaker shall leave his chair, and a Chairman, to preside in committee, shall be appointed by the Speaker.

RULE 9. In case of any disturbance or disorderly conduct in the galleries or lobby, the Speaker (or Chairman of the Committee of the Whole House) shall have power to order the same to be cleared.

Rule 105 dates in reality from April 7, 1789,[4] and was modified in 1794 by the addition of the words "by the Speaker." Until those words were added the Chairman was nominated from the floor and elected. The inconvenience of the practice [5] led to its abandonment.[6]

4705. The origin and development of the Committees of the Whole.

Distinction between the Committee of the Whole House on the state of the Union and the Committee of the Whole House.

The rules and practice of the House of Representatives contemplate two Committees of the Whole, the "Committee of the Whole House" and the "Committee of the Whole House on the state of the Union." In the former are considered bills of a private nature, and its business is kept on the Private Calendar. To the latter go public bills requiring an appropriation of money or property of the Government, and its business is kept on the Union Calendar.[7]

The Committee of the Whole is a very ancient parliamentary institution; [8] but the two Committees of the Whole of the House, each with its own individuality, functions, and jurisdiction, are the results of development in the last century. The Continental Congress used the Committee of the Whole frequently, considering its important business and giving private audiences to foreign ministers therein.[9] In the early days of the struggle for independence it resolved itself into a "Committee of the Whole to take into consideration the state of America." [10] The Federal Con-

[1] The Chairman of the Committee of the Whole has power to administer oaths to witnesses in any case under its examination. (R. S., sec. 101.) Act of May 3, 1798, second session Fifth Congress, Journal, pp. 203, 250; Annals, p. 1069. The law was proposed to obviate the inconvenience that had been experienced in the examination of witnesses, notably in the contempt case arising out of the affray between Messrs. Lyon and Griswold, which had been considered in Committee of the Whole a few weeks before. (See sec. 1642 of Vol. II of this work.) The House has not, for many years, recurred to this early practice of conducting examinations in Committee of the Whole.

[2] Second session Forty-sixth Congress, Record, pp. 205, 1208.

[3] Third and Fourth Congresses, Journal, p. 92. (Gales and Seaton ed.)

[4] First session First Congress, Journal, p. 10.

[5] Constitution, Manual, Rules, edition of 1859, p. 190.

[6] In the Continental Congress the Chairman of the Committee of the Whole was elected by ballot whenever the House went into committee. (See Journal of Continental Congress, January 29, 1783.)

[7] See section 3115 of this volume.

[8] See Reed's Parliamentary Rules, section 86.

[9] Continental Congress, Journal, February 13, 1779.

[10] Continental Congress, Journal, May 15, 1775.

vention, called to frame the Constitution, met May 14, 1787, and adjourned from day to day until the delegates arrived. On May 29 it was—

Resolved, That the House will meet to-morrow to resolve itself into a Committee of the Whole House to consider of the state of the American Union.

Such a motion was agreed to thereafter from time to time during the work of preparing the Constitution.[1] When the Constitution was framed it provided in section 3 of Article II that the President should "from time to time give to the Congress information of the state of the Union." When, in 1789, the First Congress met and the Committee on Rules reported a system of rules for the House,[2] it was established that it should be a "standing order of the day, throughout the session, for the House to resolve itself into a Committee of the Whole House on the state of the Union."[3] The rules also contemplated the reference of bills to "a Committee of the Whole House." Thus the two kinds of Committees of the Whole were recognized at that time. The use of the article "a" instead of "the" indicates what was the fact, that there was then no individuality and permanence to these committees.

A Committee of the Whole was often known and designated by some important bill which had been referred to it. Thus, on February 8, 1816,[4] a revenue bill was reported by the Ways and Means Committee and referred to a Committee of the Whole House, and on March 15 the appropriation bill for the support of the Government was committed "to the Committee of the Whole on the report of the Committee of Ways and Means upon the subject of revenue." This usage is further illustrated on February 25, 1818,[5] when Mr. Speaker Clay ruled that a vote discharging a Committee of the Whole from the consideration of the bankruptcy bill in effect dissolved that Committee of the Whole, with the result that a bill relating to the organization of the courts of the United States, which had been referred to the Committee of the Whole on the bankruptcy bill, was by that dissolution brought before the House. In 1817[6] the practice of referring several bills to a single Committee of the Whole had resulted in delays, and a rule was adopted that no more than three bills should be referred to the same Committee of the Whole, and such bills should be analagous in their nature. When the rules were revised, in 1860, this rule was dropped, Mr. Israel Washburn, jr., of Maine, who presented the report, stating that the Committee on Rules "were unable to understand what the rule meant, and saw no use in retaining it."[7]

Mr. Washburn's statement affords a remarkable illustration of how a practice of the House may subvert a rule so thoroughly that the rule may in the course of time become an enigma. On April 18, 1822,[8] Mr. Charles Rich, of Vermont, proposed a rule to provide that, exclusive of "the Committee of the Whole on the state of the Union," there should be three Committees of the Whole House: One on bills

[1] See Bulletin No. 3, Department of State, p. 55 (published January, 1894).

[2] This committee included several who had served in the Continental Congress.

[3] First session First Congress, Journal, pp. 9 and 10.

[4] First session Fourteenth Congress, Journal, pp. 298, 299, 492.

[5] First session Fifteenth Congress, Journal, p. 277; Annals, p. 1028.

[6] First session Fifteenth Congress, Journal, p. 88; Annals, p. 514.

[7] First session Thirty-sixth Congress, Globe, p. 1181.

[8] First session Seventeenth Congress, Journal, pp. 469, 477; Annals, p. 1617.

of a public or general nature, one on private or local bills, and one for private matters unfavorably reported from a committee. The rule still further provided that reports of committees referred to the Committee of the Whole should be assigned to the appropriate one by the Speaker and be entered on the Calendar for the next succeeding day. In Committee of the Whole the subjects should be announced in their order on the Calendar, and any number might be considered at the sitting of the Committee of the Whole. The House, on April 22, declined to consider this rule, which was intended to supplant the rule that no more than three bills should be referred to the same Committee of the Whole. On January 24, 1824,[1] Mr. Rich renewed his proposition. He said that in earlier days a general Committee of the Whole was appointed to which many subjects were often referred. This committee being overburdened, many matters failed. Hence the rule that not more than three matters should be referred to the same Committee of the Whole. That had improved matters, but he believed this method would be better. The proposition does not seem to have been acted on; but in spite of this neglect to make a formal rule a practice similar to that proposed in 1822 and 1824 grew up, and in 1860 had been so long established that the most experienced Members of the House could remember no other.

As the many Committees of the Whole, each created temporarily for the consideration of one, two, or three bills, gradually became, as the practice changed, two committees, each with an individuality and calendar of its own, so, also, there grew up a new and, in some respects, more marked distinction between the Committees of the Whole House and those of the Whole House on the state of the Union.

Originally matters were brought up in the Committee of the Whole House on the state of the Union without a reference of them to that committee by the House. Thus, on April 8, 1789, Mr. James Madison, of Virginia, brought up the subject of the first tariff law, and, after debate, the Committee of the Whole House on the state of the Union reported resolutions to the House giving it as the opinion of the committee that a select committee should be appointed to prepare a bill to regulate the duties, etc.[2] In the same way the subject of organizing the Executive Departments of the Government was first introduced by Mr. Elias Boudinot, of New Jersey, who rose in Committee of the Whole House on the state of the Union and proposed the subject.[3] As late as 1850 a bill was originated in Committee of the Whole House on the state of the Union, but jurisdiction had been conferred by the reference of a message of the President. For many years neither Committee of the Whole has considered a subject or originated a bill not referred to it; and as early as 1833[4] we find discussion of the general interests of the nation in Committee of the Whole House on the state of the Union referred to as a usage of the past.[5]

[1] First session Eighteenth Congress, Annals, p. 1179.

[2] First session First Congress, Annals, April 11, 1789.

[3] First session First Congress, Annals, May 19, 1789.

[4] Second session Twenty-second Congress, Debates, p. 1088.

[5] Distinctions should be made between the early discussions which began with nothing before the committee and ended in a recommendation for legislation, and the general discussion in Committee of the Whole House on the state of the Union at the present time, which are made without reference to the subject of the pending measure and do not result in formulated action.

So it is evident that in the First Congress, and for several subsequent Congresses, the Committee of the Whole House on the state of the Union was an arrangement for consultation chiefly. Whenever the House referred a matter they generally sent it to a Committee of the Whole House. Even the addresses of the Presidents went to a Committee of the Whole House until 1801. In that year President Jefferson, instead of addressing the Congress, sent a message,[1] and this was referred to the Committee of the Whole House on the state of the Union.[2] This has been the practice since with the annual messages of the President. Formerly, also, special messages of great importance were sometimes referred at once to this committee instead of to a standing committee.[3]

But the committees of the Whole House continued for many years to receive the public as well as the private bills. The "orders of the day" for Monday, December 2, 1822,[4] shows that the Committee of the Whole House on the state of the Union received resolutions relating to appropriation of land for educational purposes, proposed amendments to the Constitution, reports from Cabinet officers and committees of the House, and a few bills for public purposes. On February 17, 1836,[5] we find a proposition to refer the joint resolution for erecting a monument to Nathan Hale to the Committee of the Whole House on the state of the Union antagonized by Mr. Samuel F. Vinton, of Ohio, who deprecated the growing practice of sending "ordinary matters" to the Committee of the Whole House on the state of the Union. He proposed to refer it to a Committee of the Whole House.

This idea that the Committee of the Whole House on the state of the Union should receive what may be called the greater matters of legislation has gradually resulted in the usage now crystallized in rule[6]—that private bills shall go to the Committee of the Whole House, while the Committee of the Whole House on the state of the Union receives public bills. But in the early usage the Committee of the Whole House received the greater proportion of the public bills, as well as all the private bills. Excepting one bill in 1822,[7] both revenue and appropriation bills went to the Committee of the Whole House until 1828, when bills of both classes were referred to the Committee of the Whole House on the state of the Union.[3] But all the public bills did not at once follow the revenue and appropriation bills; and as late as 1838 a bill relating to repairs of vessels of the Navy went to the Committee of the Whole House,[9] which had not yet become devoted exclusively to private business.

Under the later usage and rule of the House the Committee of the Whole House on the state of the Union considers only those public bills which involve the, expenditure of money or authorize appropriation of money or property. But it

[1] First session Seventh Congress, Journal, p. 7, for President Jefferson's letter giving his reasons for sending a message.

[2] First session Seventh Congress, Journal, p. 11; Annals, pp. 313, 326.

[3] First session Thirty-fourth Congress, Journal, pp. 532, 544, 659, 1430.

[4] Reports of Committees on Rules, Fourteenth to Forty-ninth Congresses (McKee's Compilation).

[5] First session Twenty-fourth Congress, Debates, p. 2557.

[6] See rule as to Calendars (sec. 3115 of this volume).

[7] Second session Seventeenth Congress, Journal, p. 172.

[8] First session Twentieth Congress, Journal, pp. 232, 233, 236.

[9] Second session Twenty-fifth Congress, Journal, pp. 484, 485.

is evident that as late as 1844[1] important matters were referred to the committee without regard to this distinction.

Formerly the reports from the Committee of the Whole House on the state of the Union recognized the relations of this committee to the state of the Union generally.

4706. The Committee of the Whole has been held to be but a committee of the House.—On February 14, 1826,[2] in a debate in Committee of the Whole on a point of order, Mr. Speaker Taylor said that the Committee of the Whole was but a committee of the House, though a large one.

4707. Only in exceptional and early cases has the Committee of the Whole originated legislative propositions.—On February 24, 1847,[3] the Committee of the Whole House on the state of the Union rose and the Chairman reported that the committee having, according to order, had the state of the Union generally under consideration, particularly the bill (No. 638) to establish certain post routes, had directed him to report the same to the House with amendments. And the committee had also directed him to report an original bill (No. 691) to amend the act entitled "An act to reduce the rate of postage," etc.

The record of debates shows that Mr. George W. Hopkins, of Virginia, proposed in the Committee of the Whole to report the original bill. It was objected that the Committee of the Whole might not originate a bill, but Mr. Hopkins contended that one committee bad as much right to report and prepare a bill for the House as another, and the bill was strictly appropriate to a committee sitting on a post-office bill. The Chairman[4] ruled the bill in order on the ground of a former precedent.

4708. On December 29, 1851,[5] Chairman George W. Jones, of Tennessee, in Committee of the Whole House on the state of the Union, ruled out of order an original resolution, presented first in Committee of the Whole that day, to provide for welcoming Louis Kossuth. Mr. Jones made his decision on the ground that the Committee of the Whole could originate nothing itself. The committee overruled him, and proceeded to the consideration of the resolution for several days, but did not succeed in getting action on it in the committee. Mr. Jones, at each rising, reported that the committee had had the state of the Union under consideration, and had come to no resolution thereon. This report was questioned on the ground that he ought to have referred to the Kossuth resolution, but the Speaker[6] sustained the Chairman.

4709. The House may refer a subject to a Committee of the Whole as well as to a standing committee.—On December 10, 1833,[7] the House committed to the Committee of the Whole House on the state of the Union the report of the Secretary of the Treasury received by the House on December 4, and relating to the removal of deposits of money from the Bank of the United States.

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[1] First session Twenty-eighth Congress, Journal, p. 353; Globe, p. 235.

[2] First session Nineteenth Congress, Debates, p. 1358.

[3] Second session Twenty-ninth Congress, Journal, p. 421; Globe, p. 504.

[4] James B. Bowlin, of Missouri, Chairman.

[5] First session Thirty-second Congress, Globe, pp. 158, 168.

[6] Linn Boyd, of Kentucky, Speaker.

[7] First session Twenty-third Congress, Journal, pp. 26, 31, 53, 87.

On December 11, Mr. James K. Polk, of Tennessee, moved to reconsider this vote, stating that the subject needed a more careful investigation than the Committee of the Whole could give it.

On December 17 the motion to reconsider was agreed to; and Mr. Polk at once moved that the report be referred to the Committee on Ways and Means.[1] On February 18, 1834,[2] the motion was agreed to.[3]

4710. A Committee of the Whole may not authorize or appoint a committee.—On April 11, 1789,[4] the House resolved itself into Committee of the Whole House on the state of the Union.

During a discussion of the subject of duties on imports, Mr. George Clymer, of Pennsylvania, proposed the appointment of a subcommittee to collate the material and bring them before the House.

The Chairman[5] was of the opinion that a motion of the kind just mentioned would be out of order, because a committee could not appoint another committee. The House appointed all committees.

4711. The Committee of the Whole may not grant authority to a standing committee to amend its report, or order the reprint of a bill.—On January 7, 1897,[6] the Pacific Railroad funding bill (H. R. 8189) was under consideration in Committee of the Whole House on the state of the Union, when Mr. H. Henry Powers, of Vermont, requested leave to make certain changes in the bill as reported by the Committee on Pacific Railroads, and to have the bill as changed reprinted.

The Chairman[7] ruled that the Committee of the Whole could not make the order requested. The reprinting of a bill could only be ordered by the House.

4712. The Committee of the Whole has no authority to modify an order of the House.—On December 16, 1899,[8] the bill (H. R. No. 1) "to define and fix the standard of value," etc., was under consideration in Committee of the Whole House on the state of the Union, under the terms of the following special order:[9]

Resolved, That on Monday, December 11, immediately after the reading of the Journal, the House shall resolve itself into the Committee of the Whole House on the state of the Union for the consideration of H. R. No. 1, entitled "A bill to define and fix the standard of value, to maintain the parity of all forms of moneys issued or coined by the United States, and for other purposes;" general debate thereon shall continue to not later than 5 o'clock p. m. of Friday, the 15th day of December, and thereafter debate under the five-minute rule until 5 o'clock p. m. of Saturday, the 16th day of December, at which time the committee shall rise and report the bill to the House, with any amendments adopted by the com-

[1] Debates, p. 2170.

[2] Journal, p. 345.

[3] In modem practice the House rarely by motion and vote refers anything except the annual message of the President to the Committee of the Whole. Ordinary legislation is referred to the Committee of the Whole by rule.

[4] First session First Congress, Annals, pp. 121, 122.

[5] John Page, of Virginia, Chairman.

[6] Second session Fifty-fourth Congress, Record, p. 576.

[7] Sereno E. Payne, of New York, Chairman.

[8] First session Fifty-sixth Congress, Record, p. 555.

[9] This order was adopted December 8, 1899, first session Fifty-sixth Congress, Record, pp. 160–163; Journal, p. 69.

mittee, and a vote shall be taken on the bill and amendments, if any, without intervening motion, to final passage, immediately after the reading of the Journal on Monday, the 18th day of December.

And during said debate the House shall on each day adjourn not later than 5 o'clock p. m.

The hour having arrived for the committee to rise and report the bill, Mr. Joseph W. Bailey, of Texas, asked unanimous consent to offer an amendment for the free and unlimited coinage of silver at the ratio of 16 to 1.

The Chairman [1] held that the Committee of the Whole had no power to modify or change an order of the House.

4713. In Committee of the Whole a rule of procedure prescribed by the House may not be set aside.—On January 25, 1901,[2] the House was in Committee of the Whole House considering business on the Private Calendar, under the rule making in order bills granting pensions and removing charges of desertion and political disabilities.[3]

A question arising as to the consideration of a bill (H. R. 5931, for the relief of Henry L. McCalla) not strictly within the terms of the rule, Mr. Eugene F. Loud, of California, made the point of order that the Committee of the Whole House were operating under a mandatory rule of the House of Representatives, which the committee might not set aside. Therefore the Chairman was not permitted to entertain a request that the bill be taken up.

The Chairman [4] held that this was so and that the bill was not in order.

4714. A Committee of the Whole sometimes reports a bill with the recommendation that it be recommitted to a standing committee with certain instructions.—On July 14, 1890,[5] the Committee of the Whole House on the state of the Union reported the bill (H. R. 8243) relating to the construction of the Baltimore and Potomac Railroad in the District of Columbia, with the recommendation that it be recommitted to the Committee on the District of Columbia, with instructions to report a substitute for it. This substitute was specified in the report from the Committee of the Whole.

The Speaker [6] at once put the question on agreeing to the recommendation of the Committee of the Whole, and, the motion being agreed to, the bill was recommitted with the specified instructions.

4715. The authority of the Committee of the Whole to recommend instructions to the managers of a conference is doubtful.—On April 23, 1897,[7] the Senate amendments to the Indian appropriation bill were under consideration in Committee of the Whole House on the state of the Union. The committee having voted to recommend nonconcurrence in an amendment relating to the gilsonite mineral lands, Mr. John F. Lacey, of Iowa, moved the following:

The Committee of the Whole recommend that the conference committee be instructed to insist upon a provision for leasing the gilsonite mineral lands, with such limitations and restrictions as will

[1] William P. Hepburn, of Iowa, Chairman.

[2] Second session Fifty-sixth Congress, Record, p. 1491.

[3] See section 3281 of this volume.

[4] Adin B. Capron, of Rhode Island, Chairman.

[5] First session Fifty-first Congress, Record, p. 7263.

[6] Thomas B. Reed, of Maine, Speaker.

[7] First session Fifty-fifth Congress, Record, pp. 833, 840.

prevent the control of the said mineral by trusts or combinations of any kind, such leases to be for limited amounts and for limited periods upon a royalty to the Government.

Mr. William H. King, of Utah, raised the point of order against recommending instructions to a committee of conference that had not been appointed.

The Chairman [1] said:

This is simply a motion to recommend to the House certain instructions. The House would be competent to instruct even before a conference committee had been appointed.

The recommendation having been adopted and reported to the House, the Speaker [2] said:

The Chair desires to say with regard to this question of instructing the conference committee that it is, perhaps, a question whether the committee have a right to make such a recommendation as that, but it can be made by the indorsement of the individual Member.

Thereupon the instructions were moved by Mr. Lacey individually.

4716. The motions to reconsider, for the previous question, and to adjourn are not in order in Committee of the Whole.—Jefferson's Manual has these provisions in relation to certain motions not in order in Committee of the Whole:

In Section XXVI:

When a vote is once passed in a committee, it can not be altered but by the House, their votes being binding on themselves.[3] (1607, June 4.)

In Section XII:

No previous question [4] can be put in a committee, nor can this committee adjourn as others may.

4717. The motion to reconsider is not in order in Committee of the Whole.—On February 8, 1901,[5] a bill (H. R. 13049) granting a pension to Elizabeth Fury, was under consideration in Committee of the Whole House, an amendment had been agreed to, and the bill was laid aside with a favorable recommendation.

Mr. George W. Steele, of Indiana, having obtained unanimous consent to recur to the bill, moved to reconsider the action of the committee in agreeing to the amendment.

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[1] Sereno E. Payne, of New York, Chairman.

[2] Thomas B. Reed, of Maine, Speaker.

[3] It has long been the practice of the House that a motion to reconsider may not be entertained in Committee of the Whole, and the Manual and Digest has referred to a precedent of the first session of the Twenty-seventh Congress (Globe, p. 305), although there seems at that time to have been no actual ruling by the Chair. On August 7, 1841, the House was in Committee of the Whole on the state of the Union, Mr. Joseph L. Tillinghast, of Rhode Island, in the chair. After the failure of a motion to take up for consideration Senate bill No. 1, to repeal the independent treasury act, it was moved and voted that the committee take up the Senate bill to provide for a uniform system of bankruptcy. After the bill had been read, Mr. George N. Briggs, of Massachusetts, moved to reconsider the vote by which the bill was taken up. Mr. James W. Williams, of Maryland, submitted to the Chair that the committee had no power to reconsider a vote. After some debate, Mr. Francis W. Pickens, of South Carolina, declaring that he had never heard of such a thing as the reconsideration of a vote in committee, Mr. Briggs withdrew the motion to reconsider and moved to lay aside the bill, the Chairman deciding that the latter motion was in order.

[4] This referred to the previous question of the early days of the House, which was essentially different from the previous question as developed by the modern practice. (See secs. 5443–5446 of Vol. V of this work.) But is held to apply to the present motion.

[5] Second session Fifty-sixth Congress, Record, p. 2171.

The Chairman [1] said:

There can be no reconsideration in Committee of the Whole.

4718. On April 23, 1902,[2] the House in Committee of the Whole House on the state of the Union was considering the bill (H. R. 9206) relating to oleomargarine and other dairy products, and the third amendment of the Senate was considered, and the Committee of the Whole voted to recommend concurrence.

Thereupon, Mr. James R. Mann, of Illinois, moved to reconsider the vote.

Mr. E. Stevens Henry, of Connecticut, made the point of order that the motion to reconsider was not in order in Committee of the Whole.

The Chairman [3] sustained the point of order.

4719. The motion to lay on the table is not in order in Committee of the Whole.—On February 3, 1852,[4] in Committee of the Whole House on the state of the Union, an appeal was taken from a decision of the Chair.

Mr. Orin Fowler, of Massachusetts, moved to lay the appeal on the table.

The Chairman [5] ruled this motion not in order in Committee of the Whole.

4720. On March 10, 1902,[6] while the Committee of the Whole House on the state of the Union was considering the bill (H. R. 11728) relating to free rural delivery service, Mr. Ebenezer J. Hill, of Connecticut, moved to lay two pending amendments on the table.

The Chairman [7] held that the motion was not in order in Committee of the Whole.

4721. The simple motion to recommit is not in order in Committee of the Whole.—On January 4, 1828,[8] the bill "for the relief of Marigny D'Auterieve" was under consideration in Committee of the Whole House, when Mr. Thomas R. Mitchell, of South Carolina, moved that the bill be recommitted.

The Chairman [9] decided that such a motion could not be received until the Committee of the Whole had risen and reported.

4722. The yeas and nays may not be taken in Committee of the Whole.

Instance wherein the former theory that the quorum was to be determined by those voting was set forth in 1840.

On March 24, 1840,[10] the House was in Committee of the Whole on the state of the Union, considering the Treasury-note bill. A quorum having failed to vote on a motion to rise, Mr. George C. Dromgoole, of Virginia, inquired if it was not in order to have a count of the Members who were within the bar, as he thought that a quorum was present.

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[1] John F. Lacey, of Iowa, Chairman.

[2] First session Fifty-seventh Congress, Record, p. 4594.

[3] Marlin E. Olmsted, of Pennsylvania, Chairman.

[4] First session Thirty-second Congress, Globe, p, 451.

[5] Edson B. Olds, of Ohio, Chairman.

[6] First session Fifty-seventh Congress, Record, p. 2588.

[7] Frederick H. Gillett, of Massachusetts, Chairman.

[8] First session Twentieth Congress, Debates, p. 909; Journal, p. 123.

[9] Lewis Condict, of New Jersey, Chairman.

[10] First session Twenty-sixth Congress, Globe, p. 285.

The Chairman[1] said that, as a quorum had not voted, the committee must rise and report that fact to the House. The yeas and nays could not be taken in committee, and there was no way of ascertaining whether a quorum was present but by an actual count.

4723. On May 23, 1844,[2] the House was in Committee of the Whole House on the state of the Union, considering the naval appropriation bill. Mr. James McKay, of North Carolina, offered an amendment making certain appropriations to supply deficiencies in the appropriations for the naval service for the current Year.

Mr. John Quincy Adams, of Massachusetts, objected to the amendment as out of order, on the ground that all appropriations must be considered in Committee of the Whole.

The Chair said that the House was acting in Committee of the Whole.

Mr. Adams replied that no discussion was allowed, and therefore the amendment was out of order.

The Chair[3] said that the amendment was in order, and that discussion was not in order.[4]

Mr. Adams was proceeding to discuss the point of order, when he was called to order by the Chair, and asked if he appealed from the decision just made.

Mr. Adam said that he did, and called for the yeas and nays.

The Chair said that the yeas and nays could not be taken in Committee of the Whole.

4724. It is not in order for the Committee of the Whole to arrange for a yea-and-nay vote to be taken in the House.—On February 21, 1891,[5] the House was in Committee of the Whole House on the state of the Union considering the agricultural appropriation bill. There having been debate and a division on a question relating to the distribution of seeds, Mr. Edward P. Allen, of Michigan, asked unanimous consent that when the bill should be reported to the House there should be a yea-and-nay vote upon the paragraph.

There being objection, the Chairman[6] said:

There is manifest objection, and besides, the Chair will say it would remain for the House to order it.

4725. The Chairman of the Committee of the Whole has declined to consider a question of order arising in the House just before the committee began to sit.—On May 22, 1906,[7] the House was in the act of resolving itself into Committee of the Whole House on the state of the Union to consider the consular and diplomatic appropriation bill, when Mr. Augustus P. Gardner, of Massa-

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[1] William C. Dawson, of Georgia, Chairman.

[2] First session Twenty-eighth Congress, Globe, p. 618.

[3] George C. Dromgoole, of Virginia, Chairman.

[4] This was before the development of the five-minute rule, and after general debate had been closed in Committee of the Whole all amendments had to be voted on without debate.

[5] Second session Fifty-first Congress, Record, p. 3270.

[6] Nelson Dingley, jr., of Maine, Chairman.

[7] First session Fifty-ninth Congress, Record, p. 7249.

chusetts, demanded the floor for a parliamentary inquiry, but was not recognized by the Speaker.

Mr. Gardner continued to demand recognition until after the Committee of the Whole had began its sitting, but was not recognized until the Chairman had called the committee to order and announced:

The House is in Committee of the Whole House on the state of the Union for the consideration of the diplomatic and consular appropriation bill.

Then Mr. Gardner was recognized, and proceeded to state his object in demanding recognition.

The Chairman [1] said:

The present occupant of the chair was not in the chair in the House and knows nothing of what occurred then. We are now in Committee of the Whole House on the state of the Union.

Mr. Gardner then moved that the committee rise. The Chairman recognized the motion as in order.

4726. On May 25, 1906 [2] the Speaker, after a vote, declared the House in Committee of the Whole House for consideration of bills on the Private Calendar, and the Chairman [3] took the chair and called the committee to order, announcing that the House was in Committee of the Whole House, etc.

Mr. John S. Williams, of Mississippi, rising to a question of order, said he arose—

To make the point of order that the House is not in Committee of the Whole, because it was thrown into the Committee of the Whole upon the supposition that the last division of the House showed the presence of a quorum, whereas as a matter of fact the last division of the House showed that there was no quorum present.

The Chairman said:

Undoubtedly the gentleman from Mississippi fully appreciates the fact that the present occupant of the chair has no information upon the point that he has raised. * * * The present occupant of the chair can not pass upon what took place in the House, as he was not in the chair at the time. The Clerk will report the first bill.

4727. A request for unanimous consent may not be entertained after the House has voted to go into Committee of the Whole.—On July 14, 1882,[4] the House had voted to go into Committee of the Whole House.

Mr. Waldo Hutchins, of New York, asked unanimous consent to submit a report.

The Speaker [5] declined to entertain the request, saying:

The House having decided to go into Committee of the Whole, the Chair thinks that ends for the present the session of the House. The gentleman may be recognized later in the day.

4728. The House having voted to resolve itself into Committee of the Whole, the Chair declined to entertain a motion to adjourn but did entertain an appeal from his decision.—On February 20, 1903,[6] the yeas and nays

[1] Charles Curtis, of Kansas, Chairman.

[2] First session Fifty-ninth Congress, Record, pp. 7434, 7435.

[3] Adin B. Capron, of Rhode Island, Chairman.

[4] First session Forty-seventh Congress, Record, p. 6060.

[5] J. Warren Keifer, of Ohio, Speaker.

[6] Second session Fifty-seventh Congress, Journal, p. 271; Record, pp. 2428, 2429.

had been taken on a motion to go into the Committee of the Whole House on the state of the Union to consider the bill (H. R. 16228) relating to the currency, and there appeared yeas 118, nays 89.

Mr. James D. Richardson, of Tennessee, moved to reconsider; but the Speaker pro tempore ruled the motion dilatory.

Thereupon Mr. James Hay, of Virginia, moved that the House adjourn.

The Speaker pro tempore [1] declined to put the motion, saying:

In the absence of any precedent, the Chair is of opinion that the House having determined to resolve into the Committee of the Whole House on the state of the Union, and the announcement having been partially made, the motion of the gentleman from Virginia is not in order. * * * The Chair will state that he now finds he is sustained by precedent. The Chair will call the gentleman's attention to what has been called to his attention. The Chair will state to the gentleman from Virginia that this very question was passed upon by Mr. Speaker Carlisle in the Forty-ninth Congress, and he held that the House having determined by a yea-and-nay vote to resolve itself into the Committee of the Whole House on the state of the Union, a motion to adjourn was not in order.

Mr. Hay proposed an appeal from the decision of the Chair.

Mr. Charles H. Grosvenor, of Ohio, made the point of order that, as the House had decided to resolve itself into Committee of the Whole, an appeal would not be in order.

After the debate the Speaker pro tempore said:

The House having determined by a vote of 118 to 89 to resolve itself into Committee of the Whole House on the state of the Union, the Chair proceeded to announce that the ayes had it, and was going to make the further formal announcement, when interrupted by the gentleman from Tennessee with a motion to reconsider. The point of order was made that the gentleman's motion was dilatory, and in view of what had taken place prior thereto the Chair sustained the point of order.

Now, whatever may be the theoretical view of the functions of the Speaker at that stage of the proceedings, there is no doubt at all that he still continued de facto to be exercising the functions of the Speaker; and the clerk to the Speaker's table informs the Chair that a great many Speakers—Mr. Carlisle, Mr. Keifer, and the present Speaker of the House—have entertained points of order at that stage of the proceedings.

The Chair is clearly of the opinion that the motion of the gentleman from Virginia to adjourn is out of order, and has so decided; but, having thus far exercised the function of Speaker, and passed on the question of order, it seems to him that when the appeal has been taken it must be entertained. The Chair will put the question. The question is, Shall the decision of the Chair stand as the judgment of the House?

The question being taken, there appeared yeas 110, nays 74.

So the decision of the Chair was sustained.

Thereupon, in pursuance of the former vote, the House resolved itself into Committee of the Whole House on the state of the Union.

4729. Unprivileged business on the Calendars of the Committee of the Whole is taken up in the Calendar order or in such order as may be determined in the committee.

Former method of securing precedence of revenue, general appropriation, and river and harbor bills in Committee of the Whole.

Form and history of section 4 of Rule XXIII.

Section 4 of Rule XXIII provides:

In Committees of the Whole House, business on their Calendars may be taken up in regular order, or in such order as the committee may determine, unless the bill to be considered was determined by

[1] John Dalzell, of Pennsylvania, Speaker pro tempore.

the House at the time of going into committee, but bills for raising revenue, general appropriation bills, and bills for the improvement of rivers and harbors shall have precedence.[1]

This rule applies both to the Union and the Private Calendars. The consideration of bills in the order that the Committee of the Whole might determine seems to have been the early method. But in 1844, in order to save much time wasted in motions to take bills up out of order, a rule was adopted that bills should be taken up in the order of reference, but that general appropriation bills and, in time of war, bills raising money or men and bills concerning a treaty of peace might be preferred, at the discretion of the committee.[2] This rule left all other bills on the Calendar to be taken up in order, without power on the part of the committee to change that order. So on July 28, 1848[3] a rule was adopted that—

In Committee of the Whole House on the state of the Union the bills shall be taken up and disposed of in their order on the Calendar; but when objection is made to the consideration of a bill a majority of the committee shall decide, without debate, whether it shall be taken up and disposed of or laid aside.

The provision of the former rule in regard to appropriation bills and war measures was continued, with the additional requirement that the question in regard to them should be put when demanded by any Member.

In the revision of 1880[4] the House adopted this form of rule:

In Committees of the Whole House, business on their Calendars shall be taken up in regular order, except bills for raising revenue, general appropriation bills, and bills for the improvement of rivers and harbors, which shall have precedence; and when objection is made to the consideration of any bill or proposition the committee shall thereupon rise and report such objection to the House, which shall decide, without debate, whether such bill or proposition shall be considered or laid aside for the present; whereupon the committee shall resume its sitting without further order of the House.

The Committee on Rules, in their report,[5] commended this rule on the ground that it would expedite business and save the large amount of time wasted in struggles to secure precedence of a certain bill. In their opinion, a bill committed to a Committee of the Whole was given a place entitling it to precedence over business committed later, and ought not to be displaced therefrom except by the House.

In 1885 the rule was changed by substituting for "when objection is made to the consideration of any bill" the words "when objection is made to passing over any bill." This change was made to give greater control over business in committee, enabling the committee to pass over such as it might not wish to take up.[6] The rule as amended remained in the Fiftieth, Fifty-second, and Fifty-third Congresses.

In the revision of 1890,[7] the present form was adopted and has continued in the Fifty-fourth, Fifty-fifth, and succeeding Congresses.

On January 25, 1839,[8] a rule was adopted that "on the first and fourth Fridays of each month the Calendar of Private Bills shall be called over (the Chairman of the

[1] As revenue and appropriation bills are usually designated in the privileged motion to go into Committee of the Whole, as prescribed in section 9 of Rule XVI (see sec. 3072 of this volume), the latter portion of this rule is rather a survival of an old practice than of present use.

[2] First session Twenty-eighth Congress, Globe, p. 367; first session Thirtieth Congress, p. 47.

[3] First session Thirtieth Congress, Globe, p. 1006; Journal, p. 1120.

[4] Second session Forty-sixth Congress, Record, p. 1208.

[5] Second session Forty-sixth Congress, Record, p. 201.

[6] First session Forty-ninth Congress, Record, p. 170.

[7] House Report No. 23, first session Fifty-first Congress.

[8] Third session Twenty-fifth Congress, Globe, p. 146.

Committee of the Whole House commencing the call where he left off the previous day), and the bills to the passage of which no objection shall then be made shall be first considered and disposed of."

In 1860[1] the second and fourth Saturdays were added as objection days, and to avoid retaliatory objections it was provided that when a bill once objected to should be again reached it should require five Members to object to prevent its consideration. This was to prevent the waste of time caused by retaliatory objections. The rule remained thus until the revision of 1880, when the Committee on Rules reported against continuing the practice and in favor of putting all bills on an equality, it being doubtful whether one Member should have the power even temporarily of obstructing a bill recommended by a standing committee of the House.[2] Since that time the same rule has applied to both the Union and Private Calendars.

4730. The Committee of the Whole may on motion put and carried determine an order for taking up the business on its Calendar.—On March 27, 1896,[3] the House resolved itself into Committee of the Whole House for the consideration of bills on the Private Calendar.

Mr. John A. Pickler, of South Dakota, moved that business on the Private Calendar from the Committees on Claims and War Claims be passed over without prejudice, and that bills from the Committees on Invalid Pensions, Pensions, and Military Affairs be taken up for consideration in their order upon the Calendar.

Mr. James D. Richardson, of Tennessee, made a point of order that the motion was not in order.

The Chairman held:[4]

Paragraph 4 of Rule XXIII provides that after the House has gone into Committee of the Whole House the committee can then determine the order of business that shall be pursued, and the Chair holds that it is clearly within the province of the committee to determine whether it will take up the bills in the order in which they are found on the Private Calendar, or whether, by motion, as proposed by the gentleman from South Dakota, Mr. Pickler, it will proceed to take up a certain class of private bills. The language of paragraph 4 of Rule XXIII, as it seems to the Chair, is clear upon the subject. The Chair therefore holds that the written motion submitted by the gentleman from South Dakota is in order.

4731. In considering bills on the Calendar of the Committee of the Whole House, it is in order, on a motion made and carried, to take up a bill out of its order.—On May 22, 1896,[5] the bills on the Private Calendar were under consideration in Committee of the Whole House, when Mr. David G. Colson, of Kentucky, moved to take up out of its order the bill (H. R. 4841) granting a pension to Silas Adams.

Mr. Luther M. Strong, of Ohio, made the point of order that this motion was not in order.

The Chairman[6] overruled the point of order.[7]

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[1] First session Thirty-sixth Congress, Globe, p. 1179.

[2] Second session Forty-sixth Congress, Record, p. 201.

[3] First session Fifty-fourth Congress, Record, p. 3283.

[4] Albert J. Hopkins, of Illinois, Chairman.

[5] First session Fifty-fourth Congress, Record, p. 5589.

[6] William P. Hepburn, of Iowa, Chairman.

[7] For rule governing this case, see section 4729.

4732. On February 2, 1904,[1] the House was in Committee of the Whole House considering bills on the Private Calendar, and had considered several bills in their order, when Mr. Thaddeus M. Mahon, of Pennsylvania, moved to take up "A bill (H. R. 9548) for the allowance of certain claims for stores and supplies, reported by the Court of Claims under the provisions of the act approved March 3, 1883, and commonly known as the Bowman Act."

Mr. William P. Hepburn, of Iowa, raised the question of order that the Committee of the Whole House might not in this way depart from the regular order of the Calendar.

The Chairman[2] overruled the point of order, saying—

The Chair understands that the rule so provides.

4733. Except in cases wherein the rules make specific provision therefor, a motion is not in order in the House to fix the order in which business shall be taken up on the Calendars of the Committee of the Whole.—On January 27, 1897,[3] at the Friday evening session for the consideration of bills under the special rule,[4] and before the House had resolved itself into Committee of the Whole House, Mr. H. C. Loudenslager, of New Jersey, asked unanimous consent for the consideration of this resolution:

Resolved, That bills be considered in the following order: The Clerk to call the first bill on the Calendar, Announce the number of it, the Calendar number, and the name of the Member who introduced it, and upon his failure to respond "Present," the bill to be passed without prejudice and the next bill to be called in the same way; this not to apply to Senate bills.

The Speaker pro tempore[5] said:

The Chair understands the proposition of the gentleman from New Jersey to be that this shall be adopted as a rule for this evening's session after the House resolves itself into Committee of the Whole. The Chair thinks it would not be a proper subject for action on motion, but must be adopted, if at all, by unanimous consent. If proposed as a resolution, it would have to go to the Committee on Rules but by unanimous consent it can be agreed upon in the House, so as to bind the Committee of the Whole.[6] Is there objection?

4734. When the House agrees to the privileged motion to go into Committee of the Whole to consider a particular revenue or appropriation bill, the Committee of the Whole may not consider a different bill.—On February 8, 1881,[7] the House resolved itself into Committee of the Whole by agreeing to this motion, made by Mr. John D. C. Atkins, of Tennessee:

That the House resolve itself into Committee of the Whole on the state of the Union to consider the bill (H. R. No. 7101) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1882, and for other purposes.[8]

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[1] Second session Fifty-eighth Congress, Record, p. 1542.

[2] David J. Foster, of Vermont, Chairman.

[3] Second session Fifty-fourth Congress, Record, p. 1079.

[4] See section 3281 of this volume.

[5] John F. Lacey, of Iowa, Speaker pro tempore.

[6] This should be taken in connection with section 9 of Rule XVI, section 4 of Rule XXIII, and section 5 of Rule XXIV. See sections 3072, 4729, and 3134 of this volume.

[7] Third session Forty-sixth Congress, Record, p. 1357.

[8] This motion was made under what is now section 9 of Rule XVI (see sec. 3072 of this volume.), the Speaker (Mr. Randall) saying that it was in order under this rule to designate a particular bill.

The session of the committee having begun, Mr. John H. Reagan moved to take up the river and harbor bill, which preceded this bill on the Calendar.

On the point of order the Chairman [1] ruled:

The Chair was about to decide the point of order, and to suggest to the gentleman from Texas [Mr. Reagan] the only way, in the judgment of the Chair, in which the order of the House can be avoided.

It is undoubtedly true that the Committee of the Whole on the state of the Union bears the same relation to the House that every other committee does, and is bound just as much as any other committee is bound by any order or instruction which the House may give it. It is not in the power of the Chairman of the committee, or of the committee itself, to overrule an order which the House has made, no matter what the Chairman or the committee may think of the propriety of that order. Therefore, the House having resolved itself into Committee of the Whole on the state of the Union for the purpose of considering a particular bill, the Chairman of the committee can not lay before the committee for its consideration any other bill. If gentlemen are dissatisfied with that order of the House, a motion that the committee rise may be made and entertained; and, if agreed to, then, when in the House, the order may be made that the House may resolve itself into Committee of the Whole on the state of the Union generally, in which event the motion made by the gentleman from Texas in regard to the river and harbor appropriation bill would be in order; or it may resolve itself into Committee of the Whole on the state of the Union for the purpose of considering the river and harbor appropriation bill or any other bill pending in the committee. The sense of the House may be taken in that way, and when its will has been expressed the committee must obey it; and this is all that the Chair decides on the point now made.

4735. In considering the bills before a Committee of the Whole the unfinished business is usually first in order.—On April 17, 1896,[2] the House was in Committee of the Whole House, and the committee had decided to take up bills in their order on the Calendar, as the rule directs.[3]

Thereupon the bill (H. R. 4510) for the reappointment of Frank M. Marshall as lieutenant on the retired list of the Army was presented as the unfinished business on which the committee was engaged when it last adjourned.

Mr. Claude A. Swanson, of Virginia, made the point of order that the committee had just determined the order in which it would take up bills, and that this bill was not therefore in order.

The Chairman [4] overruled the point of order, holding that this bill was unfinished business on the Calendar, and was first to be taken up in proceeding with bills in their order on the Calendar.[5]

4736. A bill unfinished at a session of the Committee of the Whole House on the state of the Union held under section 5 of Rule XXIV is again in order when the House goes into Committee of the Whole to consider it under that rule.—On January 29, 1900,[6] the bill (H. R. 3988) to reorganize and improve the United States Weather Bureau was under consideration in Committee of the Whole House on the state of the Union under section 5 of Rule

[1] John G. Carlisle, of Kentucky, Chairman.

[2] First session Fifty-fourth Congress, Record, p. 4101.

[3] See section 4729 of this volume.

[4] Sereno E. Payne, of New York, Chairman.

[5] Of course if the House had gone into Committee of the Whole under special order of the House to consider a particular bill, or under one of the privileged motions which provide for designating a particular bill for consideration, conditions would be presented entirely different from those on which this ruling is based.

[6] First session Fifty-sixth Congress, Record, p. 1286.

XXIV. The Committee of the Whole having risen, Messrs. Eugene F. Loud, of California, and James W. Wadsworth, of New York, as a parliamentary inquiry, asked when the bill would be in order again.

The Speaker[1] said:

When we are again in the Committee of the Whole in the morning hour. * * * The Chair think it will when the House is in Committee of the Whole and the House is pursuing the particular order that it has been this morning.

4737. The rules of proceeding in the House shall be observed in Committee of the Whole so far as they may be applicable.

Present form and history of section 8 of Rule XXIII.

Section 8 of Rule XXIII provides:

The rules of proceeding in the House shall be observed in Committees of the Whole House so far as they may be applicable.

This is almost exactly the first clause of the old Rule 113, which dated from April 7, 1789.[2]

4738. When a bill is taken up in Committee of the Whole its reading in full may be demanded, although it has just been read in the House.—On February 8, 1897,[3] Mr. Joseph W. Babcock, of Wisconsin, called up the bill (H. R. 10133) to amend the act to increase the water supply of the city of Washington, and moved that the House resolve itself into Committee of the Whole House on the state of the Union for its consideration. The bill having been read in full the Speaker put the question and the House voted to go into Committee of the Whole.

It being suggested in Committee of the Whole that the reading of the bill be dispensed with, Mr. Alexander M. Dockery, of Missouri, objected.

The Chairman[4] then said:

The Clerk will read the bill unless its reading is dispensed with by the action of the committee.

4739. Appropriation and revenue bills are considered in Committee of the Whole by paragraphs, other bills by sections.

Points of order may be made to the whole or to a part only of a paragraph.

Construction of the law authorizing the employment of "watchmen, laborers, and other employees" in the Executive Departments.

On March 27, 1906,[5] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Office of assistant treasurer at Cincinnati: For assistant treasurer, $4,500; cashier, $2,250; assistant cashier, $1,800; bookkeeper, $1,800; receiving teller, $1,500; interest clerk, and five clerks, at $1,200 each; two clerks, at $1,000 each; clerk and stenographer, $720; clerk and watchman, $840; night watchman, $600; day watchman, $600; in all $23,810.

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[1] David B. Henderson, of Iowa, Speaker.

[2] First session First Congress, Journal, p. 11.

[3] Second session Fifty-fourth Congress, Record, p. 1660.

[4] Albert J. Hopkins, of Illinois, Chairman.

[5] First session Fifty-ninth Congress, Record, pp. 4362–4366.

Mr. George W. Prince, of Illinois, made the point of order that the law specifying the employees was as follows:

There shall be appointed in the office of the assistant treasurer at Cincinnati one cashier at $2,000 a year, one clerk at $1,800, one clerk at $1,500, two clerks at $1,200 each, two clerks at $1,000 each, one messenger at $600, two watchmen, one at $720 and one at $240.

and that therefore a portion of the employees appropriated for were not authorized.

Mr. James A. Tawney, of Minnesota, urged that by the act of August 6, 1846, it was provided:

Be it enacted, etc., That the rooms prepared and provided in the new Treasury building at the seat of government for the use of the Treasurer of the United States, his assistants, and clerks, and occupied by them, and also the fireproof vaults and safes erected in said rooms for the keeping of the public moneys in the possession and under the immediate control of said Treasurer, and such other apartments as are provided in this act as places of deposit of the public money, are hereby constituted and declared to be the Treasury of the United States.

Therefore, as the Cincinnati office was declared to be the treasury, Mr. Tawney argued:

Now, if it is the Treasury of the United States, Mr. Chairman, we are certainly, under section 169 of the Revised Statutes, entitled to provide—that is, this House can provide—for as many clerks—that is, the clerks designated, or other employees—as the Department may deem necessary to carry on this branch of the public business.

Now, these subtreasuries, I repeat, being the Treasury of the United States, there would be no question, Mr. Chairman, of the right of this House to appropriate a lump sum for this service. We can appropriate a, lump sum for the carrying on of this service in every subtreasury in the United States, and it would be in order. Why? Because the Congress of the United States has authorized this service. The Congress of the United States has expressly authorized the service in each individual case, and thereby impliedly authorized the necessary appropriation for carrying on the service. If we can appropriate a lump sum for the purpose of carrying on this service, the Secretary of the Treasury, the head of the Department, would have authority to employ as many clerks as he deemed necessary for the performance of that service, and pay them such salaries as he in his judgment deemed necessary. There can be no question in regard to his authority to do this. Do you mean to tell me that an administrative officer of this Government can do that under a lump-sum appropriation which the Congress of the United States can not do? And yet to sustain the point of order made by the gentleman from Illinois would be equivalent to declaring that, although Congress may appropriate for this service in a lump sum, and the Secretary of the Treasury has the power to expend that appropriation by employing such clerks as the service, in his judgment, may demand, and pay them such salaries as he sees fit, yet the House of Representatives can not, under its rules, segregate the appropriation and designate the number of clerks and provide specifically for their salaries. The effect of such a ruling would be to say that the House of Representatives cannot exercise its constitutional function of appropriating specifically for a public service authorized by law which an administrative officer of the Government would have authority to provide for. Such a construction would be equivalent to saying that the House of Representatives, that must originate all appropriations, was not the power to provide specifically for a service that Congress has itself expressly authorized, which would be a reduction ad absurdum.

After further debate the Chairman[1] held:

As the Chair understands it, the gentleman from Illinois invokes against this paragraph the provision of the second clause of Rule XXI of this House that—

"No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress; nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto."

[1] Marlin E. Olmsted, of Pennsylvania, Chairman.

In opposition to the point of order it is urged that section 169 of the Revised Statutes applied. That section reads as follows:

"Each head of a Department is authorized to employ in his Department such numbers of clerks of the several classes recognized by law and such messengers, assistant messengers, copyists, watchmen, laborers, and other employees at such rates of compensation, respectively, as may be appropriated for by Congress from year to year."

It does not seem to the Chair that the fact stated that a year or two after the passage of that statute a general appropriation bill was passed appropriating a lump sum for one of the Departments would call for such a construction of section 169 as has been suggested, for section 169 itself distinctly says that the employees shall receive "such rates of compensation as may be appropriated for by Congress," not leaving it to the heads of Departments to determine. Now, it is suggested that this subtreasury at Cincinnati is, by reason of a provision in an act of 1846, which has been cited, a part of an Executive Department of the United States, namely, the Treasury Department, within the meaning of section 169.

The Chair does not find it necessary to pass upon that point at this time, for a reason which will be stated. The highest grade specifically mentioned in section 169 of the Revised Statutes is clerk of the fourth class, and the salary is fixed in the same statute. If the effect to be given to the term "other employees" were entirely an open question, the present occupant of the chair would be inclined to give much weight to the argument of the gentlemen from Minnesota were it not for the fact that this precise question is found to have been decided in the first session of the Fifty-seventh Congress and the term held to apply only to employees below the grade, at least not above the grade, of clerks as classified in the act of which section 169 forms part.

The Chair, while recognizing the susceptibility of that construction to argument on either side, feels bound by the ruling then made and acquiesced in.

The Chair does not find it necessary to decide at this time whether or not the subtreasury at Cincinnati is a department or to be treated as part of the Treasury Department within the meaning of section 169, for it appears that in section 3612 of the Revised Statutes the salary of the cashier is specifically fixed at $2,000 a year.

The paragraph complained of appropriates $2,250, an increase of $250 above the salary provided by law for that officer. Some other items have been specified as also in violation of the rule. It is not necessary to pass upon them. Ordinarily a bill is read in the House by sections, but the custom has arisen—growing largely out of convenience—of reading appropriation bills in Committee of the Whole by paragraphs. It is a very old custom, founded almost upon necessity, certainly upon strong reasons of convenience, as may be seen from the fact that the first section of this bill covers 161 pages and embraces hundreds of paragraphs. This consideration of the bill by paragraphs, if not directly authorized, is clearly recognized in clause 6 of Rule XXIII.

It has often been ruled that if a point of order be made against an amendment and part of it found out of order the whole amendment must be ruled out. In one or two instances it has been similarly ruled that if a paragraph in a pending bill be objected to and part of it found subject to the point, the whole paragraph falls, and, it seems to the present occupant of the chair, with good reason. If one item is clearly shown to be in violation of the rule, it can hardly be in the province of the Chair to go through and scrutinize the entire paragraph and see what items, if any, are entitled to stay in the bill. If there are such, it would be in order to put them in again by amendment, without the obnoxious matter. Of course, where a point of order is limited to a specific item in a paragraph that item only is affected by the ruling. But this point is aimed at the whole paragraph. Finding that it contains at least one item in violation of the rule, the Chair feels constrained, for the reasons stated, to sustain the point of order against the entire paragraph.

4740. On February 7, 1883,[1] during the consideration of the bill (H. R. 7313) to impose duties on foreign imports, etc., in Committee of the Whole House on the state of the Union under the five-minute rule, Mr. John A. Anderson, of Kansas, proposed a substitute amendment which was in fact a new schedule.

Mr. William D. Kelley, of Pennsylvania, made a point of order against the proposed amendment.

[1] Second session Forty-seventh Congress, Record, pp. 2227–2332.

After debate the Chairman [1] said:

The Chair will state in reference to this matter that in the Digest of the Rules and Practice in committee it is provided that general appropriation, tariff, and tax bills shall be considered by clauses. That has been the universal practice of the committee, and the Chair is informed that that was the old rule.

The Committee of the Whole are now considering lines 616 to 621, inclusive, as a paragraph. Now, any substitute for or any amendment to that paragraph would clearly be in order.

The gentleman from Kansas offers a proposition which is not in the nature of an amendment to the paragraph at all. It is not an amendment to nor a substitute for the paragraph, but is an independent proposition. The Chair can not be blind to the fact that the amendment in substance is a substitute for the entire schedule. And without passing on the fact whether such a substitute will be in order or not when this schedule is completed, the Chair is clearly of the opinion that it is not under the guise of an amendment in order at this time to be voted on. The committee has the right in the first instance to perfect the original text of the bill before any substitute is voted on. The Chair therefore sustains the point of order.[2]

4741. A Senate bill with a proposed committee amendment in the nature of a substitute being under consideration in Committee of the Whole, the bill was first read by sections for amendment, and then the substitute was perfected.—On June 6, 1902,[2] the Committee of the Whole House on the state of the Union was considering the bill (S. 3653) for the protection of the President of the United States, and for other purposes. This bill had been reported from the Committee on the Judiciary with the recommendation that it be amended by striking out all after the enacting clause and inserting a new text.

Mr. Edgar D. Crumpacker, of Indiana, having made a parliamentary inquiry as to the method of considering the bill, the Chairman [4] said:

The Chair will state, in the first instance, that the Senate bill must be read by sections for amendment; that, however, can be waived by unanimous consent. Then amendments will be competent to the sections of the Senate bill. When that is disposed of the substitute offered by the House will be read, which is one amendment, and that amendment will be pending, and amendments may be offered to the amendment that is pending.

Other inquiries being made, the Chairman said:

The amendment reported by the Committee on the Judiciary is one amendment—to strike out all after the enacting clause and insert a substitute for the entire bill. Now, the rule is that we must perfect the original bill before the substitute is voted upon. * * * The gentleman from Missouri himself offers an amendment to perfect the original bill, which he has the right to do, just as it would be entirely competent to move to strike out any one of these sections as read, or to add words or to strike out words, or to insert a new section. When the end of the bill is reached, then the amendment proposed by the committee will be in order.

4742. When, in considering a bill by paragraphs or sections, the Committee of the Whole has passed a particular paragraph or section it is not in order to return thereto.—On February 19, 1853,[5] the House was in Committee of the Whole on the state of the Union, considering the civil and diplomatic appropriation bill.

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[1] Julius C. Burrows, of Michigan, Chairman.

[2] Later, on February 17, a motion was made to close debate on an entire section, comprising many paragraphs not yet read. This precipitated along debate on the subject, but the Speaker did not rule, as the bill was abandoned. (Second session Forty-seventh Congress, Record, pp. 2877–2884.)

[3] First session Fifty-seventh Congress, Record, pp. 6419, 6420.

[4] Charles H. Grosvenor, of Ohio, Chairman.

[5] Second session Thirty-second Congress, Globe, p. 730.

The committee had reached that section of the bill headed "Miscellaneous," when Mr. John S. Caskie, of Virginia, moved an amendment to provide an additional appropriation for the erection of a custom-house building at Richmond, Va.[1]

Mr. George S. Houston, of Alabama, made the point of order that the amendment was not in order.

Mr. Caskie contended that his amendment could not be declared out of order except on the ground that they had passed the part headed "Custom-houses." That, however, was a mere arbitrary division for convenience sake, made perhaps in printing the bill. But, he submitted, that division could not rule out an amendment clearly in order to the bill, particularly when they had reached the head of "Miscellaneous items."

The Chairman[2] stated that the effect of the amendment, if entertained, would be to recur to a clause[3] of the bill which had been passed. This would be violating a rule which prevented a recurrence to a section of the bill already passed. The Chair therefore decided the amendment to be out of order.

An appeal being taken, the Chair was sustained.

4743. On February 26, 1859,[4] the House was in Committee of the Whole House on the state of the Union, considering the naval appropriation bill.

When the bill had been gone through with for amendments, Mr. John U. Pettit, of Indiana, moved the following as an additional section:

> No money appropriated by this act shall be used or applied with respect to the fitting, sending out, or maintaining any hostile expedition against the Republic of Paraguay until the same shall be particularly directed by law.

The Chairman[5] said:

> The committee has gone through the bill by clauses. It would not now be in order to go back to amend the first clause, for the pay of persons in the Navy, or any other clause of the bill. The Chair is, therefore, of opinion that it is not in order to amend the entire provisions of the bill by an additional section at the end. * * * It would, perhaps, have been in order if it had been offered at the end of the section to which it is intended to apply; but the committee has passed all these sections, and the Chair thinks it is not now in order to amend them.

Mr. Galusha A. Grow, of Pennsylvania, in appealing from the decision of the Chair, made the point that the bill was but a single section, and therefore that the proviso was in order.

The Chairman said that appropriation bills were considered by clauses, as though they were different sections, and that when one was passed it was not in order to go back. * * * The Chair thought it not in order when a clause had been passed to go back and amend it, and that the object could not be attained by putting an amendment at the end of the bill to apply to the whole bill.

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[1] For the rule relating to reading the bill for amendment under the five-minute rule, see section 5221 of Vol. V of this work.

[2] James L. Orr, of South Carolina, Chairman.

[3] The word "paragraph" is now generally used to describe the divisions on which consideration is based. Revenue and appropriation bills are considered by paragraphs, other bills by sections. See section 4739.

[4] Second session Thirty-fifth Congress, Globe, p. 1422.

[5] George W. Jones, of Tennessee, Chairman.

Mr. Israel Washburn, jr., of Maine, asked what rule there was to prevent the addition of a second section to the bill, upon a subject which was entirely germane to the bill.

The Chair replied that it made no difference about clauses or sections. The rule provided that no proposition to amend, different from the subject under consideration, should be in order. The clause immediately under consideration was one proposing to make an appropriation for the completion of sloops of war.

On the appeal the decision of the Chair was sustained, 67 yeas to 60 nays.

4744. In Committee of the Whole amendments are not in order until general debate has been closed.—On January 18, 1901,[1] a Friday, the bill (H. R. 1605) "for the relief of The William Cramp & Sons Ship and Engine Building Company, of Philadelphia, Pa.," was under consideration in Committee of the Whole House.

During general debate Mr. Charles H. Grosvenor moved an amendment.

The Chairman[2] said:

> That amendment is not in order until general debate is closed. * * * General debate must be closed by order of the House.

Thereupon, on motion of Mr. Grosvenor, the committee rose and the House limited general debate.

4745. In Committee of the Whole, no Member desiring to participate in general debate, the reading of the bill for amendment begins.—On January 20, 1901,[3] the House resolved itself into Committee of the Whole House on the state of the Union for the consideration of the agricultural appropriation bill. The bill having been read, no Member addressed the Chair for recognition to debate the bill.

The Chairman[4] said:

> Does any gentleman wish to address the committee?

No one arising, the Chairman directed the Clerk to read the bill by paragraphs for amendment. Thus general debate was closed.

4746. In considering a bill for amendment under the five-minute rule it is in order to return to a paragraph already passed only by unanimous consent.—On March 31, 1904,[5] the Committee of the Whole House on the state of the Union had completed the reading of the sundry civil appropriation bill for amendment under the five-minute rule, when Mr. William Sulzer, of New York, moved to strike out the last four lines on page 9.

The Chairman[6] said:

> The Chair would suggest to the gentleman from New York that the rule is perfectly clear that he must first ask unanimous consent to return to page 9.

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[1] Second session Fifty-sixth Congress, Record, p. 1197.

[2] James A. Hemenway, of Indiana, Chairman.

[3] Second session Fifty-sixth Congress, Record, p. 1643.

[4] Sereno E. Payne, of New York, Chairman.

[5] Second session Fifty-eighth Congress, Record, p. 4072.

[6] Theodore E. Burton, of Ohio, Chairman.

4747. On February 26, 1904,[1] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union; when Mr. Edward J. Livernash, of California, proposed as a new section an amendment relating to and limiting the provisions of a paragraph which had already been passed.

Mr. George E. Foss, of Illinois, made a point of order as to the amendment.

After debate the Chairman[2] held:

The Chair is of opinion that this amendment relates to, qualifies, and seeks to amend a part of the bill upon which the committee has already passed, and that to sustain this amendment as in order would practically open all the provisions of the bill to amendment. Therefore the Chair sustains the point of order that the amendment is not in order.

4748. The reading of a bill for amendment being concluded in Committee of the Whole, and a motion to rise being negatived, a motion to return to a particular portion of the bill was offered and admitted.

Instance wherein a decision of a Chairman of the Committee of the Whole was overruled.

On February 27, 1905,[3] the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the reading by paragraphs for amendment had been completed, when Mr. Theodore E. Burton, of Ohio, asked unanimous consent to return to page 3.

Mr. James A. Hemenway, of Indiana, moved that the committee rise, and insisted on the motion, thus displacing the request of Mr. Burton.

On a vote by tellers the motion to rise was disagreed to, ayes 51, nays 97.

Mr. Burton thereupon renewed his request to return to page 3, but there was objection.

Mr. Burton moved to recur to the portion of the bill already described.

Mr. Hemenway made the point of order that the motion to return to an item upon a bill after having been passed and read was not in order.

After debate the Chairman[4] said:

It is true that this matter was called to the attention of the Chair yesterday, and the Chair looked for a direct ruling upon this point and failed to find one where the precise point was raised. But during a service in the House of better than fifteen years of the present occupant of the Chair he does not recollect a single instance where a motion made to return to a paragraph after passing it was held in order.

Wherever that has been done, it has always been by unanimous consent; and although there is no special rule that so directly holds, that course should be followed. It does seem to the Chair that the orderly procedure is the ordinary procedure which dictates that there is but one course to follow, and that is when the reading of the bill has been begun that that must be continued to the end, and that that course can be deviated from only by unanimous consent of the committee. And the indicated ruling of the Chair seems very appropriate, because it does not end the matter; it is not final. Any gentleman thereafter has recourse in the House to bring up the matter which he desires disposed of when the bill is reported to the House itself.

Even if the previous question were demanded, a negative vote would afford an opportunity to consider the proposition. Therefore, holding that opinion, the Chair sustains the point of order made by the gentleman from Indiana.

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[1] Second session Fifty-eighth Congress, Record, p. 2447.

[2] Marlin E. Olmsted, of Pennsylvania, Chairman.

[3] Third session Fifty-eighth Congress, Record, pp. 3576, 3577.

[4] James S. Sherman, of New York, Chairman.

Mr. Burton having appealed from the decision of the Chair, on the question of sustaining the Chair there appeared on a vote by tellers, ayes 71, noes 89. So the decision was overruled by the committee.

4749. An amendment to insert in a bill a new section having been presented and debated before an opportunity was given to amend fully the section last read, the Chairman held that it was in order to recur to the latter section.—On January 17, 1899,[1] the naval personnel bill (H. R. 10403) was under consideration in Committee of the Whole House on the state of the Union, and was being read for amendment under the five-minute rule. Section 18 of the bill had been read, and one amendment had been made to it, when Mr. Amos J. Cummings, of New York, a member of the Naval Affairs Committee, was recognized and offered an amendment to insert after section 18 a new section.

This proposed new section having been presented and debate on it having begun, Mr. John J. Jenkins, of Wisconsin, asked the privilege of offering an amendment to section 18. Objection having been made, the Chairman[8] held:

The Chair was just about to state to the gentleman in charge of the bill that the amendment of the gentleman from New York relates to an entirely distinct section. The gentleman from Wisconsin was on his feet at the time the gentleman from New York offered his amendment, and the Chair recognized the gentleman from New York, because he is a member of the committee, and under the practice of the Committee of the Whole would be entitled to recognition before the gentleman from Wisconsin, who is not a member of the committee, as the Chair understands. Now, the amendment offered by the gentle man from New York relating to another section, the Chair will now recognize the gentleman from Wisconsin in his own right to offer an amendment that relates to section 18.

4750. During consideration of a bin by sections for amendment the Chair may direct a return to a section where, by error, no action has been had on a pending amendment.—On June 13, 1902,[3] the Committee of the Whole House on the state of the Union was considering the bill (S. 3057) for the reclamation of arid lands by irrigation, when the Clerk read an amendment proposed by the committee in the form of a new section, numbered 9.

Then, before a vote was taken on agreeing to this amendment, the Clerk read the next section.

Then the Chairman was proceeding to put the vote on the amendment, section 9.

Mr. George W. Ray, of New York, made the point of order that the section 9 amendment had been passed, and that it was in order to return to it only by unanimous consent.

The Chairman[4] said:

The Chair was under the impression that it was a regular section of the bill, and having been read, was adopted. The Chair is now informed that it was a committee amendment. The Chair does not think the gentleman from New York can take advantage of a wrong impression of the Chair as to the character of the provision. * * * This amendment is a committee amendment submitted by the committee, and the Chair thinks that it was his duty to put the amendment without attention being called to it. But under the impression that it was a part of the bill, and was agreed to when read, the Chairman directed the Clerk to read section 10. The question now is on agreeing to the committee

[1] Third session Fifty-fifth Congress, Record, p. 719.

[2] Albert J. Hopkins, of Illinois, Chairman.

[3] First session Fifty-seventh Congress, Record, p. 6767.

[4] James A. Tawney, of Minnesota, Chairman.

amendment. * * * The Chair holds that it having been passed by an error of the Chair, and under a misunderstanding or misapprehension, the committee can go back—can return to the amendment and vote upon it.

4751. In Committee of the Whole, under the five-minute rule, the right to explain or oppose an amendment has precedence over a motion to amend it.—On March 30, 1906,[1] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, under the five-minute rule, and Mr. James L. Slayden, of Texas, had debated an amendment proposed by him to the paragraph providing for the Bureau of Standards.

Thereupon Mr. Choice B. Randell, of Texas, proposed an amendment to the amendment, and sought recognition for debate.

The Chairman[2] said:

The Chair would feel bound first to recognize somebody desiring to be heard against the amendment, after which it would be in order for the gentleman to make his amendment.

The amendment of Mr. Slayden having been disposed of, Mr. John W. Gaines, of Tennessee, offered another amendment to the same paragraph, and debated it five minutes.

At the expiration of the five minutes, Mr. Gaines proposed to amend his own amendment by striking out the last two words, and by reason thereof sought recognition for another five minutes.

The Chairman said:

The Chair will read for general information of all Members:

"When general debate is closed by order of the House, any Member shall be allowed five minutes to explain any amendment he may offer, after which the Member who shall first obtain the floor shall be allowed to speak five minutes in opposition to it, and there shall be no further debate thereon; but the same privilege of debate shall be allowed in favor of and against any amendment that may be offered to an amendment."

Now, if any gentleman desires the floor to be heard against the amendment the gentleman from Tennessee has offered, it is the duty of the Chair to recognize him before he can recognize any one to offer an amendment to the amendment.

4752. In Committee of the Whole a motion to amend a bill has precedence over a motion to rise and report it.

The reading of a bill for amendment in Committee of the Whole was provided by a former rule and is continued by usage.

On February 10, 1881,[3] the House was in Committee of the Whole House on the state of the Union, considering the river and harbor appropriation bill. Before the general debate had been closed Mr. John H. Reagan, of Texas, moved that the committee rise and report the bill to the House with the recommendation that it do pass.

Mr. Samuel S. Cox, of New York, made the point of order that the bill had not been considered by paragraphs.

Mr. Thomas Updegraff, of Iowa, also announced that he wished to propose an amendment.

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[1] First session Fifty-ninth Congress, Record, pp. 4500–4504.

[2] Marlin E. Olmsted, of Pennsylvania, Chairman.

[3] Third session Forty-sixth Congress, Record, pp. 1434, 1435.

After debate, the Chairman[1] held:

There is no express rule, but the practice of this House which has existed for many years has been to allow amendments to be offered in Committee of the Whole. The old rule, Rule 107, as the gentleman will see by reference to the old edition of the rules, expressly provides that in Committee of the Whole the bill shall be read through by paragraphs or sections for debate and amendment. That clause of the rule is not contained in the new revision. But the revision contains in subdivision 5 of Rule XXIII[2] this clause:

"When general debate is closed by order of the House, any Member shall be allowed five minutes to explain any amendment he may offer, after which the Member who shall first obtain the floor shall be allowed to speak five minutes in opposition to it, and there shall be no further debate thereon."

Now, the Chair thinks it is very clear that after the House has by an order closed general debate it would not be in the power of the Chair to entertain a motion that the Committee rise and report a bill without giving every gentleman an opportunity to offer and discuss amendments. But the Chair was inclined to think that, inasmuch as in this instance the House had not yet closed general debate, and no amendment had been offered, and no gentleman had asked for the reading of the bill by clauses, he could have entertained the motion, and he would undoubtedly have entertained the motion on that view of the case if the gentleman from Iowa [Mr. Updegraff] had not announced that he rose in his place with an amendment in his hand and said that he desired to offer it. Now, the Chair does not see how this Committee can prevent Members from offering amendments. The Committee can vote them down.

Mr. Reagan having appealed, the Chairman, in stating the appeal, said:

The Chair will state distinctly what he decided. The Chair decided that in Committee of the Whole House on the state of the Union a motion to amend a bill has preference over a motion that the Committee rise and report the bill to the House. That is all the Chair has decided, and from that decision the gentleman from Texas [Mr. Reagan] has appealed.

The decision of the Chair was sustained, 152 yeas to 6 nays.

4753. On February 19, 1853,[3] the civil and diplomatic appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the second and last section of the bill was considered and stricken out.

Thereupon Mr. Edward Stanly, of North Carolina, offered an amendment in the form of an additional section of the bill.

Mr. George W. Jones, of Tennessee, made the point of order that the bill had been considered and disposed of and that there was nothing left on which to attach an amendment. He therefore moved that the Committee rise and report the bill.

The Chairman[4] said:

The Chair decides that that motion can not be put so long as any gentleman desires to offer an amendment. * * * The gentleman from Tennessee submits that inasmuch as the Committee have passed the first section of the bill, and stricken out the second, there is nothing left to amend, and that therefore no amendment whatever is in order. The Chair decides that according to the uniform practice in the Committee, so far as he recollects, and according to his understanding of the rules, amendments are in order at the end of the bill.

An appeal being taken, the decision of the Chair was sustained.

4754. On January 18, 1901,[5] the bill (H. R. 1605) "for the relief of the William Cramp & Sons Ship and Engine Building Company of Philadelphia," was

[1] John G. Carlisle, of Kentucky, Chairman.

[2] See section 5221 of Vol. V of this work.

[3] Second session Thirty-second Congress, Globe, p. 738.

[4] James L. Orr, of South Carolina, Chairman.

[5] Second session Fifty-sixth Congress, Record, pp. 1200–1202.

under consideration in Committee of the Whole House, general debate having been limited to one minute by order of the House.

General debate being closed, Mr. Charles H. Grosvenor, of Ohio, moved that the Committee do now rise and report the bill back to the House with a favorable recommendation.

The Chairman [1] held that the bill would have to be read by sections for amendment.

The reading of the bill being concluded, Mr. Charles H. Grosvenor, of Ohio, immediately moved that the Committee rise and report the bill to the House with a favorable recommendation.

Mr. Edward Robb, of Missouri, a member of the committee reporting the bill, asked recognition to offer an amendment to the section just read, the last and only section of the bill.

Mr. Grosvenor insisting on his motion, the Chairman held that Mr. Robb's motion was entitled to precedence, and that Mr. Grosvenor's motion was not in order while the Committee of the Whole chose to amend. And later, the question arising again, the Chairman reaffirmed his position, saying that the reading of a bill for amendment, as provided by the rules, implied the right to amend, and that as long as amendments, not dilatory in character, were offered to perfect sections of a bill, they were necessarily in order under the rule.

4755. On March 11, 1898,[2] the House was in Committee of the Whole House, considering the bill (H. R. 4936) for the payment of certain Bowman Act claims. Before the reading of the bill for amendments had been concluded Air. Thaddeus M. Mahon, of Pennsylvania, moved that the Committee rise and report the bill to the House with the recommendation that it do pass.

Mr. George W. Steele, of Indiana, made the point of order that the bill had not been read the second time, and could not thus be taken out of Committee.

The Chairman [3] sustained the point of order.

4756. On February 26, 1904,[4] the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the reading by paragraphs had been concluded.

Mr. George E. Foss, of Illinois, moved that the Committee rise and report the bill with a favorable recommendation.

Mr. John F. Rixey, of Virginia, proposed an amendment as an additional section.

The Chairman [5] ruled that the motion to amend had precedence of the motion to rise and report.

4757. On June 13, 1902,[6] the Committee of the Whole House on the state of the Union was considering the bill (S. 3057) for the reclamation of and lands by irrigation. The bill had been read through for amendment, and the pending question

[1] James A. Hemenway, of Indiana, Chairman.

[2] Second session Fifty-fifth Congress, Record, p. 2737.

[3] Sereno E. Payne, of New York, Chairman.

[4] Second session Fifty-eighth Congress, Record, p. 2440.

[5] Marlin E. Olmstead, of Pennsylvania, Chairman.

[6] First session Fifty-seventh Congress, Record, pp. 6777, 6778.

was on the adoption of an amendment in the nature of a substitute, when Mr. Frank W. Mondell, of Wyoming, moved that the Committee rise and report the bill.

The Chairman [1] said that the vote must first be taken on the substitute.

Mr. George W. Ray, of New York, having raised a question of order, the Chairman said:

> The Chair will state that the simple motion that the Committee rise would be in order; but the gentleman from Wyoming made a motion that the Committee rise and report the bill, with the sundry amendments, favorably to the House, and that is not in order pending a vote upon the substitute. The question is on the substitute offered by the gentleman from Indiana [Mr. Robinson.]

4758. On April 1, 1828,[2] the tariff bill having been considered, and all amendments having been acted on, the only question natural to come before the committee was whether or not they should rise and report the bill.

Mr. Peleg Sprague, of Maine, without making this motion, proceeded to debate the merits of the bill.

Mr. James Buchanan, of Pennsylvania, made a point of order as to whether it was permissible to debate the bill without any motion, or even upon the motion that the committee should rise and report.

A long discussion followed, after which Mr. Sprague was allowed to proceed on moving an amendment to strike out the increased duty on hemp, etc.[3]

4759. A bill may not be laid aside with a favorable recommendation in Committee of the Whole until the reading for amendment is completed.—On January 20, 1899,[4] the bill (H. R. 3754) for the relief of William Cramp & Sons was under consideration in Committee of the Whole House. After some time spent in general debate, but before the reading of the bill for amendments had begun, Mr. Charles N. Brumm, of Pennsylvania, moved that the bill be laid aside with a favorable recommendation.

Mr. Alexander M. Dockery, of Missouri, made the point of order that the motion was not in order at this time.

The Chairman [5] held:

> The motion that the bill be laid aside with a favorable recommendation is not in order at this stage. * * * If no one desires to take the floor for further debate, the bill will be read.

4760. On May 30, 1822,[6] a tariff bill being under consideration in Committee of the Whole House on the state of the Union, and the consideration for amendment not having begun, the Chairman held it to be in order to move to lay it aside to take up another bill.

But he held also that a motion to amend had precedence, so a Member moved to amend by striking out the first section, and the debate proceeded.

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[1] James A. Tawney, of Minnesota, Chairman.

[2] First session Twentieth Congress, Debates, pp. 2053, 2054, 2055.

[3] On the next day, Mr. Sprague continuing the debate, the Chairman seems to have held that the whole subject was open to discussion on the motion that the committee rise and report the bill, but this is evidently an error, since subsequent proceedings show the debate to have been on Mr. Sprague's amendment.

[4] Third session Fifty-third Congress, Record, p. 867.

[5] Sereno E. Payne, of New York, Chairman.

[6] First session Twenty-second Congress, Debates, p. 3188.

At this time the general debate does not seem to have had a fixed time before the consideration for amendment.

4761. A motion that the Committee of the Whole report a bill with the recommendation that it be referred may not be made until it has been read for amendments.—On January 2, 1852,[1] a resolution of welcome to Louis Kossuth was under consideration in Committee of the Whole House on the state of the Union, and general debate had been limited by order of the House.

General debate having terminated and the offering and debate of amendments having begun, Mr. William A. Richardson, of Illinois, proposed a motion that the Committee rise and report the resolution with a recommendation that it be referred to the Committee on Foreign Affairs.

The Chairman[2] said:

All debate is terminated by the latter branch of the one hundred and thirty-sixth rule. This rule provides:

"That the House may at any time, by a vote of a majority of the Members present, suspend the rules and orders for the purpose of going into the Committee of the Whole House on the state of the Union; and also to provide for the discharge of the Committee of the Whole House, and the Committee of the Whole House on the state of the Union, from the further consideration of any bill referred to it, after acting without debate on all amendments pending, and that may be offered."

This rule provides that the House itself may discharge the Committee of the Whole upon the state of the Union from the consideration of any proposition committed to it without debate after voting on all amendments which have been offered or may be offered. The committee, by this vote and decision, have determined that the debate on this resolution should terminate. Then, in the opinion of the Chair it can not be reported to the House until all the amendments pending and which may be offered shall be voted on. The Chair overrules the motion of the gentleman from Illinois.

Mr. Richardson having appealed, the decision of the Chair was sustained, ayes 78, noes 44.[3]

4762. On January 14, 1901,[4] the bill (H. R. 13189) "making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes" was under consideration in Committee of the Whole House on the state of the Union.

The reading by paragraphs for amendment had begun, when Mr. F. W. Cushman, of Washington, moved that the bill be reported back to the House with the recommendation that it be recommitted to the Committee on Rivers and Harbors.

Mr. John W. Maddox, of Georgia, made the point of order that the motion was not in order.

The Chairman[5] held:

In relation to this matter the Chair is of the opinion that the admission of the motion to report the bill with a recommendation of recommittal would be in violation of the spirit of the rules and precedents governing the consideration of bills in the Committee of the Whole. The Committee of the Whole is expected to complete consideration of a bill before it is reported to the House; and it is well understood that a motion to report a bill with a favorable recommendation is not in order until the consideration by sections or paragraphs for amendment has been completed.

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[1] First session Thirty-second Congress, Globe, p. 194.

[2] George W. Jones, of Tennessee, Chairman.

[3] On February 25 (Globe, p. 635), Chairman Edson B. Olds, of Ohio, affirmed this decision.

[4] Second session Fifty-sixth Congress, Record, p. 996.

[5] Albert S. Hopkins, of Illinois, Chairman.

To admit the motion proposed by the gentleman from Washington would afford a means of taking a bill from the Committee of the Whole before it had been fully considered. By the motion to strike out the enacting clause the rules provide the only proper means for such an action, and the carefully guarded provisions of that rule satisfy the Chair that the framers of the rules intended it to be the only method whereby the Committee of the whole might escape the mandate of the House to consider a bill referred to it. The Chair is aware of the fact that in the Fifty-first Congress a motion like that made by the gentleman from Washington was admitted; but in that case there was a question as to the validity of the bill itself, whether it had been rightfully reported in the first instance from a standing committee. A question of privilege was raised; and the motion to recommend end recommittal was a part of that question. No such question is involved in the present case, and the Chair sustains the point of order.

4763. The motion to lay a bill aside in Committee of the Whole is not debatable.—On April 5, 1860,[1] in Committee of the Whole House on the state of the Union, Chairman Israel Washburn, Jr., of Maine, held that a motion to lay aside a bill was a motion relating to priority of business, and therefore not debatable.

4764. On March 28, 1902[2] while the Committee of the Whole House was considering the bill (H. R. 3379) to correct the military record of Calvin A. Rice, Mr. Frank W. Mondell, of Wyoming, moved that the bill be laid aside with a favorable recommendation.

Mr. Mondell was proceeding to debate the motion, when the Chairman[3] ruled further debate out of order, the motion to lay aside having been made.

4765. A bill which is under consideration in Committee of the Whole may not be laid aside, except to be reported to the House.

The Committee of the Whole having voted to consider a particular bill, and consideration having begun, a motion to reconsider or change that vote is not in order.

A motion that a bill be reported with a recommendation to postpone is in order in Committee of the Whole.

A motion to report a bill from the Committee of the Whole with a recommendation that it do pass has precedence of a motion recommending postponement.

On January 21, 1898,[4] the House was in Committee of the Whole House. The bill (S. 629) to confer jurisdiction on the Court of Claims in the case of the Book Agents of the Methodist Episcopal Church South against the United States was before the committee. Its consideration had began on the previous Friday, and it came up as unfinished business in the committee.

Mr. Samuel B. Cooper, of Texas, moved to lay aside the bill and to substitute therefor the House bill (No. 4829) relating to the same subject.

Mr. John Dalzell, of Pennsylvania, having made a point of order, the Chairman[5] ruled:

The Committee of the Whole may undoubtedly take up any bill, or change the order, but on Friday it voted to take up this particular bill and entered upon consideration of it. Now, the Committee of the Whole can not reconsider its order. A motion to reconsider is not in order. It can not

[1] First session Thirty-sixth Congress, Globe, p. 1563.

[2] First session Fifty-seventh Congress, Record, p. 3372.

[3] Adin B. Capron, of Rhode Island, Chairman.

[4] Second session Fifty-fifth Congress, Record, p. 843.

[5] Sereno E. Payne, of New York, Chairman.

change the order until the order is executed. The Chair thinks there is no power to do it, except by unanimous consent of the committee. The Chair must sustain the point of order.

Mr. James D. Richardson, of Tennessee, moved that the bill be reported to the House with the recommendation that it be postponed until Friday next.

Mr. Dalzell having made the point of order that the motion was not admissible, the Chairman ruled that the motion was in order.

Mr. Dalzell moved that the bill be laid aside, with the recommendation that it do pass.

Mr. John S. Williams, of Mississippi, made the point of order that there was a motion pending.

The Chairman ruled that the motion of the gentleman from Pennsylvania [Mr. Dalzell] was entitled to preference, for the reason that if adopted it would dispose of the bill finally, as far as the Committee of the Whole was concerned.

4766. In Committee of the Whole the motion to rise and report has precedence of a motion to take up another bill.

In Committee of the Whole the motion to rise and report is not debatable.

On July 5, 1838,[1] the House was in Committee of the Whole House on the state of the Union, and had completed the consideration of several bills.

Mr. Charles F. Mercer, of Virginia, had moved to take up a certain bill, when Mr. Churchill C. Cambreleng, of New York, moved that the committee rise and report the bills already acted on.

Mr. Mercer insisted that his own motion should be put, and that the motion to rise was debatable.

The Chairman[2] overruled him. Thereupon Mr. Mercer took an appeal, and after debate the decision of the Chair was sustained by the committee.

4767. A motion that the Committee of the Whole rise is not debatable.—On February 15, 1901,[3] Mr. Sereno E. Payne, of New York, moved that the Committee of the Whole House rise.

Mr. John S. Williams, of Mississippi, rising to a parliamentary inquiry, asked if that motion was debatable.

The Chairman[4] replied that it was not.

4768. On February 16, 1831,[5] the House was in Committee of the Whole House on the state of the Union considering the bill (H. R. 567) for the relief of certain surviving officers and soldiers of the Revolution.

A question of order being raised as to whether or not a motion that the committee rise was debatable, the Chairman[6] decided that it was not debatable.

4769. A motion that the Committee of the Whole rise is not in order while a Member has the floor in debate.—On February 15, 1901,[7] the bill

[1] Second session Twenty-fifth Congress, Journal, p. 1246; Globe, p. 497.

[2] Zadok Casey, of Illinois, Chairman.

[3] Second session Fifty-sixth Congress, Record, p. 2492.

[4] James A. Hemenway, of Indiana, Chairman.

[5] Second session Twenty-first Congress, Debates, p. 726.

[6] Robert P. Letcher, of Kentucky, Chairman.

[7] Second session Fifty-sixth Congress, Record, p. 2491.

(H. R. 4303) for the relief of the heirs of Aaron Van Camp and Virginius P. Chapin was under consideration in committee of the Whole House, and Mr. Joseph G. Cannon, of Illinois, held the floor in debate.

Mr. Joseph V. Graff, of Illinois, rising to a parliamentary inquiry, asked if it was proper at this time to make a motion that the committee rise.

The Chairman[1] replied that it would be in order if the gentleman having the floor should yield for that purpose.

4770. In Committee of the Whole the simple motion that the committee rise has precedence of the motion to amend.—On June 6, 1902,[2] the Committee of the Whole House on the state of the Union were considering the bill (S. 3653) for the protection of the President of the United States and for other purposes, when Mr. Malcolm R. Patterson, of Tennessee, sought recognition to propose an amendment.

Mr. George W. Ray, of New York, moved that the committee rise.

Mr. Patterson having claimed the right to offer his amendment, the Chairman[3] said:

> The gentleman from New York at the same time moved that the committee do now rise. That is a preferential motion, and if the gentleman will withhold his amendment he will be recognized in the morning.

4771. In Committee of the Whole a motion that the committee rise may not be made until a demand for tellers on the pending question has been disposed of.—On March 2, 1904,[4] the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and a rising vote had been taken and declared on an amendment.

Thereupon Mr. James T. McCleary, of Minnesota, moved that the committee rise.

The Chairman put the question.

Thereupon Mr. McCleary gave notice that he would demand tellers on the vote on the amendment.

Mr. James R. Mann, of Illinois, made the point of order that a demand for tellers might not be made after the motion to rise.

Thereupon Mr. Elmer J. Burkett, of Nebraska, demanded tellers.

Pending that Mr. McCleary insisted on his motion that the committee rise.

The Chairman[5] held that the motion to rise might not be made until the demand for tellers had been disposed of.

4772. On March 2, 1906,[6] the Committee of the Whole House on the state of the Union had considered various bills on the Private Calendar when a motion was made to lay aside, with a recommendation that it lie on the table, the bill (H. R. 850) for the relief of the estate of Samuel Lee. On a division there appeared ayes 61, noes 56.

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[1] James A. Hemenway, of Indiana, Chairman.

[2] First session Fifty-seventh Congress, Record, p. 6426.

[3] Charles H. Grosvenor, of Ohio, Chairman.

[4] Second session Fifty-eighth Congress, Record, pp. 2709, 2710.

[5] George P. Lawrence, of Massachusetts, Chairman.

[6] First session Fifty-ninth Congress, Record, p. 3301.

Mr. James M. Miller, of Kansas, called for tellers, and, pending that call, proposed to move that the committee rise.

Mr. John S. Williams, of Mississippi, made a point of order.

The Chairman [1] held:

In the Committee of the Whole a motion that the committee rise may not be made until a demand for tellers on the pending question has been disposed of.

4773. Tellers having been ordered and appointed, it is not in order to move that the Committee of the Whole rise until the vote has been announced.—On May 26, 1890,[2] on a vote in Committee of the Whole House on the state of the Union, tellers were ordered and appointed.

Thereupon Mr. Louis E. Atkinson, of Pennsylvania, asked, as a parliamentary inquiry, if it would be in order to move that the committee rise.

The Chairman [3] said:

The demand for tellers has been made. The division has been ordered, and the Chair thinks that it would not be in order to move that the committee do now rise.

The tellers having reported, the motion that the committee rise was then entertained.

4774. Bills in Committee of the Whole may be reported with the recommendation that they be postponed or referred, and the latter recommendation has precedence over the recommendation that the bill do pass.

The motion in Committee of the Whole that a bill be laid aside with a favorable recommendation is not amendable, but may be displaced by a preferential motion.

In Committee of the Whole the motion that a bill be laid aside with a favorable recommendation is not debatable.

On April 23, 1906,[4] the House was considering the bill (H. R. 15961) "to quiet title to certain lots in the District of Columbia," in Committee of the Whole House on the state of the Union, when Mr. Joseph W. Babcock, of Wisconsin, moved to lay aside the bill with a favorable recommendation.

Thereupon Mr. John J. Fitzgerald, of New York, moved to amend his motion by striking out the language "with a favorable recommendation" and substituting this language: "with the recommendation that the Committee on the District of Columbia shall report a bill conferring jurisdiction upon the supreme court of the District of Columbia to hear and determine the questions of title involved in this matter."

The Chairman [5] said:

The gentleman from New York moves that the motion of the gentleman from Wisconsin that the bill be laid aside with a favorable recommendation be amended so that the bill be laid aside with the recommendation that it be referred back to the committee with instructions, and the Chair would

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[1] Philip P. Campbell, of Kansas, Chairman.

[2] First session Fifty-first Congress, Record, p. 5315.

[3] Julius C. Burrows, of Michigan, Chairman.

[4] First session Fifty-ninth Congress, Record, p. 5748.

[5] Charles E. Littlefield, of Maine, Chairman.

hold that that motion is out of order, but he would entertain a motion of the gentleman from New York, taking precedence of the motion of the gentleman from Wisconsin, to lay it aside with the recommendation that it be referred to the committee with instructions. Now the gentleman from New York moves that this bill be reported with the recommendation that it be referred to the Committee on the District of Columbia, with instructions.

Mr. Fitzgerald having made the motion suggested by the Chair, debate was proceeding when the Chairman said:

The Chair will state that debate upon the pending motion is, in the opinion of the Chair, proceeding by unanimous consent; that when action is taken upon the motion that the bill be laid aside with a favorable recommendation it is ordinarily after debate has been entirely exhausted upon the proposition, and the Chair is of opinion the motion of the gentleman from New York is in practically that parliamentary situation, and debate is now proceeding by unanimous consent.

After debate the motion proposed by Mr. Fitzgerald was disagreed to.

4775. In Committee of the Whole the motion to report a bill with the recommendation that it be referred takes precedence of the motion to report it with the recommendation that it do pass.—On January 22, 1896,[1] the House was considering in Committee of the Whole House on the state of the Union the joint resolution (S. R. 50) relating to plans for the public building at Chicago, Ill.

Mr. William Lorimer, of Illinois, moved that the committee rise and report the bill as amended back to the House, with the recommendation that it do pass.

Mr. Charles F. Crisp, of Georgia, moved that the committee rise and report the bill back with the recommendation that it be referred to the Committee on Public Buildings and Grounds.

Mr. Joseph G. Cannon, of Illinois, having raised a question as to the precedence of the motions, the Chairman[2] held that the latter motion had precedence.

4776. In Committee of the Whole the motion to report with a favorable recommendation has precedence of the motion to report with an unfavorable recommendation.

In Committee of the Whole a negative decision on a motion to report a bill with a favorable recommendation is not equivalent to a decision to report unfavorably.

On February 14, 1896,[3] in Committee of the Whole House, Mr. W. Jasper Talbert, of South Carolina, moved that the bill under consideration be laid aside with an unfavorable recommendation—i. e., that it do not pass, after the Chairman had put the question on the motion that the bill be laid aside with the recommendation that it do pass.

Mr. John A. Pickler, of South Dakota, having raised a question as to the precedence of the motions, the Chairman[2] held that the motion to lay aside the bill with a favorable recommendation had precedence.

On March 2, 1896,[4] in Committee of the Whole, the motion to report the pending bill favorably to the House was negatived.

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[1] First session Fifty-fourth Congress, Record, p. 889.

[2] Sereno E. Payne, of New York, Chairman.

[3] First session Fifty-fourth Congress, Record, p. 1742.

[4] First session Fifty-fourth Congress, Record, p. 2341.

Thereupon the Chairman[1] entertained the motion that the bill be reported unfavorably.[2]

4777. In Committee of the Whole a motion to report a bill with the recommendation that it lie on the table has precedence of motions recommending postponement or recommittal.—On April 15, 1898,[3] the bill (H. R. 706) for the relief of the Erie Railroad Company was under consideration in Committee of the Whole House.

Mr. Charles N. Brumm, of Pennsylvania, made the motion that the bill be reported with the recommendation that it be postponed for two weeks.

Mr. Eugene F. Loud, of California, moved that the bill be laid aside with the recommendation that it do lie on the table.

Mr. Thomas McEwan, jr., of New Jersey, moved that it be laid aside with the recommendation that it be recommitted to the Committee on Claims.

The Chairman[4] ruled:

The gentleman from California moves that the committee report the bill to the House with the recommendation that it lie on the table. Now, that motion would take precedence of the motion made by the gentleman from New Jersey and the motion of the gentleman from Pennsylvania to postpone for a couple of weeks. The Chair thinks that the vote, in any event, would be first on the motion of the gentleman from California.

4778. Before general debate has been closed in Committee of the Whole it is not in order to move to report the bill with the recommendation that it be laid on the table.—On January 27, 1902,[5] the Committee of the Whole House on the state of the Union was considering the bill (H. R. 2041) to aid in establishing homes in the States and Territories for teaching articulate speech, etc., to deaf children.

Before general debate had been closed Mr. Willard D. Vandiver, of Missouri, moved that the bill be reported to the House with the recommendation that it be laid on the table.

The Chairman[6] said:

General debate not being closed, it would not be in order except by consent.

4779. The motion to report a bill with a favorable recommendation being decided in the negative in Committee of the Whole, the bill remains in its place on the Calendar.—On March 30, 1900,[7] the Committee of the Whole House was considering the bill (H. R. 909) conferring on the Court of Claims jurisdiction with respect to certain claims, and the motion that the bill be reported with a favorable recommendation was decided in the negative.

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[1] Nelson Dingley, of Maine, Chairman.

[2] The practice has been long established that the negative of the motion to report favorably is not equivalent to the affirmative of the motion to report adversely. (Second session Forty-sixth Congress, Journal, p. 421; Record, p. 745.)

[3] Second session Fifty-fifth Congress, Record, pp. 3923, 3924.

[4] Sereno E. Payne, of New York, Chairman.

[5] First session Fifty-seventh Congress, Record, p. 1038.

[6] Adin B. Capron, of Rhode Island, Chairman.

[7] First session Fifty-sixth Congress, Record, p. 3539.

Mr. Joseph G. Cannon, of Illinois, rising to a parliamentary inquiry, asked:

A majority of the Committee of the Whole having refused to report the bill back with a favorable recommendation, where does that leave the bill?

The Chairman [1] said:

It leaves the bill on the Calendar, in its place.

4780. On January 25, 1901,[2] the House was in Committee of the Whole House considering bills on the Private Calendar, and the pending question was on laying aside with a favorable recommendation the bill (H. R. 9271) to remove the charge of desertion against Charles Schaupp, etc.

This motion was determined in the negative, whereupon Mr. Charles L. Bartlett, of Georgia, rising to a parliamentary inquiry, asked as to the status of the bill.

The Chairman [3] said:

The Chair will rule that it goes to the Calendar unless some further action is taken by the committee.

4781. On March 2, 1906,[4] in Committee of the Whole House for the consideration of business on the Private Calendar several bills were considered and laid aside with favorable recommendation, and the bill (H. R. 850) making an appropriation to pay the estate of Samuel Lee on account of the latter's alleged election and service in Congress was considered, and a motion that it be laid aside with a favorable recommendation was disagreed to, ayes 57, noes 62.

Then Mr. James R. Mann, of Illinois, moved that the bill be reported with a recommendation that it do lie on the table.

This motion was disagreed to, ayes 63, noes 64.

Mr. James M. Miller, of Kansas, moved that the committee rise and report the bills to the House.

Mr. Mann, rising to a parliamentary inquiry, asked if the bill H. R. 850 would be included in this motion.

The Chairman said: [5]

The bill goes back on the Calendar, and will not be reported among the bills acted upon by the committee. The question is on the motion to rise and report the bills.

4782. As to the motions in order when a bill again comes up in Committee of the Whole after the committee has refused to report it either favorably or unfavorably.

Reading of a bill for amendments being concluded in Committee of the Whole motions ordering it to be reported are not debatable.

The reading of a bill for amendment in Committee of the Whole being concluded, a motion to strike out the enacting clause is not in order.

Bills in Committee of the Whole may be reported with the recommendation that they be postponed or referred, and the latter recommendation has precedence over the recommendation that the bill do pass.

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[1] James A. Hemenway, of Indiana, Chairman.

[2] Second session Fifty-sixth Congress, Record, p. 1479.

[3] Adin B. Capron, of Rhode Island, Chairman.

[4] First session Fifty-ninth Congress, Record, p. 3302.

[5] Philip P. Campbell, of Kansas, chairman.

On May 18, 1906,[1] the bill (H. R. 850) making appropriation to pay the estate of Samuel Lee, deceased, in full for any claim for pay and allowances made by reason of election of said Lee to the Forty-seventh Congress and his services therein, came up in regular order for consideration in Committee of the Whole House.

On March 2[2] this bill had been debated and amended, and a motion to lay it aside with a favorable recommendation had been decided in the negative. Thereupon a motion had been made that the bill be laid aside with the recommendation that it do lie on the table. This also was decided in the negative; and the bill, by direction of the Chairman, went back to its place on the Calendar.

When the bill came up this day (May 18) Mr. Charles L. Bartlett, of Georgia, proposed a motion that it be reported to the House with the recommendation that it lie on the table.

The Chairman[3] held that the motion was not in order, and later explained his ruling as follows:

A few moments ago the gentleman from Georgia made a motion that this bill be reported with a recommendation that it lie on the table. The Chair, without being fully advised as to former proceedings, ruled that the motion was out of order, and has taken time to ascertain exactly what was done on the former occasion. The fact appears to be that the last thing which was done in Committee of the Whole, when the bill was before the Committee on the former occasion, was to vote down a motion that it be reported to the House with the recommendation that it do lie on the table. It seems, therefore, to the Chair that there having been, so far as this bill is concerned, no business intervening, the similar motion made by the gentleman from Georgia was correctly ruled not in order. The question is on laying the bill aside with a favorable recommendation.[4]

Mr. James M. Miller, of Kansas, was proceeding as if to debate the bill, when the Chairman said:

The Chair will state to the gentleman from Kansas [Mr. Miller] that the Chair is informed that when this bill was heretofore under consideration in the Committee of the Whole House general debate was closed, and is therefore not now in order.

Mr. Miller then moved that the bill be laid aside with a favorable recommendation.

Mr. Bartlett thereupon moved that the bill be laid aside with the recommendation that it be postponed indefinitely.

The Chairman entertained the motion as a preferential motion.

Mr. Bartlett's motion was disagreed to.

Mr. John S. Williams, of Mississippi, thereupon proposed a motion that the bill be reported with the recommendation that it be recommitted to the Committee on Claims.

The Chairman said:

The Chair is of the opinion that that motion has preference over the motion of the gentleman from Kansas [Mr. Miller]. The gentleman from Kansas moved that the bill be reported to the House with

[1] First session Fifty-ninth Congress, Record, pp. 7089–7091.

[2] Record, pp 3301, 3302.

[3] Marlin E. Olmsted, of Pennsylvania, Chairman.

[4] A query arises as to what would be the procedure had the last vote on March 2 been a negative vote on the motion to lay aside with a favorable recommendation. Would the motion be entertained over again, or would the Chair require some other motion—such as a motion to lay aside with an unfavorable recommendation—to intervene before again permitting the motion to lay aside with a favorable recommendation?

a favorable recommendation. The gentleman from Mississippi moves that it be reported with the recommendation that it be recommitted to the Committee on Claims. The Chair is of the opinion that the motion of the gentleman from Mississippi is the preferential motion, and that the question now is upon the motion of the gentleman from Mississippi, that the bill be reported to the House with the recommendation that it be recommitted to the Committee on Claims.

Mr. Williams's motion was disagreed to.

Then the question recurred on the motion of Mr. Miller, that the bill be laid aside with a favorable recommendation, when Mr. Williams proposed to move that the enacting clause of the bill be stricken out.

The Chairman said:

The Chair is of the opinion that the stage of amendment has passed, and that the motion of the gentleman is not in order. The Chair thinks nothing is in order except the motion of the gentleman from Kansas to lay the bill aside to be reported to the House with a favorable recommendation.

Thereupon Mr. Henry M. Goldfogle, of New York, proposed to debate the motion of Mr. Miller.

The Chairman held that the motion was not debatable.

Mr. Miller's motion was agreed to.

Thereupon, on motion of Mr. Miller, the Committee rose and reported.

4783. In an exceptional case, when an appeal was taken from a decision of a chairman in Committee of the Whole, the Committee rose and reported the question of order for the decision of the House.—On May 12, 1876,[1] the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a point of order was made against an amendment submitted by Mr. Charles Foster, of Ohio. The Chairman[2] having decided the point of order, an appeal was taken. Thereupon the Chairman said:

An appeal from the decision of the Chair can not be taken in the Committee of the Whole. In practice this has frequently been done; but the leading authorities on parliamentary law do not recognize this practice as regular. The better way to settle the question is for the Committee to rise, in order to report the point of order to the House, and ask its instruction in reference to the matter in question.[3]

Thereupon the Committee of the Whole rose, the Speaker resumed the chair, and the Chairman reported, stating the point of order, his ruling thereon, the appeal, his further ruling that an appeal could not be taken in Committee of the Whole, and that the Committee had risen to obtain the direction of the House thereon.

The Speaker pro tempore[4] thereupon ruled that the point of order was well taken and that the amendment was properly ruled out.

Upon appeal this decision was sustained by the House.

4784. A bill being alleged to be improperly before the Committee of the Whole, a motion to report it with recommendations was held in order before it had been considered for amendment.

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[1] First session Forty-fourth Congress, Journal, p. 945; Record, p. 3049.

[2] William M. Springer, of Illinois, Chairman.

[3] The practice of the House has for many years been almost invariably against this position. As early as 1850 appeals were without question decided in Committee of the Whole (see secs. 6927–4937 of Vol. V of this work), and such is the present practice.

[4] Samuel S. Cox, of New York, Speaker pro tempore.

A committee having reported a private bill grouping together a series of claims, each belonging to the jurisdiction of the committee, it was held that no point of order could be sustained when the bill came up in Committee of the Whole.

A bill having been reported from the Committee of the Whole with instructions which were ruled out of order as proposing a change of the rules, the bill was held thereby to stand recommitted to the Committee of the Whole.

On March 28, 1890,[1] the bill (H. R. 7616) "for the allowance of certain claims for stores and supplies taken and used by the United States Army, as reported by the Court of Claims under the provisions of the act of March 3, 1883, known as the Bowman Act," was taken up in Committee of the Whole House.

Points of order being raised and discussed, the consideration of the bill had not actually begun on a succeeding Friday, April 4, when Mr. Ormsby B. Thomas, of Wisconsin, offered this resolution:

Whereas House bill 7616 is alleged to be composed of a large number of items, many of which have not been referred to the Committee on War Claims by bill or otherwise, by the House of Representatives of the Fifty-first Congress: Therefore—

Resolved, That the Committee of the Whole House report said bill to the House with the recommendation that it be referred to the Committee on Rules to investigate the status of said bill in connection with the practice of the House, and as early as practicable to make such recommendations in the premises as they may deem proper for the consideration of the House, including any change of rules deemed by them necessary for just action on the part of the House as to this and similar bills.

Mr. John H. Rogers, of Arkansas, made the point of order that it was not in order to submit a motion to refer before consideration of the bill had begun, before general debate had begun, and before an opportunity to amend had been allowed.

After debate, the Chairman[2] said:

The point of order * * * is that the resolution * * * can not be entertained until this bill has been considered by the Committee of the Whole, paragraph by paragraph, and amendments offered if desired. * * * In other words, until the committee has entered into the merits of the question. The Chair holds that the resolution offered by the gentleman from Wisconsin is a privileged motion, and as such takes precedence of everything except a motion to rise. The Chair is not prepared to hold that he will not consider, or allow this Committee to consider, a privileged motion or resolution as soon as presented, and in support of his ruling what is there said under the head of "questions of privilege."

"Whenever the Speaker is of the opinion that a question of privilege is involved in a proposition he must entertain it in preference to any other business, such opinion, of course, being subject to an appeal; and when a proposition is submitted which relates to the privileges of the House it is his duty to entertain it, at least to the extent of submitting the question to the House as to whether or not it presents a question of privilege."

Now, a point of order is addressed to the Chair, and it is for the Chair to consider and pass upon it; but a question of privilege is a very different and a far higher question, and the Chair, considering that this resolution is such, felt it his duty to entertain it, notwithstanding the fact that in so doing it interfered with the question of order raised by the gentleman from Iowa [Mr. Kerr]. For these reasons the Chair overrules the point of order made by the gentleman from Arkansas.

On April 18, 1890,[3] the resolution offered by Mr. Thomas was decided in the negative.

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[1] First session Fifty-first Congress, Record, pp. 2749, 3021, 3023, 3032.

[2] Edward P. Allen, of Michigan, Chairman.

[3] Record, p. 3491.

Thereupon Mr. Daniel Kerr, of Iowa, made the point of order that the Committee on War Claims had no right to report many of the claims, the same not having been referred to the committee, and further that the committee had no right to report more than one claim in a single bill.

The Chairman held that this question could not be raised in Committee of the Whole.

Mr. Thomas, of Wisconsin, then presented a resolution [1] providing that the bill be reported back with the recommendation that it be recommitted to the Committee on War Claims with instructions.

Mr. Rogers made the point of order that this motion to recommend recommittal would not be in order until the consideration of the bill had been concluded in Committee of the Whole.

The Chairman overruled the point of order.

The resolution was agreed to, and was reported back to the House.

When reported, points of order were made against it that it proposed to change the rules of the House.

The Speaker [2] sustained the points of order, and the bill went back to the Committee of the Whole.

The point urged in Committee of the Whole by Mr. Rogers was not made in the House.

4785. The hour previously fixed for the adjournment of the House arriving while the Committee of the Whole is still in session, the chairman may direct the committee to rise and make his report as though the committee had risen on motion in the regular way.—On March 20, 1896,[3] at the close of a Friday evening session, the hour of 10.30 p.m. arrived while the Committee of the Whole House was still in session.

Thereupon the Chairman [4] announced:

> The hour fixed by the rule for adjournment being at hand, the committee will rise.

Thereupon, without motion, the committee rose, the Speaker pro tempore took the chair, and the Chairman reported as though the committee had risen regularly on motion.

The report being made, the Speaker pro tempore declared the House adjourned, also without motion or vote.

4786. A message being announced while the Committee of the Whole is in session, the committee rises informally and the Speaker takes the chair to receive it.—Section XII of Jefferson's Manual has this provision:

> If a message is announced during a committee, the Speaker takes the chair and receives it, because the committee can not.[5]

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[1] Record, pp. 3491, 3504, 3505.

[2] Thomas B. Reed, of Maine, Speaker.

[3] First session Fifty-fourth Congress, Record, p. 3062.

[4] William P. Hepburn, of Iowa, Chairman.

[5] This is called the informal rising of the committee. The mace, which is taken down when the committee begins to sit, is put up again, and the House is in session. The message having been received, the Speaker announces that the committee will resume its session, and the Chairman of the Committee of the Whole at once resumes the chair. The mace is again taken down.

4787. At an informal rising of the Committee of the Whole a message from the President of the United States may be laid before the House only by unanimous consent.—On June 13, 1902,[1] the Committee of the Whole House on the state of the Union rose informally to receive messages from the President of the United States.

The messages having been communicated to the House, the Speaker[2] said:

If there is no objection, the Chair will lay the messages before the House.

Mr. Oscar W. Underwood, of Alabama, objected.

Thereupon the Speaker said:

Objection being made, the Committee of the Whole will resume its sitting.

4788. Sometimes on the informal rising of the Committee of the Whole, the House, by unanimous consent, transacts business, such as the presentation of enrolled bills, the swearing in of a Member, or consideration of a message.—On February 26, 1859,[3] the Committee of the Whole informally rose, and Mr. James Pike, of New Hampshire, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled certain bills.

Thereupon the Speaker[4] signed the same; and the committee then resumed its session.[5]

4789. On May 5, 1880,[6] the Committee of the Whole informally rose to receive a message from the Senate. The message having been read, Mr. Martin Maginnis, of Montana, asked the House to concur in a verbal amendment to one of the bills just received from the Senate.

The Speaker[7] said:

The rising of the committee is informal. That request can not now be entertained.

4790. On May 14, 1896,[8] the Committee of the Whole informally rose to receive a message from the Senate, one of the announcements of which was that the Senate had passed with amendments a bill (H. R. 7977) making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes, asked a conference with the House of Representatives on the bill and amendments, and had appointed Mr. Frye, Mr. Quay, and Mr. Vest as the conferees on the part of the Senate.

As soon as the reading of the message was concluded, Mr. Binger Hermann, of Oregon, asked unanimous consent that the Senate amendments to this bill be

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[1] First session Fifty-seventh Congress, Record, p. 6746.

[2] David B. Henderson, of Iowa, Speaker.

[3] Second session Thirty-fifth Congress, Globe, p. 1417.

[4] James L. Orr, of South Carolina, Speaker.

[5] It is quite common for the committee to rise informally for this purpose. (See Record, first session Fifty-first Congress, p. 10350; first session Fifty-fifth Congress, p. 507; and first session Fifty-first Congress, p. 7774. In the latter case conferees also were appointed.)

[6] Second session Forty-sixth Congress, Record, p. 3028.

[7] Samuel J. Randall, of Pennsylvania, Speaker.

[8] First session Fifty-fourth Congress, Record, pp. 5249, 5270, 5532.

nonconcurred in and that the conference asked by the Senate be agreed to. There being no objection, it was so ordered.

Later in the day Mr. William P. Hepburn, of Iowa, made the point of order that this action was not proper and not in accordance with the rules, and proposed a motion to reconsider the action.

On May 21, the Speaker,[1] having had the point of order under consideration, said in connection with a subsequent consideration of the same bill:

> The Chair ought to state, in regard to the question brought up in connection with this matter a few days ago, that so far as the Chair has been able to find there is no objection, in point of parliamentary law, to asking unanimous consent that the action that was taken should be taken under the circumstances.[2] The Chair thought, also, that the question of reconsideration could not be raised, because at the time it was presented the order was partially executed.

4791. On March 31, 1897,[3] while the tariff bill was under consideration in Committee of the Whole House on the state of the Union, the committee rose informally and the Speaker[1] administered the oath to Mr. William H. King, Representative from Utah.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] See also Record, first session Fifty-first Congress, p. 8293; first session Fifty-fourth Congress, pp. 1985, 1986; second session Fifty-fourth Congress, pp. 942, 943, and second session Fifty-fifth Congress, June 27, 1898.

[3] First session Fifty-fifth Congress, Record, p. 547.

Chapter CVIII.

SUBJECTS REQUIRING CONSIDERATION IN COMMITTEE OF THE WHOLE.

1. The rule and its history. Section 4792.
2. Rule applicable to amendments. Sections 4793–4795.
3. Senate amendments. Sections 4796–4808.
4. The charge on the Government must appear with a certain degree of certainty. Sections 4809–4821.
5. General decisions. Sections 4822–4836.
6. Decisions relating to use of public lands. Sections 4837–4845.
7. As to new offices, pensions, trust funds, etc. Sections 4846–4855.
8. Payment on adjudication of claims. Sections 4856–4860.
9. Revenue bills. Section 4861.
10. Expenditures from the contingent and printing funds. Sections 4862–4868.

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,[1] 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.

[1] 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,[1] 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,[2] 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,[3] 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[4] 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,[5] 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,[6] 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.[7]

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,[8] 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.

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[1] First session Twenty-sixth Congress, Globe, pp. 405, 406.

[2] First session Thirty-first Congress, Journal, p. 1216; Globe, p. 1491.

[3] First session Forty-third Congress, Record, pp. 627, 628, 629; Journal, p. 234.

[4] James G. Blaine, of Maine, Speaker.

[5] 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.)

[6] Second session Forty-sixth Congress, Record, p. 206.

[7] First session Fifty-fourth Congress, Record, pp. 586–592.

[8] 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[1] 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.[2] The House decided finally, noes 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,[3] 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,[4] 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[5] 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.[6]

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.

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[1] Andrew Stevenson, of Virginia, Speaker.

[2] In respect to this decision the rule at the present time is the same as then. (See sec. 4792.)

[3] First session Twentieth Congress, Journal, p. 1042.

[4] Second session Twentieth Congress, Debates, p. 351.

[5] Andrew Stevenson, of Virginia, Speaker.

[6] 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 Sayler, 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,[1] the House was considering certain Senate amendments to the legislative, executive, and judicial appropriation bill, one of which was as follows:

For clerks to Senators who are not chairmen of committees, at $6 per day, $39,432.

Mr. J. Warren Keifer, of Ohio, moved to concur in 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,[2] 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

[1] Second session Forty-eighth Congress, Record, pp. 2421–2423.

[2] 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.[1] 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,[2] 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,[3] 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[4] 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 percent. * * * 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

[1] Second session Forty-sixth Congress, Record, p. 203.

[2] Second session Forty-fifth Congress, Journal, p. 485.

[3] Third session Forty-sixth Congress, Record, pp. 2299–2301; Journal, p. 558.

[4] 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,[1] 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[2] held that the rule[3] 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,[4] 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[2] 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,[5] 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,[6] 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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[1] Second session Fifty-fourth Congress, Record, p. 1253.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Rule XX. (See sec. 4796 of this volume.)

[4] First session Fifty-first Congress, Journal, p. 1087; Record, p. 10490.

[5] Second session Fifty-first Congress, Journal, p. 333; Record, pp. 3606–3608.

[6] See section 4796 of this chapter.

After debate on the point of order, the Speaker[1] 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,[2] 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[3] 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,[4] 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[3] 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;

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Fifty-second Congress, Journal, p. 79; Record, pp. 1292, 1293.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] 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,[1] 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[2] overruled the point of order.

4804. On January 19, 1903,[3] 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[4] 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,[5] 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[6] 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

[1] Second session Fifty-first Congress, Journal, p. 234; Record, p. 2506.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Second session Fifty-seventh Congress, Record, p. 965; Journal, p. 137.

[4] John Dalzell, of Pennsylvania, Speaker pro tempore.

[5] First session Fifty-seventh Congress, Record, p. 2186

[6] 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,[1] 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[2] 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,[3] 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.[4]

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[5] 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,[6] 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.

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[1] Third session Fifty-eighth Congress, Record, p. 725.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] First session Forty-eighth Congress, Record, pp. 5981, 5985.

[4] See sections 4792 and 4796 of this chapter.

[5] John G. Carlisle, of Kentucky, Speaker.

[6] 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 [1] 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,[2] Mr. George E. Foss, of Illinois, during the call of committees in the morning hour [3] 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,[4] since it might involve a charge upon the Treasury in the shape of pensions or bounties.

After debate the Speaker [5] 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,[6] 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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[1] John G. Carlisle, of Kentucky, Speaker.

[2] First session, Fifty-sixth Congress, Record, pp. 1657, 1658; Journal, p. 242.

[3] For rule relating to morning hour see section 3118 of this work.

[4] For rule relating to Calendars see section 3115 of this volume.

[5] David B. Henderson, of Iowa, Speaker.

[6] 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.[1] 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[2] 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[3] 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,[4] 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,[5] 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.

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[1] Now section 3 of Rule XXIII. (See sec. 4792 of this work.)

[2] Milton Sayler, of Ohio, Speaker pro tempore.

[3] First session Forty-fourth Congress, Record, pp. 4865–4868.

[4] For this rule as it existed at that time see section 4792 of this volume.

[5] First session Forty-eighth Congress, Journal, pp. 1247, 1248; Record, pp. 4248, 4257.

The Speaker[1] 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,[2] 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[1] 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.[3] 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,[4] 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[5] 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,[6] 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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[1] John G. Carlisle, of Kentucky, Speaker.

[2] First session Forty-ninth Congress, Record, pp. 3808, 3809; Journal, p. 1373.

[3] 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.)

[4] Second session Fifty-fourth Congress, Record, p. 2459.

[5] Thomas B. Reed, of Maine, Speaker.

[6] 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 [1] 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,[2] 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 [3] 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,[4] 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,[5] 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 [1] overruled the point of order.

4817. On February 25, 1897,[6] 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 [1] 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.—

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Fifty-first Congress, Journal, p. 235.

[3] Lewis E. Payson, of Illinois, Speaker pro tempore.

[4] See section 4792.

[5] Second session Fifty-first Congress, Journal, p. 30; Record, p. 180.

[6] Second session Fifty-fourth Congress, Record, p. 2270.

On February 27, 1897,[1] 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[2] 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,[3] 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[4] 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,[5] 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,[2] 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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[1] Second session Fifty-fourth Congress, Record, pp. 2477, 2579, 2580.

[2] Thomas B. Reed, of Maine, Speaker.

[3] First session Fifty-second Congress, Journal, pp. 311, 312.

[4] Charles F. Crisp, of Georgia, Speaker.

[5] Second session Fifty-fifth Congress, Record, p. 1737.

4821. On December 14, 1904,[1] 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[2] 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,[3] 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,[4] 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.

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[1] Third session Fifty-eighth Congress, Record, pp. 285, 286.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] Second session Forty-sixth Congress, Journal, p. 139; Record, p. 191.

[4] First session Forty-seventh Congress, Record, p. 592.

The Speaker[1] 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,[2] 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[3] 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,

[1] J. Warren Keifer, of Ohio, Speaker.

[2] Second session Twenty-second Congress, Journal, p. 139; Debates, pp. 950, 951.

[3] 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,[1] 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[2] 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,[3] 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[4] 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.[5]

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[1] First session Twenty-fourth Congress, Debates, p. 4212.

[2] James K. Poll., of Tennessee, Speaker.

[3] First session Forty-ninth Congress, Journal, p. 2217; Record, p. 7003.

[4] John G. Carlisle, of Kentucky, Speaker.

[5] 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,[1] 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[2] 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 win 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,[3] 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[4] held:

The Chair does not remember any decision bearing upon this point of order except one case where there had been a recommittal 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

[1] Third session Fifty-eighth Congress, Record, p. 165.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] First session Fiftieth Congress, Record, p. 4793; Journal, pp. 2029, 2030.

[4] 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.[1]

4829. On April 9, 1896,[2] 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[3] held:

In the third clause of Rule XXIII[4] 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 fast 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 recommittal 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,[5] Mr. Charles Foster,

[1] First session Fiftieth Congress, Record, p. 4821.

[2] First session Fifty-fourth Congress, Record, p. 3781.

[3] Thomas B. Reed, of Maine, Speaker.

[4] See section 4792 of this chapter.

[5] 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[1] 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.[2]

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,[3] 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.[4] 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[5] 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,[6] 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[7] 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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[1] Samuel J. Randall, of Pennsylvania, Speaker.

[2] 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.

[3] First session Fifty-sixth Congress, Record, pp. 1655, 1656.

[4] As to the calendars, see section 3115 of this volume.

[5] David B. Henderson, of Iowa, Speaker.

[6] Second session Fiftieth Congress, Journal, p. 534; Record, pp. 2021, 2022.

[7] 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,[1] 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[2] 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,[3] 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[4] 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.[5]

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,[6] 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.[7]

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[1] First session Fifty-ninth Congress, Record, p. 4955.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] Third session Thirty-seventh Congress, Journal, p. 319; Globe, p. 700.

[4] Galusha A. Grow, of Pennsylvania, Speaker.

[5] 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.)

[6] Second session Forty-fifth Congress, Journal, pp. 937, 938; Record, pp. 2780, 2781.

[7] For form of this rule at that time see section 4792 of this chapter.

The Speaker[1] 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,[2] 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[3] 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,[4] 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[5] 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

[1] Samuel J. Randall, of Pennsylvania, Speaker.

[2] First session Fiftieth Congress, Journal, p. 721; Record, p. 1063.

[3] John G. Carlisle, of Kentucky, Speaker.

[4] Second session Fifty-fourth Congress, Record, pp. 2215, 2216.

[5] 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,[1] 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[2] 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,[3] 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[4] sustained the point of order under Rule 112,[5] 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,[6] 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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[1] First session Fifty-seventh Congress, Record, p. 2804.

[2] David B. Henderson, of Iowa, Speaker.

[3] Second session Forty-fourth Congress, Journal, p. 293; Record. p. 924.

[4] Samuel J. Randall, of Pennsylvania, Speaker.

[5] Now section 3 of Rule XXIII. (See sec. 4792 of this chapter.)

[6] 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[1] 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,[2] 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[3] sustained the point of order.

4842. On December 5, 1893,[4] 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[3] 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,[5] 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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[1] Thomas B. Reed, of Maine, Speaker.

[2] First session Fifty-second Congress, Journal, p. 237.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] Second session Fifty-third Congress, Journal, p. 15; Record, p. 36.

[5] First session Fifty-first Congress, Journal, p. 830; Record, pp. 5441, 5701.

The Speaker[1] 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,[2] 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[1] 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,[3] 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[1] 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,[4] 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,[5] receive its first consideration in the Committee of the Whole House.

The Speaker[6] 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,[7] the House was about to proceed to the consideration of the bill of

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[1] Thomas B. Reed, of Maine, Speaker.

[2] First session Fifty-first Congress, Journal, p. 948; Record, p. 8483.

[3] First session Fifty-first Congress, Journal, p. 337; Record, pp. 2165, 2166.

[4] Second session Forty-sixth Congress, Journal, p. 217.

[5] See section 4792 of this chapter.

[6] Samuel J. Randall, of Pennsylvania, Speaker.

[7] 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[1] 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[2] 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[3] 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,[4] 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[5] 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[6] 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,[7] 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,[8] Mr. Joseph H. Outhwaite, of Ohio, presented for consideration the bill (H. R. 8059) to amend section 1315 of the Revised Statutes.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Third session Forty-fifth Congress, Journal, p. 484; Record, p. 1722.

[3] Samuel J. Randall, of Pennsylvania, Speaker.

[4] First session Forty-eighth Congress, Journal, p. 1657.

[5] See section 4796 of this chapter.

[6] John G. Carlisle, of Kentucky, Speaker.

[7] See section 4792.

[8] 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 [1] 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,[2] 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 [3] 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,[4] 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 [3] 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,[5] 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 [6] 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,[7] 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

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[1] Alexander M. Dockery, of Missouri, Speaker pro tempore.

[2] First session Fifty-first Congress, Journal, p. 520; Record, p. 3822.

[3] Thomas B. Reed, of Maine, Speaker.

[4] Second session Fifty-first Congress, Journal, p. 107; Record, p. 996.

[5] First session Fifty-third Congress, Journal, p. 127.

[6] Charles F. Crisp, of Georgia, Speaker.

[7] 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[1] 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,[2] 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[3] 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,[4] 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[5] 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)[6] did not apply.

4857. On September 20, 1890,[7] 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.

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[1] Schuyler Colfax, of Indiana, Speaker.

[2] Second session Fifty-third Congress, Journal, p. 467; Record, p. 7140.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] First session Fifty-first Congress, Journal, p. 972; Record, pp. 8881, 8882.

[5] Charles H. Grosvenor, of Ohio, Speaker pro tempore.

[6] See section 4792 of this chapter.

[7] First session Fifty-first Congress, Journal, p. 1104; Record, p. 10690.

The Speaker[1] 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,[2] 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,[3] 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[4] 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,[5] 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 depredations," 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[6] 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."

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Forty-eighth Congress, Journal, p. 260; Record, pp. 696, 697.

[3] 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.

[4] John G. Carlisle, of Kentucky, Speaker.

[5] Third session Fifty-eighth Congress, Record, pp. 282, 283.

[6] 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,[1] 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[2] 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.[3]

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,[4] 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[5] 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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[1] First session Fifty-first Congress, Journal, p. 315.

[2] Thomas B. Reed, of Maine, Speaker.

[3] 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.)

[4] Second session Fifty-sixth Congress, Journal, p. 22; Record, pp. 50–52.

[5] 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.[1]

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,[2] 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[3] sustained the point of order.[4]

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[1] 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. Mannappealed, but, after debate, withdrew the appeal.

[2] Second session Fiftieth Congress, Record, pp. 356, 357.

[3] John G. Carlisle, of Kentucky, Speaker.

[4] 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,[1] 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[2] 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,[3] being propositions "authorizing payments out of appropriations already made."

4864. On March 2, 1893,[4] 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[2] sustained the point of order.

4865. On December 21, 1889,[5] 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[6] overruled the point of order.

4866. On February 5, 1891,[7] Mr. M. M. Boothman, of Ohio, as a privileged question, from the Committee on Accounts, reported a resolution providing for

[1] First session Fifty-second Congress, Journal, p. 345; Record, p. 6945.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] See section 4792 of this chapter.

[4] Second session Fifty-second Congress, Journal, p. 126; Record, p. 2431.

[5] First session Fifty-first Congress, Journal, p. 87; Record, p. 376.

[6] Thomas B. Reed, of Maine, Speaker.

[7] 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 [1] overruled the point of order.

4867. On December 18, 1896,[2] 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 [1] 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,[3] 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 [4] 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.[5]

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Fifty-fourth Congress, Record, p. 271.

[3] First session Forty-seventh Congress, Journal, p. 1728; Record, p. 6481.

[4] Warren Keifer, of Ohio, Speaker.

[5] Second session Forty-sixth Congress, Journal, p. 217, for a decision the other way.

Chapter CIX.

REPORTS FROM THE COMMITTEE OF THE WHOLE.

1. **A series of bills considered in the order reported. Sections 4869, 4870.**
2. **Amendments and their consideration. Sections 4871–4898.**
3. **Amendment in the nature of a substitute. Sections 4899–4905.**
4. **Paragraphs ruled out not reported. Section 4906.**
5. **Irregular reports. Sections 4907–4912.**[1]
6. **As affected by failure of a quorum. Sections 4913, 4914.**
7. **House has no authority over bills in Committee of Whole. Section 4915.**
8. **As to reading of bills reported from. Section 4916.**
9. **Discharge of Committee of Whole. Sections 4917–4922.**

4869. A series of bills reported from the Committee of the Whole should be considered in the House in the order in which they are reported.—On March 2, 1906,[2] the Committee of the Whole House had risen and reported sundry bills, with favorable recommendations.

As the bills were being acted on by the House, Mr. John N. Garner, of Texas, asked if the bills were being acted on in the order in which they passed the Committee of the Whole, and made the demand that such order should be observed.

The Speaker[3] said:

> The Chair is informed that they are not, strictly speaking, and the Chair supposes that, strictly speaking, they ought to be so taken up. * * * The Clerk will proceed with the remainder of the bills and call them in the order in which they were considered and reported. Those that have already passed are beyond the control of the Speaker or of the House, except by unanimous consent. The Clerk will proceed, as stated by the Chair.

4870. On February 8, 1899,[4] the House proceeded to the consideration of a series of bills for the erection of public buildings, reported from the Committee of the Whole House on the state of the Union on the preceding day.

Mr. Eugene F. Loud, of California, rising to a parliamentary inquiry, asked in what order the bills would come before the House.

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[1] Speaker entertains only reports made by the Chairman. (Sec. 6987 of Vol. V.)

[2] First session Fifty-ninth Congress, Record, p. 3303.

[3] Joseph G. Cannon, of Illinois, Speaker.

[4] Third session Fifty-fifth Congress, Record, p. 1628.

The Speaker[1] replied that they would come up in the order in which they were reported, as shown by the Journal, which would not, as he understood, be the order in which they were considered in Committee of the Whole.

Then, by unanimous consent, it was arranged that the bills should be taken up in the order in which they were considered in Committee of the Whole.

4871. All amendments to a bill reported from the Committee of the Whole stand on an equal footing and must be voted on by the House.—On December 15, 1900,[2] the Committee of the Whole House on the state of the Union had risen and had reported with sundry amendments the bill (H. R. 12394) "to amend an act entitled 'An act to provide ways and means to meet war expenditures, and for other purposes.'"

A separate vote being demanded on several amendments, Mr. H. Henry Powers, of Vermont, raised the point that one amendment on which a separate vote had been demanded was in the Committee of the Whole accepted on behalf of the Committee on Ways and Means,[3] and no notice was given that a separate vote would be called for.

The Speaker[4] said:

The gentleman from Vermont makes the parliamentary inquiry if the fact that this amendment was accepted by or agreed to by the Committee on Ways and Means or the chairman in charge of the bill, and that no notice of a separate vote was given in the Committee of the Whole, would not make it out of order to be considered now. The Chair does not know anything about what transpired in the Committee of the Whole House on the state of the Union, except as reported by the Chairman. It is a pending amendment, and in respect to that a separate vote may be demanded.

4872. When a bill is reported from the Committee of the Whole with amendments it is in order to submit additional amendments, but the first question is on the amendments reported.—On May 28, 1846,[5] the civil and diplomatic appropriation bill was reported from the Committee of the Whole House on the state of the Union with amendments. The House proceeded to the consideration of these amendments, when Mr. George W. Jones, of Tennessee, proposed a new amendment. Thereupon Mr. Robert C. Winthrop, of Massachusetts, raised the question of order that a motion to amend the original bill is not in order until the amendments reported from the Committee of the Whole House on the state of the Union shall have been acted on.

The Speaker[6] decided that the proposition to amend the original bill was in order, but that the question must first be taken on the amendments of the committee and then on the amendment proposed to the original bill.[7]

On an appeal the decision of the Chair was sustained.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Fifty-sixth Congress, Record, p. 346.

[3] The acceptance of an amendment by those in charge of a bill on the floor amounts to no more than notice that they do not oppose it. The amendment must be voted on like any other before it is adopted.

[4] David B. Henderson, of Iowa, Speaker.

[5] First session Twenty-ninth Congress, Journal, p. 865; Globe, p. 876.

[6] John W. Davis, of Indiana, Speaker.

[7] Of course, if the previous question is moved at once, amendments by Members are cut off.

4873. On January 18, 1810,[1] the House was considering the amendments reported by the Committee of the Whole House to the bill respecting the commercial intercourse between the United States and Great Britain and France.

Mr. Edward St. L. Livermore, of Massachusetts, moved to amend the bill by striking out the fifth section thereof.

The Speaker[2] decided that the motion was not in order until after the consideration of the amendments reported by the Committee of the Whole House.

Mr. Livermore having taken an appeal, the decision of the Chair was overruled, 65 to 48.

Thereupon the question was put on the amendment proposed by Mr. Livermore.

4874. On February 18, 1833,[3] the House was considering the tariff bill, which had been reported from the Committee of the Whole House on the state of the Union, with amendments.

During consideration of these amendments, and before they had all been disposed of, Mr. Thomas T. Bouldin, of Virginia, proposed to offer an amendment in the nature of a substitute.

The Speaker[4] held that it would not be in order until the amendments were disposed of.

4875. On February 26, 1839,[5] the Journal records that the Committee of the Whole House on the state of the Union rose and reported, with certain amendments, the civil and diplomatic appropriation bill.

The bill being taken up in the House, the following procedure is recorded:

> And then, by unanimous consent, and before acting on the amendments reported from the Committee of the Whole House, the said bill was, on motion of Mr. Chambers, amended.

The amendments reported from the Committee of the Whole House on the state of the Union were then in part concurred in by the House.

4876. On April 17, 1844,[6] the House was considering the bill (H. R. 126) making appropriations for the improvement of certain rivers and harbors, the question being on agreeing to the amendments to the bill reported from the Committee of the Whole House on the state of the Union.

A motion was made by Mr. Andrew Kennedy to amend the bill by striking out all after the enacting clause and inserting the text of a new bill.

Mr. George C. Dromgoole, of Virginia, raised the question of order that, according to the parliamentary practice, an amendment was not in order, except to an amendment of the Committee, until the House had first acted upon the amendments of the Committee.

The Speaker pro tempore[7] decided that, as the amendments proposed by the Committee were embraced in the part proposed to be stricken out, the question would be first put on the amendments of the Committee, under the usual parlia-

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[1] Second session Eleventh Congress, Journal, p. 180 (Gales and Seaton ed.); Annals, p. 1219.

[2] Joseph B. Varnum, of Massachusetts, Speaker.

[3] Second session Twenty-second Congress, Debates, p. 1729.

[4] Andrew Stevenson, of Virginia, Speaker.

[5] Third session Twenty-fifth Congress, Journal, p. 652.

[6] First session Twenty-eighth Congress, Journal, p. 807; Globe, p. 552.

[7] George W. Hopkins, of Virginia, Speaker pro tempore.

mentary practice of perfecting what was proposed to be stricken out. He held that the amendment of Mr. Kennedy was in order, but the question was put first on the Committee amendments.

Mr. Dromgoole having appealed, the decision of the Chair was sustained.

4877. Amendments rejected in Committee of the Whole are not reported to the House.—On May 12, 1880,[1] the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. William J. Samford, of Alabama, moved an amendment reducing the salary of the President of the United States to $25,000 yearly.

The amendment being disagreed to by the Committee of the Whole, Mr. James A. McKenzie, of Kentucky, rising to a parliamentary inquiry, asked if it would be possible to get the yeas and nays in the House on this proposition.

The Chairman[2] said:

Amendments rejected in Committee of the Whole do not go to the House.

4878. The fact that a proposition has been rejected by the Committee of the Whole does not prevent it from being offered as an amendment when the subject comes up in the House.

An instance where the Committee of the Whole reported a new resolution in lieu of the one referred to it.

On January 10, 1878,[3] the Committee of the Whole House on the state of the Union, to whom had been referred a series of two resolutions providing for a general investigation of the Executive Departments of the Government, reported as a substitute[4] an independent resolution relating to the same subject.

On January 11, the substitute resolution being under consideration, Mr. Eugene Hale, of Maine, demanded the previous question. The House refused to second[5] this demand.

Thereupon Mr. Fernando Wood, of New York, moved as an amendment in the nature of a substitute, a series of two resolutions identical with those referred to the Committee of the Whole.

Mr. Hale made the point of order that the amendment was not in order, it being the identical proposition rejected by the Committee of the Whole House on the state of the Union.

The Speaker[6] overruled the point of order, on the ground that the House, having practically rejected the report of the Committee of the Whole by refusing to second the demand for the previous question, left the subject open to debate and amendment.

4879. On February 12, 1902,[7] the previous question had been ordered on the bill (H. R. 9266) relating to oleomargarine and other imitation dairy products,

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[1] Second session Forty-sixth Congress, Record, p. 3291.

[2] S. S. Cox, of New York, Chairman.

[3] Second session Forty-fifth Congress, Journal, pp. 150, 151, 160; Record, pp. 287, 288.

[4] Not as an amendment in the nature of a substitute. In this case the Committee of the Whole assumed the right often exercised by a standing committee of reporting a new measure in place of the one referred to it by the House. Such action by the Committee of the Whole is very rare.

[5] The second of the previous question is no longer required.

[6] Samuel J. Randall, of Pennsylvania, Speaker.

[7] First session Fifty-seventh Congress, Record, p. 1659.

when Mr. James W. Wadsworth, of New York, moved to recommit the bill with instructions to report an amendment in the nature of a substitute.

Mr. James A. Tawney, of Minnesota, rising to a parliamentary inquiry, said:

This proposition was voted on after consideration in Committee of the Whole and was defeated, and this is simply for the purpose of securing another vote on an amendment offered in Committee of the Whole.

The Speaker [1] said:

The House knows nothing about what was done in the Committee of the Whole except as was reported by the Chairman of the Committee. Besides, the point of order would be too late.

4880. On March 11, 1896,[2] the Committee of the Whole House on the state of the Union rose and the Chairman reported that they had had under consideration the Post-Office appropriation bill and reported it favorably with certain amendments.

Thereupon Mr. Jacob H. Bromwell, of Ohio, offered an amendment to strike out these lines of the bill—

For necessary and special facilities on trunk lines from Boston, Mass., by way of New York and Washington, to Atlanta and New Orleans, $196,614.22: *Provided,* That no part of the appropriation made by this paragraph shall be expended unless the Postmaster-General shall deem such expenditure necessary in order to promote the interest of the postal service.

Mr. Charles F. Crisp, of Georgia, made the point of order that the express question raised by the amendment was voted on by the Committee of the Whole.

The Speaker [3] said:

The Chair can not know about that. * * * The question is on the amendment of the gentleman from Ohio.

4881. Amendments reported from the Committee of the Whole should be voted on in the order in which they are reported although they may be inconsistent one with another.—On February 1, 1894 [4] the House was considering the amendments reported from the Committee of the Whole on the bill (H. R. 4864) to reduce taxation, to provide revenue for the Government, and for other purposes.

Among these amendments were two which were reported as separate amendments, because they were adopted at different times, but one of which was in reality an amendment to the other.

The first one was to the wool schedule, as follows:

Amend paragraph 686 by adding at the end of the paragraph the words "*Provided,* That this paragraph shall take effect immediately upon the passage of this act."

The second, adopted after the first had been agreed to, was:

In paragraph 686, amend by striking out all after the words "take effect," and insert the words "on or after August 2, 1894."

When the question came on the first amendment, Mr. Clifton R. Breckinridge, of Arkansas, made the point that the amendment was not before the House, for the

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[1] David B. Henderson, of Iowa, Speaker.

[2] First session Fifty-fourth Congress, Record, p. 2710.

[3] Thomas B. Reed, of Maine, Speaker.

[4] Second session Fifty-third Congress, Journal, p. 129; Record, pp. 1794, 1795.

reason that the Committee of the Whole, by a subsequent amendment, had, in effect, amended the aforesaid amendment, and that the only question thereon was upon the subsequent amendment of the Committee of the Whole.

The Speaker[1] held that the amendments must be voted on in the order in which they were reported from the Committee of the Whole, regardless of any irregularity of the proceedings thereon or of any inconsistency between such amendments:

It seems from the reading that the committee first adopted an amendment providing that the bill should take effect immediately as to wool, and that subsequently an amendment was offered to that amendment and agreed to, which struck out all of it except the words "shall take effect," and inserted another date as the time at which the bill should go into operation. * * * The trouble that the Chair finds arises from the fact that it has never been the custom or the rule that the Committee of the Whole should reconsider its action, therefore its action takes the form of a subsequent amendment to the first amendment, which accomplishes the same purpose as reconsideration, and yet gives effect and force to the change of mind in the committee on the question. * * *

It seems to the Chair that every amendment which has been agreed to by the committee must be reported from the committee to the House, and that it is in the power of any Member of the House to have a separate vote on any amendments so reported. In the case before the House, it seem that there was an amendment offered by the gentleman from Ohio, and agreed to, which fixes a given time for the tariff on the woolen schedule to go into effect, and subsequently that amendment was amended so as to strike out that part of it which fixed the time and fixed another time. Now, it seems that the two reports from the Committee of the Whole on the question of the time when the bill should go into operation are inconsistent one with the other. One report is that it shall immediately take effect, and the other is that it shall take effect at another time, so that it seems to the Chair that perhaps the best solution of the question would be for the House to vote upon what it called the last amendment, the amendment to amend the first amendment that fixes the time. If that should be agreed to by the House, that would dispose of the question; if it should not, then the other amendment could be voted upon.

4882. On July 16, 1842,[2] the House considered the bill (H. R. 472) to provide revenue from imports, etc., which has been reported from the Committee of the Whole House on the state of the Union with a series of amendments. These amendments were taken up in order and acted on.

4883. A proposition reported from the Committee of the Whole as an entire and distinct amendment may not be divided, but must be voted on in the House as a whole.—On June 8, 1844,[3] the House was considering the bill (H. R. 22) to amend and continue in force the act to incorporate the inhabitants of the city of Washington, which had been reported from the Committee of the Whole House on the state of the Union with an amendment striking out all after the enacting clause and inserting a new bill.

Mr. Cave Johnson, of Tennessee, requested a division of the amendment, so as to take the question, first on all thereof except the twenty-sixth section, and then on that section alone.

The Speaker[4] decided that at this stage of the bill the amendment was not divisible, it having been adopted in committee and reported to the House as one entire amendment to strike out and insert.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] Second session Twenty-seventh Congress, Journal, pp. 1081–1106; Globe, p. 761.

[3] First session Twenty-eighth Congress, Journal, p. 1061; Globe, p. 653.

[4] John W. Jones, of Virginia, Speaker.

On an appeal the decision of the Chair was sustained.[1]

4884. On February 9, 1846,[2] the Committee of the Whole House on the state of the Union reported with an amendment the joint resolution (H. J. Res. 5) of notice to Great Britain to "annul and abrogate" the convention between Great Britain and the United States of the 6th of August, 1827, relative to the country "on the northwest coast of America, westward of the Stony Mountains," commonly called Oregon.

The House proceeded to the consideration of the resolution, the question being on agreeing to the amendment reported from the Committee of the Whole House on the state of the Union.

This amendment was a substitute of two sections, the first to give notice of the annulment of the convention between the United States and Great Britain, and the second declaring that nothing herein was intended as interfering with the right and discretion of the proper authorities of the two contracting parties to renew negotiations for an amicable settlement.

A division of the question was demanded by Mr. Allen G. Thurman, of Ohio, so as to take the question on each branch of the resolution separately.

The Speaker stated that, in conformity with the usual practice of the House, the amendment was divisible, and was about proceeding to put the question on striking out the original resolution and inserting the first branch of the amendment, when

Mr. Linn Boyd, of Kentucky, raised the question of order that, as the amendment was reported from the Committee of the Whole House as an entire and distinct proposition, it could not be divided.

The Speaker[3] decided against the point of order raised by Mr. Boyd, but on appeal the House reversed the decision of the Chair.

On April 7, 1846[4] the House was considering a bill (H. Res. 46) to provide for the construction of the Cumberland road in the States of Ohio, Indiana, and Illinois, which had been reported by the Committee of the Whole House on the state of the Union with an amendment of six new sections.

Mr. James Graham, of North Carolina, called for a division of the amendment, so as to take the question separately on portions of the amendment proposed to be inserted in lieu of the original bill.

The Speaker[3] decided that, in conformity with the decision of the House made on the 9th day of February last, on the Oregon question, wherein the decision of the Speaker, in a similar case, that the part to be inserted was divisible was overruled and reversed by the House, the division asked for by Mr. Graham was not in order.

From this decision an appeal was taken. The appeal was laid on the table; so the Chair was sustained.

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[1] Before this, on February 24, 1841 (second session Twenty-sixth Congress, Journal, p. 311; Globe, p. 205), this principle was invoked and apparently recognized, although Mr. Speaker Hunter admitted a division of the amendment, there being doubt as to whether or not it had been adopted by the Committee of the Whole as an entire and distinct proposition.

[2] First session Twenty-ninth Congress, Journal, pp. 366, 642; Globe, pp. 348, 349.

[3] John W. Davis, of Indiana, Speaker.

[4] First session Twenty-ninth Congress, Journal, p. 641; Globe, p. 622.

4885. On July 18, 1848,[1] the Committee of the Whole House on the state of the Union rose and the chairman reported the civil and diplomatic appropriation bill with amendments. The House proceeded to the consideration of these amendments, among them being the following:

Insert between the thirty-sixth and thirty-seventh lines of the printed bill the following:

"For the purchase of the unpublished papers of Thomas Jefferson, late President of the United States, twenty thousand dollars; and for the purchase of the manuscript papers of the late Alexander Hamilton, twenty thousand dollars."

Mr. Howell Cobb, of Georgia, called for a division of the question upon the amendment.

The Speaker[2] decided that the clause having been reported from the Committee of the Whole House on the state of the Union, as a whole, it could not be divided.

From this decision Mr. Cobb appealed. The decision of the Chair was sustained.

4886. The House, on March 1, 1849[3] proceeded to the consideration of the Senate amendments to the Indian appropriation bill, which had been considered in Committee of the Whole House on the state of the Union and reported therefrom.

The tenth amendment of the Senate related to an appropriation for carrying into effect the provisions of a treaty with the Cherokees. To this Senate amendment the Committee of the Whole House on the state of the Union recommended a single amendment in form, providing, however, not only for carrying into effect the provisions of the treaty with the Cherokees, but also providing for the issue of Treasury notes to meet the expenses of the appropriation for the payment to the Cherokees and also the expenses of two installments called for by the treaty with Mexico.

The question being upon agreeing to this amendment to the tenth amendment of the Senate, Mr. Richard Brodhead, of Pennsylvania, asked for a division of the question so as to take a separate vote upon each subject of the amendment, the Cherokee treaty and the provision for Treasury notes.

The Speaker[2] stated that the question was not divisible.

On an appeal, the decision was sustained.

4887. On January 13, 1862,[4] the House resumed, as the regular order of business, the consideration of the bill of the House (H. R. 154) making appropriations for sundry civil expenses of the Government for the year ending June 30, 1863, and additional appropriations for the year ending June 30, 1862, reported on Friday last from the Committee of the Whole House on the state of the Union with sundry amendments, the pending question when the House adjourned on that day being on agreeing to the amendments.

The fifteenth amendment having been read, as follows:

Add at the end of the first section:

"Provided, That the appropriation of $178,000 for Atlantic and Gulf survey, $100,000 for western coast survey, and $11,000 for Florida reefs and keys, shall not be expended, nor any part thereof, while

[1] First session Thirtieth Congress, Journal, p. 1059; Globe, p. 948.

[2] Robert C. Winthrop, of Massachusetts, Speaker.

[3] Second session Thirtieth Congress, Journal, p. 574; Globe, p. 642.

[4] Second session Thirty-seventh Congress, Journal, p. 170; Globe, p. 305.

the present insurrection exists: *Provided further,* That such portion of the Coast Survey appropriation as shall be deemed by the President important to the prosecution of the blockade and suppression of the rebellion, or for any other purpose, shall not be suspended.

Mr. Francis P. Blair, jr., of Missouri, demanded a division of the question.

The Speaker[1] decided that no division was in order, the same having been reported as one amendment.

From this decision of the Chair Mr. Blair 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.

The record of debate shows that Mr. Blair contended that the two provisos of the amendment were adopted at different times and to different sections.

The Speaker decided, however, that even though this might be so, the amendment was reported by the committee as a single amendment and could not be divided in the House.

4888. On March 19, 1880,[2] the House was considering amendments made to the deficiency appropriation bill by the Committee of the Whole House on the state of the Union, when this amendment was reached:

For special deputy marshals of elections, the sum of $7,600: *Provided,* That hereafter special deputy marshals of elections for performing any duties in reference to any election shall receive the sum of $5 per day in full for their compensation, and that the appointments of such special deputy marshals shall be made by the judge of the circuit court of the United States for the district in which such marshals are to perform their duties or by the district judge in the absence of the circuit judge, such special deputies to be appointed in equal numbers from the different political parties; and the persons so appointed shall be persons of good moral character and shall be well-known residents of the voting precinct in which their duties are to be performed.

Mr. Frank Hiscock, of New York, demanded a division of the question on agreeing to the amendment.

The Speaker[3] held, in accordance with the uniform practice of the House, based upon decisions of former Speakers and sustained by the House on appeal, that an amendment reported from the Committee of the Whole House as an entire amendment was not divisible.

Mr. Omar D. Conger, of Michigan, having appealed, the appeal was laid on the table, 167 yeas to 49 nays.

4889. On January 21, 1891,[4] the House was considering amendments of the Committee of the Whole House on the state of the Union to the District of Columbia appropriation bill.

The question was on agreeing to the following amendment:

Provided further, That the sum total of the accounts so allowed shall not exceed in amount $20,000, and that the Commissioners of the District of Columbia shall report to the next Congress the amounts so allowed and to whom.

Mr. William M. Springer, of Illinois, demanded a division of the said-named amendment.

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[1] Galusha A. Grow, of Pennsylvania, Speaker.

[2] Second session Forty-sixth Congress, Journal, p. 816; Record, pp. 1713–1715.

[3] Samuel J. Randall, of Pennsylvania, Speaker.

[4] Second session Fifty-first Congress, Journal, p. 167.

The Speaker[1] ruled that an amendment reported from the Committee of the Whole was not divisible.

4890. On February 1, 1894[2] the House was considering the tariff bill, the question being on the amendment reported from the Committee of the Whole relating to internal revenue.

Mr. W. Bourke Cockran, of New York, demanded that the question be divided so as to enable the House to vote separately on so much thereof as provided for a tax on incomes. Objection being made, the Speaker[3] held that under the practice of the House it was not in order to demand a division of the question on an amendment reported from the Committee of the Whole as a single amendment.

4891. On June 22, 1894,[4] the Committee of the Whole House on the state of the Union rose and the Chairman reported favorably with amendments the antioption bill (H. R. 7007).

Mr. William P. Hatch, of Missouri, demanded a division of an amendment providing that the terms of the act should not apply to contracts entered into by the actual owners of the articles sold. A portion of this amendment had been offered by Mr. Nicholas N. Cox, of Tennessee, and to it a second portion had been added as an amendment to the amendment by Mr. Charles J. Boatner, of Louisiana. Mr. Hatch demanded a division, so that the portion offered by each of these two gentlemen might be voted on separately.

The Speaker pro tempore[5] held that under the practice of the House of long standing it was not in order to demand a division of the question on an amendment reported from the Committee of the Whole as a single amendment, notwithstanding such amendment included distinct and independent propositions.

4892. On February 4, 1895,[6] the bill (H. R. 8705) to authorize the Secretary of the Treasury to issue bonds to maintain a sufficient gold reserve, etc., was reported from the Committee of the Whole House on the state of the Union with amendments.

The question being on this amendment:

> And in lieu of all existing taxes every association shall pay to the Treasury of the United States in the months of January and July a duty of one-eighth of 1 per cent each half year upon the average amount of the notes issued to it by the Comptroller of the Currency. And banks with a capital of not less than $20,000 may, with the approval of the Secretary of the Treasury, be organized in any place the population of which does not exceed 6,000 inhabitants.

Mr. William J. Bryan, of Nebraska, demanded that the question be divided, so as to permit the House to vote separately on each of the two propositions therein contained.

The Speaker[3] held that the amendment having been reported from the committee as an entire amendment it was not in order to demand that it be divided.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Fifty-third Congress, Journal, p. 130; Record, p. 1795.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] Second session Fifty-third Congress, Journal, p. 445; Record, pp. 6736, 6737.

[5] Joseph W. Bailey, of Texas, Speaker pro tempore.

[6] Third session Fifty-third Congress, Journal, pp. 105, 110, 111, 114.

4893. It is a frequent practice for the House, by unanimous consent, to act at once on all the amendments to a bill reported from the Committee of the Whole, but it is the right of any Member to demand a separate vote on any amendment.—On February 2, 1898,[1] the Committee of the Whole rose and the Chairman reported that the Committee of the Whole House on the state of the Union had had under consideration the bill (H. R. 6897) making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1899, and for other purposes, and had directed him to report the same back with amendments, and with the recommendation that the bill as amended be passed.

The Speaker having, in the usual form, stated to the House the report of the Chairman, Mr. William W. Grout, of Vermont, asked for a separate vote upon the amendment striking out the provision for the bridge across Rock Creek Park.

Mr. William P. Hepburn, of Iowa, thereupon made this parliamentary inquiry:

> The gentleman from Vermont [Mr. Grout] moved that the committee rise and report the bill with amendments to the House with a favorable recommendation. Is it now competent for him to make this motion for a separate vote upon this amendment? The amendments all came in on his motion.

The Speaker[2] said:

> The Chair can not know on whose motion it was done. Even if he did, every Member of the House has a right to call for a separate vote upon any amendment. Is there a separate vote asked for upon any other amendment?[3]

4894. On February 23, 1855,[4] when the civil and diplomatic appropriation bill was reported with amendments from the Committee of the Whole, and came before the House for action, Mr. Speaker Boyd said:

> For convenience sake, and to facilitate the action of the House upon the bill, it is usual to vote upon such amendments as are not objected to in gross. The amendments therefore will be read, and as to such amendments as any gentleman on the floor may desire a separate vote upon, he will so declare when it is read from the Clerk's desk, and it will be reserved for such separate vote.

4895. The right to debate and amend a bill reported from the Committee, of the Whole depends upon the will of the House.—On July 20, 1841,[5] the Committee of the Whole House on the state of the Union rose and reported the fortifications appropriation bill with amendments. The question being on the amendments, and the previous question having been demanded, Mr. James W. Williams, of Maryland, submitted the following as a question of order:

> That, by the one hundred and ninth rule of the House, "every bill shall receive three several readings in the House;"

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[1] Second session Fifty-fifth Congress, Record, p. 1363.

[2] Thomas B. Reed, of Maine, Speaker.

[3] It is usual to put the question first on the amendments on which no separate vote is asked. These are voted on together. Then the separate votes are taken, as requested. But it has always been in order to have a separate vote on amendments reported from the Committee of the Whole. Thus see an instance in the case of the bill (H. R. 439) to organize a Territorial government in the Oregon Territory, considered by the House February 3, 1845. (Second session Twenty-eighth Congress, Journal, p. 318.)

[4] Second session Thirty-third Congress, Globe, p. 914.

[5] First session Twenty-seventh Congress, Journal, pp. 260, 342 Globe, pp. 233, 313.

That, by the one hundred and nineteenth rule, "after report (from the committee) the bill shall again be subject to be debated and amended by clauses, before a question to engross it be taken;[1]

That, by the one hundred and nineteenth rule, "after report (from the committee) the bill shall again be subject to be debated and amended by clauses, before a question to engross it be taken;"

That, by the one hundred and twenty-ninth rule, the rules of practice comprised in Jefferson's Manual "shall govern the House in all cases in which they are applicable and not inconsistent with the standing rules and orders of the House;"

That, in the Manual, it is stated that "when through the amendments of the committee, the Speaker pauses, and gives time for amendments to the body of the bill, as he does, also, if it has been reported without amendments, putting no question but on amendments proposed; and, when through the whole, he puts the question whether the bill shall be read a third time;"

That, according to the Manual, "the Speaker reads it by paragraphs, pausing between each, but putting no question but on amendments proposed; and, when through the whole, he puts the question whether it shall be engrossed and read a third time."

Mr. Williams contended that this rule of practice, as laid down in the Manual was not inconsistent with the rules and standing orders of the House, and therefore could not be dispensed with or suspended unless by a vote of two-thirds of the Members present.

The Speaker[2] decided the question against the position assumed by Mr. Williams.

Mr. Williams having appealed, the decision of the Chair was sustained.

Again, on August 9, Mr. Williams raised the same point of order, and again the Speaker overruled it, being sustained by the House.

4896. The recommendation of the Committee of the Whole being before the House, the motion is considered as pending without being offered from the floor.—On December 23, 1851[3] the Committee of the Whole House on the state of the Union rose and reported a joint resolution (No. 1) in relation to bounty land warrants, with the recommendation that it be referred to the Committee on the Judiciary.

No motion having been made to carry out the recommendation of the Committee of the Whole, Mr. William H. Bissell, of Illinois, made the point of order that the question could not come before the House except by a motion.

The Speaker[4] said:

The Chair decides that the recommendation of the Committee of the Whole is now before the House, and the question pending therefore is to refer the bill to the Committee on the Judiciary.

4897. There is a question as to whether or not the recommendation of the Committee of the Whole that a bill do lie on the table may be accepted in the House as a pending motion.

When a bill is reported from the Committee of the Whole with an adverse recommendation, an opponent of it is recognized to make a motion as to its disposition.

On January 22, 1897,[5] the House had under consideration a bill (S. 90) for the relief of William P. Buckmaster, reported from the Committee of the Whole House with the recommendation that it do lie upon the table.

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[1] This rule was long ago rescinded.

[2] John White, of Kentucky, Speaker.

[3] First session Thirty-second Congress, Globe, p. 148.

[4] Linn Boyd, of Kentucky, Speaker.

[5] Second session Fifty-fourth Congress, Record, p. 1069.

A question arising as to time for debate on the bill, the Speaker[1] said:

The Chair does not know that a report of the Committee of the Whole House that the bill do lie on the table is itself a motion to lay upon the table. It may be a question of whether the chairman of the committee should not carry out the direction of the committee by making the motion to lay upon the table.

After some discussion the motion to lay the bill on the table was made by Mr. Joseph G. Cannon, of Illinois, who was recognized as an opponent of the bill in Committee of the Whole to make the motion.

4898. If a Committee of the Whole amend a paragraph and subsequently strike out the paragraph as amended, the first amendment falls and is not reported to the House or voted on.

The old form of report from the Committee of the Whole House on the state of the Union.

Modern forms and ceremony of the report by the Chairman of the Committee of the Whole and the reception thereof by the Speaker. (Footnote.)

On February 25, 1851,[2] the Committee of the Whole House on the state of the Union rose and its Chairman[3] reported that the committee having, according to order, had the state of the Union generally[4] under consideration, and particularly the bill of the House (H. R. 461) "making appropriations for the civil and diplomatic expenses of the Government for the year ending June 30, 1852, and for other purposes," had directed him to report the same with sundry amendments.[5]

The Speaker stated the question to be on agreeing to the amendments.

An amendment striking out a paragraph of the bill providing for a survey of the public lands having been reached, and the Speaker having stated the question to be upon agreeing thereto, Mr. George W. Jones, of Tennessee, made the point of order, that, inasmuch as the committee had struck out the said paragraph upon two separate and distinct motions, it should have been reported as two amendments, and the question should be taken in the House upon each, as in the committee.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] Second session Thirty-first Congress, Journal, p. 346; Globe, p. 679.

[3] Armistead Burt, of South Carolina, Chairman.

[4] This is the old form of report. The phrase relating to the state of the Union generally is no longer included in the form.

[5] In the present practice a chairman of the Committee of the Whole takes his place in the area in front of the Clerk's desk as soon as the Speaker takes the chair, and reports in form as follows:

"Mr. Speaker, the Committee of the Whole House [or Whole House on the state of the Union, as the case may be] have had under consideration the bill [giving number and title] and have directed me to report the same with amendments, with the recommendation that the amendments be agreed to and that the bill do pass."

If there are no amendments the Chairman shortens the report in that particular.

If the Committee of the Whole has recommended that the bill do not pass, or be laid on the table, etc., the Chairman modifies his report to conform to the fact.

As soon as the Chairman has reported to the Speaker the latter repeats the report to the House, beginning:

"The gentleman from ———, Chairman of the Committee of the Whole House [or Whole House on the state of the Union] reports that that committee have had under consideration," etc.

The Speaker[1] overruled the point of order, and stated that, notwithstanding the committee had first amended the paragraph by striking out the proviso, the fact of their afterwards striking, out the rest of the paragraph must necessarily bring the House to vote upon the question of striking out the whole. The second vote was to strike out the paragraph as amended; and, under the uniform practice of the House, the amendments previously adopted thereby fell.

From this decision of the Chair Mr. Robert Toombs, of Georgia, 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 104, nays 71.

4899. A Committee of the Whole, like any other committee, may adopt and report an amendment in the nature of a substitute.—The Committee of the Whole, like any other committee, may report to the House an amendment striking out all after the enacting clause and inserting a new text. Thus, on April 29, 1846,[2] this was done with the bill for establishing the Smithsonian Institution.

4900. An amendment in the nature of a substitute is reported from the Committee of the Whole in its perfected form, amendments to the substitute not being noted in the report.

An amendment reported from the Committee of the Whole may not be withdrawn, and a question as to its validity is not considered by the Speaker.

On March 1, 1907[3] the Committee of the Whole House on the state of the Union arose and reported the merchant marine bill (S. 529) with an amendment in the nature of a substitute and a pending amendment thereto.[4]

Mr. James E. Watson, of Indiana, rising to a parliamentary inquiry, asked if a separate vote might be demanded on certain amendments which the Committee of the Whole had adopted to perfect the substitute.

The Speaker[5] said:

The Chair reads from the Manual:

"An amendment in the nature of a substitute is reported from the Committee of the Whole in its perfected form, amendments to the substitute not being noted in the report."

Not being noted, the Chair has no knowledge of them.

Thereupon Mr. Joseph W. Fordney, of Michigan, who had offered in Committee of the Whole the amendment which was reported as pending, asked if he might withdraw it.

The Speaker said:

The Committee of the Whole House has reported it to the House and the gentleman has no more control over it than any other Member.

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[1] Howell Cobb, of Georgia, Speaker.

[2] First session Twenty-ninth Congress, Journal, p. 732; Globe, p. 749.

[3] Second session Fifty-ninth Congress, Record, pp. 4371, 4372.

[4] The bill and substitute with pending amendment were reported in accordance with the provisions of a special order. Ordinarily a pending amendment would be disposed of in committee before a report could be made.

[5] Joseph G. Cannon, of Illinois, Speaker.

Thereupon Mr. Watson made the point of order that in fact Mr. Fordney had never actually offered the amendment reported as pending, but that it had merely been read in Committee of the Whole for information.

The Speaker said:

The Chair must depend upon the report made by the Chairman of the Committee of the Whole House, and this amendment is reported as a pending amendment.

4901. On January 17, 1903,[1] the Committee of the Whole House on the state of the Union rose, and its chairman[2] reported that that committee had had under consideration the bill (S. 569) to establish the department of commerce and labor, and had directed him to report the same back with an amendment in the nature of a substitute, with the recommendation that the substitute be agreed to, and that the bill as amended do pass.

Mr. William C. Adamson, of Georgia, rising to a parliamentary inquiry, asked if a separate vote might be asked on certain amendments which the Committee of the Whole had incorporated in the substitute amendment.

The Speaker pro tempore[3] said:

The Chair will state to the gentleman from Georgia that there are no amendments upon which separate votes could be had. The report of the Chairman of the Committee of the Whole House was upon an amendment in the nature of a substitute which had been perfected. * * * The Chair will state the parliamentary situation: The Senate passed a bill (S. 569) to establish a department of commerce and labor and sent it to the House. The House sent the bill to its Committee on Interstate and Foreign Commerce. That committee reported the bill to the House, striking out all after the enacting clause, and offering one single amendment by way of a substitute. The Committee of the Whole, in the consideration of that amendment by way of substitute, perfected it by various amendments, but of those amendments the House knows nothing. The House knows nothing except what it has learned from the report of the Chairman of the Committee of the Whole, and he reported that the Committee of the Whole had agreed upon an amendment in the nature of a substitute to the Senate bill.

4902. On April 6, 1900,[4] the House was considering in Committee of the Whole House on the state of the Union, the bill (S. 222) to provide a government for the Territory of Hawaii, with an amendment reported from the Committee on Territories to strike out all after the enacting clause and insert a new text.

The text of the substitute having been read through by paragraphs and amended the question recurred on agreeing to the substitute as amended.

Mr. Charles L. Bartlett, of Georgia, rising to a parliamentary inquiry, asked if the adoption of the substitute would prevent a separate vote in the House on each of the amendments to the substitute agreed upon in the Committee of the Whole.

The Chairman[5] said:

The question will arise in the House and there be disposed of. * * * The Chair has no authority to express an opinion upon what will arise in the House.

The substitute having been agreed to, the Committee of the Whole voted to rise and report the bill and amendment to the House.

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[1] Second session Fifty-seventh Congress, Record, pp. 924, 925.

[2] George P. Lawrence, of Massachusetts, Chairman.

[3] John Dalzell, of Pennsylvania, Speaker pro tempore.

[4] First session Fifty-sixth Congress, Record, pp. 3865, 3866.

[5] William H. Moody, of Massachusetts, Chairman.

Thereupon the committee rose and the chairman reported that the committee had had under consideration the bill S. 222, and had directed him to report the same with an amendment in the nature of a substitute, with the recommendation that the bill as thus amended do pass.

The question was then taken on agreeing to the substitute, no report having been made as to the amendments to this substitute, and a separate vote on them being therefore impossible.

4903. On December 6, 1900,[1] the bill (S. 4300) "an act increasing the efficiency of the military establishment of the United States" was under consideration in Committee of the Whole House on the state of the Union. This bill had been reported from the House Committee on Military Affairs with an amendment striking out all after the enacting clause and inserting a new text. The new text of this substitute amendment was under consideration by sections, and Mr. Charles E. Littlefield, of Maine, as an amendment to the amendment, offered the following, which was agreed to:

The sale of or dealing in beer, wine, or intoxicating liquors by any person in any post, exchange, or canteen, or army transport, or upon any premises used for military purposes by the United States, is hereby prohibited. The Secretary of War is hereby directed to carry the provisions of this section into full force and effect.

The new text having been gone through for amendment, the question recurred on agreeing to the substitute as amended, and it was agreed to.

The committee having risen, the Speaker resumed the chair, and Mr. Dalzell reported that the Committee of the Whole House on the state of the Union, having had under consideration the bill S. 4300, a bill to increase the efficiency of the military establishment of the United States, had instructed him to report the same to the House with an amendment in the nature of a substitute and with the recommendation that as so amended the bill do pass.

The bill being before the House, Mr. John F. Fitzgerald, of Massachusetts, as a parliamentary inquiry, raised the question as to whether or not it would be in order to have a separate vote on the amendment to the substitute adopted in Committee of the Whole on motion of Mr. Littlefield.

The Speaker[2] said:

It is not, the Chair will state, because that question is not before the House in a separate form, not being reported as a separate amendment, as the Chair understands it, from the Committee of the Whole. * * * The Chair understands from the report of the chairman of the committee that no separate amendment was reported to the House, but that a substitute was presented for its action. * * * The Chair will state to the gentleman that the House can only vote upon the perfected amendment which has been reported from the Committee of the Whole—that is, the substitute for the Senate bill as amended.

4904. The practice of reporting Committee of the Whole amendments only in their perfected forms had its origin in an old rule.—It was an old rule[3] of the House that "all amendments made to an original motion in committee shall be incorporated with the motion and so reported."

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[1] Second session Fifty-sixth Congress, Record, pp. 112–122.

[2] David B. Henderson, of Iowa, Speaker.

[3] Rule 76, First session Nineteenth Congress, Journal, p.789.

4905. The Committee of the Whole having reported two amendments as distinct, the one from the other, the Speaker held that they should be considered independently although apparently one was a proviso attaching to the other.—On July 19, 1876,[1] the Committee of the Whole House on the state of the Union rose and the chairman reported that the committee, having had under consideration the joint resolution of the House (H. Res. 96) to provide for the protection of the Texas frontier on the lower Rio Grande, had directed him to report the same with sundry amendments.

The House having proceeded to its consideration, the question was taken on this amendment:

Add to the first section the following words: "And the measuress herein directed shall be carried out without any restrictions or limitations in the laws in regard to the Amy notwithstanding."

The said amendment was agreed to.

The question then being on the adoption of the following amendment:

Add at the end of the first section the following proviso: *"Provided*, That no part of the troops provided for by this resolution shall be taken from any State or service where troops may now or hereafter be stationed, if in the judgment of the President the public service requires a continuance of troops in such localities."

Mr. William S. Holman, of Indiana, made the point of order that the amendment to which the aforesaid proviso was attached having been disagreed to, the proviso was also disagreed to.

The Speaker pro tempore[2] overruled the point of order, holding that the proviso attached to the section and not to the amendment thereto.

The record of debate quotes the Chair as saying:

The Chair is informed by the Clerk that the amendment, and what is apparently a proviso to it, were entertained in the Committee of the Whole as entirely different propositions.

4906. Paragraphs ruled out in Committee of the Whole on points of order are not reported to the House.—On May 2, 1906,[3] the Military Academy appropriation bill was considered in Committee of the Whole House on the state of the Union, and no amendments were made thereto; but one paragraph was ruled out on a point of order.

When the committee rose, the Chairman[4] reported the bill with the recommendation that it be passed; but made no mention of the paragraph stricken out.

The bill coming up for action in the House, Mr. Oscar W. Underwood, of Alabama, suggested that a paragraph had gone out on a point of order.

The Speaker[5] said:

Paragraphs that go out on points of order are not reported. The question is on the engrossment and third reading of the bill.

4907. A Committee of the Whole may not report a recommendation which, if carried into effect, would change a rule of the House.

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[1] First session Forty-fourth Congress, Journal, p. 1297; Record, p. 4746.

[2] Milton Saylor, of Ohio, Speaker pro tempore.

[3] First session Fifty-ninth Congress, Record, p. 6295.

[4] John F. Lacey, of Iowa, Chairman.

[5] Joseph G. Cannon, of Illinois, Speaker.

Where a Committee of the Whole reported a recommendation which was ruled out as in excess of its powers, it was held that the accompanying bill stood recommitted to the Committee of the Whole.

On April 18, 1890,[1] the Committee of the Whole House rose, and the Chairman reported that the committee, having had under consideration the bill of the House (H. R. 7616) for the allowance of certain claims for stores and supplies taken and used by the United States Army, as reported by the Court of Claims under the provisions of the act of March 3, 1883, known as the Bowman Act, had directed him to report the same back with the following recommendation, viz:

Resolved, That House bill 7616 be reported back to the House with the recommendation that the same be recommitted to the Committee on War Claims with instructions to consider the evidence obtainable as to the loyalty of each of the claimants and as to the justice of each of the claims, and to report the bill and amendments back for consideration within two weeks, including also claims of a similar character in which favorable findings of the Court of Claims have been sent to the House of Representatives since the bill was reported by the committee, and when so reported back said bill shall be placed at the head of the Private Calendar, and shall be considered on the next private-bill day, and until disposed of, a separate vote to be taken when demanded on each separate claim, the said claims to be reported back in this bill and amendments in the order in which they were reported to Congress by the Court of Claims.

The same having been read, Mr. Charles H. Grosvenor, of Ohio, made the point of order that the resolution was not in order, for the reason that its effect was to change a standing rule of the House; also, the further point of order that the Committee of the Whole could not originate and report a resolution fixing the order in which the House should vote upon the several provisions of the bill.

Mr. Joseph G. Cannon, of Illinois, made the additional point of order that the said resolution was a recommendation for the adoption of a rule, and that under clause 51 of Rule XI[2] it should go to the Committee on Rules.

After debate on the question of order,

The Speaker[3] sustained the points of order raised and held the resolution out of order; and in reply to a parliamentary inquiry by Mr. W. C. P. Breckinridge, of Kentucky, held that the bill stood recommitted to the Committee of the Whole House.

4908. On February 4, 1896,[4] the Committee of the Whole House on the state of the Union had concluded the consideration of the District of Columbia appropriation bill, and Mr. William P. Hepburn, of Iowa, moved that the committee rise and report the bill to the House, with the recommendation that it be recommitted to the Committee on Appropriations with instructions to strike out all paragraphs making appropriations to purely private charitable institutions and objects, and to insert a provision appropriating an amount equal to the sum of the appropriations striken out to be expended under the direction of the Board of Children's Guardians.

Mr. Joseph G. Cannon, of Illinois, suggested the point of order that the motion was broad enough to authorize legislation on a general appropriation bill.

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[1] First session Fifty-first Congress, Journal, p. 495; Record, p. 3504.

[2] Now section 53 of Rule XI. (See sec. 4321 of this volume.)

[3] Thomas B. Reed, of Maine, Speaker.

[4] First session Fifty-fourth Congress, Record, p. 1310.

The Chairman[1] said:

The Chair is ready to rule upon the question. The Chair reads from the Digest:

"A recommendation reported from the Committee of the Whole which, if carried into effect, would change a rule of the House is not in order."

The resolution as drawn would authorize the Board of Children's Guardians, if adopted, to expend all this fund as they please. It would enlarge their powers and would be a change of existing law without question in the mind of the Chair; and the point of order is sustained.

4909. A Committee of the Whole having reported not only what it had done, but by whom it had been prevented from doing other things, the Speaker held that the House might not amend the report, which stood.—On June 24, 18421[2] the Committee of the Whole House rose, and the Chairman[3] reported certain bills which had been acted on favorably, and further reported that he was instructed specially to report that the committee, in obedience to the rule, had gone through the entire calendar of private bills; but that, owing to objections interposed by a gentleman from Georgia, the committee had been unable to do any business except as above reported.

A question was raised as to this report, and considerable debate ensued. The Speaker[4] held that the House might not amend the report, and that the Committee of the Whole had the right to report what they pleased.

On the succeeding day a motion was made to amend the Journal by striking out the portion of this report which gave the reasons why the Committee of the Whole were unable to act on certain bills.

This motion to amend the Journal was laid on the table.

4910. The hour for taking a vote having arrived, an amendment pending and undisposed of in Committee of the Whole at the time is not acted on by the House.—On January 31, 1899,[5] the bill (H. R. 11022) was under consideration in Committee of the Whole House on the state of the Union, when the hour of 3 o'clock, which had been fixed for voting on the bill in the House, arrived. The Chairman[1] accordingly directed the committee to rise, and made his report to the House. In the course of that report he mentioned "one amendment pending," which was an amendment recommended by the Committee on Military Affairs and which had been amended but not voted on when the Committee of the Whole rose.

Mr. Joseph W. Bailey, of Texas, made the point of order that such pending amendment could not be reported to the House and was not before the House for its consideration.

After debate the Speaker[6] held:

The Chair would say that, inasmuch as the order of the House was to the effect that the vote should be taken at 3 o'clock, and while there is no exact precedent, it seems that in accordance with the practice, as far as the Chair has had an opportunity to examine it, the point made by the gentleman from Texas should be sustained.

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[1] Sereno E. Payne, of New York, Chairman.

[2] Second session Twenty-seventh Congress, Journal, pp. 1011, 1013; Globe, pp. 680, 685, 686.

[3] John C. Clark, of New York, Chairman.

[4] John White, of Kentucky, Speaker.

[5] Third session Fifty-fifth Congress, Record, p. 1332.

[6] Thomas B. Reed, of Maine, Speaker.

4911. A Committee of the Whole, directed by order of the House to consider certain bills, reported also certain other bills, whereupon the Speaker held that so much of the report as related to the latter bills could be received only by unanimous consent.—On January 26, 1836.[1] the House agreed to a special order providing that after a certain date the general appropriation bills should have precedence each day. On March 3, the House, in pursuance of the provisions of this order, resolved itself into Committee of the Whole House on the state of the Union, and, after some time spent therein, the committee rose and the Chairman reported that the committee had had the state of the Union generally under consideration, and particularly the naval appropriation bill, and had come to no resolution thereon. He further reported that the committee did, by common consent, also take into consideration other bills, viz, a bill relating to the functions of the bank of the United States in performing the duties of commissioner of loans, and a bill to carry into effect a convention between the United States and Spain.

The Speaker[2] stated that as the last-mentioned bills had not been included in the special order under which the House had, this day, resolved itself into Committee of the Whole House on the state of the Union, the report, so far as it related to those bills, could only be received by the unanimous consent of the House.

No objection being made, and it being stated that the bills were acted on by general consent in the committee, the report was received.

4912. A matter alleged to have arisen in Committee of the Whole but not reported by the chairman may not be brought to the attention of the House even on the claim that a question of privilege is involved.—On April 26, 1900,[3] the Committee of the Whole House on the state of the Union had risen and reported the post-office appropriation bill to the House.

Mr. Eugene F. Loud, of California, asked for the previous question on the bill and amendments to the final passage.

Mr. John F. Fitzgerald, of Massachusetts, claiming the floor for a question of personal privilege, stated that he had been deprived of an opportunity of offering a certain amendment in Committee of the Whole, although the gentleman in charge of the bill had assured him that he should have such opportunity.

The Speaker[4] interrupting Mr. Fitzgerald, said:

> The gentleman will suspend. No such matter has been referred from the committee to the House, and the gentleman will readily see that the Chair can take no cognizance of any matter except it takes place in the House.

4913. The Committee of the Whole having risen because a quorum had failed, the bills that had been laid aside to be reported remained in the committee until the next occasion when the committee rose without question as to a quorum.—On May 6, 1896,[5] the House, under a special order, considered the class of bills usually in order at a Friday evening session.[6] A quorum

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[1] First session Twenty-fourth Congress, Journal, pp. 238, 461.

[2] James K. Polk, of Tennessee, Speaker.

[3] First session Fifty-sixth Congress, Record, p. 4730.

[4] David B. Henderson, of Iowa, Speaker.

[5] First session Fifty-fourth Congress, Record, pp. 4914, 5011.

[6] See section 3281 of this volume.

having failed in the Committee of the Whole House, and the roll call having failed to disclose a quorum, the session of the committee closed without any report of the bills considered.

On Friday evening, May 8, the same class of bills had been considered, and when the Committee of the Whole House rose the Chairman[1] reported not only the bills acted on that evening, but also those that had been laid aside to be reported on May 6.

When the report had been made, Mr. Constantine J. Erdman, of Pennsylvania, made the point of order that the Chairman had reported bills that had not been considered by the Committee of the Whole, and which were therefore improperly reported.

The Speaker[2] pro tempore overruled the point of order.[3]

4914. The fact that the vote whereby the Committee of the Whole rose did not show a quorum was held not sufficient to prevent the reception of the report of the committee by the House.

The Speaker can not review any matter in Committee of the Whole, not even the failure of a quorum, unless it be mentioned in the report to the House.

A quorum is not required on a motion that the Committee of the Whole rise.

On May 14, 1858,[4] the Committee of the Whole having risen, and the House being engaged in receiving the report from the Committee of the Whole, Mr. Humphrey Marshall, of Kentucky, who was making the report, gave the list of measures severally, with a recommendation that the said report be concurred in, and reported that the committee had subsequently found itself without a quorum.

The record of debates shows that in committee the bills had been laid aside to be reported with a favorable recommendation. The motion was made that the committee rise, and on a vote by tellers there were 48 in the affirmative and 46 in the negative. So the motion was agreed to.

The point was made that no quorum had voted,[5] and a demand was made that the roll must be called.

The Chairman[6] ruled that no quorum was necessary for the committee to rise.

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[1] William P. Hepburn, of Iowa, Chairman.

[2] Albert J. Hopkins, of Illinois, Speaker pro tempore.

[3] Sometimes, when the Committee of the Whole has found itself without a quorum, it has risen according to the rule, and the Chairman has reported to the House such bills as had been acted on before the quorum failed, and then has reported to the House the fact that a quorum had failed, and the list of the absentees. See instances on May 5, June 2, and June 23, 1848. (First session Thirtieth Congress, Journal, pp. 773, 869, 947.) The Speaker (Robert C. Winthrop, of Massachusetts), decided on May 5, the propriety of the course having been questioned, that less than a quorum could rise and report. (Globe, p. 728.) It seems evident, however, that should the point of no quorum be made at once in the House, this report might require to be delayed until the presence of a quorum should be ascertained. The House, evidently, may not receive a report in the absence of a quorum.

[4] First session Thirty-fifth Congress, Journal, pp. 814, 822; Globe, p. 2141.

[5] At that time the presence of the quorum was determined only by the vote. See sections 2895–2904, etc., of this volume.

[6] Humphrey Marshall, of Kentucky, Chairman.

The report of the Committee of the Whole having been made, Mr. Calvin C. Chaffee, of Massachusetts, by unanimous consent, moved that the bills be recommitted.

Mr. George W. Jones, of Tennessee, made the point of order that there was no quorum present, and that consequently it was not in order to receive the report of the committee.

The Speaker[1] stated that there was no evidence that a quorum was not present, and overruled the said point of order.

The record of the debate shows that the Speaker expressed the opinion that the bills ordered to be reported back before the committee found itself without a quorum could be received.

Mr. Jones made the point that less than a quorum could not make a report, and that even if it be made, less than a quorum of the House could not receive it. There was no legal and constitutional House to receive the report if there were not a quorum present.

The Speaker said:

> The Chair has no knowledge of the fact that there is no quorum present. The Chairman of the Committee of the Whole House reports to the House that they have had the Private Calendar under consideration, and have directed him to report sundry bills to the House, some with and some without amendment.

Mr. Jones having appealed, the appeal was laid on the table on the succeeding day.

4915. It is not in order in the House to move to postpone or otherwise consider a bill which is still in the Committee of the Whole.—On July 22, 1892,[2] during the call of committees for reports,[3] when the Committee on Public Lands was called, Mr. Thomas C. McRae, of Arkansas, from that committee, submitted the question of order, whether it was not in order to move to postpone the bill (H. R. 9072)—to fully adjust and settle the claims of Arkansas and other States under the swamp-land grants—until the 6th day of December next.

The Speaker[4] held that the motion was not in order, inasmuch as the bill was in Committee of the Whole House on the state of the Union, and must have its first consideration in that Committee.

On motion of Mr. McRae, the House resolved itself into the Committee of the Whole House on the state of the Union; and after some time spent therein, the Speaker resumed the chair, and the Chairman reported that the Committee, having had under consideration the bill (H. R. 9072) to fully adjust and settle the claims of Arkansas and other States, had come to no resolution thereon.

Mr. McRae moved that the further consideration of said bill be postponed until December 6, 1892.

Mr. Nelson Dingley, jr., of Maine, made the point of order that the motion was not in order, for the reason that the bill was still in Committee of the Whole.

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[1] James L. Orr, of South Carolina, Speaker.

[2] First session Fifty-second Congress, Journal, p. 318; Record, pp. 6591, 6592.

[3] Reports are now filed with the Clerk.

[4] Charles F. Crisp, of Georgia, Speaker.

The Speaker sustained the point of order, holding that the bill having been referred to the Committee of the Whole House on the state of the Union, and not having been reported back, it was not now in order to postpone it or otherwise consider it in the House.

4916. A bill presumed to have been read in Committee of the Whole and reported favorably therefrom is not read in full again when acted on by the House.

When a bill is reported from the Committee of the Whole the Speaker must assume that it has passed through all the stages necessary for the report.

On April 29, 1902,[1] the bill (H. R. 14018) "to increase the limit of cost of certain public buildings, to authorize the purchase of sites," etc., was reported from the Committee of the Whole House on the state of the Union, and the Speaker put the question on the engrossment and third reading.

Mr. James D. Richardson, of Tennessee, made the point of order that the bill had not been read in the Committee of the Whole, and that it should be read before it was acted on by the House.

Debate developed the fact that the reading of the bill in full, when it had been taken up in Committee of the Whole, had been dispensed with by unanimous consent. There had been no reading for amendment under the five-minute rule, since a special order adopted previously by the House had dispensed with amendment.

After debate the Speaker[2] said:

The Clerk will read the first ruling found on page 647 of the Manual.

"A bill which has been read in Committee of the Whole and reported favorably therefrom is not read in full again when acted upon by the House."

* * * There is not the slightest difficulty about the situation, as the Chair views it. The Chair is bound to assume that every necessary step has been taken in the Committee of the Whole, including the reading of the bill. The gentleman from Tennessee knows very well that the reading under the five-minute rule is not one of the readings referred to in the rule, but is merely a matter of convenience for the Members in case they wish to offer amendments. The rule adopted by the House makes that unnecessary, and the bill comes to the House with every presumption in favor of all having been done that is required to be done by the rules of the House of Representatives.

4917. A motion to discharge the Committee of the Whole from the consideration of a matter committed to it is not privileged as against a demand for the regular order.—On March 8, 1878,[3] the Committee of the Whole House rose and the Chairman reported that it had had under consideration the joint resolution (No. 20) to apply the amount appropriated by the act of Congress approved March 3, 1877, to pay certain southern mail contractors, and had come to no resolution thereon.

Mr. Alfred M. Waddell, of North Carolina, moved to discharge the Committee of the Whole House from further consideration of the resolution.

Mr. Omar D. Conger, of Michigan, called for the regular order and made the point that the motion of the gentleman from North Carolina was not in order.

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[1] First session Fifty-seventh Congress, Journal, p. 659; Record, pp. 4840, 4841.

[2] David B. Henderson, of Iowa, Speaker.

[3] Second session Forty-fifth Congress, Journal, p. 619; Record, p. 1601.

The Speaker,[1] having first caused to be read a portion of Rule 109, as follows:

The House may at any time, by a vote of a majority of the Members present, provide for the discharge of the Committee of the Whole House and the Committee of the Whole on the state of the Union from the further consideration of any bill referred to it after acting without debate on all amendments pending and that may be offered.

said:

The Chair thinks that the rule runs to this fact, that the Committee of the Whole did not act upon all the amendments pending as provided for in the rule read. The gentleman from Michigan raises the point of order that the motion of the gentleman from North Carolina under a demand for the regular order was not in order, and the Chair thinks that it was not in order pending such demand for the regular order.[2]

4918. The motion to discharge a Committee of the Whole was frequently in use until the necessary adherence to an order of business destroyed its privileged character.—It is very evident that in the earlier history of the House a debate might be cut short in Committee of the Whole by a motion in the House that the Committee of the Whole be discharged from the consideration of the subject. Thus, on April 15, 1826,[3] during the prolonged debate in Committee of the Whole House on the state of the Union on the resolutions relating to the mission to Panama, a Member gave notice of his intention to make such a motion. But on the next day the Committee declining to rise, he was precluded from making the motion. On April 18[4] the motion to discharge the committee was made in the House, and after debate, on April 19, was decided in the negative.

4919. On April 1, 1826,[5] the Committee of the Whole House on the state of the Union was considering a certain resolution proposing amendments to the Constitution relating to the method of electing the President of the United States, and after long debate Mr. Daniel Webster, of Massachusetts, moved that the committee rise.

Mr. Henry R. Storrs, of New York, asked that the motion might be withdrawn in order that he might make an explanation.

But Mr. Webster insisting on his motion, the committee voted to rise, and the Chairman reported that the committee had had the state of the Union generally

[1] Samuel J. Randall, of Pennsylvania, Speaker.

[2] While the principle of the decision is correct in accordance with the present practice of the House, the rule cited by the Speaker has not existed since the revision of 1880, and even then was obsolete. (See Record, second session Forty-sixth Congress, p. 201.) It was originally intended, before the five-minute rule of debate was devised, to afford a means of saving a bill from obstructive debate in Committee of the Whole. (See sec. 5221 of Vol. V of this work.) At present there is no rule whatever providing for discharging the Committee of the Whole from the consideration of a bill.

In the earlier years of the House the motion to discharge the Committee of the Whole was frequently made, not being prevented by the rigid order of business compelled by pressure of business. (Second session Thirteenth Congress, Journal, pp. 276, 277.) On February 28, 1818, Mr. Speaker Clay decided that a vote discharging a Committee of the Whole dissolved it, but of course the modern usage would prevent such a result. (First session Fifteenth Congress, Journal, p. 271; Annals, p. 1028.) In 1840 the Committee of the Whole could be discharged only by a two-thirds vote suspending the rule as to the order of business.

[3] First session Nineteenth Congress, Debates, pp. 2302, 2303.

[4] Debates, pp. 2371, 2376.

[5] First session Nineteenth Congress, Journal, p. 400; Debates, p. 2003.

under consideration; but more particularly the resolution, etc., and had come to no decision thereon.

Mr. Webster thereupon moved that the Committee of the Whole House be discharged from the consideration of the pending resolutions, and also several other resolutions.

This motion being agreed to, the resolutions were considered by the House.

4920. On February 2, 1841,[1] Mr. Speaker Hunter decided that a motion to discharge the Committee of the Whole from the consideration of the bill authorizing the issuing of Treasury notes could only be presented by a motion to suspend the rules relating to the order of business.

4921. On February 21, 1843,[2] the House was considering a motion to discharge the Committee of the Whole House from the consideration of the bill (H. R. 692) to revive the act to enable claimants to land in Missouri and Arkansas to institute proceedings to try the validity of their claims, etc.

The Speaker[3] informed the House that a vote of two-thirds would be required to agree to the motion, as it was a proposition to change the order of business.[4]

4922. When the Committee of the Whole is discharged from the consideration of a bill the House, in lieu of a report from the Chairman, accepts the minutes of the Clerk as evidence of amendments agreed to.—On February 25, 1845,[5] on motion of Mr. Stephen A. Douglas, of Illinois, the rules were suspended, and the House agreed to this resolution:

Resolved, That the Committee of the Whole House on the state of the Union be discharged from the further consideration of the Senate bill No. 46, and that the said bill, together with the amendments agreed to in committee, be brought before the House for immediate action thereon.[6]

Mr. George C. Dromgoole, of Virginia, raised a question as to procedure under this resolution, the committee being discharged without making any report. The Journal has this entry, describing the procedure as it occurred:

So the said resolution offered by Mr. Douglas was agreed to; and the said bill from the Senate (No. 46) entitled, "An act to reduce the rates of postage, to limit the use and correct the abuse of the franking privilege, and for the prevention of frauds on the revenue of the Post-Office Department,"

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[1] Second session Twenty-sixth Congress, Journal, p. 223; Globe, p. 138.

[2] Third session Twenty-seventh Congress, Journal, p. 419.

[3] John White, of Kentucky, Speaker.

[4] It was formerly the custom for a Committee of the Whole to ask leave to sit again. Thus, on May 6, 1826, the Committee of the Whole House rose and the Chairman reported that the committee had had under consideration bills relating to the claims of the legal representatives of the Marquis de Maison Rouge and of De Bastrop, had made progress therein, and asked leave to sit again.

The House decided in the negative the motion that the committee have leave to sit again.

On May 8, the next legislative day, the House proceeded to consider the bills, without any action discharging the Committee of the Whole. (First session Nineteenth Congress, Journal, pp. 525, 528; Debates, pp. 2605, 2606.)

So in a similar case on December 15 and 16, 1825, when, the Committee of the whole having asked leave to sit again, the House adjourned before acting on the request. On the next day leave was refused. It seems to have been considered that the bill was reported from the committee with the rising. (First session Nineteenth Congress, Journal, pp. 61, 66; Debates, pp. 813, 819.)

[5] Second session Twenty-eighth Congress, Journal, pp. 476, 477; Globe, p. 349.

[6] A motion to discharge the Committee of the Whole is not privileged, and may only be offered under suspension of the rules, as in this case, by unanimous consent, or on report from the Committee on Rules.

as taken up by the House for immediate action thereon. And it appeared by the minutes of the Clerk, "entered on a separate piece of paper," according to the provisions of the one hundred and twenty-sixth rule of the House[1] while the House was in Committee of the Whole on the state of the Union, that the said committee had amended the bill by—(here follows a statement of the amendments).

The question was stated by the Speaker, in accordance with the said resolution offered by Mr. Douglas, on agreeing to the said amendments.

[1] This rule provided, "The body of the bill shall not be defaced or interlined; but all amendments, noting the page and line, shall be duly entered by the Clerk on a separate paper, as the same shall be agreed to by the committee, and so reported to the House." This rule dated from April 7, 1789. It no longer exists, except in the general provision of the Manual. For this rule, see Journal, second session Twenty-eighth Congress, p. 591.

Chapter CX.

CONSIDERATION ''IN THE HOUSE AS IN COMMITTEE OF THE WHOLE''

1. **Provisions of Jefferson's Manual. Section 4923.**
2. **Consideration is under five-minute rule. Sections 4924, 4925.**
3. **The previous question applies. Sections 4926–4930.**
4. **The motion to refer in order. Sections 4931, 4932.**
5. **Substitute amendments permitted. Sections 4933, 4934.**
6. **Withdrawal of amendments. Section 4935.**

4923. The procedure known as consideration "in the House as in Committee of the Whole."

Consideration "in the House as in Committee of the Whole" is by unanimous consent only, as the order of business gives no place for a motion.

The House, while acting "in the House as in Committee of the Whole," may refer to a committee, use the previous question, deal with disorder, take the yeas and nays, or adjourn.

Mr. Jefferson, in Section XXX of his Manual, defines the functions of the House when acting as in Committee of the Whole: [1]

* * * Though it acts in some respects as a committee, in others it preserves its character as a House. Thus (*a*) it is in the daily habit of referring its business to a special committee. (*b*) It admits of the previous question. If it did not, it would have no means of preventing an improper discussion; not being able, as a committee is, to avoid it by returning into the House.[2] * * * (*c*) It would doubtless exercise its powers as a House on any breach of order. (*d*) It takes a question by yea and nay, as the House does. (*e*) It receives messages from the President and the other House. (*f*) In the midst of a debate it receives a motion to adjourn, and adjourns as a House, not as a committee.

4924. Under the latest ruling, when a bill is considered in the House as in Committee of the Whole, it is considered under the five-minute rule, without general debate.—On February 19, 1906,[3] it was proposed to consider in the House as in Committee of the Whole the bill (H. R. 12864) to provide for the purchase of certain coal lands in the Philippine Islands, and to authorize the lease

[1] The House may, under its ordinary rules, act as in Committee of the Whole only by unanimous consent, since the rules governing the order of business and admissions of motions make no provision for a motion to consider a matter "in the House as in Committee of the Whole."

[2] For changes in effect of previous question see section 5443 of Vol. V, of this work.

[3] First session Fifty-ninth Congress, Record, p. 2682.

of same and of the Batan Military Reservation for the purpose of securing a local coal supply to the United States Government in the Philippine Islands, when a question was raised as to general debate.

The Speaker [1] said:

The Chair will state, for the information of the House, that under the latest ruling if this motion should prevail then the bill would come immediately before the House for consideration under the five-minute rule, without general debate, except as general debate may be had by unanimous consent.[2]

4925. On February 28, 1905,[3] the House was proceeding to consider "in the House as in Committee of the Whole "the bill (H. R. 18464) to amend the homestead laws as to certain unappropriated and unreserved lands in South Dakota.

Mr. Eben W. Martin, of South Dakota, rising to a parliamentary inquiry, asked if there would be debate other than the debate on amendments under the five minute rule.

The Speaker [1] said:

This is a proceeding by unanimous consent to consider the bill in the House as in Committee of the Whole under the five-minute rule. The Chair is inclined to the opinion that the consideration of the bill under that order would be under the five-minute rule unless it is determined otherwise by unanimous consent. * * * It occurs to the Chair, however, that the first reading of the bill in the House is not required; that the regular order would be to read the bill for consideration under the five-minute rule for amendment, paragraph by paragraph. * * * House bills in the House ordinarily are considered subject to the previous question as a whole. There is no five-minute rule in the House of Representatives under the rules of the House. The Chair knows of no way by which debate can be cut off in the House except by the operation of the previous question. This bill is to be considered in the House as in Committee of the Whole, and it seems to the Chair that the better rule would be, and is under such an order, for the bill to be read under the five-minute rule. Much can be said on the other side. The Chair has not looked up the precedents himself, but the Chair is informed that the precedents are conflicting, but that the weight of practice seems to be to consider such bills under the five-minute rule, and unless the precedent should be clearly in favor of general debate, under an agreement of this kind or a special order of this kind, the Chair would be inclined to think that the better rule would be that it should be considered under the five-minute rule. Under the circumstances, the weight of precedents being in favor of that view, the Chair is very clearly of the opinion that the bin should be read for amendment under the five-minute rule.

After consideration had proceeded for a time, but before the reading of the bill for amendments had been completed, Mr. Martin moved the previous question on the bill and pending amendments to the final passage.

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[1] Joseph G. Cannon, of Illinois, Speaker.

[2] In one instance general debate was permitted. On December 7, 1900 (second session Fifty-sixth Congress, Record, p. 166), the bill (H. R. 3717) "making oleomargarine and other imitation dairy products subject to the laws of the State and Territory into which they are transported, and to change the tax on oleomargarine," was under consideration in the House as in Committee of the Whole.

During the progress of the general debate, Mr. William W. Grout, of Vermont, moved that general debate be closed at a quarter past 4 o'clock, and that then the bill be read under the five-minute rule, and the five-minute debate be continued for half an hour longer.

The Speaker (David B. Henderson, of Iowa, Speaker) held that the motion was in order only in the simple form of fixing a time for closing general debate.

Mr. Grout then moved that general debate be closed at quarter past 4 o'clock, and the motion was agreed to.

[3] Third session Fifty-eighth Congress, Record, p. 3673.

Mr. John F. Lacey, of Iowa, raised a question of order:

Mr. Speaker, under the order of the House, this bill has to be considered in the House as in the Committee of the Whole, and the previous question is not in order until the bill has been so considered. Debate may be closed on a paragraph, but at the conclusion of the first paragraph and before the bill has been read in full, the previous question on the whole bill would not be in order.

The Speaker ruled:

The Chair is informed that under prior rulings, under similar orders, when a bill is in the House as in the Committee of the Whole the consideration of it proceeds under the five-minute rule, but that the House does not lose its control by a majority over the bill, and that it is in the power of the House to order the previous question upon the bill and amendments pending, if there be any. Otherwise the bill, even if it had been gone through entirely, would be subject to indefinite amendment and the House would be powerless to express its will, acting by a majority.

4926. During consideration of a bill "in the House as in Committee of the Whole" the previous question may be demanded while Members yet desire to offer amendments.—On February 7, 1877,[1] Mr. Henry Waldron, of Michigan, from the Committee on Appropriations, presented the bill (S. 1222) to supply deficiencies in the appropriation for public printing and binding for the current fiscal year, and the House proceeded to consider it in the House as in Committee of the Whole.

During the consideration of the bill under the five-minute rule, Mr. Waldron moved the previous question.

Mr. Greenbury L. Fort, of Illinois, announced that he wished to propose an amendment.

Mr. Omar D. Conger, of Michigan, made the point of order that when the House permitted the bill to be considered in the House as in Committee of the Whole, that carried with it the right to amend and to debate the amendment, five minutes for and five minutes against.

The Speaker[2] said:

The Chair overrules the point of order, and holds the gentleman from Michigan has the right to demand the previous question.[3]

4927. On April 27, 1887,[4] a bill relating to a subtreasury at Louisville, Ky., was under consideration in the House as in Committee of the Whole.

Mr. James B. McCreary, of Kentucky, moved the previous question on the engrossment and third reading of the bill.

Mr. Frank Hiscock, of New York, made the point of order that, as the debate under the five-minute rule had not yet taken place, the motion for the previous question was not in order.

The Speaker pro tempore[5] held:

The present occupant of the chair, if there had been no previous ruling on this subject, would be inclined to sustain the point of order. But the Chair finds in the Digest the ruling of the Speaker of the

[1] Second session Forty-fourth Congress, Record, p. 1321.

[2] Samuel J. Randall, of Pennsylvania, Speaker.

[3] Mr. Speaker Keifer also ruled this way on January 6, 1883. (Second session Forty-seventh Congress, Record, p. 928.)

[4] First session Forty-ninth Congress, Record, p. 3893; Journal, p. 1412.

[5] William M. Springer, of Illinois, Speaker pro tempore.

House which the Clerk has just read. It is to the effect that the consideration of bills in the House as in Committee of the Whole, under the five-minute rule, does not in any way limit the operation of the previous question. The previous question may be ordered at any time after the five-minute debate has begun upon the bill. So the Speaker has held, and it has been the uniform practice of the House.

4928. On February 9, 1899,[1] the House was considering, "in the House as in Committee of the Whole," a joint resolution (H. J. Res. 358) to amend the war-revenue act.

Mr. Albert J. Hopkins, of Illinois, proposed an amendment, and after debate thereon demanded the previous question on the bill and amendment.

Mr. William H. Moody, of Massachusetts, made the point of order that the demand for the previous question was not in order in the House when sitting as a Committee of the Whole.

The Speaker[2] said:

The Chair thinks that the practice has been different. It has been frequently done.

4929. On February 13, 1905,[3] Mr. Joseph W. Babcock, of Wisconsin, asked unanimous consent for the consideration in the House as in Committee of the Whole of the bill (S. 3343) to authorize the Anacostia, Surrattsville and Brandywine Electric Railway Company to extend its street railway in the District of Columbia.

A question arising as to the procedure under such an order, and the effect on the right to offer amendments, the Speaker," responding to a parliamentary inquiry by Mr. Charles L. Bartlett, of Georgia, said:

It would be within the power of the gentleman in charge of the bill to cut off amendment by calling for the previous question. Of course, it takes a majority to order the previous question. Whether the gentleman would do that or not, is a matter between the gentleman from Wisconsin and the gentleman from Georgia.

4930. During consideration "in the House as in Committee of the Whole" the previous question may not be moved on a single section of a bill.

A Member may not submit a question of order to the House except by appeal.

Instance wherein the Chair submitted a question of order to the decision of the House.

On December 18, 1884,[5] the House was considering the Interstate Commerce bill in the House as in Committee of the Whole, when Mr. John H. Reagan, of Texas, proposed to move the previous question on the first section of the bill.

Mr. Roswell G. Horr, of Michigan, made the point of order that the motion was not in order.

After debate, the Speaker[6] held:

The Chair recognizes not only the difficulty of this question under the rules of the House and under the order made in this particular case, but also the importance of its correct decision, as constituting,

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[1] Third session Fifty-fifth Congress, Record, p. 1654; Journal, p. 152.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Third session Fifty-eighth Congress, Record, p. 2499.

[4] Joseph G. Cannon, of Illinois, Speaker.

[5] Second session Forty-eighth Congress, Journal, p. 127; Record, pp. 333–344.

[6] John G. Carlisle, of Kentucky, Speaker.

perhaps, a precedent to be followed hereafter; for, of course, whatever is decided here, so far as it may be based entirely on the rules of the House, will apply to other bills as well as to this. The order of the House made last March was that this bill should be considered in the House as in Committee of the Whole on the state of the Union. If the bill were actually being considered in Committee of the Whole on the state of the Union, it is conceded on all sides that the House would still have power, under an express rule, to close debate not only upon a pending amendment, but upon the whole section or paragraph under consideration. Therefore the question presents itself at once whether the House, when considering a bill in the House as in Committee of the Whole on the state of the Union, has less power to close debate than if it were actually in the Committee of the Whole on the state of the Union. The most the Chair can do is to assimilate the proceedings of the committee in the House as nearly as possible to the proceedings in the Committee of the Whole on the state of the Union.

It has always been held when the House is considering a proposition as in Committee of the Whole it must be read by section or paragraph, as the case may be; but at the same time it has been held that the previous question may be ordered on a pending question; that the yeas and nays may be called, which can not, of course, be done in the Committee of the Whole on the state of the Union; that a motion to recommit or reconsider may be made, or a motion to lay on the table, which are not proper motions to be made in the Committee of the Whole on the state of the Union. And it has always been the practice of the House, and in fact had been ruled in the House repeatedly, that debate could not be closed otherwise than by the previous question.

Now the Chair feels somewhat embarrassed by what transpired a few days ago in reference to this matter, and he has some difficulty in determining whether that amounted to an agreement or understanding on both sides of the House that there should be unlimited debate and unlimited opportunity for amendment, or whether it simply meant the House should proceed in regard to this bill in the usual way bills are considered in the House as in Committee of the Whole on the state of the Union.

There is another difficulty about entertaining a motion for the previous question on a section of the bill. * * * It will be observed that the rules[1] of the House prescribe exactly what the effect of the previous question shall be—that is, that it shall bring the House to a direct vote upon the main or pending question, which presupposes that there is a question pending. The gentleman from Texas demands the previous question, not upon any pending motion or question, but upon the section under consideration.

Suppose the House shall order the previous question upon it; what vote is to be taken after that is done? It must be apparent that there is no vote to be taken on the section itself, nor is there anything upon which the previous question can operate, its only effect being to cut off debate and amendment; and the Chair, therefore, is of the opinion that when considering a bill in the House as in the Committee of the Whole House on the state of the Union, a motion for the previous question can not be entertained unless there be some question actually pending before the House upon which the vote should be taken after the previous question is ordered. If there was an amendment pending, that, of course, would be a question upon which the vote would be taken. So the Chair thinks that the gentleman's motion is premature, at all events.

Mr. James H. Blount, of Georgia, asked of the Chair whether a motion to limit debate on the section might not be made after the analogy of the similar motion used to limit debate in Committee of the Whole.

The Speaker said:

It has been decided more than once that such a motion could not be made with reference to a proposition actually pending in the House; that the only way debate can be closed and the House brought to a direct vote upon a proposition is to move the previous question.

Now, the Chair has intimated his opinion, but is not inclined to decide now what effect the previous question would have if it could be ordered at all on the section. The Chair has simply declined to entertain a demand for the previous question upon the section of the bill when there is no question pending in regard to that section at all.

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[1] Section 1 of Rule XVII. See section 5443 of Vol. V of this work.

Mr. Horr then offered an amendment to the section, and Mr. Hilary A. Herbert, of Alabama, moved to close debate on the pending amendment and the section. Mr. Herbert then requested that this question be submitted to the House:

Mr. Herbert having moved to close debate on the pending section and amendment, submitted the following as a question of order: Is it in order, when a bill is under consideration in the House as in Committee of the Whole under the five-minute rule, to move to limit debate on a pending section, and on that motion demand the previous question, such order to have the same effect as if the bill were in Committee of the Whole?

The Speaker said:

The gentleman from Alabama does not submit the question to the House, and the Chair does not recognize the right of a Member on the floor to submit a question of order to the House except by an appeal. The Chair submits this question to the House—that is, the question of order now pending. * * * The gentleman from Alabama moves to close debate on the pending amendment and the section of the bill under consideration; the gentleman from Ohio [Mr. Keifer] makes the point of order that this can not be done. The Chair now submits the question to the House, whether it is in order to make a motion to close debate on a pending amendment and on the section under consideration when the House is considering the bill as in Committee of the Whole House on the state of the Union.[1]

On a yea-and-nay vote the House decided, yeas 150, nays 88, that the motion made by Mr. Herbert was in order.

Mr. John D. Long, of Massachusetts, having inquired as to the effect of this vote on propositions to amend the section further, the Speaker said:

The Chair has just said that he would entertain further amendments, but without debate-in other words, he would give this motion precisely the same effect which it would have if made and carried when the bill was actually under consideration in Committee of the Whole on the state of the Union.

4931. A bill being under consideration "in the House as in Committee of the Whole" a motion to commit was decided to be in order, although the reading by sections had not begun.—On January 19, 1892,[2] the House was considering, as in Committee of the Whole, the bill (H. R. 3513) providing for the public printing and binding and the distribution of documents. This consideration was in pursuance of a special order, adopted January 13 and providing—

That said bill shall be considered in the House; that it shall be first read throughout and then by items, and as each item is read it shall be open for amendment and debate as under the five-minute rule of the House when in Committee of the Whole for the consideration of appropriation bills, except that the previous question may be ordered at any time on any item of said bill, after debate, when the House shall so determine.

After debate on the bill Mr. John J. O'Neill, of Missouri, moved that the bill be recommitted to the Committee on Printing.

Mr. James D. Richardson, of Tennessee, made the point of order that the motion was not in order, on the ground that the House was then considering the bill as in Committee of the Whole House, pursuant to a special order of the House that it should be so considered, and that the bill not having yet been read by sections the order of the House had not been executed.

The Speaker pro tempore,[3] in response to the point of order, stated that the motion to recommit was one mode of consideration, and in the opinion of the Chair

[1] The motion to close debate on a paragraph or section of a bill in Committee of the Whole, since this decision, has been made undebatable by a rule.

[2] First session Fifty-second Congress, Journal, pp. 31, 32; Record, pp. 303, 432.

[3] Benton McMillin, of Tennessee, Speaker pro tempore.

it was for the House to determine how far it will go after the adoption of a special order before it applies any one of the various methods of disposition to the measure.

4932. On April 28, 1900,[1] the House was considering the bill (S. 2799) to carry into effect the stipulations of Article VII of the treaty between the United States and Spain, etc., reported from the Committee on War Claims, and under consideration in the House as in Committee of the Whole.

There having been general debate, and the reading of the bill by sections for amendment not having begun, Mr. George W. Ray moved that the bill be referred to the Committee on the Judiciary with certain instructions.

Mr. Thaddeus M. Mahon, of Pennsylvania, made the point of order against the motion.

The Speaker pro tempore[2] held that the motion to refer was in order although the consideration of the bill by sections had not been entered upon.

4933. A bill being under consideration "in the House as in Committee of the Whole" an amendment in the nature of a substitute is in order only after the consideration of the bill by sections has been completed.—On April 23, 1894,[3] the House resumed the consideration of the bill (H. R. 6171) to authorize the Metropolitan Railroad Company to change its motive power for the propulsion of cars, the same being considered in the House as in Committee of the Whole.

Section 3 of the bill having been read, and Mr. James D. Richardson, of Tennessee, having proposed a substitute for that section, Mr. William J. Coombs, of New York, demanded that the question be first put on agreeing to a substitute for the whole bill which he had heretofore proposed and had had read at the desk.

The Speaker pro tempore[4] held that the substitute for the whole bill would not be in order until the consideration of the bill by sections had been completed, inasmuch as the bill was being considered in the House as in Committee of the Whole.

4934 On July 16, 1894,[5] the House was acting under a special order providing for the consideration of the bill (H. R. 4609) "to establish a uniform system of bankruptcy" in the House as in Committee of the Whole.

After general debate, the amendments recommended by the Committee on the Judiciary were agreed to in gross, and, by unanimous consent, were considered subject to amendment in like manner as other parts of the bill.

Mr. George W. Ray, of New York, and Mr. W. A. Stone, of Pennsylvania, submitted the question of order: At what period of the consideration would it be in order to move a substitute for the pending bill?

The Speaker pro tempore[6] held that the substitute would be in order after the reading of the bill by sections for amendment should be concluded, and not before.[7]

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[1] First session Fifty-sixth Congress, Record, p. 4822, 4823.

[2] Charles H. Grosvenor, of Ohio, Speaker pro tempore.

[3] Second session Fifty-third Congress, Journal, pp. 350, 351; Record, p. 4002.

[4] Alexander M. Dockery, of Missouri, Speaker pro tempore.

[5] Second session Fifty-third Congress, Journal, pp. 484, 485; Record, p. 7560.

[6] James D. Richardson, of Tennessee, Speaker pro tempore.

[7] This bill was considered under a special order, which limited the reading of the bill for amendments to two hours.

4935. During consideration of a bill "in the House as in Committee of the Whole" an amendment may be withdrawn at any time before action has been had on it.—On March 3, 1898,[1] the House, as in Committee of the Whole, was considering the bill (H. R. 5359) to amend the postal laws relating to second-class matter, when the question arose as to whether or not an amendment offered by Mr. James M. Griggs, of Georgia, might be withdrawn. The special order under which the bill was considered specified that the bill should be considered in the House and that it should "be read through for amendments under the five minute rule."

The Speaker[2] said:

The Chair finds the matter in this rather curious condition: That the House is considering the bill in the House as in Committee of the Whole. In the House the amendment can be withdrawn, and in the Committee of the Whole it can not.

Mr. Eugene F. Loud, of California, here called attention to the fact that, under the special order, the "five-minute rule" was the only provision of the Committee of the Whole applying.

The Speaker replied:

The Chair is inclined to the opinion * * * the gentleman from Georgia can be recognized to withdraw his amendment and to substitute for it what he desires.

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[1] Second session Fifty-fifth Congress, Record, p. 2440.

[2] Thomas B. Reed, of Maine, Speaker.

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