

Chapter CLXXX.¹

PREROGATIVES OF THE HOUSE AS TO REVENUE LEGISLATION.

1. Action as to revenue bills and amendments originated by the Senate. Sections 314-318.
 2. Discussions as to origination of appropriation bills by the Senate. Sections 319-322.
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314. Instance wherein a Senate amendment affecting the revenue was not objected to until the stage of conference.

A question relating to the invasion of the constitutional prerogatives of the House by a Senate amendment comes too late after the bill has been sent to conference.

On June 4, 1920,² during the consideration by the House of the conference report on the bill (H. R. 10378) to provide for the American merchant marine, Mr. Finis J. Garrett, of Tennessee, said:

The Constitution of the United States provides that all bills for raising revenue shall originate in the House of Representatives, but that the Senate may propose or concur with amendments, as in other bills. The bill which this House passed was not a revenue bill in the sense in which the term is used in the Constitution, and it had no reference whatsoever to it. It went to the Senate, and the Senate put upon it an amendment which does have to do with revenue. It originated in the Senate.

Now, unless I am mistaken in my recollection, it has not been many years since the Senate amended some House bill by putting upon it a revenue feature involving the subject of child labor, and that was not upon a revenue bill; and the matter got before the Supreme Court of the United States, and the Supreme Court held that act unconstitutional because it did not originate in the House of Representatives, where the Constitution provides that revenue bills shall originate.

That is worthy of pretty serious attention.

I remember, Mr. Speaker, more than once in my experience here, that the House has by a respectful resolution advised the Senate that it would have to decline to receive or consider any bill which interfered with its constitutional right to originate revenue measures.

The Speaker pro tempore³ said:

The Chair is of the opinion that it is too late to raise that question now, the bill having gone to conference; that question might have been raised when the bill came over from the Senate with the Senate amendments, but can not be raised upon a conference report, which presents the compromise of managers of the two Houses.

315. A bill raising revenue incidentally was held not to infringe upon the constitutional prerogative of the House to originate revenue legislation.

Discussion of differentiation between bills for the purpose of raising revenue and bills which incidentally raise revenue.

¹ Supplement to Chapter XLVII.

² Second session Sixty-sixth Congress, Record, p. 8575.

³ Joseph Walsh of Massachusetts, Speaker pro tempore.

On December 18, 1920,¹ Mr. Robert Luce, of Massachusetts, rising to a question of the privilege of the House, presented the following:

Resolved, That the first section of Senate joint resolution 212 in the opinion of this House contravenes the first clause of the seventh section of the first article of the Constitution of the United States and is an infringement of the privileges of this House, and that the said resolution be respectfully returned to the Senate with a message communicating this resolution.

The first section of the joint resolution in question, which was then pending on the Union Calendar, was as follows:

Resolved, etc., That the Secretary of the Treasury and the members of the War Finance Corporation are hereby directed to revive the activities of the War Finance Corporation, and that said corporation be at once rehabilitated with the view of assisting in the financing of the exportation of agricultural and other products, to foreign markets.

Mr. James R. Mann, of Illinois, made the point of order that a question of privilege was not involved, and said:

All laws which incidentally raise revenues are not laws for the purpose of raising revenue. Would the gentleman from Massachusetts contend, for instance, that the Senate could not pass a bill providing for the sale of a former public-building site and that it would not become a law if then passed by the House and signed by the President? The effect of the law would be to raise revenue. That is the only effect it would have. And yet no one has ever contended that the Senate could not originate a bill of that kind, the incidental effect of which is to raise revenue.

The provision of the Constitution the gentleman referred to provides that bills for the purpose of raising of revenue shall originate in the House of Representatives. It does not provide that laws which take the effect and which will have the effect either of raising revenue or producing a deficit shall originate in the House, and no one can tell whether the passage of the original act in this case was to produce revenue or to produce a deficit. No one can tell whether the passage of this resolution, if it shall be carried out in the spirit of the resolution, will produce revenue or produce a deficit. But everyone knows that the purpose of the law is not to produce revenue. The purpose of the law was to aid in the transaction of business, to aid in exports, to aid in the war, and not for the purpose of raising revenue. I doubt whether the gentleman from Massachusetts or anyone else will contend that Congress has the power to create corporations to engage in business for the purpose of raising the revenue of the Government.

The Speaker² quoted with approval a decision³ by Mr. Speaker Carlisle on a similar question, holding that such questions were for the House rather than the Speaker, and after directing the clerk to again report the resolution, put the question:

Is the resolution of the gentleman from Massachusetts in order as a matter of privilege?

The question being taken it was decided in the negative, yeas 28, nays 142.

316. Decision by the Senate holding a bill proposing a gasoline tax in the District of Columbia to be a revenue producing measure and that under the Constitution it should originate in the House.

On January 16, 1925,⁴ the Senate proceeded, as in Committee of the Whole, to the consideration of the bill (S. 120) to provide a tax on motor vehicle fuels sold within the District of Columbia.

¹Third session Sixty-sixth Congress, Record, p. 524; Journal, p. 51.

²Frederick H. Gillett, of Massachusetts, Speaker.

³Section 1501 of this work.

⁴First session Sixty-eighth Congress. Record. p. 1025.

Mr. Kenneth D. McKellar, of Tennessee, made the point of order that the bill was a revenue producing measure and that under the Constitution it should originate in the House of Representatives.

Mr. Heisler L. Ball, of Delaware,¹ said:

Mr. President, I do not think this is a revenue measure. There are certain measures the intent of which is to raise revenue. Those are revenue measures. The intent of this bill is to bring about automobile reciprocity with Maryland. I think the amendment that I suggest is such that the tax will not be increased and will not be materially lessened as received by the District. In other words, it does not affect the revenues of the United States, neither increasing nor lessening them. Incidentally there is a certain amount of revenue raised which offsets the revenue formerly raised by the taxation of the automobile itself. It is arranged so that the two will about equalize each other. There is no change in the amount of the revenue to be collected. It is clearly not the intention of the bill that it should be a revenue bill. It is merely an incidental fact that it does raise some revenue in that way.

Mr. McKellar said:

This bill provides for a tax which would be paid into the Treasury of the United States. It would be for general purposes. It would go into the Treasury of the United States just exactly as do the moneys which arise from tariff taxes or internal revenue taxes or any other taxes. The taxes raised by this bill would be mingled with and become a part of all the revenues of this Government. This is as completely a revenue bill as it is possible to make it. The funds are not to be set aside; they are to be intermingled with other funds of the Government. They would be a part of the general revenue of the Government, and it is impossible, it seems to me, that any theory could be urged against a measure of this kind originating in the House of Representatives, as is required by the plain terms of the Constitution.

The President pro tempore² said:

The Chair is of the opinion that he has no authority to declare a proposed act unconstitutional. The only precedent which the Chair has been able to find since the question arose was presented to the Senate in 1830, and the Vice President then in the chair ruled, holding that it was a question which must be submitted to the Senate and one which could not be ruled upon by the Chair, which entirely concurs with the views of the present occupant of the chair in the matter. The question before the Senate, therefore, is, shall the point of order made by the Senator from Tennessee [Mr. McKellar], which is that the bill now under consideration is unconstitutional and should have originated in the House of Representatives, be sustained? [Putting the question.] The "ayes" have it, and the point of order is sustained. The bill will be indefinitely postponed.

317. A point of order that a Senate bill proposing an increase in postage rates contravened the prerogative of the House was not sustained by the Senate.

The Senate having passed a bill with incidental provisions relating to revenue, the House returned the bill, holding it to be an invasion of constitutional prerogative.

A bill proposing an increase in rates of postage is a revenue bill within the constitutional requirement as to revenue bills.

On January 22, 1925,³ the Senate, as in Committee of the Whole, proceeded to the consideration of the bill (S. 3674) reclassifying postal salaries and increasing postal rates to provide for such adjustment.

¹ Albert B. Cummins, of Iowa, President pro tempore.

² Senate Journal, p. 101.

³ Second session Sixty-eighth Congress, Record, P. 2273; Senate Journal, p. 109.

Mr. Claude A. Swanson, of Virginia, made a point of order that the portion of the bill relating to increase of rates was a proposition to raise revenue and under the Constitution must originate in the House of Representatives.

Mr. Swanson said:

The only defense which has ever been urged for such legislation as that contained in Title II is that the rates of postage provided constitute a charge for a service and are not proposed for the purpose of raising revenue. It is very hard, however, to make any such distinction where the money so raised goes into the Treasury to be used for all purposes of the Government. All the revenue collected by such charges goes into the Treasury to be appropriated by Congress. Consequently, it seems to me, that under the general principles governing such legislation, the rates proposed clearly can not be held to be charges for service rendered, as they are, when collected, covered into the Treasury with all the other revenues of the Government, and, therefore, must be considered as revenue going into the Treasury to be appropriated out of the Treasury by Congress, as are any other revenues.

There have been some cases in which it has been held as to some specific matters, where the Government makes specific charges for services, that amendments affecting such charges, proposed in the Senate, do not constitute revenue legislation. This, however, is a case where the money will go into the Treasury; it will go through all the ordinary processes of collection; and it can only be appropriated out of the Treasury by Congress as are other revenues.

Mr. George H. Moses, of New Hampshire, said:

This is not an appropriation bill within the meaning of the Constitution. We base that contention upon the fact that the provision giving absolute, complete control of revenue bills in their origination to the House of Representatives is found in one place in the Constitution, whereas the broad power of Congress to establish post offices and post roads, a concomitant portion of which power is the payment of salaries, is to be found in another place.

We maintain further, Mr. President, that the payments provided for in the schedule of rates in title 2 of the bill are not payments of revenue in the form of general taxation; that they are payments for specific services carefully enumerated in the body of the measure itself; and that they are paid by no one who does not enjoy those services. They are unlike a general levy of a tax burden upon the whole body of the people.

The Presiding Officer¹ held the Chair has no authority to pass upon the constitutionality of a bill and submitted to the Senate the question: "Shall the point of order be sustained?", which was decided in the negative, yeas 29 nays 50.

The bill passed the Senate January 30 and was received in the House January 31, where it was held on the Speaker's table. On February 3, 1925,² Mr. William R. Green, of Iowa, as a question of privilege, submitted the following:

Resolved, That the bill S. 3674, in the opinion of the House, contravenes the first clause of the seventh section of the first article of the Constitution and is an infringement of the privileges of this House, and that the said bill be taken from the Speaker's table and be respectfully returned to the Senate with a message communicating this resolution.

During consideration of the resolution, Mr. Green enumerated instances in which questions relating to the constitutional prerogative of the House in originating revenue measures had risen between the two Houses and said:

In all of these instances the Senate has finally yielded to and virtually acknowledged the principle that amendments which fix the rate of postage can not be introduced for the first time in the Senate. The practice in the House is fixed that with one or two important exceptions which

¹ Wesley L. Jones, of Washington, Presiding Officer.

² Record, p. 2941.

might possibly be mentioned, such as the instance when a bill authorizing the Postmaster General to fix the rates on air mail, which might be considered in the same category as this bill, came from the Senate; and when a bill raising fees in the Patent Office was passed by that body, a similar bill having been introduced in the House—with these exceptions, when the matter involved was so insignificant as to be unnoticed—the House has always insisted on its privilege and the Senate has always yielded.

The resolution was agreed to—yeas 225, nays 153—and was transmitted to the Senate with the bill, which was by the Senate referred to the Committee on Post Offices and Post Roads.

318. The question of the constitutional right of the House to originate revenue measures is properly raised at any time after the measure infringing the right has been messaged to the House.

The House, while disclaiming the establishment of a precedent, sent to conference a bill declared to involve a question of infringement of the constitutional prerogative of the House in the origination of revenue legislation.

On May 17, 1929,¹ Mr. Bertrand H. Snell, of New York, by direction of the Committee on Rules, called up a privileged resolution which was agreed to as follows:

Whereas, in the opinion of the House, there is a question as to whether or not section 10 of the amendment of the Senate to H.R. 1 contravenes the first clause of section 7 of Article I of the Constitution of the United States, and is an infringement on the rights and privileges of this House; but in view of the present legislative situation and the desire of this House to speedily pass legislation affording relief to agriculture, and with the distinct understanding that the action of the House in this instance shall not be deemed to be a precedent so far as the constitutional prerogatives of the House are concerned: Now, therefore, be it

Resolved, That upon the adoption of this resolution it shall be in order to move to take from the Speaker's table the bill H.R. 1, with a Senate amendment, disagree to the Senate amendment, and agree to conference asked by the Senate, and that the Speaker shall immediately appoint conferees.

The statement in the preamble that the bill referred to raised a question of the constitutional right of the House to originate revenue legislation was vigorously combated² in debate in both the House and the Senate.

During the consideration in the House, Mr. Otis Wingo, of Arkansas, as a parliamentary inquiry, asked when the question of infringement on the constitutional privilege of the House could properly be raised

The Speaker³ said:

The Chair does not think anything can be done until a report has been made by the conferees, in case this resolution is agreed to.

¹⁰The Chair thinks that question could be raised at any time when the House has possession of the papers.

319. In 1930 the House insisted on its exclusive right to originate revenue measures and returned to the Senate a Senate concurrent resolution characterized as an infringement on its constitutional prerogative.—On January 16, 1928,⁴ Mr. William R. Green, of Iowa, rising to a question of the privilege of the House, offered the following resolution:

¹ First session Seventy-first Congress, Record, p. 1448.

² Record, p. 1605.

³ Nicholas Longworth, of Ohio, Speaker.

⁴ First session Seventieth Congress, Record, p. 1529.

Resolved, That Senate Concurrent Resolution 4 in the opinion of this House contravenes the first clause of the seventh section of the first article of the Constitution of the United States, and is an infringement of the privileges of this House, and that the said resolution be respectfully returned to the Senate with a message communicating this resolution.

At the request of Mr. Green the Senate concurrent resolution referred to was read by the Clerk as follows:

Resolved by the Senate (the House of Representatives concurring), That for the purpose of interpreting the meaning of the tariff act of 1922, with respect to imported broken rice, "broken rice" shall include only rice which falls within the class "brewers' milled rice" as defined in the United States standard for milled rice as promulgated by the Secretary of Agriculture.

In support of the resolution Mr. Green said:

Mr. Speaker, this Senate concurrent resolution, if it became a law and had any effect whatever—which, perhaps, may be doubted, as it is merely a resolution and not an amendment, in form, of the tariff law—would have the effect of changing the classification of broken rice, and, consequently, change the tariff rate upon it.

If it had any effect whatever it would have the effect desired by the party who introduced it to change the classification of rice, and a change of classification would change the duty and this would change the revenue.

How such a proposition ever got through the Senate is more than I can imagine. I can not understand how that body for a moment could think the House would receive such a resolution.

The pending resolution was then agreed to without division. The Senate concurrent resolution was accordingly returned to the Senate and no further record of its disposition appears.

320. Instance wherein the Senate declined to consider a bill challenged as an infringement on the right of the House to originate revenue measures.—On March 2, 1931,¹ it being the legislative day of February 17, in the Senate, Mr. Arthur Capper, of Kansas, moved that the Senate proceed to the consideration of the bill (S. 5818) to regulate commerce between the United States and foreign countries in crude petroleum and all products of petroleum, including fuel oil, and to limit the importation thereof.

Mr. Henry F. Ashurst, of Arizona, raised the question of order that the bill proposed to raise revenue, and was an infringement on the constitutional prerogative of the House to originate revenue bills.

The Vice President² submitted the question to the Senate, when Mr. Robert M. La Follette, Jr., of Wisconsin, proposed to lay the motion of the Senator from Kansas on the table.

The question being taken, it was decided in the affirmative, and the motion to proceed to the consideration of the bill was laid on the table.

321. Discussion of the right of the House to originate revenue legislation.

On April 11, 1912,³ in the Senate, during the consideration of the Army appropriation bill, a discussion arose pertaining to the right of the House to originate

¹ Third session Seventy-first Congress, Record, p. 7606; Senate Journal, p. 317.

² Charles Curtis, of Kansas, Vice President.

³ Second session Sixty-second Congress. Record. p. 4574.

supply bills, Mr. John Sharp Williams, of Mississippi, took the position that the right was of constitutional origin.

Mr. Francis E. Warren, of Wyoming, argued that it was the outgrowth of mere practice, the gradual development of a doctrine originally without specific constitutional sanction.

At the close of the discussion, Mr. Williams secured leave to print in the Record a statement of views and authorities, and on July 15,¹ submitted an exhaustive discussion of the question.

322. Instance where in proposed Senate amendments to a revenue bill were questioned in the House as an invasion of the constitutional prerogatives in relation to revenue legislation.

On July 25, 1917² Mr. Ebenezer J. Hill, Connecticut, rising to a question of privilege, and referring to the bill (H. R. 4280), the revenue bill, said:

Mr. Speaker, it seems to me, as a member of the Committee on Ways and Means, that the prerogatives of this body are being invaded. I recognize under the Constitution that the power of issuing bonds and incurring indebtedness must originate in the House of Representatives. Weeks ago, we sent from this House a tax bill. It was derided and denounced all over the country, and in two days was to be re-formed and reconstructed and made perfect. Many things in it I did not approve, but it had one saving grace. It raised the money which the party in power said they needed. Eight weeks have gone by, and no report has come yet from the other body. And now in the press of to-day I find that the Secretary of the Treasury appeared before the Finance Committee of the Senate yesterday and proposed \$5,000,000,000 of additional funds, part to be raised by bonds, the function of this House to originate; part to be raised by certificates of indebtedness, the function of this House to originate; the balance to be raised by taxation, which they have a perfect right to do, as an amendment to the tax bill which was sent to them. The bond issue that has been made, the certificates of indebtedness, authorized under a prior bill, passed weeks before that by this House of Representatives, have been issued, the bonds had been sold in part, and now, ignoring the law and ignoring the Constitution of the United States, it is proposed to more than double those things under the guise of an amendment to the tax bill, and the House of Representatives is absolutely ignored under the proposition, under the plea that it is an emergency.

I feel it my duty, Mr. Speaker, to call the attention of the House of Representatives to this invasion of its prerogatives, so that in the future, when such a bill comes to us for consideration, if nobody else does it, I will move to send it back, as Mr. Sereno E. Payne once did under similar circumstances and the House refused to consider it. I think we ought to stand on our rights and I therefore call the attention of the House to this invasion of our prerogatives.

No action was taken by the House, and no further reference to the question appears.

¹ Record, p. 9047.

² First session Sixty-fifth Congress, Journal, p. 313; Record, p. 5472.