

Chapter CCXXI.¹

AUTHORIZATION OF APPROPRIATIONS ON GENERAL APPROPRIATION BILLS.

1. The “rider rule” and its history. Section 1125.
2. Appropriations prohibited by law. Sections 1126–1133.
3. A treaty as authorization. Sections 1134–1143.
4. Constitutional authorization. Section 1144.
5. Mere appropriation not law of authorization. Sections 1145–1152.
6. Reappropriation of balances. Sections 1153–1162.
7. General decisions as to authorizations:
 - Agriculture Department. Sections 1163–1174.
 - Deficiency. Sections 1175, 1176.
 - District of Columbia. Sections 1177–1195.
 - Independent Offices. Sections 1196–1201.
 - Interior Department. Sections 1202–1229.
 - Legislative Establishment. Sections 1230–1231.
 - Navy Department. Sections 1232–1246.
 - State, Justice, Commerce, and Labor Departments. Sections 1247–1267.
 - Treasury and Post Office Departments. Sections 1268–1270.
 - War Department. Sections 1271–1286.
8. Appropriations for payment of claims. Sections 1287–1293.
9. As to investigations by Agricultural Department. Sections 1294–1309.
10. As to appropriations for pay of House employees. Sections 1310–1313.
11. Appropriations for salaries and offices. Sections 1314–1331.

1125. 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 except such as being germane retrenches expenditures.

Germane amendments retrenching expenditures are in order on general appropriation bills when reported by committees having jurisdiction.

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

¹Supplementary to Chapter XCV.

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 or any joint commission authorized by law or the House Members of any such commission having jurisdiction of the subject matter of such amendment, which amendment being germane to the subject matter of the bill shall retrench expenditures.

The provision admitting legislation intended to retrench expenditures on general appropriation bills was first adopted in 1876,¹ and having been proposed by Mr. William S. Holman, of Indiana, has since been known in its various forms as the "Holman rule."

It was omitted from the rules of the Forty-ninth Congress and did not appear again until the adoption of rules for the Fifty-second Congress. It was retained by the Fifty-third Congress, but was eliminated in 1891 and was not again included in the rules until the revision of 1911,² when it was readopted in its present form.

1126. The law prohibiting purchase of vehicles from appropriations for executive departments without specific authority is merely a limitation on administrative officers and does not support a point of order against items in an appropriation bill.³

On January 5, 1915,⁴ the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Martin D. Foster, of Illinois, made the point of order that an appropriation for the purchase of automobiles for the use of the Indian service was contrary to law.⁵

The Chairman⁶ ruled:

The gentleman from Illinois makes a point of order against the paragraph:

"That the Secretary of the Interior is authorized to purchase for the use of superintendents, farmers, physicians, field matrons, allotting, irrigation, and other employees of the Indian field service, in the supervision and administration of the affairs of the Indians, 20 motor-propelled passenger-carrying vehicles, at a cost not to exceed \$15,000; 40 horse-drawn passenger-carrying vehicles not to exceed a total cost of \$8,000; and to expend for the maintenance, repair, and operation of motor-propelled and horse-drawn passenger-carrying vehicles, including those now on hand and those to be purchased for the Indian Service, \$200,000; in all, \$223,000, payment to be made from applicable funds herein appropriated or otherwise available."

It is contended that this section is not authorized by law and is new legislation on an appropriation bill. Gentlemen have cited, in support of the point of order, section 5 of the legislative, executive, and judicial act for the fiscal year 1915.

The Chair has some personal knowledge of the reasons which brought about the action of the Committee on Appropriations in recommending the enactment of such legislation. As has been stated several times, it was intended to correct a possible abuse in applying the lump-sum contingent fund to the purchase of automobiles, and so forth. This section was passed in order to afford Congress some information as to the automobiles that were to be purchased, and why they were to be purchased.

¹ First session Forty-fourth Congress, Record, p. 445.

² First session Sixty-second Congress, Record, pp. 16, 80.

³ For somewhat different decision see sec. 8277, this work.

⁴ Third session Sixty-third Congress, Record, p. 985.

⁵ 38 Stat. L., p. 508.

⁶ Joseph W. Byrns, of Tennessee, Chairman.

The Chair does not think it was intended by Congress to deny itself the right in an appropriation bill to authorize any executive department of the Government to purchase motor-drawn vehicles or any other kind of vehicles, where they are needed as an administrative necessity. The section in question provides that these automobiles and vehicles shall be purchased for the use of superintendents, farmers, physicians, field matrons, allotting, irrigation, and other employees of the Indian field service in the supervision and administration of the affairs of the Indians.

It is very clear to the Chair that the occasion might arise as an administrative necessity where an automobile, or a motor-drawn vehicle, or some other class of vehicle, like a wagon or other horse-drawn vehicle, would be necessary in order to properly perform the duties of the Bureau of Indian Affairs. The Chair does not think that the section which has been quoted and relied on to sustain this point of order goes so far as to require, or that it was intended to require, special legislation. It seems to the Chair that it was passed for the purpose of providing a check by Congress, so to speak, on the purchase of motor-drawn vehicles used by the various departments of the Government, so that Congress might have before it estimates from these various departments as to the number of vehicles required, and why they were needed.

The point has been made that this section of the legislative, executive, and judicial act provides that there shall not be expended out of any appropriation, and so forth, any money for any vehicle for any branch of the Government service unless the same is specifically authorized by law. The Chair thinks that is nothing more or less than limitation upon an administrative officer, and that if Congress in its wisdom sees fit to authorize the purchase of motor-drawn vehicles or other vehicles for the administrative purposes set forth in this bill, then it would be authorized by law within the meaning of the section referred to, because an appropriation bill after it has passed, is as much law as any other statute which may be passed.

The Chair, therefore, overrules the point of order.

1127. On January 15, 1921,¹ the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union. A paragraph was read providing for the purchase of automobiles for the use of employees in the Indian field service.

Mr. Homer P. Snyder, of New York, raised a question of order against the paragraph.

The Chairman² overruled the point of order.

1128. The granting of quarters as part of the compensation of a civil employee without a proportionate reduction of salary was held to be contrary to law and not to be in order on an appropriation bill.

Appropriation for an object in former years does not justify the continuation of the appropriation.

On February 4, 1933,³ the legislative appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read the paragraph appropriating for the maintenance of the Botanic Garden containing the following proviso:

Provided, That the quarters, heat, light, fuel, and telephone service heretofore furnished for the director's use in the Botanic Garden shall not be regarded as a part of his salary or compensation, and such allowances may continue to be so furnished without deduction from his salary or compensation notwithstanding the provisions of section 3 of the act of March 5, 1928.⁴

¹Third session Sixty-sixth Congress, Record, p. 1481.

²Simeon D. Fess, of Ohio, Chairman.

³Second session Seventy-second Congress, Record, p. 3416.

⁴U.S. Code, title 5, section 678.

Mr. John C. Schafer, of Wisconsin, made a point of order against the proviso on the ground that it was unauthorized by law.

Mr. John N. Sandlin, of Louisiana, informed the Chair that the provision had been carried in the bill for years but that he was unable to refer to any statutory authorization.

The Chairman ¹ sustained the point of order.

1129. An appropriation for experiments and demonstrations in livestock production was held to be authorized by the organic law creating the Department of Agriculture.

On January 26, 1921,² during the consideration of the agricultural appropriation bill in the Committee of the Whole House on the state of the Union, the following paragraph was read:

Experiments and demonstrations in livestock production in the cane-sugar and cotton districts of the United States: To enable the Secretary of Agriculture, in cooperation with the authorities of the States concerned, or with individuals, to make such investigations and demonstrations as may be necessary in connection with the development of livestock production in the cane-sugar and cotton districts of the United States, including the employment of persons and means in the city of Washington and elsewhere, \$51,500.

Mr. Joseph Walsh, of Massachusetts, submitted a point of order against the clause authorizing the employment of persons in Washington, which was sustained.

Thereupon Mr. Sydney Anderson, of Minnesota, offered, as an amendment, the same paragraph omitting the provision for "the employment of persons and means in the city of Washington and elsewhere."

Mr. Walsh made the point of order that there was no authority of law for the appropriation.

The Chairman ³ said:

The Chair feels that under the organic law creating the Department of Agriculture, which is a very broad and comprehensive one, there is authority for these investigations. The Chair, therefore, overrules the point of order.

1130. Payment of cash in lieu of transportation for naval personnel is not authorized by statute and an appropriation for that purpose is not in order on an appropriation bill.

On February 11, 1921,⁴ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when a paragraph was reached making appropriation for the Bureau of Navigation. Mr. Fred A. Britten, of Illinois, made the point of order that an appropriation for the following purpose was unauthorized:

Transportation of enlisted men and apprentice seamen and applicants for enlistment at home and abroad, with subsistence and transfers en route, or cash in lieu thereof—

¹ Alfred L. Bulwinkle, of North Carolina, Chairman.

² Third session Sixty-sixth Congress, Record, p. 2094.

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

⁴ Third session Sixty-sixth Congress, Record, p. 3021.

The Chairman¹ said:

The Chair thinks the language providing for cash in lieu thereof is subject to a point of order, and the Chair sustains the point of order.

1131. Provision that an appropriation to be administered “in conformity with” an act is not subject to the point of order that it is in violation of such act.

On January 13, 1922,² during the consideration of the Post Office appropriation bill, Mr. Halvor Steenerson, of Minnesota, made the point of order that the appropriations provided by the bill were in violation of law.

Mr. James R. Mann, of Illinois, said in debate:

It is the contention of my distinguished friend from Minnesota that the appropriations carried in this bill are in conflict with the act of 1836. But the bill says that the appropriations are made in conformity with that act. That is the law, if it is written into the law. If this is enacted, it is the law, and any contention that it is in conflict falls, because the law says it is in conformity with the act of 1836. I assume that they did not assume that they were saying that the appropriation should be made in conformity with a repealed act. However, I do not think that makes any difference. But this will be the law if it is enacted, and this law will say, if it is enacted, that the appropriations in this bill are in conformity with the act of 1836, notwithstanding my genial friend from Minnesota insists that they are in conflict with the act of 1836. The law says it must be in conformity with the act of 1836.

The Chairman³ ruled:

The Chair is ready to rule. The gentleman from Minnesota makes the point of order that in paragraph 2 of the bill there are items of appropriation which do not come within the usual term of “field service,” that it is an appropriation in violation of the provisions of the act of July 2, 1936. The act of July 2, 1836, reads as follows:

“And be it further enacted, That the aggregate sum required for the service of the Post Office Department in each year shall be appropriated by law out of the revenues of the department, and all payments and receipts of the Post Office Department in the Treasury shall be to the credit of said appropriation.”

That provision is expressly repealed by the act of June 8, 1872, not by implication, but by expressly referring to it in the repealing clause. The provision of law (act of June 8, 1872) which supplants the repealed section reads as follows:

“The money required for the Postal Service in each year shall be appropriated for out of the revenues of the service.”

In ruling on the point of order, the Chair must be governed by the language of the bill. The language of the bill expressly provides that the sums are appropriated in conformity with the act of July 2, 1836. The fact that that act has been repealed does not militate against reference to it in the present bill. An act which has been repealed may be referred to in a measure in order to make it definite. In other words, by the terms of the bill these appropriations covered by all the items in section 1 are in conformity with the provisions of the act which the gentleman from Minnesota says they violate.

1132. An appropriation of certain revenues of the Shipping Board in direct violation of existing law requiring such moneys to be covered into the Treasury⁴ was held not in order on a general appropriation bill.

¹Joseph Walsh, of Massachusetts, Chairman.

²Second session Sixty-seventh Congress, Record, p. 1156.

³Everett Sanders, of Indiana, Chairman.

⁴See also sections 8254 and 8263 of this work.

On January 27, 1922,¹ the independent offices appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read the following:

For expenses of the United States Shipping Board Emergency Fleet Corporation during the fiscal year ending June 30, 1923, for administrative purposes, miscellaneous adjustments, losses due to the maintenance and operation of ships, for the tie-up, reconditioning, and repair of ships, and for carrying out the provisions of the merchant marine act, 1920, \$55,000,000 from moneys collected from mortgages, leases, accounts, and bills receivable other than those arising from current operations, and from moneys collected from the sale of ships, plants, material, securities, and other assets, prior to July 1, 1923, less such portion of said \$55,000,000 which shall have been collected during the fiscal year 1922 under the provisions of an act entitled "An act making appropriation for sundry civil expenses of the Government for the fiscal year ending June 30, 1922, and for other purposes." approved March 4, 1921.

Mr. James F. Byrnes, of South Carolina, raised a point of order.
After debate, the Chairman² held:

Of course, we are all familiar with the proposition that legislation on an appropriation bill is not in order. There must be an authorization under existing law upon which the appropriation may stand, or it must fall. In this instance we have, as it seems to the Chair, very clearly not only a provision which is not authorized by existing law but one which is directly contrary to existing law. The provision in this paragraph is for the expenses of the United States Shipping Board Emergency Fleet Corporation, for administrative purposes, miscellaneous adjustments, losses due to maintenance and operation of ships, for the tying up and reconditioning of ships, and the carrying out of the provisions of the merchant marine act.

Now we find ourselves confronted, as has been shown by the gentleman from South Carolina, Mr. Byrnes, in his reference to section 14, to which the attention of the Chair has been called, with the fact that the net proceeds derived by the board after July 1, 1922, must be applied to certain specific purposes or turned into the Treasury of the United States. The purposes stated are as follows:

"Such net proceeds, less an amount to be authorized by Congress to be withheld as operating capital, less such sums as may be needed for insurance, etc., shall be covered into the Treasury of the United States as miscellaneous receipts"; so that we have this direct and positive statement by existing law in the organic act creating this board, in which it is stated that for these specified purposes after July 1 those proceeds must be conveyed into the Treasury of the United States, unless they should be for the three purposes mentioned. These three purposes, and these three purposes only, may be appropriated for by Congress in an appropriation act or otherwise.

As I stated before, they must be only those three exceptions, and none other authorized by law; otherwise the provision is in contravention of law. It appears to the Chair clearly and inevitably that the point of order is well taken, for the reason which the Chair has stated, and the Chair so holds.

1133. 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 April 6, 1922,³ the State and Justice Departments appropriation bill was being considered in the Committee of the Whole House on the state of the Union, when Mr. John Jacob Rogers, of Massachusetts, offered an amendment providing an appropriation, in addition to one of \$150,000 previously made, for the purchase of an embassy building in Paris, France.

¹ Second session Sixty-seventh Congress, Record, p. 1839.

² Horace M. Towner, of Iowa, Chairman.

³ Second session Sixty-seventh Congress, Record, p. 5128.

Mr. Thomas L. Blanton, of Texas, made the point of order that the appropriation was unauthorized.

The Chairman ¹ said:

The Chair is ready to rule.

The authorization of the Lowden Act is as follows:

“Provided, however, That not more than the sum of \$500,000 shall be expended in any fiscal year under the authorization herein made: And provided further, That in submitting estimates of appropriation to the Secretary of the Treasury for transmission to the House of Representatives the Secretary of State shall set forth a limit of cost for the acquisition of sites and buildings and for the construction, alteration, repair, and furnishing of buildings at each place in which the expenditure is proposed (which limit of cost shall not exceed the sum of \$150,000 at any one place) and which limit shall not thereafter be exceeded in any case, except by new and express authorization of Congress.”

The Chair has no trouble in construing this proviso. It seems clear to the Chair from the language itself that the cost at any one place is limited to \$150,000, unless Congress sees fit to authorize further expenditure. But in order that we may have the view of the House on this question the Chair desires to call attention to the statement of the distinguished gentleman from Illinois, Mr. Lowden, when this legislation was presented to the House for consideration.

The interpretation by Mr. Lowden on this proviso and limitation of expenditure is in the following language—I read:

“While it is true that under this bill with its present limitation it will not be possible to purchase embassies in some of the capitals of Europe where land has become very expensive, it will be possible within the limitation of \$150,000 as proposed to purchase embassies and consulates while there is yet time.”

This interpretation the Chair assumes was placed upon this legislation by the Congress at the time of its passage.

However, the Chair can interpret the language of the act itself in no other way than a limitation of the appropriation to \$150,000 at any one place until Congress authorizes further expenditures.

The Chair sustains the point of order.

1134. The right granted by treaty and supplemental legislation to maintain civil government in the Canal Zone was held to authorize appropriations in general appropriation bills for such maintenance.²

On May 7, 1908,³ the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Henry T. Rainey, of Illinois, raised a question of order against this paragraph:

For pay of officers and employees other than skilled and unskilled labor in the service of the government of the Canal Zone, \$225,000 and the unexpended balances of appropriations for these objects available June 30, 1908.

The Chairman ⁴ ruled:

Against the paragraph the gentleman from Illinois, invokes, as the Chair understands, the second clause of Rule XXI of this House, which declares—

“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 con-

¹ Cassius C. Dowell, of Iowa, Chairman.

² Subsequently specifically authorized by the act of August 24, 1912 (U.S. Code, title 48, section 1305).

³ First session Sixtieth Congress, Record, p. 5889.

⁴ Marlin E. Olmsted, of Pennsylvania, Chairman.

tinuation 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.”

It is urged that this paragraph appropriating for the pay of officers and employees other than skilled and unskilled labor in the service of the government of the Canal Zone, is without authority of law.

By recent resolution of the House the President of the United States was asked to state by what authority of law he has exercised the functions of government in the Panama Canal Zone since the date of the expiration of the Fifty-eighth Congress, or by what right or authority the executive, legislative, and judicial functions in the Zone have been performed since that date.

Replying to that resolution of inquiry, the President, by message delivered to the House on the 4th of April, 1908, said:

“Civil government has been maintained in the Canal Zone under my direction pursuant to the authority conferred by the treaty between the United States and Panama, concluded November 18, 1903, and the acts of Congress approved June 28, 1902; April 28, 1904; March 3, 1905; December 21, 1905; June 30, 1906; March 4, 1907; by which the right to maintain civil government in the Canal Zone was granted to the United States, the duty to maintain it was imposed upon the President, and the means for its maintenance were from year to year expressly and specifically appropriated by Congress.”

Now, it would probably be safe for the occupant of the chair in Committee of the Whole to accept the construction of the law as declared by the President, acting presumably under the advice of the chief law officer of the Government. But the gentleman from Illinois calls attention to the second section of the act of April 28, 1904, by virtue of which he claims that upon the expiration of the Fifty-eighth Congress the power of the President to govern the Zone in the manner indicated ceased. Without stopping to inquire into all the acts of Congress referred to in the President's message, the Chair refers first to the treaty with the Republic of Panama. The second article defines the Canal Zone. The third article reads:

“The Republic of Panama grants to the United States all the rights, power, and authority within the Zone mentioned and described in Article II of this agreement and within the limits of all auxiliary lands and waters mentioned and described in Article II which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority.”

It is manifest therefore, that the Zone must be governed by the United States in some way or not governed at all.

The Chair finds an act later than the act of 1904, namely, the act of December 21, 1905, in the third section of which occurs this language:

“That the President shall annually, and at such other periods as may be provided, either by law or by his order, require full and complete reports to be made to him by the persons appointed or employed by him in charge of the government of the Canal Zone, the construction of the Isthmian Canal, and the operation of the Panama Railroad”—

And so forth.

Now, the Chair calls particular attention to this clause:

“The President shall annually cause to be made, by the persons appointed and employed by him in charge of the government of said Canal Zone and the construction of said canal, estimates of expenditures and appropriations, in detail as far as practicable, which estimates shall cover all annual salaries paid to persons employed on said work, excepting laborers and skilled laborers, and shall be submitted to Congress in the manner provided in section 5 of the act entitled ‘An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1902, and for other purposes.’ ”

Here is an act passed in 1905 by the Fifty-ninth Congress, after the expiration of the term of the Fifty-eighth Congress, requiring by reasonable interpretation that the President shall continue to govern the Canal Zone in the manner in which he had governed it, and as pointed out in the act of 1904. In pursuance of that authority the President has, from year to year,

caused estimates to be submitted by the proper department to the House, Congress has each year made appropriations for that specific purpose, and the government of the Zone has continued under that authority.

When a provision of permanent law is allowed to remain in an appropriation bill and is enacted into law, it is just as binding and effective as though found in any other statute. But the act of December 21, 1905, is not an appropriation act at all. It was not intended to and did not make law for one year only, but was intended to be and is permanent in character. It requires reports to be made "annually" by those appointed by the President to govern the Canal Zone. It shows the contemplation and intention of Congress that the President shall continue the government of the Canal Zone. If there were any doubt upon this point, there would still remain the fact that an appropriation in continuation of appropriations for a Government work or object already in progress requires no previous authority of law, but is excepted out of the rule. Without any hesitation whatever the Chair overrules the point of order.

On February 26, 1909,¹ during the consideration of the sundry civil appropriation bill in Committee of the Whole, Mr. Francis B. Harrison, of New York, having made this point of order against a similar item, the Chairman² said:

The same point of order was made one year ago to this same paragraph in the sundry civil appropriation bill for the current year. The present occupant of the chair ruled upon it then. Without stopping to read it, the Chair adopts and adheres to that ruling. It contains a discussion of this whole subject. The Chair will call the attention of the gentleman from New York to the fact that it did not rest upon the proposition that the appropriation was for the continuation of a government work in progress, but said, after ruling that there was authority for that appropriation, that "if there were any doubt upon that point, there would still remain the fact that an appropriation in continuation of appropriations for a government work or object already in progress requires no previous authority of law, but is excepted out of the rule." The Chair overrules the point of order now for the same reasons as it did then.

Again, on January 18, 1910,³ when this item was reached in the urgent deficiency appropriation bill, Mr. Harrison raised the same question of order.

The Chairman⁴ said:

This same point has been passed upon twice during the last two years. The Chair calls the attention of the gentleman from New York to the first decision, on May 7, 1908. The sundry civil bill being under consideration in Committee of the Whole House on the state of the Union, the paragraph relating to the Isthmian Canal was as follows:

"Eighth. For the pay of officers and employees other than skilled and unskilled labor in the service of the government of the Canal Zone, \$225,000; and the unexpended balances of appropriations for these objects available June 30, 1908."

Mr. Henry T. Rainey, of Illinois, made the point of order that there was no authority of law for this appropriation. There was considerable debate, and the Chairman of the Committee of the Whole in a long opinion overruled the point of order.

Again, on February 26, 1909, the sundry civil appropriation bill being under consideration a similar paragraph having been read, the gentleman from New York, who makes this point of order, made the point of order at that time.

Again, after debate, the Chair overruled the point of order.

Under these rulings the Chair overrules the point of order.

¹ Second session Sixtieth Congress, Record, p. 3307.

² Marlin E. Olmsted, of Pennsylvania, Chairman.

³ Second session Sixty-first Congress, Record, p. 771.

⁴ Henry S. Boutell, of Illinois, Chairman.

1135. A convention arrived at by Executive correspondence and not formally ratified by the contracting parties was not held to constitute a treaty to the extent of authorizing an appropriation on an appropriation bill.

An appropriation to continue representation of the United States at an adjourned meeting of an international conference was held not to be in continuance of a public work.

On January 17, 1910,¹ the urgent deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

International conference on maritime law: For expenses necessary for the representation of the United States at the adjourned meeting of the Third International Conference on Maritime Law, at Brussels, Belgium, in April, 1910, for the purpose of considering conventions and projects relating to collisions at sea, salvage, liability of shipowners, and liens, \$5,000, or so much thereof as may be necessary, together with the unexpended balance of the previous appropriation for representation of the United States at the Third International Conference on Maritime Law, to meet at Brussels in 1909.

Mr. Francis B. Harrison, of New York, made a point of order that the appropriation was not authorized by existing law.

Mr. James A. Tawney, of Minnesota, explained:

By convention entered into between the powers named in this paragraph, this congress has already held two meetings. At the last meeting they reached a formal conclusion, but before the conclusion could be ratified it had to be submitted to their respective governments, with the understanding—and the convention provided—that the ratification shall take place at a subsequent conference. Now, this is for the purpose of completing the work authorized by the conventions or treaties entered into with all these countries, according to the terms and conditions of those conventions. It is to defray the expense of the delegates attending the third and last congress, when the final result of the preceding congresses will be promulgated. It is clearly authorized by law.

And I may say that not only was an appropriation made, but it was authorized under a convention between independent nations; and if that is not good law, I do not know what is.

The Chairman² said:³

It appears that this convention was held pursuant to executive arrangement by correspondence, and not in accordance with the treaty or by law; by treaty I mean such a treaty as is contemplated in the Constitution and ratified by the Senate, and is therefore the law of the land. It therefore can not be held in order as authorized by existing law.

The question therefore recurs as to whether it can be considered a work in progress. If the appropriation in the current act, although originally subject to a point of order, had been agreed to and it was within the rules a work in progress, the Chair would be inclined to hold that this provision was in order. But under the decisions, which are very numerous, it does not appear to the Chair that this can be held to be work in progress. For example, it is held in volume 6 of Hinds's Digest, page 110:

“An appropriation to continue the duties of a commission was held not to be the continuation of a public work.

“The continuation of scientific work by a department of the Government does not constitute a work in progress, and must be appropriated for under authorization of prior law.

¹Second session Sixty-first Congress, Record, p. 721.

²Henry S. Boutell, of Illinois, Chairman.

³Record, p. 749.

“The continuation of investigations of mineral, coal, and so forth, was held not a continuation of a public work.”

Under these rulings the Chair sustains the point of order.

1136. A treaty authorizing appropriations for Indian tribes subscribing as contracting parties thereto does not sanction appropriations for other Indian tribes.

Unauthorized appropriations for relief of distressed Indians do not constitute such work in progress as will authorize similar items in subsequent bills.

On February 18, 1910,¹ the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read the following paragraph:

“For the relief of distress among Indians, not otherwise provided for, including the purchase of vaccine and the expense of vaccination, and for the prevention and treatment of tuberculosis, trachoma, smallpox, and other contagious and infectious diseases among Indians, \$40,000.”

Mr. James R. Mann, of Illinois, made the point of order that there was no authority of law for such appropriation.

The Chairman² said:

Section 2 of Rule XXI declares 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 such public works or objects as are already in progress.”

Is there any authority of law for this proposed expenditure for the relief of Indians in distress?

The Chair finds in the Revised Statutes, after a hurried examination, that there is statutory authority for the education of Indians, for schools, and so forth, but not, as far as the Chair is able to discover or has been informed, for the relief of distress among the Indians or supplying them with medicines.

In the so-called “Black Hills treaty,” which has been sent to the Chair, there is a provision that the Government will furnish supplies for the parties to this agreement who are unable to sustain themselves. That would clearly provide for relief of distress for such Indians as are parties to this treaty.

The language is that the Government will aid said Indians, but it refers only to the parties to this treaty. There may be other treaties, or many of them, containing similar provisions. If this paragraph in the bill were confined to Indians parties to such treaties, the Chair would have no difficulty in sustaining it; but it seems to be general in its terms, relating to all Indians whether parties to any such treaty or not, and therefore in violation of the rule, which says that no appropriation for an expenditure not previously authorized by law shall be in order. Previous appropriations have been made for similar purposes, no point of order having been made against them. They were made only for one year and for a specific sum, and that does not afford any authority for any further expenditure as proposed here. The Chair has been trying to find if it could be sustained as in continuation of a public work in progress, but it seems clearly to fall within the precedents which hold the other way.

No matter how meritorious or desirable it may be, the Chair may not consider the merits of the proposition, but must be governed by the rules. The point of order must therefore be sustained.

¹ Second session Sixty-first Congress, Record, p. 2101.

² Marlin E. Olmsted, of Pennsylvania, Chairman.

1137. Treaty stipulations providing for protection of the Panama Canal and enactments in conformity therewith were held to authorize appropriations for canal fortifications.

On February 25, 1911,¹ the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when a paragraph appropriating for the construction of fortifications on the Isthmian Canal was reached.

Mr. J. Warren Keifer, of Ohio, made the point of order that the appropriation was not authorized by law.

The Chairman² said:

The Clayton-Bulwer treaty of April 19, 1850, contains this provision in Article I:

"The Governments of Great Britain and the United States hereby declare that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said ship canal; agreeing that neither will ever erect or maintain any fortifications commanding the same or in the vicinity thereof, or occupy, or fortify, or colonize, or assume or exercise dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America, etc."

For many years there were bills pending, some of which were reported, in reference to the construction of an isthmian canal, a number of them relating in recent years to the Nicaraguan Canal in aid of the Maritime Canal Co. On December 12, 1898, the Hon. William P. Hepburn, who was then the chairman of the Committee on Interstate and Foreign Commerce, the committee of this House which had jurisdiction of legislation relating to the Isthmian Canal, introduced a bill which for the first time proposed that the Government itself should construct the canal. That bill provided, among other things, that the President of the United States—"be, and he is hereby, authorized to acquire by purchase from the States of Costa Rica and Nicaragua full ownership * * * of certain territory on which to excavate, construct, and defend a canal of such depth and capacity."

That was at the third session of the Fifty-fifth Congress. At the first session of the Fifty-sixth Congress, on December 7, 1899, Mr. Hepburn introduced another bill to the same effect, that the President, and so forth, be authorized to acquire territory on which to excavate, construct, and defend a canal of such depth and capacity. Following the introduction of that bill on the 5th of February, 1900, a treaty was signed by Mr. Hay and Sir Julian Pauncefote, commonly known as the first Hay-Pauncefote treaty, which referred to the Clayton-Bulwer treaty as follows:

"The United States of America and Her Majesty, the Queen of the United Kingdom of Great Britain and Ireland, etc., being desirous to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans, and to that end to remove any objections that may arise out of the convention on the 19th of April, 1850, commonly called the Clayton-Bulwer treaty, to the construction of such canal under the auspices of the Government of the United States, without impairing the 'general principle' of neutralization established in Article VIII of that convention."

Among other provisions in this Hay-Pauncefote treaty was this in Article II:

"The high contracting parties, desiring to preserve and maintain the 'general principle' of neutralization established in Article VIII of the Clayton-Bulwer convention, adopt as the basis of such neutralization the following rules."

It will be noticed that this article places the responsibility for maintaining the principle of neutralization not upon the United States alone, but upon the United States and Great Britain. Paragraph 7 of Article II of that treaty contains this provision:

¹Third session Sixty-first Congress, Record, p. 3469.

²James R. Mann, of Illinois, Chairman.

“No fortification shall be erected commanding the canal or the waters adjacent. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.”

When that treaty was submitted to the Senate of the United States various amendments were suggested in the Senate, but in the end the treaty was not ratified by either party. Following the sending of that message to the Senate of the United States and its consideration in the Senate on May 3, 1900, Colonel Hepburn introduced this bill:

“A bill to provide for the construction of a canal connecting the waters of the Atlantic and Pacific Oceans.

“That the President of the United States be, and he is hereby, authorized to acquire from the States of Costa Rica and Nicaragua, for and in behalf of the United States, control of such portion of territory now belonging to Costa Rica and Nicaragua as may be desirable and necessary on which to excavate, construct, and protect a canal of such depth and capacity.”

Here were bills pending in Congress, one of which was reported before the treaty had been agreed upon and ratified between the United States and Great Britain abrogating the Clayton-Bulwer treaty, providing that the United States should construct and defend or protect the canal. The first Hay-Pauncefote treaty did not contain a provision directly abrogating the Clayton-Bulwer treaty. There was then before the two countries a proposition presented by a legislative committee of this House having control of the subject, a proposition that the United States should construct and defend or protect an Isthmian Canal and a provision that the Clayton-Bulwer treaty could be, if not abrogated, changed to allow that.

The Hay-Pauncefote treaty, which was finally ratified, contained a provision that the high contracting parties agree that the present treaty—that is, the last Hay-Pauncefote treaty—shall supersede the aforementioned convention of the 19th of April, 1850, the Clayton-Bulwer treaty.

The Clayton-Bulwer treaty, therefore, is entirely abrogated. Article III of the Hay-Pauncefote treaty provides that the United States, not the United States and Great Britain, but the United States adopts as a basis of neutralization of such ship canal the following rules substantially as embodied in the convention of Constantinople of October 28, 1888, for the free navigation of the Suez Canal. That is to say, the canal shall be free and open to vessels of commerce and of war of all nations observing these rules on terms of entire equality, so that there shall be no discrimination against any such nation or its citizens or subjects in respect to the conditions, or charges of traffic, or otherwise. Such conditions and charges of traffic shall be just and equitable.

And there are various other rules. Article II of that treaty provides that—

“The canal may be constructed under the auspices of the Government of the United States, either directly at its own cost or by gift or loan of money by individuals.”

And that—

“subject to the provisions of the present treaty, the United States shall have and enjoy the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal.”

Paragraph 2 of Article III provides:

“The canal shall never be blockaded, nor shall any right of war be excised nor any act of hostility be committed within it. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.”

And the provision which was in the first Hay-Pauncefote treaty, “that no fortification shall be erected commanding the canal or the waters adjacent,” was deliberately left out of the treaty which was ratified.

The present occupant of the chair has endeavored to read all of the correspondence which has been published in any form upon this subject, and has no hesitation in saying that in his opinion it was the design in the treaty to leave to the Government of the United States the right to determine how it should police the canal, and what regulations it should make.

Following the ratification of the Hay-Pauncefote treaty, which was ratified in November, 1901, came an act of Congress based upon the Hepburn bill, which had passed the House and

for which a substitute was made in the Senate. That act, commonly known as the Spooner Act, is the act of June 28, 1902. It provided:

“That the President is hereby authorized to acquire from the Republic of Colombia, for and on behalf of the United States, upon such terms as he may deem reasonable, perpetual control of a strip of land, the territory of the Republic of Colombia, not less than 6 miles in width, and extending from the Caribbean Sea to the Pacific Ocean, and the right to use and dispose of the waters thereon, and to excavate, construct, and to perpetually maintain, operate, and protect thereon, a canal of such depth and capacity, etc.”

Another provision of that act is section 5, reading:

“That the President is hereby authorized to cause to be entered into such contract or contracts as may be deemed necessary for the proper excavation, construction, completion, and defense of said canal, harbors, and defenses, by the route finally determined upon under the provisions of this act.”

The route finally determined upon was the Panama Canal route, and it is said that the convention or treaty entered into between the United States and Panama would not permit the United States to fortify the canal.

Article XVIII of the treaty between the United States and Panama provides:

“The canal, when constructed, and the entrances thereto shall be neutral in perpetuity, and shall be opened under the terms provided for in section I of Article III of, and in conformity with all the stipulations of, the treaty entered into by Great Britain and the Government of the United States October 18, 1901.”

But the neutralization under the treaty (the Hay-Pauncefote treaty) is to be maintained by the United States, not by the United States and Great Britain.

It is said that the limit of cost has been exceeded. The original limit of cost for the canal was based upon the estimate of the engineers, but when Congress adopted the lock-type of canal at the time it did, it was well known that the original limit of cost would be exceeded.

The chairman is not now certain what provision was made at that time in reference to the limit of cost, but in the Payne tariff bill it was provided, among other things, in reference to the issuance of bonds, that there might be issued the additional sum of \$290,569,000 of bonds, which sum, together with the \$84,631,900 already borrowed by the issuance of 2 per cent bonds under section 8 of the act of June 28, 1902, equals the estimate of the Isthmian Canal Commission of the amount required to cover the entire cost of the canal from its inception to its completion; and if there be no other change of authorization it is quite certain that the adoption of this estimate by the authority to issue bonds to cover the estimate of cost would be, of itself, an adoption of the estimate.

The Chair personally has been very much at sea in reference to the desirability of fortifying the canal, but in deciding the point of order the Chair does not pass upon that in any respect. It seems to the Chair that whereas it is provided that the United States shall preserve the neutrality of the canal for the benefit of all nations alike, and that the United States shall provide military police upon the canal to preserve it from disorder, and whereas Congress has provided that the Government shall construct, maintain, operate, and protect the canal, it is quite within the power of the House to determine in what way it should be protected, and whether fortifications are necessary. If fortifications are necessary for protection, then the items in the bill are in order. The Chair therefore overrules the point of order.

1138. A treaty establishing an international institute authorizes an appropriation in a general appropriation bill for sending delegates to the institute.

An appropriation for maintaining an international institute, in excess of the amount provided by treaty as the quota which the United States should contribute for that purpose, is not in order on an appropriation bill.

On March 28, 1912,¹ the diplomatic and consular appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The following paragraph was read:

For the payment of the expenses of delegates to the next General Assembly of the International Institute of Agriculture, to be held at Rome, \$10,000, or so much thereof as may be necessary, to be expended under the direction and in the discretion of the Secretary of State.

Mr. Martin D. Foster, of Illinois, made the point of order that the appropriation was without authorization of law.

Mr. Everis A. Hayes, of California, argued:

I will state that this paragraph clearly is not subject to the point of order. In that connection I want to call attention to article 2 of the treaty, which provides:

“The institute shall be composed of the general assembly and a permanent committee, the composition and duties of which are defined in the ensuing articles.”

Article 3 says:

“The general assembly of the institute shall be composed of the representatives of the adhering governments. Each nation, whatever be the number of delegates, shall be entitled to the number of votes in the assembly which shall be determined according to the group to which it belongs, and to which reference will be made herein in article 10.”

In article 10 it is provided that this country comes in group 1, which entitles us to five votes in the general assembly. The general assembly is created by this law, and this provision in the bill is intended to pay the expenses of the delegates to that general assembly from this country.

As has already been stated, a similar appropriation was made to defray the expenses of delegates from this country to the general assembly who attended at the last general assembly, and I can see no possible ground for a point of order against this provision of the bill. Clearly this general assembly is provided for in the existing law, and it certainly will not be claimed that when this general assembly is provided for the House has no authority to pay its expenses. It seems to me very plain that it is not subject to a point of order—

The Chairman² overruled the point of order.

Subsequently this paragraph was reached:

For the payment of the quota of the United States for the fiscal year ending June 30, 1913, of the cost of the publications of the International Institute of Agriculture at Rome, \$5,000, or so much thereof as may be necessary.

Mr. Thomas U. Sisson, of Mississippi, called attention to a provision in the treaty that—

In any event the contribution due per unit of assessment shall never exceed a maximum of 2,500 francs. As a temporary provision, the assessment for the first two years shall not exceed 1,500 francs per unit. Colonies may, at the request of the nation to which they belong, be admitted to form a part of the institute on the same conditions as independent nations.

and made the point of order that appropriations in excess of this quota having already been made the pending item was in violation of clause 2 of Rule XXI.

The Chairman sustained the point of order.

1139. In determining the extent to which treaties authorize appropriations on appropriation bills, ambiguous provisions are to be construed in favor of authorization.

¹ Second session, Sixty-second Congress, Record, p. 3949.

² Thetus W. Sims, of Tennessee, Chairman.

Where provisions of a treaty are susceptible of conflicting interpretations, questions of doubt are to be resolved in favor of the more liberal construction.

On January 9, 1913,¹ the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was read:

For support and maintenance of day and industrial schools among the Sioux Indians, including the erection and repairs of school buildings, \$200,000.

Mr. Scott Ferris, of Oklahoma, made the point of order that this appropriation was not authorized by law.

The Chairman² said:

The point of order made by the gentleman from Oklahoma, Mr. Ferris, is to the effect that the obligations imposed by the act of 1877 are impressed with a time limit by reason of the reference in section 5 of that act to the act of 1868. In view of this contention it is necessary to consider both the act of 1868 and the act of 1877. Under the act of 1868 the contracting parties respectively assumed certain obligations for value furnished and to be furnished. The treaty of 1868 was one of limited duration. Later, by the act of 1887 the same contracting parties entered into new relations. On the part of the Indians an exceedingly valuable tract of land, a principality, one might say, was ceded to the United States. This cession is referred to in the section cited by the gentleman from Oklahoma, which in part is as follows:

“Art. 5. In consideration of the foregoing cession of territory and rights and upon full compliance with each and every obligation assumed by the said Indians, the United States does agree to provide all necessary aid to assist the said Indians in the work of civilization; to furnish to them schools and instruction in mechanical and agricultural arts, as provided for by the treaty of 1868.”

It is insisted by the gentleman from Oklahoma that this reference to the treaty of 1868 is intended to furnish a time limit for the discharge of the obligations imposed by the act of 1877, that limit being the limit fixed in the treaty of 1868. From the language that the Chair has read it will be seen that there was a cession of property by the Indians, so that a new consideration was afforded for any obligations or undertakings on the part of the United States toward the other contracting parties.

It is also insisted by the gentleman from Oklahoma that in the agreement of 1877 the Indians undertook on their part to go to the Indian Territory, and failing to carry out this undertaking, they have lost their rights against the United States. If the committee will bear with me, I will give the substance of so much of the act of 1877 as relates to the suggested change of habitation to the Indian Territory.

The Indians agreed that a delegation of five or more chiefs and principal men from each band should without delay visit the Indian Territory to examine the land, with a view to making it a permanent home, and if on this examination the report should be favorable and satisfactory to their principals, that is, the Sioux Indians, then the Indians agreed that they would make the change. But a condition precedent was the investigation of this new territory and the requirement that the recommendation, if favorable, should be satisfactory to the Sioux Indians. Until this condition precedent was discharged, there was no obligation whatever on the part of the Indians to change their habitat.

No evidence has been adduced to show that any delegation on the part of the Sioux made the investigation contemplated, or that if they did, and made a report, this report was satisfactory to the principals. Hence there is no reason to conclude that the Sioux have ever incurred any obligation to remove to the Indian Territory, or failed in any duty in this respect.

¹Third session Sixty-second Congress, Record, p. 1298.

²Edward W. Saunders, of Virginia, Chairman.

Referring again to the section of the act of 1877 in which reference is made to the treaty of 1867, the Chair will cite anew the language used in that connection.

“Art. 5. In consideration of the foregoing cession of territory and rights and upon full compliance with each and every obligation assumed by the said Indians, the United States do agree to provide all necessary aid to assist the said Indians in the work of civilization; to furnish to them schools and instruction in mechanical and agricultural arts, as provided for by the treaty of 1868.”

Obviously there are two meanings that may be given to this reference to the treaty of 1868. First, the one suggested by the gentleman from Oklahoma that it is intended thereby to fix a time limit on the obligations of the United States under the act of 1877. Second, that it was intended to save description in the second act and to use the language of the treaty of 1868 to show in detail what was intended by thereby comprehended under the words “to provide all necessary aid to assist the said Indians in the work of civilization, to furnish to them schools and instruction in mechanical and agricultural arts.” Under the first suggestion it will be seen that the United States would secure an immensely valuable tract of land, for practically no consideration. If the second view is the correct view, then the United States is merely thereby held to the discharge of obligations which, in the light of what this Government has received from these Indians, are essentially reasonable.

If the interpretation of this treaty is in doubt, then this doubt must be resolved by resort to the fundamental principles for the interpretation of treaties, or agreements between a great nation like ours and aboriginal savages. Obviously these contracting parties are not on an equal footing, and dealing at arm's length. Hence in the construction of the language under consideration, as between the two conflicting views, that one should be adopted which is most favorable to the weaker, and practically helpless party, and which in addition conforms to essential justice by requiring the United States to afford adequate return for the highly valuable consideration furnished by the other contracting party.

The Chair concludes, therefore, that the reference made to the treaty of 1868 was not intended to impose the limitations of the treaty of 1868 on the obligations assumed by the act of 1877, but was designed to save words and avoid a restatement in detail of what the Government assumed to do when it undertook to provide all necessary aid.

Another thing, to which the Chair wishes to call attention is that the act of 1877 and the treaty of 1868 seem to be most highly regarded. I find in the act of 1899 a most unusual provision, to the effect that anything that occurs in the treaty of 1868 and the agreement of 1877 is to be held as in force, anything in the act of 1889 to the contrary notwithstanding.

Of course, as a rule as between subsequent and antecedent acts, if there is any conflict between the two relating to one subject matter, there is a repeal by implication of the former act, but in this instance it is provided that in case of conflict the subsequent statute shall give way to the antecedent acts. This provision clearly shows that this Government reestablished by the act of 1889 in the most emphatic fashion the rights of the Indians under the treaty of 1868 and the agreement of 1877.

Since these agreements are made the repository of the Indians' rights, they should be favorably construed in their interests according to the principles cited.

Looking to the treaty of 1868 and the agreement of 1877 it is clear that the Government undertook to do many things for the Indians, and specifically agreed to assist them in the work of civilization.

It is familiar authority that once a policy is established by law, Congress may appropriate to carry out that policy, and provide for the agents and agencies, fairly within the same. If a department is authorized to make investigations, an appropriation bill may provide for the agents needed for this purpose. Under the head of assisting these Indians in the work of civilization, many things may be appropriated for.

The Chair, not take up any further time of the committee, but looking to the provision for the payment of teachers, for physicians, blacksmiths, and additional employees, as well as well as for the other items it is perfectly clear that if there is no time limit on the obligations of the Government under the act of 1877, and this has been fully discussed, then there is an existing obligation

on the part of the Government of the United States to make those appropriations to which the point of order relates. The Chair, therefore, overrules the point of order.

1140. A treaty sanctioning employment of counsel to represent an international court was held not to authorize employment of counsel to represent this Government before such court.

On February 20, 1915,¹ the diplomatic and consular appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

For the payment of necessary expenses, not to exceed the sum of \$5,000, incurred, and compensation for services rendered under the direction of the Secretary of State in the examination and preparation of cases involving the use, distribution, or division of waters and other questions or matters of difference covered by the treaty of January 11, 1909.

And in representing this Government and the American interests involved in the presentation of such cases before the International Joint Commission constituted under that treaty.

A point of order having been made against the paragraph by Mr. William E. Humphrey, of Washington, the Chairman² ruled:

The Chair has considered all the arguments on this point of order and regrets that he is unable to agree with the gentlemen who desire to retain this appropriation in the bill. The Chair views it that here is a high court, created for the consideration of cases between Canada and the United States. He views it that this commission have the right to incur expenses for clerical services and matters of that kind and to pay them out of the appropriation, according to the terms of the treaty. But the Chair does not feel that we have the right to limit any item in this appropriation bill except to pay—

“For services rendered under the direction of the Secretary of State in the examination and preparation of cases involving the use, distribution, or division of waters and other questions or matters of difference covered by the treaty of January 11, 1909, between the United States and Great Britain, and in representing this Government and the American interests, involved in the presentation of such cases before the international joint commission constituted under that treaty.”

The distinction the Chair makes is that here is an attempt to employ counsel, not to advise the commission but to act under the direction of the Secretary of State in preparing cases to be presented to this commission, an absolutely different situation. The counsel is not to act under the direction of the commission; he is to act under the direction of the Secretary of State, and his whole duties are to present the suits in which the United States Government and the American interests are involved before the court. It is as distinct as if we should say that the court had a right to employ counsel to represent John Smith before it. It looks like an effort to use the treaty and the fund provided for salaries of the commission and other officials in the employment of counsel to present cases involving American interests. The Chair does not know what those interests are which are referred to, but if they need counsel there ought to be another appropriation for that purpose. Hence the Chair sustains the point of order.

1141. A convention with foreign nations organizing and establishing an international association was held to justify an appropriation for its support.

¹Third session Sixty-third Congress, Record, p. 4229.

²Charles J. Linthicum, of Maryland, Chairman.

April 6, 1922,¹ the appropriation bill for the Departments of State and Justice was under consideration in the Committee of the Whole House on the state of the Union, when Mr. James W. Husted, of New York, offered this amendment:

Pan American Union, \$100,000: *Provided*, That any moneys received from the other American Republics for the support of the union shall be paid into the Treasury as a credit, in addition to the appropriation, and may be drawn therefrom upon requisitions of the chairman of the governing board of the union for the purpose of meeting the expenses of the union and of carrying out the orders of the said governing board.

Mr. Thomas L. Blanton, of Texas, made the point of order that the amendment involved legislation:

After debate the Chairman² said:

Under the act of July 14, 1890, the Congress organized and established under the direction of the Secretary of State the International Union of American Republics. It is true that that legislation was on an appropriation bill, but no objection was made and it became and was permanent law. There has been no change or modification, so far as the Chair is able to learn, of this organization and the establishment of this union except as to the name. The agreement referred to by the gentleman from Texas between the members of the union is as follows:

“Any of the Republics may cease to belong to the Union of American Republics upon notice to the governing board two years in advance. The Pan American Union shall continue for successive terms of 10 years, unless 12 months before the expiration of such term a majority of the members of the union shall express the wish to the Secretary of State of the United States of America to withdraw therefrom on the expiration of the term.”

The Chair thinks that this agreement has not expired and that the notice was not served which would in any manner terminate our relations with the Pan American Union. The Chair, therefore, overrules the point of order.

1142. A treaty providing for mutual reports by contracting nations to an international bureau was held to sanction appropriations for the bureau's maintenance although no treaty had been entered into providing for establishment of the bureau.

On April 7, 1922,³ the appropriation bill for the Departments of State and Justice was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read the following paragraph:

For the annual share of the United States for the maintenance of the International Sanitary Bureau for the year 1923, \$11,323.16.

Mr. Thomas L. Blanton, of Texas, made the point of order that there was no authority for the provision.

Mr. James W. Husted, of New York, said:

Mr. Chairman, the International Sanitary Bureau has been recognized in a treaty which has been ratified by the United States Senate, and I think that is sufficient authorization to support the appropriation. This is the treaty known as the International Sanitary Convention, concluded October 14, 1905, ratification advised by the Senate February 22, 1906, ratified by the President May 29, 1906, and proclaimed March 1, 1909. Article 10 of that treaty is as follows:

“The Government of each country is obliged to immediately publish the measures which it believed necessary to take against departures either from a country or from an infected territorial area.

¹ Second session Sixty-seventh Congress, Record, p. 5137.

² Cassius C. Dowell, of Iowa, Chairman.

³ Second session Sixty-seventh Congress, Record, p. 5191.

“The said Government is to communicate at once this publication to the diplomatic or consular agent of the infected country residing in its capital as well as to the International Sanitary Bureau.”

The Chairman ¹ ruled:

In the opinion of the Chair this provision is for the purpose of carrying out this treaty, and therefore the Chair overrules the point of order.

This is, in effect, a treaty.

1143. A treaty entering into mutual agreement to reduce the number of combat ships maintained by the high contracting parties was held to authorize appropriations for the conversion of such ships.

On February 12, 1931,² the Committee of the Whole House on the state of the Union was considering the naval appropriation bill.

When the paragraph providing for repair and preservation of naval vessels and equipment was reached, Mr. Menalcus Lankford, of Virginia, offered this amendment:

Provide further, That in order to convert the U.S.S. *Wyoming* into a training ship and the U.S.S. *Utah* into a target ship, in accordance with the terms of the treaty for the limitation and reduction of naval armament, signed at London on April 22, 1930, there shall be available \$779,000 of the appropriations for the fiscal year 1931, as follows: Engineering, Bureau of Engineering, 1931, \$210,000; construction and repair, Bureau of Construction and Repair, 1921, \$535,000; and Ordnance and Ordnance Stores, Bureau of Ordnance, 1931, \$343,000.

Mr. James V. McClintic, of Oklahoma, interposed a point of order.

The Chairman ³ held:

The Constitution of the United States, Article VI, provides that—

“This Constitution and the laws of the United States which shall be made in pursuance thereof; and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land.”

A treaty entered into and properly ratified and proclaimed is the law of the land and repeals any previous statute. Conversely, if Congress should thereafter pass a statute which receives the approval of the President, in conflict with a treaty, the later law governs, because treaties and statutes are on the same basis, both being the supreme law of the land while they are in force. Consequently, any authorization carried in a treaty is the basis of an appropriation, just as if it were an authorization passed by an act of Congress.

The only question that remains to be considered is this: Is the language of the treaty which provides that these three ships shall be scrapped as combat ships and which permits one to be used as a target ship and one to be retained as a training ship merely permissive positions which the Congress must determine to avail itself of by statute. Any doubt that might be entertained on that subject is obviated by section 468 of title 5 of the United States Code, which was quoted by the gentleman from Idaho, the chairman of the subcommittee in charge of the bill.

In order to make the proposition clear the Chair will quote the language of section 468—

“The Secretary of the Navy shall report to Congress at the commencement of each regular session the number of vessels and their names upon which any repairs or changes are proposed which in any case shall amount to more than \$300,000, the extent of such proposed repairs and changes, and the amount estimated to be needed for the same in each vessel; and the expenditures for such repairs or changes so limited shall be made only after appropriations in details are provided for by Congress.”

¹ Cassius C. Dowell, of Iowa, Chairman.

² Third session Seventy-first Congress, Record, p. 4732.

³ Frederick R. Lehlbach, Chairman.

This is legislation which amply authorizes an appropriation for repairs and changes without further law, and removes any question that may remain as to the treaty itself being an authorization for the appropriation. The point of order is therefore overruled.

1144. Constitutional provisions, however explicit, are not sufficient to warrant appropriations not previously authorized by law.¹

On May 24, 1910,² the House was considering the sundry civil appropriation bill in the Committee of the Whole House on the state of the Union, when Mr. James A. Tawney, of Minnesota, offered an amendment providing an appropriation to enable the President to secure information to assist him in the discharge of the duties imposed upon him by the tariff act approved August 5, 1909.

Mr. John J. Fitzgerald, of New York, made the point of order that the amendment was not authorized by law.

Mr. Tawney contended in rebuttal that it was sanctioned under the constitutional provision authorizing the President to transmit to Congress information on the state of the Union.

The Chairman,³ said:

That portion of the amendment which provides—

“To enable the President to give to Congress information of the state of the Union and recommend to their consideration such measures as he shall judge necessary”—is the language of the Constitution. Of course no one will suggest for a moment that the Constitution is not the law of the land. It is the supreme law of the land, in force not only in the House, but everywhere else in the country; and the question arises whether, under the provision of the Constitution giving to the President the authorization that he may from time to time give to Congress information of the state of the Union and recommend to their consideration such measures as he shall judge necessary and expedient, it is in order under Rule XXI to make an appropriation for employment of persons to enable the President to acquire information or to assist him in this purpose.

Would it be in order for any gentleman on the floor of the House to offer an amendment for an appropriation to enable the President from time to time to give to the Congress information of the state of the Union and recommend to their consideration such measures as he shall judge necessary and expedient—\$100,000,000 or \$1,000,000—to be expended by him as he pleases, without any control by legislation or by the appropriation? Is this provision of the Constitution such a warrant that Congress may, without legislation, without previous authorization, by a mere appropriation, give to the President such sum as Congress may see fit to give, with no control over it? If such a ruling were to be held sound, it seems to the present occupant of the chair that it would go a long way toward establishing autocracy of the Executive and depriving the Congress of power in the Government.

Nor can the present occupant of the chair believe that the right of the President to give to Congress information of the state of the Union and recommend to their consideration such measures as he shall judge expedient is a sufficient foundation for Congress to appropriate money under Rule XXI, not previously or otherwise authorized by law, to expend as the Executive may deem fit and without any control over it; and it seems to the Chair that the provision of the amendment to include the employment of such persons as may be required on the part of the Executive, only limited by the sum of \$250,000, to be used as he may see fit, for the purpose of giving information to Congress and recommending such measures as he may judge necessary and expedient—that that portion of the amendment is obnoxious to clause 2 of Rule XXI, which prohibits an appropriation

¹ See, however, section 1248 of this volume.

² Second session Sixty-first Congress. Record, p. 6803.

³ James R. Mann, of Illinois, Chairman.

not previously authorized by law and prohibits a proposition which shall change existing law. For that reason the Chair feels constrained to sustain the point of order.

Mr. Tawney having appealed from the decision of the Chair, the decision was sustained, yeas 136, nays 3.

1145. Previous enactment of items of appropriation unauthorized by law does not justify similar appropriations in general appropriation bills.

On April 14, 1914,¹ the legislative, executive, and judicial appropriation bill was under consideration in the Committee of the Whole House on the state of the Union.

To a paragraph providing for personnel in the office of the Attorney General Mr. Joseph T. Johnson, of South Carolina, offered this amendment:

Insert "six Assistant Attorneys General, at \$5,000 each."

Mr. James R. Mann, of Illinois, made the point of order against the amendment. The Chairman,² held:

The only law that has been suggested to the Chair authorizing more than three Assistant Attorneys General is the appropriation act of last June, and that simply makes an appropriation for seven Assistant Attorneys General, and in no way makes it permanent law. Therefore the statute authorizes only three, and this is clearly without authority of law, and the Chair sustains the point of order.

1146. On January 7, 1920,³ the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the paragraph was reached providing for the relief and care of destitute Indians.

Mr. James R. Mann, of Illinois, made a point of order that there was no law authorizing the expenditure.

Mr. Homer P. Snyder, of New York, said:

It has been carried in the bill for years.

After debate, the Chairman⁴ sustained the point of order.

1147. On January 15, 1920,⁵ the Post Office Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the following paragraph was read:

For inland transportation by railroad routes, including increases hereinafter provided, \$60,000,000: *Provided*, That not to exceed \$1,250,000 of this appropriation may be expended for pay of freight and incidental charges for the transportation of mails conveyed under special arrangement in freight trains or otherwise: *Provided further*, That out of this appropriation the Postmaster General is authorized to expend not exceeding \$850,500 for the purchase of aeroplanes and the operation and maintenance of aeroplane mail service between such points, including service to and between points in Alaska, as he may determine.

¹ Second session Sixty-third Congress, Record, p. 6695.

² John N. Garner, of Texas, Chairman.

³ Second session Sixty-sixth Congress, Record, p. 1186.

⁴ Nicholas Longworth, of Ohio, Chairman.

⁵ Second session Sixty-sixth Congress, Record, p. 1584.

Mr. Leonidas C. Dyer, of Missouri, raised a question of order against the last proviso in the paragraph.

The Chairman¹ ruled:

The point of order is made to the language beginning "*Provided further*" down to and including the word "determine." The Chair finds upon examination of the previous acts that in 1917 the Postmaster General was authorized to expend not exceeding \$100,000 for the purchase, operation, and maintenance of aeroplanes, for experimental aeroplane mail service between such points as he may determine; and furthermore, in the act of May 10, 1918, the Postmaster General in his discretion was authorized to require the payment of postage on mail carried by aeroplane at not exceeding 24 cents per ounce or fraction thereof. The fact that the establishment of this particular class of service was provided for in an appropriation bill and may have been continued in another appropriation bill the succeeding year, would not, in the opinion of the Chair, be sufficient justification for the claim that it would not be subject to a point of order, if the point of order be made. In the view of the Chair, the Post Office Department is not authorized by any existing law to establish as a permanent class of service the carriage of mail by aeroplane. Section 3965 of the Revised Statutes provides for the carrying of mail on all post roads, but that would not apply to the carrying of mail through the air. The Chair is inclined to believe that the provision of this statute, enacted some 40 or 50 years ago, could hardly have been intended to comprehend the carriage of mail by air route, neither does the Chair believe that this appropriation can be justified on the ground that it is a continuation of a public work or a service heretofore authorized by law, and the Chair therefore sustains the point of order.

1148. On January 14, 1920,² the Post Office Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read:

For conducting experiments in the operation of motor vehicle truck routes; also for experiments in the operation of county motor express routes, which shall be operated primarily as a means of expediting the transportation of fourth-class mail between producing and consuming localities, and shall not displace nor supplant any existing methods of mail transportation or delivery, which two classes of experiments shall be conducted hereafter under such rules and regulations, including modifications in rates of postage, limit of weight and size, and wrapping and packing requirements, as the Postmaster General may prescribe, \$300,000.

Mr. J. N. Tincher, of Kansas, made the point of order that appropriations for such experiments were not authorized by law.

Mr. Clyde M. Kelly, of Pennsylvania, submitted that similar provisions had been carried in former appropriation bills.

The Chairman¹ held:

The language of the acts to which the gentleman from Pennsylvania referred, namely, those pertaining to the parcel post, in the view of the Chair are not sufficient to sustain the contention that in this act we can carry language providing for the operation of motor vehicle truck routes, and so forth. And, as the gentleman from Illinois, Mr. Mann, has well said, the carrying of this item in the annual appropriation bill is not sufficient justification, if the point of order be made at the time the appropriation is pending, against the language seeking to provide for the continuation of the experiment. Furthermore, as the gentleman from Michigan, Mr. Cramton, has pointed out, it is apparently sought to make this permanent law by inserting the word

¹ Joseph Walsh, of Massachusetts, Chairman.

² Second session Sixty-sixth Congress, Record p. 1596.

“hereafter.” Neither can the language be justified on the ground that it is a continuation of a public work.

The Chair therefore sustains the point of order.

1149. A statute prohibits payment of the compensation or expenses of any board, commission, or similar body from funds appropriated by Congress unless the creation of such body shall have been authorized by law.

Appropriations in former bills do not authorize similar appropriations for the same purpose in subsequent bills.

On June 20, 1930,¹ during the consideration of the second deficiency appropriation bill, this paragraph was read:

Investigation of enforcement of prohibition and other laws: For continuing the inquiry into the problem of the enforcement of the prohibition laws of the United States, together with enforcement of other laws, pursuant to the provisions therefor contained in the first deficiency act, fiscal year 1929, to be available for each and every object of expenditure connected with such purposes, notwithstanding the provisions of any other act, and to be expended under the authority and by the direction of the President of the United States, who shall report the results of such investigation to Congress, together with his recommendations with respect thereto, fiscal year 1931, \$250,000 together with the unexpended balance of the appropriation for these purposes contained in the first deficiency act, fiscal year 1929, which shall remain available until June 30, 1931.

Mr. Fiorello H. LaGuardia, of New York, having raised a question of order, Mr. William R. Wood, of Indiana, pointed out that the paragraph had been carried in former appropriation bills.

Mr. LaGuardia cited section 673 of title 31 of the United States Code, reading:

No part of the public moneys or of any appropriations made by Congress shall be used for the payment of compensation or expenses of any commission, council board, or other similar body, or any members thereof, or for expenses in connection with any work or the results of any work or action of any commission, council, board, or other similar body, unless the creation of the same shall be or shall have been authorized by law.

Nor shall there be employed, by detail hereafter or heretofore made, or otherwise, personal services from any executive department or other Government establishment in connection with any such commission, council, board, or similar body.

The Chairman² ruled:

The Chairman of the committee, the gentleman from Indiana, has conceded the point of order, but in the opinion of the present occupant of the chair it is incumbent upon every Chairman to act upon an opinion of his own. The Chair is of the opinion that the point of order is well taken. The gentleman from New York read the statute with reference to the payment of money to commissions appointed without legal authority. The Chair does not find any pertinency in that discussion, because clearly under the legislation which was contained in the deficiency appropriation act of March 4, 1929, authority was given for the expenditure of \$250,000, but that expenditure was limited to the fiscal years 1929 and 1930. Therefore the authorization which was contained in the appropriation act of March 4, 1929, is no longer in force, and the Chair sustains the point of order.

1150. An appropriation for an object unauthorized by law, however frequently made in former years, does not warrant similar appropriations in succeeding years.

¹ Second session Seventy-first Congress, Record, p. 11340.

² Carl R. Chindblom, of Illinois, Chairman.

The recent tendency is to narrow the range of projects to which the rule admitting appropriations in extension of public works is applicable.

The construction of a road, although in extension of roads already built, was held not to be in continuation of a public work.

On February 21, 1917,¹ Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read as follows:

Construction, repair, and maintenance, military and post roads, bridges, and trails, Alaska: For the construction, repair, and maintenance of military and post roads, bridges, and trails, Territory of Alaska, \$500,000.

Mr. William Gordon, of Ohio, made the point of order that there was no authority of law for the expenditure.

The Chairman² said:

The fact that appropriations have been made from year to year in an appropriation bill does not make a continuance of such appropriations in order if the appropriation was ever out of order.

Thereupon Mr. Julius Kahn, of California, offered the following amendment:

Protection, repair, and maintenance of military post roads, bridges, trails, Alaska: For the completion, repair, and maintenance of military post roads, bridges, and trails, Territory of Alaska, \$500,000.

Mr. Gordon having made the point of order against the amendment, Mr. Kahn contended that it provided for the continuation of a work in progress.

The Chairman ruled:

In the first place, the Chair will say that there has been a tendency to narrow the application of that principle. But entirely apart from that tendency, the committee which proposes to appropriate for a work in progress should have some original authority in that connection. This authority is entirely lacking in this committee in the present connection. If there is any authority anywhere to appropriate for these roads, as a work in progress, that authority is not found in this committee. Under the act which the Chair has read this committee is not authorized to make appropriations for the Alaskan roads. A special fund for the construction of these roads is provided in the Alaskan act. That provision does not give the right to this committee, either by virtue of the principle of a work in progress, or on any other ground, to appropriate for the roads in question.

The Chair referred to the tendency being to limit the application of the principle of making appropriations for work already in progress. In that connection I desire to read a citation which has just been handed to me:

“But later decisions, in view of the indefinite extent of the practice made possible by the early decisions, have ruled out propositions to appropriate for new buildings in navy yards.”

What could be a larger application of this principle than to hold that if this board has outlined a large scheme of road construction in Alaska, and done some work here and there in connection with the same, this committee, or any committee, is thereby authorized to appropriate the funds necessary to complete every road contemplated by that scheme or project?

In the act which the Chair has cited, section 29, there is an elaborate provision for road construction in Alaska by a board to be composed of an engineer officer of the United States, two other officers, and so on. At the close of that section it is specifically stated that the cost and expense of laying out, constructing, and repairing these roads and trails in the Territory shall

¹Second session Sixty-fourth Congress, Record, p. 3818.

²Edward W. Saunders, of Virginia, Chairman.

be paid by the disbursing officer out of the "roads and trails" portion of the Alaskan fund. The Chair thinks that the point of order directed to this paragraph is well taken, and it is therefore sustained.

1151. Whether appropriations for purposes unauthorized by law have been carried in prior appropriation bills is not material in determining whether appropriations for such purposes are in order in succeeding years.

The question as to the pertinency of court decisions predicated on legislation subject to points of order at the time of enactment.

An appropriation for completing governmental activities undertaken during the war under the food control act was held in order on an appropriation bill.

On April 24, 1924,¹ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. A point of order advanced by Mr. Joseph W. Byrns, of Tennessee, was pending on a paragraph making appropriation to enable the Bureau of Agricultural Economics to complete certain work conducted during the war under the food control act and corollary laws.

In debating the question, Mr. William J. Graham, of Illinois, took the position that while there might be ground for doubt as to authority of law, the fact that Congress has repeatedly made appropriations for this work validated it to the extent of authorizing the proposed expenditure.

The Chairman,² held:

The Chair does not think that the fact that items of appropriation have been carried in prior appropriation bills has any force or effect in determining whether like provisions in a pending bill are in order. The Chair has a good deal of doubt also as to whether the decisions of courts predicated upon legislation passed by Congress, which may or may not have been subject to points of order at the time the legislation was passed, have any real importance or efficacy in the determination of a point of order.

The history of the legislation has been set forth by those who contend that the paragraph in question in this bill is in order. They have called attention to legislation which in the opinion of the Chair tends to support the paragraph in the bill, and the Chair is inclined to believe that the burden of proof has shifted to the gentlemen who insist that the legislation is out of order to show that the legislative authority cited is not complete for the purpose of making this legislation in order. Under the act of August 29, 1916, an Army appropriation bill, there was created the Council of National Defense. This, as the Chair understands it, was largely an advisory commission; but under the authority of that act there was formed the Wax Industries Board, subsidiary to the Council of National Defense, and under an Executive order of May 28, 1918, No. 2868, the President established this board as a separate administrative agency to act for and under his direction. The Chair will not take the time to read the paragraphs of the law sustaining this statement.

The food control act of August 10, 1917, empowered the President to requisition food, feed, fuel, and other supplies necessary for the support of the Army, and the Chair calls attention to section 2 of that act of August 10, 1917, which reads as follows:

"That in carrying out the purposes of this act the President is authorized to enter into any voluntary arrangements or agreements to create and use any agency or agencies, to accept the services of any person without compensation, to cooperate with any agency or person, to utilize any department or agency of the Government, and to coordinate their activities so as to avoid any preventable loss or duplication of efforts or funds."

¹First session Sixty-eighth Congress, Record, p. 7081.

²Carl R. Chindblom, of Illinois, Chairman.

The Chair calls attention particularly to the words—
“to utilize any department or agency of the Government.”

The title of that act reads as follows:

“An act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel.”

This act terminated by its terms at the end of the war, but there were some functions which had been exercised under that act which did not so terminate. The Chair calls attention to section 24 of the food control act of August 10, 1917:

“That the provisions of this act shall cease to be in effect when the existing state of war between the United States and Germany shall have terminated, and the fact and date of such termination shall be ascertained and proclaimed by the President; but the termination of this act shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil case before the said termination pursuant to this act; but all rights and liabilities under this act arising before its termination shall continue and may be enforced in the same manner as if the act had not terminated. Any offense committed, and all penalties, forfeitures, or liabilities incurred prior to such termination may be prosecuted or punished in the same manner and with the same effect as if this act had not been terminated.”

Under section 2 of this same act the President had authority to utilize any department or agency of the Government for the purposes of the act. It appears from the language in the pending paragraph itself that this legislation is based upon an Executive order dated December 31, 1918. That date occurred prior to the termination of the war as proclaimed by the President. The order transferred the work of the domestic wool section of the War Industries Board to the Bureau of Agricultural Economics.

It seems to the Chair, therefore, that the order of the President transferring the work of the domestic wool section of the War Industries Board to the Department of Agriculture must be considered to have been authorized by law. The gentleman from Tennessee makes the point that the paragraph in question authorizes activities not contemplated or permitted under the war legislation. The Chair does not find anything in the language of the paragraph which indicates exactly how this money is to be spent, except that it is—

“to enable the Bureau of Agricultural Economics to complete the work of the domestic wool section of the War Industries Board and to enforce Government regulations for handling the wool clip of 1918 as established by the wool division of said board pursuant to the Executive order of December 31, 1918, transferring such work to the said bureau.”

The subsequent language only enlarges or further describes the purpose of the appropriation, namely:

“To continue, as far as practicable, the distribution among the growers of the wool clip of 1918 of all sums heretofore or hereafter collected or recovered with or without suit by the Government from all persons, firms, or corporations which handled any part of the wool clip of 1918.”

It does not appear from the language of the paragraph that this money is to be used for any other purpose than to carry out the purpose of the activities of the domestic wool section of the War Industries Board, which, as the Chair has attempted to state, were legally and properly transferred by the President prior to the termination of the war to the Agricultural Department. While the Chair concedes that there is much difficulty in the solution of this question, on the whole the Chair is of the opinion that there is sufficient authority for the appropriation, and overrules the point of order.

1152. A provision for the reappropriation of a sum required by law to be covered into the Public Treasury was held not to be a change of law, and not to be an appropriation beyond the limit of cost.

On January 20, 1910,¹ the urgent deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was read:

The amounts hereinafter stated, deposited in the Treasury in accordance with the requirements of the act approved March 4, 1909, section 10 (35 Stat. L., p. 1027) are hereby reappropriated and made available for expenditure for the purposes for which they were originally appropriated as follows, namely: Navy-yard, Mare Island, Cal.: Shipwright's shop for construction and repair, \$19,570.56; light and power station building, \$28,565.90; in all, \$48,136.46.

Mr. John J. Fitzgerald, of New York, reserved a point of order on the paragraph, and said:

Mr. Chairman, I desire to call the attention of the committee to what is proposed to be done here. Before I entered Congress an appropriation was made, by the act approved March 4, 1899, to construct a shipwright's shop at the Mare Island Navy Yard. The appropriation was made and the work was authorized, apparently because it was essential to the Mare Island Navy Yard that this shop should be built. On the 4th of March last, in the sundry civil act, it was provided that all unexpended balances on the books of the Treasury Department, on the first of July, 1904, should be covered into the general fund, unless at the time of the passage of the sundry civil act, March 4, 1909, the money was obligated by contract for some particular work. For ten years this money had lain idle in the Treasury to the credit of this work, for the purpose of enabling the Navy Department to initiate and erect this shop, so essential to the work in the navy yard at Mare Island. Then it was ascertained that under the provisions of the sundry civil act the money had to be turned into the Treasury. In reality, the money had remained unexpended for ten years, and no contract even had been made which was then in existence under which the money was obligated to be paid.

It seems to me, Mr. Chairman, that the appropriation having been made, the authority under the act authorizing the building is exhausted, and this is, in effect, an appropriation beyond the limit of cost, or, at any rate, it must change the law under which the money was converted back into the Treasury, and so is subject to the point of order.

The Chairman² said:

In the United States Statutes at Large, Volume 35, page 27, section 10 reads as follows:

"The Secretary of the Treasury shall cause all unexpended balances of appropriations which remained on the books of the Treasury on the first day of July, 1904, except permanent specific appropriations, judgments and findings of courts, trust funds, and appropriations for fulfilling treaty obligations with the Indians, to be carried to the surplus fund and covered into the Treasury: *Provided*, That such sums of said balances as may be needed to pay contracts existing and not fully discharged at the date of this act shall remain available for said purposes. For the purposes herein declared no appropriation made prior to July 1, 1904, shall be construed to be a permanent specific appropriation unless by its language it is specifically and in express terms made available for use until expended."

In view of the statute, the Chair would like to ask whether this paragraph in the bill involves a change of law?

Mr. James A. Tawney, of Minnesota replied:

It is not a change of law. This does not repeal the law which authorized the construction of the shipwright shop, nor the construction of the power plant. The shipwright-shop law was passed March 3, 1899, Thirtieth Statutes at Large, page 1045. The act authorizing the light and power station building was passed March 3, 1903, Thirty-second Statutes at Large, page 1187.

¹Second session Sixty-first Congress, Record, p. 854.

²David J. Foster, of Vermont, Chairman.

Now, these works were in progress at the time of the act of March 4, 1909, and two contractors had failed on account of delay incident to the physical conditions surrounding the construction of the foundation of the shipwright shop and the construction of the dry dock. The delays, it seems, were responsible for the two contractors failing, and the work had to be stopped entirely. But the remaining amount—the unexpended balance of the appropriation—was not obligated; and, in my judgment, although it was not obligated, I think the Navy Department was altogether too hasty in stopping the work as soon as the act of March 4, 1909, was passed, and turning the money back into the Treasury.

The fact that under the requirements of that law the unexpended balances of these two appropriations should be turned back into the Treasury does not affect the law that authorized the construction of these two projects, and therefore Congress can appropriate now for the balance necessary to complete these projects, as well as it could appropriate in the first instance.

It is a work in progress, but not a work in progress alone; it is a work that is being done in accordance with authority of law. All they need to complete it is the appropriation. Now, the fact that the act of 1909 turned back into the Treasury part of the appropriation did not affect the original authority under which these two projects are being carried on.

The common practice of Congress has been to reappropriate unexpended balances. That has always been the practice of Congress, to reappropriate unexpended balances, where the unexpended balances have been turned back into the Treasury by virtue of the covering-in act, which was passed in 1874. The reference to the first statute is Thirtieth Statutes at Large, page 1045. If the Chair has the two statutes authorizing the projects, he will see that the one was authorized March 3, 1899, and the other was authorized in the act approved March 3, 1903.

The Chairman thereupon overruled the point of order.

1153. The reappropriation of an unexpended balance for an object authorized by law may be made on an appropriation bill.

On February 18, 1910,¹ the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the paragraph was reached making available certain unexpended balances.

Mr. William H. Stafford, of Wisconsin, having made the point of order, the Chairman² said:

The Chair is ready to rule upon the point of order made by the gentleman from Wisconsin. That point is made against the proviso:

“That the unexpended balances of all continuing appropriations heretofore made for allotment work, general or specific, are hereby made available for the purposes enumerated herein.”

Now, there is no allegation that the purposes enumerated herein are not authorized by law, and they seem in fact to relate to allotments. The Chair thinks that it is competent to appropriate unexpended balances. The Chair understood the gentleman from Wisconsin to suggest that the moneys might heretofore have been appropriated for some other purpose than that enumerated herein, but, even so, the Chair finds several precedents, one of them in section 3591 of volume 4 of Hinds' Precedents, which states in the caption:

“The reappropriation of an unexpended balance for an object authorized by law may be made on an appropriation bill.”

In that case the Postmaster General was authorized to apply to the payment of the salaries of letter carriers the sum of the unexpended balance of an appropriation which had been made for letter boxes. From that and other precedents it seems perfectly clear to the Chair that it is proper in this bill to provide that the unexpended balance for continuing the appropriation heretofore made for allotment work may be made available for the purposes mentioned in this bill, particularly as the said purposes appear from a very hasty reading to relate exclusively to allotments. The Chair therefore overrules the point of order.

¹ Second session Sixty-first Congress, Record, p. 2094.

² Marlin E. Olmsted, of Pennsylvania, Chairman.

1154. A proposition which would be in order if provided through a new appropriation is in order if provided from an unexpended balance.

A proposal authorizing the Secretary of the Navy to expend unobligated balances for labor-saving devices was held to be in order on an appropriation bill.

On May 16, 1930,¹ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when a paragraph was read providing for contingent expenses and including the following:

Provided, That any unexpended or unobligated balances under appropriations for salaries in the Navy Department for the fiscal year 1930 may, with the approval of the Secretary of the Navy, be expended for the purchase, exchange, or rental of labor-saving devices during the fiscal year 1931.

Mr. Fred A. Britten, of Illinois, having raised a question of order, the Chairman² ruled:

It appears to the Chair that the question here is whether this provision, which authorizes the Secretary to expend during the fiscal year 1931 certain unexpended balances from appropriations for the fiscal year 1930, imposes a new duty upon him and would therefore constitute legislation not in order on an appropriation bill.

The gentleman from Idaho, Mr. French, has cited to the Chair a provision of law under which it appears that the various appropriations, general, specific, and contingent, for each bureau in the Navy Department must be kept separate in the Treasury. That being the present law, it seems to the Chair that there would be nothing within the discretion of the Secretary to determine as to whether there was any unexpended or unobligated balance in any appropriation item after the close of the fiscal year 1930. In other words, it would be merely a question of fact disclosed by the books of the Treasury Department. Therefore, this language imposes no new duty on the Secretary as to determining whether there does in fact exist any unexpended balance in the appropriation for salaries for the fiscal year 1930. After the beginning of the fiscal year 1931 it will be a known fact whether such unexpended balances exist.

Now, as to whether it is in order on this appropriation bill to appropriate any unexpended balances out of items in the appropriations for 1930, the Chair thinks it is in order to do that. If the purpose is one for which there is authority of law, it is as much in order to appropriate for the purpose out of an unexpended balance as it would be to make an entirely new appropriation. The Chair does not understand that any question has been raised as to the right to appropriate money to be expended by the Secretary for the purchase of labor-saving devices. If this would be in order as an entirely new appropriation, it is in order out of an unexpended balance.

The Chair is of the opinion, therefore, that this is an appropriation for a purpose authorized by law, is not new legislation, and overrules the point of order.

1155. The reappropriation of unexpended balances, even for another lawful purpose than that for which originally appropriated, is in order on an appropriation bill.

On April 5, 1910,³ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was read:

The Secretary of the Navy is hereby authorized to utilize toward yard development of the naval station, Pearl Harbor, Hawaii, the sum of \$35,000 appropriated by the act of June 29,

¹ Second session Seventy-first Congress, Record, p. 9098.

² Homer Hoch, of Kansas, Chairman.

³ Second session Sixty-first Congress, Record, p. 4308.

1906, for the reclamation of that portion of the naval station, Honolulu, Hawaii, known as "The Reef."

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

After debate, the Chairman¹ ruled:

The act of June 29, 1906, seems to have made an appropriation for the reclamation of that portion of the naval station at Honolulu known as the Reef. The proposition in the bill is that the Secretary of the Navy is hereby authorized to utilize toward yard development of the naval station, Pearl Harbor, Hawaii, the sum of \$35,000, appropriated by the act of June 29, 1906, for the reclamation of that portion of the naval station, Honolulu, known as the Reef.

It has been frequently held that it is in order to appropriate an unexpended balance, and in some cases where the unexpended balance was for another purpose.

I read from Hinds' Digest, volume 4, page 394:

"A paragraph was read in the Post Office appropriation bill: 'The Postmaster General is authorized to apply to the payment of the salaries of letter carriers for the fiscal year ending 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.'"

A point of order was made to the paragraph, but the point of order was not sustained.

It seems to the Chair that where Congress has made an appropriation for a specific purpose and the money is still unexpended, it is within the power, under the rules of the House, to appropriate that money to another lawful purpose. The Chair understands that is the proposition in this paragraph, and the Chair therefore overrules the point of order.

1156. Reappropriations of unexpended balances to be in order on appropriation bill must specify amounts and from what previous appropriation remaining, and be for similar objects.

On January 30, 1915,² the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the following paragraph was read:

Aeronautics: The sum of \$1,000,000 is hereby reappropriated, out of the total unobligated balances of all annual appropriations for the Naval Establishment for the fiscal year ending June 30, 1914, and made available for aeronautics, to be expended under the direction of the Secretary of the Navy for procuring, producing, constructing, operating, preserving, storing, and handling aircraft and appurtenances, maintenance of aircraft stations, experimental work in development of aviation for naval purposes, and such other aeronautical purposes as the Secretary of the Navy may deem proper.

Mr. James R. Mann, of Illinois, made a point of order against the paragraph. The Chairman³ ruled:

The point of order is made by the gentleman from Illinois. It appears that it has heretofore been decided that a reappropriation of an unexpended balance for an object authorized by law may be made on an appropriation bill for a similar object.

On February 12, 1897, the Post Office appropriation bill was under consideration in Committee of the Whole when the 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

¹James R. Mann, of Illinois, Chairman.

²Third session Sixty-third Congress Record, p. 2750.

³James Hay, of Virginia, Chairman.

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.”

On February 14, 1907, when the naval appropriation bill was under consideration in Committee of the Whole, this proviso was read:

“*And provided further*, That the unexpended balances under appropriations ‘Provisions, Navy, for the fiscal years ending June 30, 1905 and 1906,’ are hereby reappropriated for ‘Provisions, Navy, for fiscal year ending June 30, 1908.’”

It was held that that was in order; but in this case the reappropriations asked for do not point out from what appropriations this reappropriation is asked, nor the specific amounts; nor does it appear that this appropriation is for a similar object. Therefore, the Chair, differentiating these decisions which hold that a reappropriation is in order, is constrained to arrive at the conclusion that when the reappropriation is asked for it must specify from what appropriation, heretofore made, the reappropriation is asked, and the specific amounts to be reappropriated. The Chair therefore sustains the point of order.

1157. While it is in order to provide for the reappropriation of unexpended balances in an appropriation bill, sums previously appropriated for a specific purpose may not be reappropriated for a purpose unauthorized by law.

On January 31, 1920,¹ the second deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Joseph W. Byrns, of Tennessee, offered as a new paragraph an amendment reappropriating an unexpended balance.

Mr. Thomas L. Blanton having made a point of order, the Chairman,² held:

The gentleman from Tennessee offers an amendment, by way of a new section, providing that—“so much of the appropriation of \$3,500,000 not necessary for the care and custody of the draft records and for the employment of clerical assistance for the purpose of furnishing to adjutants general of States statements of service of soldiers who served in the war with Germany shall be available for the employment of the clerical assistance necessary for the purpose of furnishing such information from the records of the demobilized army as may be properly furnished to public officials, former soldiers, and other persons entitled to receive it.”

It appears from the language of this amendment that an appropriation of three and a half million dollars was heretofore made for a specific purpose and that it is now desired that the Secretary of War may use it for a different purpose.

It seems to the Chair that the entire purpose of the amendment is to authorize the Secretary of War to do something which, without the amendment, he has not authority to do. If such is the effect of the proposed amendment, it is in contravention of the rule. The Chair sustains the point of order.

1158. The reappropriation of unexpended balances for purposes authorized by law is in order even though for different purposes than those for which originally appropriated.

On December 14, 1921,³ Mr. Martin B. Madden, of Illinois, called up the conference report on the first deficiency appropriation bill.

The report having been read, Mr. Nicholas J. Sinnott, of Oregon, said:

Mr. Speaker, I desire to make a point of order against the conference report in that the conferees have exceeded their authority in agreeing to the Senate amendment No. 34 and for further

¹ Second session Sixty-Sixth Congress, Record, p. 2313.

² John Q. Tilson, of Connecticut, Chairman.

³ Second session Sixty-seventh Congress, Record, p. 372.

reason that this is a deficiency bill and they have no right to agree to such an amendment and it is new legislation.

After debate, the Speaker¹ ruled:

The question that arises is whether a reappropriation of a fund which is not specifically, appropriated to this purpose, and therefore is appropriated to another purpose, is legislation.

The Chair assumes that this claim has been adjudicated or adjusted and only needs an appropriation. Indeed, the Chair is informed that a warrant was actually drawn for it by the Secretary of War which the comptroller refused to pass because the appropriation had not been made.

Now, it does not seem to the Chair that it is legislation to make a reappropriation of funds to a purpose which was not embraced in the original appropriation. It seems to the Chair the Appropriations Committee has the right to appropriate from a fund different from the one from which normally the payment would be made, and therefore this amendment is not subject to the point of order.

There are several decisions in the print which are contradictory. There are decisions both ways. The Chair thinks inasmuch as the Committee on Appropriations has the right to appropriate if there was no fund at all, that it is not legislation to reappropriate from a fund which has been originally allotted for another purpose, and therefore the Chair overrules the point of order.

1159. On February 26, 1923,² the third deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union when the Clerk read a paragraph reappropriating, for the alteration of buildings and purchase of land, a portion of an unexpended balance from the appropriation for participation in an exposition at Rio de Janeiro, Brazil, as follows:

The appropriation of \$1,000,000 authorized by Joint Resolution No. 25, approved November 2, 1921, for the expenses of taking part in an international exposition to be held at Rio de Janeiro, Brazil, which was made by the first deficiency act, fiscal year 1922, approved December 15, 1921, is hereby made available for the fiscal year 1924, and the Secretary of State may expend not to exceed \$15,000 of the balance of the appropriation, not required for the expenses of participation in the exposition, for the alteration, adaptation, and furnishing of the exposition building and improvement of the grounds thereof for permanent use as residence and offices of the diplomatic representative of the United States to Brazil; and not to exceed \$30,000 for the purchase of additional land adjoining the site now owned by the United States upon which the exposition building is situated.

A point of order against the paragraph made by Mr. William H. Stafford, of Wisconsin, was overruled by the Chairman:³

The joint resolution (S. J. Res. 114), signed November 2, 1921, accepting the invitation of the Republic of Brazil to take part in an international exposition to be held at Rio de Janeiro in 1922, in section 3, contains this language:

“SEC. 3. That officers and employees of the executive departments and other branches and institutions of the Government in charge of or responsible for the safe-keeping of objects, articles, etc., property of the United States, which it is desired to exhibit, may permit such property to pass out of their possession for the purpose of being transported to and from and exhibited at said exposition as may be requested by the commissioner general, such exhibits and articles to be returned to the respective departments and institutions to which they belong at the close of the exposition: *Provided*, That the commissioner general, with the approval of the President,

¹ Frederick H. Gillett, of Massachusetts, Speaker.

² Fourth session Sixty-seventh Congress, Record, p. 4701.

³ Clifton N. McArthur, of Oregon, Chairman.

at the close of the exposition may make such disposition of the buildings and other property of the United States used at the exposition, which it will not be feasible to return to the United States, as he may deem advisable.”

This provision here also contains the authority for the purchase of contiguous land. The Chair is of the opinion that it is clearly authorized by law and therefore overrules the point of order.

1160. While the reappropriation of unexpended balances may be made on an appropriation bill, the establishment of a revolving fund from such balances is not a mere reappropriation and is not in order.

On February 16, 1922,¹ the Department of the Interior appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Louis C. Cramton, of Michigan, proposed an amendment as follows:

During the fiscal year 1923 there shall be covered into the appropriation established from time to time under the act entitled “An act to authorize the President of the United States to locate, construct, and operate railroads in the Territory of Alaska, and for other purposes,” approved March 12, 1914, as amended, the proceeds of the sale of material utilized for temporary work and structures in connection with the operations under said act, as well as the sales of all other condemned property which has been purchased or constructed under the provisions thereof, also any moneys refunded in connection with the construction and operations under said act, and a report hereunder shall be made to Congress at the beginning of its next session.

Mr. Thomas L. Blanton, of Texas, made the point of order that the amendment was not authorized by law.

The Chairman² ruled:

This amendment, in substance, provides that the proceeds of the sale of certain property sold by virtue of an act of Congress approved March 12, 1914, together with the sales of other condemned property that may have been purchased or constructed under the provisions of that act, together with any moneys refunded in connection with the construction and operation of that act, may be collected in a fund and may be used from time to time for the purposes provided in this section.

It seems to the Chair that this creates a revolving fund. It is not the appropriation of an unexpended balance, which could be done, but it is the creation of a fund which is revolving in its nature. It seems to the Chair that this must be subject to the point of order as legislation in an appropriation bill. The concluding language in the amendment is: “And a report hereunder shall be made to Congress at the beginning of its next session.” That is plainly legislation, and as such legislation would invalidate the whole section, the point of order is sustained.

1161. A proposition reappropriating an unexpended balance may be amended by a proposition making a direct appropriation for the same purpose.

On April 19, 1922,³ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the following paragraph was read:

The Secretary of the Navy may use interchangeably the unexpended balances on the date of the approval of this act under appropriations heretofore made on account of “Increase of the Navy,” including any balance then remaining under the appropriation “Increase of the Navy, torpedo boat destroyers,” for the prosecution of work on vessels under construction on such

¹ Second session Sixty-seventh Congress, Record, p. 2684.

² William J. Graham, of Illinois, Chairman.

³ Second session Sixty-seventh Congress, Record, p. 5746.

date, the construction of which may be proceeded with under the terms of the treaty providing for the limitation of naval armament concluded on February 6, 1922, published in Senate Document No. 126 of the present session; for the conversion into aircraft carriers, including their complete equipment of aircraft and aircraft accessories, in accordance with the terms of such treaty, 2 of the battle cruisers the construction of which had been heretofore commenced, when the conversion of such battle cruisers shall have been authorized; for the settlement of contracts on account of vessels already delivered to the Navy Department; for the completion of torpedoes under manufacture on April 8, 1922, not to exceed 400; and for the installation of fire-control instruments on the U. S. S. *Maryland* and on 12 destroyers heretofore constructed, and such balances shall not be available for any other purposes.

Mr. James F. Byrnes, of South Carolina, offered as substitute a paragraph providing a direct appropriation for the same purpose as follows:

For the prosecution of work on vessels under construction on the date of the approval of this act the construction of which may be proceeded with under the terms of the treaty providing for the limitation of naval armament, concluded on February 6, 1922, published in Senate Document No. 126 of the present session; for the conversion into aircraft carriers, including their complete equipment of aircraft and aircraft accessories, in accordance with the terms of such treaty, 2 of the battle cruisers the construction of which had been heretofore commenced, when the conversion of such battle cruisers shall have been authorized; for the settlement of contracts on account of vessels already delivered to the Navy Department; for the completion of torpedoes under manufacture on April 8, 1922, not to exceed 400; and for the installation of fire-control instruments on the U. S. S. *Maryland* and on 12 destroyers heretofore constructed; in all \$46,250,000: *Provided*, That any unexpended balances on June 30, 1922, under appropriations heretofore made on account of "Increase of the Navy," including and balance then remaining under the appropriation "increase of the Navy, torpedo boat destroyers," shall be covered into the Treasury.

Mr. Thomas S. Butler, of Pennsylvania, having submitted a point of order on the amendment, the Chairman¹ ruled:

The Chair does not think it is subject to a point of order. The only change between the amendment and the original provision of the bill lies in the fact that the original provision of the bill makes the appropriation of an indefinite unexpended balance in the Treasury, and the amendment makes the appropriation specific in amount. The Chair thinks that the objection is not well taken, and overrules the point of order.

1162. Reappropriation of sums required by law to be covered into the Treasury is in order on an appropriation bill.

Appropriations for claims arising out of the operation of the merchant marine during the war were held to be authorized by the merchant marine act of 1920.

While an amendment offered as a new paragraph must be germane to that portion of the bill to which offered, it is not required to be germane to the preceding paragraph.

On February 4, 1925² the independent offices appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the paragraph providing for expenses of the United States Shipping Board Emergency Fleet Corporation was read.

¹ Horace M. Towner, of Iowa, Chairman.

² Second session Sixty-eighth Congress, Record, p. 3022.

Mr. William R. Wood, of Indiana, proposed this amendment:

That portion of the special claims appropriation contained in the independent offices appropriation act for the fiscal year 1923, committed prior to July 1, 1923, and remaining unexpended on June 30, 1925, shall continue available until June 30, 1926, for the same purposes and under the same conditions.

Mr. Thomas L. Blanton, of Texas, made the point of order that the amendment proposed an expenditure unauthorized by law and was not germane to the preceding paragraph.

The Chairman ¹ held:

As to the place in the bill to which the new paragraph is offered, it seems to the Chair that this is a proper place to offer this new section. If it is germane to the bill at all, it seems to the Chair that it is germane here, and it is clearly germane to the bill. Being offered as a new paragraph, it is clear to the Chair that it is proper it should be offered here. While a new paragraph is considered in connection with the preceding paragraph for purposes of debate, it does not seem to the Chair that the rule should be carried to the extent of requiring that a new paragraph must be germane to the preceding paragraph. If that were insisted upon, it might be that a paragraph perfectly germane to the purposes of the bill might not be germane to any particular paragraph of the bill. The Chair overrules this point of order.

As to the other point of order, a number of precedents of the House are to the effect that a reappropriation of a sum that is already appropriated for a purpose authorized by law is not subject to a point of order in an appropriation bill; and a reappropriation of a sum required by law to be covered in to the Treasury has been held not to be a change of law. The question then resolves itself into whether the original purpose for which this appropriation was made is authorized by law. Turning to subsection C, on page 987 of the Statutes at Large, Sixty-sixth Congress, the merchant marine act, the Chair reads the following:

“As soon as practicable after the passage of this act the board shall adjust, settle, and liquidate all matters arising out of or incident to the exercise by or through the President of any of the powers or duties conferred or imposed upon the President by any such act or parts of acts; and for this purpose the board, instead of the President, shall have and exercise any of such powers and duties relating to the determination and payment of just compensation: *Provided*, That any person dissatisfied with any decision of the board shall have the same right to sue the United States as he would have had if the decision had been made by the President of the United States under the acts hereby repealed.”

It seems to the Chair that the broad power here conferred for the adjustment and settlement of claims is a sufficient authorization for the original appropriation, and the original appropriation having been authorized, the amendment proposing to reappropriate it is not obnoxious to the rule, and therefore the Chair overrules the point of order.

1163. While the organic law establishing a department permits additions to the regular force of employees by classes, the addition of specified employees is not authorized.

On January 30, 1919,² the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read as follows:

OFFICE OF THE SECRETARY

Salaries, Office of the Secretary of Agriculture: Secretary of Agriculture, \$12,000; two Assistant Secretaries of Agriculture, at \$5,000 each; solicitor, \$5,000; chief clerk, \$3,000, and \$500 additional as custodian of buildings.

¹ John Q. Tilson, of Connecticut, Chairman.

² Third session Sixty-fifth Congress, Record, p. 2369.

Mr. William H. Stafford, of Wisconsin, made the point of order that there was no law authorizing an appropriation for two Assistant Secretaries of Agriculture. After debate, the Chairman¹ ruled:

The organic act undoubtedly gives the Secretary of Agriculture authority to increase any given number of employees in the different places provided for by law, but that does not apply to administrative positions such as an assistant secretary to the department. For instance, the Chair thinks that the position of First Assistant Secretary is one position, and that of Second Assistant Secretary is a different position, and the Third Assistant Secretary is still a different position, and so on. The Chair does not think that the organic act gave the Secretary of Agriculture authority to increase the number of assistant secretaries, and you can not appropriate for such a position against a point of order unless Congress had authorized or created the particular position. The Chair therefore sustains the point of order.

1164. The organic law establishing the Department of Agriculture authorizes appropriation for necessary employees, and increases may be made in clerks by classes, or of clerks unclassified or by the transfer of clerks from those paid from lump sum appropriations to the statutory roll.

The term “additional places” as used in the organic act creating the Department of Agriculture authorizes the creation of new positions and appropriations for salaries of additional clerks to fill them.

On May 27, 1919,² the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. When the paragraph providing salaries for personnel in the office of the Secretary of Agriculture was reached Mr. Joseph Walsh, of Massachusetts, made the point of order that there was no authority for the increase in clerks of class 1 provided in the paragraph.

After debate, the Chairman³ held:

The Chair is inclined to believe that if there is any time when increases of positions shall be made under the statute that time is when an appropriation bill is under consideration, and the Chair overrules the point of order. The Clerk will read.

Whereupon Mr. Walsh made a point of order on the appropriation of salaries for a mechanical assistant and an instrument maker, provided in the same paragraph on the ground that they were new positions and unauthorized by law.

The Chairman held:

The Chair believes that the law organizing the Agricultural Department is sufficiently comprehensive to authorize the employment of additional persons by the department from time to time, as the department develops. Therefore the Chair overrules the point of order.

1165. An appropriation for distribution of seeds was held to be in order in an appropriation bill.

The reenactment from year to year of a law intended to apply during the year of its enactment is not to be construed as authorizing appropriations for subsequent years.

¹ Courtney W. Hamlin, of Missouri, Chairman.

² First session Sixty-sixth Congress, Record, p. 294.

³ Martin B. Madden, of Illinois, Chairman.

On January 24, 1921,¹ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. John W. Langley, of Kentucky, offered an amendment providing an appropriation for the purchase and distribution of valuable seeds, and embodying legislation.

Mr. Thomas L. Blanton, of Texas, raised the question of order under section 2 of Rule XXI.

After debate, the Chairman² ruled:

The Chair is aware that the seed-distribution proposition has been a bone of contention in Congress for a number of years, and the present occupant of the chair approaches the subject with some trepidation. The ruling which the Chair is going to make is in direct opposition to the real opinion of the Chairman himself, but he founds it entirely on the precedent that was established by this committee a number of years ago when they by a decisive vote overruled the Chairman and held in order this proposition.

In view of the fact that the Chair is ruling contrary to his own views, he asks the indulgence of the committee to take up briefly a few of the points that have been advanced on both sides of the argument.

There are certain portions of the amendment which the Chair thinks are in order, for they are authorized by statute law creating the Department of Agriculture and other laws pertaining to this department; but other portions, it seems to the Chair, are not so authorized, and this taint of irregularity in one part would taint the whole and would make the amendment subject to the point of order, and so the Chair would rule were it not for the precedent already referred to.

The Chair desires to take up another argument, to the effect that the repetition of legislation on an appropriation bill gave that legislation the standing of statute law; that custom created an authorization. While it is true that this proposition has been carried in previous appropriation bills, the Chair does not feel that that fact relieves it of objection.

In the opinion of the Chair, legislation in a legislative act is an authorization, which will operate until repealed, unless a limit has been stated.

As an appropriation bill provides only for supplies during the year for which it is enacted, it would seem to the Chair that any legislation carried thereon, unless expressly provided otherwise, would cease to be operative when the life of the appropriation bill terminated. Therefore the mere enactment, year after year, of legislation on an appropriation bill, in the judgment of the Chair, does not make it permanent law.

With this statement and basing his decision solely on the ruling made by the committee some years ago, which is higher authority than any ruling or any opinion made by the Chair, the Chair will overrule the point of order.

1166. The law establishing the Department of Agriculture was held to authorize an appropriation for the purchase and distribution of free seeds.

On April 24, 1924,³ the agricultural appropriation bill had been read a third time and the question was pending on its passage, when Mr. James B. Aswell, of Louisiana, offered the following motion:

Mr. Aswell moves to recommit the bill to the Committee on Appropriations with instructions to report the same back to the House forthwith with the following amendment: Page 28, line 19, at the end of line 19 insert: "Purchase and distribution of vegetable, field, and flower seeds, plants, shrubs and vines, bulbs, and cuttings of the freshest and best obtainable varieties, adapted to general cultivation, \$360,000, or so much thereof as may be necessary."

¹Third session Sixty-sixth Congress, Record, p. 1983.

²Frederick C. Hicks, of New York, Chairman.

³First session Sixty-eighth Congress, Record, p. 7105.

Mr. Martin B. Madden, of Illinois, made the point of order that the motion proposed an expenditure for which there was no authorization of law.

In debating the question of order Mr. Tom Connally, of Texas, said:

I will read from the United States Compiled Statutes, 1901, section 520:

“That there shall be at the seat of government a Department of Agriculture, the general design and duties of which shall be 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, and to procure, propagate, and distribute among the people new and valuable seeds and plants.”

I now call attention to section 527 as amended in 1896. These are the compiled statutes. The Revised Statutes of 1878 were amended in 1896, and it reads as follows:

“PURCHASE AND DISTRIBUTION OF SEEDS, PLANTS, ETC.

“That purchase and distribution of vegetable, field and flower seeds, plants, shrubs, vines, bulbs, and cuttings shall be of the freshest and best obtainable varieties and adapted to general cultivation.”

The Speaker¹ held:

The Chair thinks that to a paragraph providing for the purchase, propagation, and distribution of new and rare seeds this motion to recommit with an amendment for the purchase of seeds is germane. The Chair at first was disposed to think that it did not come within the terms of the organic act, but this provision of the law which the gentleman from Texas has cited seems absolutely conclusive that the gentleman from Louisiana has used the very language of the statute. The Chair overrules the point of order.

1167. An appropriation for “miscellaneous supplies and expenses” was held to be authorized by the organic law of the Department of Agriculture.

On January 25, 1921,² the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The paragraph providing for miscellaneous expenses of the Department of Agriculture having been read, Mr. Thomas L. Blanton, of Texas, submitted a point of order against the provision “and for other miscellaneous supplies and expenses not otherwise provided for.”

The Chairman³ said:

The Chair feels that in the organic law creating the Department of Agriculture it is manifest that the intention was to carry forward a work of this kind, and the Chair will base his ruling on a ruling of January 6, 1921, made by Chairman Walsh, a pretty strict interpretator of the rule, in which he says, where a proviso includes the words “and for other needed work and improvement” is in order. The Chair, fortifying his own opinion by the citation referred to, overrules the point of order.

1168. An appropriation for maintenance in cooperation with the War Department of an air patrol for fire prevention in national forests was held to be authorized by law.

¹ Frederick H. Gillett, of Massachusetts, Speaker.

² Third session Sixty-sixth Congress, Record, p. 2037.

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

On January 24, 1921,¹ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was reached:

For fighting and preventing forest fires, \$250,000, or so much thereof as may be necessary; and to enable the Secretary of Agriculture to cooperate with the War Department in the maintenance of an air patrol for fire prevention and suppression on the national forests of the Pacific coast and the Rocky Mountain regions, \$50,000: *Provided*, That no part of this appropriation shall be used for the purchase of land or airplanes or for the construction of permanent buildings; in all, \$300,000.

Mr. Gilbert N. Haugen, of Iowa, made the point of order that the amendment was without authorization.

The Chairman² said:

The Chair feels that the organic law dealing with the Department of Agriculture is an extremely broad one and that the provisions are very comprehensive. The Chair will read the act of June 4, 1897:

“The Secretary of Agriculture shall make provisions for the protection against destruction by fire and depredations upon the public forests and forest reservations. * * * And he may make such rules and regulations and establish such service as Will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction.”

The Chair feels that in the matter of fire prevention every means should be taken by the Department of Agriculture to prevent fire, and that it was the intention of the organic law cited above to take every precaution in this respect in our national forest reserves. Surely there can be no higher prerogative of government than to protect itself and its property. The Chair feels that these provisions of the law are sufficiently broad to authorize the establishment of a fire patrol as indicated in this bill; therefore the Chair overrules the point of order.

1169. An appropriation for the purchase of lands authorized upon contingency was held to be in order prior to development of such contingency upon the ground that it was a condition precedent to the purchase and not to the appropriation.

On January 26, 1921,³ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. Mr. Sydney Anderson, of Minnesota, offered this amendment:

Acquisition of additional forest lands: There is hereby appropriated out of any money in the Treasury not otherwise appropriated, to be expended under the provisions of the act of March 1, 1911 (36 Stat. L., 961), as amended, for the acquisition of additional lands at headwaters of navigable streams, \$1,000,000.

Mr. Thomas L. Blanton, of Texas, presented a point of order contending that the act of March 1, 1911, relied upon as authority for the purchase, had expired, and even if in force, required the approval of such purchase by the National Forest Reservation Commission which had not been given.

The Chairman² ruled:

The Chair will say to the gentleman that the money will not be used for three or four months, and in that time the report will be in, and the purchase will be approved.

¹Third session Sixty-sixth Congress. Record. p. 1987.

²Frederick C. Hicks, of New York, Chairman.

³Third session Sixty-sixth Congress, Record, p. 2092.

Section 7 seems to the Chair to be very clear. The Chair admits that the language is exceedingly broad, so broad that you could buy land almost without limit, the only limit being that it shall be on nonnavigable waters, and that it shall have the approval of this Forest Commission. But nevertheless the law says in section 7:

“That the Secretary of Agriculture is hereby authorized to purchase in the name of the United States such lands as have been approved for purchase by the National Forest Reservation Commission at the price or prices fixed by said commission.”

And so forth.

Now, it seems to the Chair that whatever we may think of that authorization, it is the authorization of existing law; and as the Chair views it in that way, the Chair overrules the point of order.

1170. An appropriation for fire protection of forested watersheds of navigable streams, in cooperation with a State, was held to be authorized by existing law.

On March 11, 1922,¹ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. James R. Mann, of Illinois, raised a question of order against this paragraph:

For cooperation with any State or group of States in the protection from fire of the forested watersheds of navigable streams under the provisions of section 2 of the act of March 1, 1911, entitled “An act to enable any State to cooperate with any other State or States, or with the United States, for the protection of the watersheds of navigable streams, and to appoint a commission for the acquisition of lands for the purpose of conserving the navigability of navigable rivers,” \$400,000.

After debate, the Chairman² decided that the appropriation was authorized by the act of March 1, 1911, and overruled the point of order.

1171. The authorization carried by an act providing an appropriation for the purchase of forest land was held not to have been terminated by the expiration of the original appropriation.

In construing an act the intent of the Congress at the time of its enactment is not taken into consideration when in conflict with the express provisions of the law.

On March 13, 1922,³ the Agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. A point of order was pending against this paragraph:

For the acquisition of additional lands at headwaters of navigable streams, to be expended under the provisions of the act of March 1, 1911 (36 Stat. L., p. 961), as amended, \$50,000.

After debate, the Chairman² said:

The point of order is that this is an appropriation not authorized by law, and so the question narrows down as to whether the original Weeks Act, so far as authorization for the acquisition of these lands is concerned, is operative or whether that authority terminated June 30, 1915.

The Chair lacks the benefit of having any personal knowledge of the history surrounding the enactment of the original law, and is devoid of the means of ascertaining the intention of Congress in relation thereto. The Chair while realizing that “intention” is entitled to consideration, yet doubts if it can be balanced against the expressed provisions of the law. I will refrain

¹ Second session Sixty-seventh Congress, Record, p. 3770.

² Frederick C. Hicks, of New York, Chairman.

³ Second session Sixty-seventh Congress, Record, p. 3805.

from rereading the sections of the Weeks Act, which seems to carry the crux of the matter, except to state that it is section 3, dealing with appropriations, that contains the limitation proviso. It states, "Provided, That the provisions of this section shall expire by limitation on the 30th day of June, 1915."

What puzzles the Chair is the location in the act of this limitation provision, and also its specific reference to "this section." Is it not fair to assume that it is the provisions of section 3 that are limited and not the provisions of the act? Is it not reasonable to suppose that if it was the intention to terminate the authorization on June 30, 1915, as well as the appropriations, the limitation would have come after section 7 and would have referred to the act and not to a section that did not deal with authorization? The Chair answers both questions in the affirmative, and feels that however much the intention of Congress may be stressed as to limitation the statute does not so express it. The Chair, feeling that the authority has not been terminated by the proviso of section 3, must hold that the item in this bill is in order. The Chair therefore overrules the point of order.

1172. An appropriation for cooperative agricultural extension work with the States and Territories is authorized by the organic law creating the Department of Agriculture.

Prohibition of expenditures "until" designated affirmative action is taken constitutes legislation and is not in order as a limitation.

Provision that an appropriation should not be available until the States and Territories contributed equal sums was ruled out of order on an appropriation bill.

If any part of a paragraph is out of order the entire paragraph is subject to a point of order.

On January 22, 1932,¹ the Department of Agriculture appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the following paragraph was reached:

For additional cooperative agricultural extension work, including employment of specialists in economics and marketing, to be allotted and paid by the Secretary of Agriculture to the several States and the Territory of Hawaii in such amounts as he may deem necessary to accomplish such purposes, \$1,000,000: *Provided*, That no expenditures shall be made hereunder until a sum or sums at least equal to such expenditures shall have been appropriated, subscribed, or contributed by State, county, or local authorities or by individuals or organizations for the accomplishment of such purpose.

Mr. William H. Stafford, of Wisconsin, submitted a point of order.

The Chairman² held that the proviso was legislation and, being out of order, would render the entire paragraph subject to the point of order.

Whereupon, Mr. James P. Buchanan, of Texas, offered the same paragraph, without the proviso, as an amendment.

Mr. Stafford again objected and made the point of order that the appropriation was not authorized by law.

The Chairman overruled the point of order and said:

The Chair will cite section 511, Title V, United States Code, which seems to be very broad and comprehensive, and within the purview of which the Chair is of the opinion that the committee has authority to report this section.

The Chair overrules the point of order.

¹First session, Seventy-second Congress, Record, p. 2553.

²William B. Bankhead, of Alabama, Chairman.

1173. On December 28, 1932,¹ during the consideration of the Department of Agriculture appropriation bill in the Committee of the Whole House on the state of the Union, a paragraph was read including the following language:

And all sums appropriated by this act for use for demonstration or extension work within any State shall be used and expended in accordance with plans mutually agreed upon by the Secretary of Agriculture and the proper officials of the college in such State which receives the benefits of said act of May 8, 1914.

Mr. John Taber, of New York, made the point of order that there was no authority of law for the provision.

The Chairman² overruled the point of order, basing his decision on the authorization contained in section 341 of Title 7 of the United States Code.

1174. An appropriation for the distribution of proceedings of the World's Dairy Congress was held to be authorized by the provision for the dissemination of knowledge in the law creating the Department of Agriculture.

On December 21, 1922,³ the Agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Gilbert N. Haugen, of Iowa, proposed this amendment:

There is hereby appropriated the sum of \$30,000, or so much thereof as may be necessary, for paying for the interpretation, translation, and transcription of discussions, and the printing, binding, and distribution of the proceedings of the World's Dairy Congress, including the payment of postage to foreign countries and the employment of such persons and means in the city of Washington and elsewhere as may be necessary to accomplish these purposes.

Mr. Thomas L. Blanton, of Texas, made the point of order that there was no authority of law for the expenditure.

The Chairman⁴ held:

The Chair realizes, as has already been stated by the Chair, that the organic law creating this department, particularly with reference to the dissemination of useful information, is extremely broad. The Chair feels that this is information useful to the people of the United States, and as there is a law providing for the dissemination of this knowledge the Chair feels that the amendment is in order. The Chair quotes from Barnes Federal Code as follows:

“(618. Establishment of department.)

“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.”

The Chair overrules the point of order.

1175. An appropriation for feeding elk in national parks was held to be authorized by law and to constitute a deficiency and to be in order on an appropriation bill.

¹ Second session, Seventy-second Congress, Record, p. 1026.

² Andrew J. Montague, of Virginia, Chairman.

³ Fourth session Sixty-seventh Congress, Record, p. 836.

⁴ Frederick C. Hicks, of New York, Chairman.

On February 2, 1920,¹ the deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the following paragraph was read:

Yellowstone National Park, Wyo.: For reimbursement of the appropriation for the park for the fiscal year 1920 on account of expenditures for fighting forest fires in the park and purchasing hay for feeding of elk, \$35,026.64.

Mr. Thomas L. Blanton, of Texas, having reserved a point of order on the paragraph, the Chairman² said:

It appears that these parks have been authorized by law and set apart for the preservation of certain animals and game in general and that these are being protected by law. The Secretary of the Interior is authorized and empowered to take such measures as may be necessary to protect the animals, fish, and game in the park. It seems to the Chair that the proposed appropriation is clearly authorized by law. As to the question whether or not it is a deficiency, it seems to the Chair that there can be little doubt. The Chair overrules the point of order.

1176. The term "existing law" as related to authorization of deficiency appropriations includes not only permanent statutes but also provisions of supply bills in force for the current year only.

An appropriation to indemnify owners of animals destroyed by direction of the department in the eradication of tuberculosis was held to be a deficiency and in order on an appropriation bill.

On May 24, 1921,³ the deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. This paragraph was read:

General expenses, Bureau of Animal Industry: To enable the Bureau of Animal Industry, Department of Agriculture, to perform the duties imposed upon it by the Agricultural appropriation act approved May 31, 1920, for the payment of indemnities on account of cattle to be slaughtered during the remainder of the current fiscal year, in connection with the eradication of tuberculosis from animals, \$405,000.

Mr. Thomas L. Blanton, of Texas, made the point of order that the paragraph was not authorized by law.

The Chairman⁴ held:

The appropriation act for the fiscal year 1921 carried this authority:

"That in carrying out the purposes of this appropriation if, in the opinion of the Secretary of Agriculture, it shall be necessary to destroy tuberculous animals and to compensate owners for loss thereof, he may, in his discretion, and in accordance with such rules and regulations as he may prescribe, expend, in the city of Washington or elsewhere, out of the moneys of this appropriation such sums as he shall determine to be necessary, within the limitations above provided, for the reimbursement of owners of animals so destroyed, in cooperation with such States, Territories, counties, or municipalities as shall by law or by suitable action in keeping with its authority in the matter, and by rules and regulations adopted and enforced in pursuance thereof, provide inspection of tuberculous animals and for compensation to owners of animals so destroyed."

This law is authority for such liabilities as are to be compensated for in this appropriation. Therefore the Chair overrules the point of order.

¹Second session Sixty-sixth Congress, Record, p. 2373.

²John Q. Tilson, of Connecticut, Chairman.

³First session, Sixty-seventh Congress, Record, p. 1701.

⁴Philip P. Campbell, of Kansas, Chairman.

1177. An appropriation for the maintenance of motor cycles belonging to the Government was held to be authorized by law.

On January 28, 1911,¹ the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The Clerk read as follows:

For the purchase and maintenance of a package motor cycle.

Mr. William E. Cox, of Indiana, raised the question of order that there was no authorization for the expenditure.

The Chairman² having sustained the point of order, Mr. Washington Gardner, of Michigan, offered this amendment:

And for the maintenance of a package motor cycle.

Mr. Cox also made the point of order on this amendment, and the Chairman held:

In the current appropriation act there appears the language "and for the purchase and maintenance of a package motor cycle." The Chair has no way of determining whether this law has been complied with, or what has been done under this law, and does not understand that it is necessary for him to go into that question. The appropriation was made, and the authorization granted by Congress for the purchase of a package motor cycle. This amendment seeks to make an appropriation for the maintenance of the motor cycle. Upon the law as it stands, the Chair will be compelled to assume that that law has been complied with, that a motor cycle had been purchased, and that this appropriation is for the maintenance of that motor cycle.

1178. An appropriation for an automobile, however necessary to the efficient and economical performance of authorized official duties is not in order on an appropriation bill unless specifically authorized by law.³

On January 28, 1911,⁴ the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. William E. Cox, of Indiana, made a point of order that there was no authorization of law for the purchase of one motor runabout as provided in the following paragraph:

For continuing the extension of and maintaining the high-service system of water distribution, laying necessary service and trunk mains for low service, and purchasing, installing, and maintaining water meters on services to such private residences and to such business place, as may not be required to install meters under existing regulations as may be directed by the Commissioners of the District of Columbia, said meters at all times to remain the property of the District of Columbia, to include all necessary land, machinery, buildings, mains, and appurtenances, and labor, and the purchase and maintenance of horses, wagons, carts, and harness necessary for the proper execution of this work, and for the purchase and maintenance of one motor runabout to be used for purposes of inspection, at a cost of not to exceed \$1,800, so much as may be available in the water fund during the fiscal year 1912, after providing for the expenditures hereinbefore authorized, is hereby appropriated.

After debate, the Chairman² said:

The Chair is very much in sympathy with what the gentleman from Minnesota, Mr. Tawney, has said as to the most economical way for inspectors and others to travel in the proper execution

¹ Third session Sixty-first Congress, Record, p. 1605.

² John Q. Tilson, of Connecticut, Chairman.

³ See, however, sections 8232, 8233 of this work.

⁴ Third session Sixty-first Congress, Record, p. 1615.

of their work. The present occupant of the chair believes that much time and money could be saved to the Government by a more general use of motor vehicles in its service, and is not seriously disturbed by the occasional abuse in their use by persons in official station. Speaking frankly, the present occupant of the chair, without the guidance of precedent, would be inclined to hold it to be in order to appropriate in a general appropriation bill for the purchase and maintenance of such vehicles when their use was clearly within the scope of the provisions of the bill. However, in the determination of the present point of order, the Chair is and should be governed by precedents, and the precedents appear to be the other way. Furthermore, if, as is contended, it is a matter that should be left entirely to the discretion of executive officials, it would seem unnecessary that this provision should be placed in an appropriation bill, specifying that so much may be expended for the purchase and maintenance of an automobile. In other words, if it were purely a matter of discretion of the officer there would be no necessity for him to come here at all for authority, but a lump sum might be appropriated and used by him for the purchase and maintenance of an automobile for proper uses. So far as the Chair is able to ascertain, there seems to be no specific authorization for the purchase and maintenance of an automobile for this purpose, and no such authorization having been brought to the attention of the Chair, the point of order is sustained.

1179. An appropriation to restrict free kindergarten supplies to indigent children was held to be out of order on an appropriation bill.

It is incumbent upon the proponent of an amendment to cite authority of law when that point is raised.

On January 28, 1911,¹ the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The following paragraph was read:

Kindergarten supplies: For kindergarten supplies, \$2,800.

Mr. Ben Johnson, of Kentucky, offered an amendment restricting the distribution of such supplies to indigent children.

Mr. James R. Mann, of Illinois, having made a point of order on the amendment, the Chairman² requested Mr. Johnson to cite authority of law.

Mr. Johnson being unable to comply with the request, the Chairman said:

The Chair was about to observe that it is incumbent on the gentleman from Kentucky, who moved the amendment, to show the Chair the law upon which his amendment may be founded. It is not necessary for the gentleman from Illinois to produce law to the contrary. If there is no such law the amendment of the gentleman will be out of order.

1180. Authorization for the erection of a memorial without expense to the United States was construed not to authorize an appropriation for maintenance of the memorial when erected.

On January 4, 1921,³ the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The following paragraph was read:

For operation, care, repair, and maintenance of the electric pump which operates the memorial fountain to Admiral Dupont in Dupont Circle, \$2,500.

Mr. James R. Mann, of Illinois, raised the question as to whether there was authorization of law for the expenditure.

¹Third session Sixty-first Congress, Record, p. 1595.

²John Q. Tilson, of Connecticut, Chairman.

³Third session Sixty-sixth Congress, Record, p. 964.

The Chairman¹ said:

The gentleman from Illinois makes the point of order upon the paragraph for “the operation, care, repair, and maintenance of the electric pump to operate the memorial fountain to Admiral Dupont in Dupont Circle, \$2,500.” The act confers authority upon the Chief of Engineers to grant permission for the removal of the statue and pedestal and foundation of the statue of Admiral Dupont at Dupont Circle, and to also grant permission for the erection in place thereof of a memorial to said Admiral Dupont. It also provides that the present statue and pedestal may be turned over to the donors of the memorial for relocation outside of the District of Columbia. But the act further provides that the site and design of the memorial shall be approved by the Commission of Fine Arts. And further, that the United States shall be put to no expense in or by the removal of the statue, pedestal, or foundation, and the erection of said memorial complete.

It is the view of the Chair that it would seem that Congress intended, in granting this permission to remove the statue which formerly was there, and permitting persons to donate a substitute in the form of a memorial, that the Fine Arts Commission should first pass upon the site and the design of the memorial that is the substitute for the statue, and, having approved the site and the design, the further qualifying language of the resolution required that that memorial, whatever it should be, after having received the approval of the Fine Arts Commission, should be placed there without additional expense to the United States; that is, so as not to require any additional expenditure for the maintenance of the park by reason of the removal of the statue and the acceptance of the memorial in its stead. There is still authority to appropriate for the maintenance of this park, but this is a new facility for which the Chair finds no authorization in the resolution cited. That act does not, in the opinion of the Chair, authorize an appropriation for the operation of anything connected with that memorial, such as an electric pump or any other form of apparatus. The change was to be made and the substitute located and erected complete without expense to the United States—this would seem to limit the discretion of both the Chief of Engineers and the Fine Arts Commission. The matter of having selected a fountain, it would seem to the Chair, would not authorize an appropriation by the Congress for the operation of anything connected with it unless further authority be given. And the Chair therefore sustains the point of order.

1181. An appropriation for increased cost in park maintenance was held to be in order on an appropriation bill.

On January 4, 1921,² the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

To provide for the increased cost in park maintenance, \$65,000.

Mr. Warren Gard, of Ohio, raised the question of order that there was no law authorizing the appropriation.

The Chairman¹ said:

The gentleman from Ohio makes the point of order to the language, “to provide for the increase in cost of park maintenance, \$65,000,” on the ground, among other things, that it is so speculative in character as not to come within the requirements of being authorized by law. There seems to be no limit of cost fixed by any law heretofore passed for the maintenance or existence of any of these parks. This is a general provision covering increased cost in park maintenance, which would be available for any of the parks specifically appropriated for in the bill. There being no limitation to the amount which might be appropriated and expended for the maintenance of the parks, the Chair feels that this is not outside of the requirements, and therefore overrules the point of order.

¹ Joseph Walsh, of Massachusetts, Chairman.

² Third session Sixty-sixth Congress, Record, p. 966.

1182. The organic act of the District of Columbia authorizes appropriations for interest on District bonds and a subsequent act authorizes appropriations for sinking fund for their payment.

On January 25, 1912,¹ the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. A point of order made by Mr. Ben Johnson, of Kentucky, was pending against this paragraph:

For interest and sinking fund on the funded debt, \$975,480.

The Chairman² ruled:

All the law that has been cited to the Chair and all the Chair has been able to find is contained in the act of 1874, in the act of 1878, and the act of 1879, except a slight amendment which was in the act of 1875 amending the act of 1874. The language applicable to this matter in the act of 1874, as amended by the act of 1875, is as follows:

“And the faith of the United States is hereby pledged that the United States will, by proper proportional appropriations as contemplated by this act, and by causing to be levied upon property within said District such taxes as will do so, provide the revenues necessary to pay the interest on said bonds, as the same may become due and payable and create a sinking fund for the payment of the principal thereof at maturity.”

Perhaps it renders this statute easier of construction if the arrangement be changed in reading and we omit that part after the first comma down to the third comma, and read it, “and the faith of the United States is hereby pledged that the United States will provide the revenues necessary to pay the interest on said bonds as the same may become due and payable and create a sinking fund for the payment of the principal thereof at maturity.” How? Going back, first, “by proper proportional appropriations as contemplated in this act,” and, second, “by causing to be levied upon property within said District such taxes as will do so.” The Chair can not escape the conclusion that the expression “by proper proportional appropriations as contemplated in this act” means something, and the Chair thinks that what it does mean is made clear by a subsequent section of the act of 1874, which appointed a joint committee to draft an act for the government of the District of Columbia in pursuance of the policy which had been defined by the passage of the act of 1874. And it is clear from all that occurred in that act of 1874 that it was then in contemplation, not only by the committee that reported the act of 1874 but in the contemplation of the Congress, because Congress passed the act, that there should be proportional appropriations, that a certain part of the expenses of the District of Columbia should be paid out of the funds of the Government of the United States and another part should be paid out of the revenues raised in the District.

Consequently the Chair regards that section of the act of 1874, as amended by the act of 1875, as being very persuasive and having a very potent meaning.

We come next to the act of June 11, 1877, the so-called “organic act” of the District of Columbia. That provides:

“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 hereinbefore provided.”

It seems to the Chair that is clear authority for the payment of the interest, and the Chair suggests that the expression in regard to the method of crediting may be explainable when we consider the time at which the act of 1878 passed it was a general provision of law. It was not in an appropriation bill. It was a direction to the Secretary of the Treasury to pay it, and the Chair

¹Second session Sixty-second Congress, Record, p. 1310.

²Finis J. Garrett, of Tennessee, Chairman.

thinks that the direction as to the crediting may have been put in by reason of the time at which the act was passed.

With the matter of bookkeeping, upon the proposition of whether or not the Government is bound for half the interest under the terms of this act, the Chair does not deem it necessary for him to pass. The sole question before the Chair being, Is there authority of law to appropriate? And if that authority exists, then of course the appropriation must be administered under the law. And the responsibility rests not upon the legislative branch or upon the Chair in passing upon the point of order but upon the administrative officers. The Chair thinks there is authority of law for appropriating for the interest in the manner appropriated in this bill, and that brings us to the act of 1879, contained in the sundry civil bill, as follows:

“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, 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 20, 1874, at maturity, which said sums the Secretary of the Treasury shall annually invest in said bonds at not exceeding the par value thereof, and all bonds so redeemed shall cease to bear interest, and shall be canceled and destroyed in the same manner that United States bonds are canceled and destroyed.”

That section has given the Chair more difficulty than any of the others. But upon the whole, construing it as best the Chair could, the Chair has concluded that it clearly authorizes Congress to appropriate for the sinking fund. And the same thing, however, as to the administration of that appropriation after it is made applies to this section as applies to the interest act to which the Chair has just made reference. Believing that there is found in the law as quoted the authority to make the appropriation, the Chair overrules the point of order.

1183. An appropriation for interest and sinking fund on the funded debt of the District of Columbia to be paid jointly from the Federal Treasury and District revenues is authorized by law.

On February 6, 1913,¹ the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Ben Johnson, of Kentucky, offered the following amendment:

INTEREST AND SINKING FUND.

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, 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 20, 1874, at maturity, which said sums the Secretary of the Treasury shall annually invest in said bonds at not exceeding the par value thereof, and all bonds so redeemed shall cease to bear interest and shall be canceled and destroyed in the same manner that United States bonds are canceled and destroyed. (Vol. 20, p. 410, U.S. Stats.)

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 United States toward the expenses of the District of Columbia, as hereinbefore provided. (Vol. 20, p. 105, U.S. Stats.)

For the purpose of meeting the payment of interest and for the purpose of providing for said sinking fund the sum of \$975,408, or as much thereof as may be necessary, is hereby appropriated (from the respective funds described in the two acts of Congress above set out), to be charged

¹Third session Sixty-second Congress, Record, p. 2655.

against the revenues of the District of Columbia, derived from taxes levied and assessed upon the taxable property and privileges of the District of Columbia for the fiscal year ending June 30, 1914.

Mr. James R. Mann, of Illinois, made a point of order against the amendment. After debate, the Chairman¹ said:

The Chair is ready to rule. Substantially the same questions for ruling that are presented now were presented on Tuesday when the point of order was made against the interest- and sinking-fund paragraph in the bill. The Chair has indulged gentlemen at length in the argument to-day because the question determined on Tuesday, and to be again ruled on now, involves not only the exercise by Congress of the taxing power as it affects the District of Columbia, but it involves the exercise of the taxing power as it affects the people of the United States. And further, that if, may be, the Chair had not given sufficient attention and entertained full comprehension of the question on the first ruling, he is now given again an opportunity to correct any error he may have made or to correct any error the committee may have made when it voted the decision of the Chair to be the decision of the committee. Therefore, the Chair now rules somewhat further on the question, although it may be said that if the Chair and the committee were right on the former ruling, of course the point of order must now be overruled. Yet the question is of sufficient importance in view of the arguments presented, that a further and more extended ruling touching the interpretation and meaning of the act of 1878 and the act of 1879 perhaps should be made now.

The amendment as offered by the gentleman from Kentucky against which the point of order is made, consists of three paragraphs in its form, but not of three paragraphs by number. Therefore, for the purpose of orderly treatment and clearness of decision, the Chair will consider the first grammatical paragraph as "paragraph 1," the second grammatical paragraph as "paragraph 2," and the third grammatical paragraph as "paragraph 3." As between the contending opinions there is no doubt or difference on some points involved. A proposition that we all agree upon is that the Government of the United States, by the act of 1878, in some cases contributes a proportional sum to the support of the District of Columbia.

There is no disputing the fact that that proportional sum is 50 per cent, because the language of the statute itself says "50 per cent." In the light of this common ground let us examine the words of paragraph 1:

"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"—

And so forth.

As stated, the proportional sum is 50 per cent, and there is no dispute on that. Then the act of 1879, if read to conform, would be:

"And there is hereby appropriated out of the 50 percent which the United States may contribute toward the expenses of the District of Columbia"—

And so forth. If that be true, there can be neither duplicity, obscurity, nor ambiguity in the act of 1879 unless there is ambiguity in the plainest terms of the English language.

Consequently the Chair now rules that the act of 1879, by the plain terms of the act, provided and directed that that proportional sum, to wit, 50 per cent, should be ultimately chargeable to and borne by the District of Columbia. If so, is it not a palpable violation of law to otherwise appropriate for it?

So much for the act of 1879. The act of 1878, paragraph 2, reads:

"All amounts so paid shall be credited as part of the appropriation for the year by the United States toward the expenses of the District of Columbia."

And so forth. By the literal language of law, if the Government appropriates anything from the Federal Treasury, it appropriates 50 per cent, and the express language of the act says it shall, when paid, be—

¹S.A. Roddenberry, of Georgia, Chairman.

“Credited as a part of the appropriation for the year by the United States”—

And so forth. Then if, in fact, the money is paid or advanced from the Treasury it would, under the letter of the act, be credited to the proportional half that the Government may appropriate toward the support of the District of Columbia. If that be true, then the language—

“Hereafter the Secretary of the Treasury shall pay the interest”—

And so forth—“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”—

Is clear.

Then there is no duplicity, there is no obscurity, and there is no ambiguity in the language of the act of 1878.

It is not contended that any authorization of appropriation, in any form provided for in this or any past bill, has stood for its foundation on any other law. Members of the committee will observe that the first and second paragraphs of the amendment follow the exact language of the statute. The Chair now comes to rule on the question as to whether paragraph 3 of this amendment is in order. Paragraph 3 reads:

“For the purpose of meeting the payment of interest and for the purpose of providing for said sinking fund the sum of \$975,408, or so much thereof as may be necessary, is hereby appropriated”—

From the respective funds described in the two acts of Congress above set forth—“to be charged against the revenues of the District of Columbia derived from taxes”—

And so forth, following the statute.

If the legal construction by the Chair of the first paragraph, being the act of 1879, is correct, and if the legal construction by the Chair of the second paragraph, being the act of 1878, is correct, then the third paragraph, in explicit language, provides that Congress by its annual appropriation shall give force and effect to existing law. The Chair is of the opinion that the ruling made on a former occasion and sustained by a vote of the committee was correct, for the reasons then stated, and for the further reasons, somewhat analytically, we hope, presented at this time to the committee.

This point of order raises, as already observed, a question of law, which the Chair is compelled, in the very nature of things, to reach and announce an opinion upon. After an earnest and careful consideration of the several acts it is the opinion of the Chair that the first two paragraphs of the proposed amendment correctly set out the appropriate law and that the interpretation given is the correct construction of that law. The last paragraph of the amendment, in fulfillment of this law, appropriates the money and directs its payment according to the construction announced. So the point of order lodged against the amendment is overruled.

1184. A law establishing a definite policy was held to authorize appropriations for agents to carry out such policy and instrumentalities promoting the efficiency of those agents.

A system of inspection being provided for by law it was held in order to appropriate for inspectors and motor cycles for their official use.

An appropriation to reimburse officials for services and expenses, however valid, is an appropriation for a private claim and is not in order on an appropriation bill.

On January 30, 1913,¹ the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was read:

To reimburse two elevator inspectors for the provision and maintenance by themselves of two motor cycles for use in their official inspection of elevators in the District of Columbia, \$10 per month each, \$240.

¹Third session Sixty-second Congress, Record, p. 2339.

Mr. Ben Johnson, of Kentucky, made the point of order that the paragraph was not authorized.

The Chairman¹ having sustained the point of order, Mr. Albert S. Burleson, of Texas, offered the following amendment:

To two elevator inspectors, for the provision and maintenance by themselves of two motor cycles for use in their official inspection of elevators in the District of Columbia, \$10 per month each, \$240.

Mr. Johnson made the point of order that the amendment was not authorized by existing law.

In debate, Mr. Edward W. Saunders, of Virginia, said:

Mr. Chairman, I desire to address myself to the point of order. When a policy is established to be carried out or discharged by a department, or bureau head, or their equivalent, it is entirely competent to appropriate for the agents required to carry out the policy, and for the instrumentalities that promote the efficiency of the agents.

In conformity with this principle we appropriate for the maintenance of the horses of the mounted police, though as I understand these horses are owned by the policemen. This appropriation provides for the maintenance of an instrumentality highly promotive of an efficient discharge of duty by these officials. In a word it greatly increases their efficiency, and in effect renders an increase of their number unnecessary. It is in the interest of economy to make this appropriation. This is not a claim. These men are making none. The amendment makes a direct appropriation to pay for the upkeep of motor cycles, just as we might provide these officials with riding horses, or car tickets, or horse-propelled vehicles in order to increase their efficiency, by providing them with means of rapid transit. These instrumentalities multiply the efficiency of these particular officials, and it is entirely competent for this committee to provide for their maintenance. In this connection, I can submit to the Chair, if it is desired, abundant authority to establish that when authority is given to create an official, and to give him a salary, an appropriation may be made to pay for his transportation necessarily incurred in the discharge of his duties. If the official owns the instrumentality, as the officials in this instance happen to do, it is competent for us to provide for their upkeep, just as we might appropriate for the car fare of certain employees when, in the course of duty, it is necessary to use the cars. No question of reimbursement is presented in this amendment. We are primarily and directly providing for the maintenance of the motor cycles of these particular officials, who have frequent occasion to use them in the line of duty.

The Chairman overruled the point of order.

1185. Appropriations for maintenance of police and health and other departments in the District of Columbia are authorized by the organic act creating permanent form of government in the District of Columbia.

On February 4, 1913,² 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 providing for the police department in the District of Columbia.

Mr. Ben Johnson, of Kentucky, in presenting a point of order, said:

Mr. Chairman, I will make this brief statement: The Metropolitan police force was first organized, I believe, in 1861. During the continuance of the war of 1861–1865 the United States Government paid the Metropolitan police force. After the war was over and found conditions

¹Joseph J. Russell, of Missouri, Chairman.

²Third session Sixty-second Congress, Record, p. 2557.

still unsettled, the Metropolitan police was carried along and paid for by the Federal Government until, perhaps, by the act of June 20, 1874. It might have assumed a new form, but the Federal Government nevertheless continued to pay the cost of the Metropolitan police force. When the act of June 11, 1878, was passed, in which was embraced the half-and-half plan, then it devolved upon the Federal Government to pay half and upon the government of the District of Columbia to pay the other half of the cost of maintaining that force. I wish to invite the attention of the Chair particularly to this fact, that here we have two governments—the Government of the United States and the government of the District of Columbia. The act of June 11, 1878, otherwise known as the “organic act,” containing, as I just said, the half-and-half principle, went a little further with the police and the schools and the fire department and the streets than that act went with any other contingent expenditure of the government of the District of Columbia. The organic act just referred to recited in specific terms that the cost of maintaining the schools, the police and fire departments, and the building of the streets should be borne half by the Federal Government and half by the District of Columbia.

By that act the Federal Government incurred the expense of one-half of the maintenance of the Metropolitan police force. I repeat that, Mr. Chairman, by the act of June 11, 1878, the Federal Government incurred the expense of paying one-half of the cost of the Metropolitan police. But, Mr. Chairman, in the sundry civil appropriation bill which passed Congress on June 20, 1878, or, in other words, just nine days after the passage of the act of June 11, 1878, this language occurs:

“And the said commissioners are hereby authorized to fix the salaries to be paid to the officers and privates of the Metropolitan police until otherwise provided by law, and to require the Washington Gaslight Co. to light the city lamps at such price as shall to said commissioners appear to be just and reasonable, and all the expenses heretofore incurred by the General Government for the board of health, for the Metropolitan police force, and for gas inspection shall hereafter be a charge upon the government of the District.”

Now, Mr. Chairman, I contend that, while it must be admitted that by the act of June 11, 1878, the Federal Government incurred the expense of one-half of the cost of maintaining the Metropolitan police force, yet by the words contained in the sundry civil appropriation act which passed Congress just nine days thereafter that expense was transferred in every way, in every part, from the Federal Government to the government of the District of Columbia.

After debate, the Chairman¹ ruled:

A point of order was directed to the paragraph on the ground, as stated by the gentleman from Kentucky, that it was not in order, because the item should be paid wholly from the revenues of the District of Columbia. The act of June 11, 1878, creating a permanent form of government for the District of Columbia provided that the expense and cost of maintaining the police force should be paid half and half from the revenues of the United States and the revenues of the District of Columbia, respectively. On June 20, 1878, the Congress passed in the sundry civil appropriation bill the following provision:

“And the said commissioners are hereby authorized to fix the salaries to be paid to the officers and privates of the Metropolitan police until otherwise provided by law and to require the Washington Gas Light Co. to light the city lamps at such price as shall to said commissioners appear to be just and reasonable, and all expenses heretofore incurred by the General Government for the board of health, for the Metropolitan police, and for gas inspection shall hereafter be a charge upon the government of the District.”

It is evident from reading that section of the act that the words “government of the District” are not employed as designating the legal title of the District government, because the word “government” begins with a small letter. It relates, then, to the fact of government and not to the form of government; the function of government, not the style of government. The act of 1878 having provided in what way the expenses of government of the District should be paid, the Chair fails to see how in any way the insertion of the paragraph in the sundry civil bill would change or conflict with the existing organic act of June 11, 1878.

¹ S. A. Roddenberry, of Georgia, Chairman.

In this connection it will be noted that in June, 1878, the first session of the Forty-fifth Congress was in progress. At that time there was no District of Columbia appropriation bill eo nomine, but the expenses of the government of the District of Columbia were carried from year to year in the sundry civil bill. The same Congress, then, which enacted the clause of June 20, 1878, was the identical Congress that in 1879, at the second session of the same Congress, passed the sundry civil appropriation bill, charging the expenses of the Metropolitan police force equally against the Federal Treasury and the District treasury.

The act of the same Congress, at its second session, recognizing the half-and-half provision, goes of its own weight as an argument if not an implied construction. The same Congress which engrafted onto the sundry civil bill the paragraph upon which the gentleman from Kentucky bases the point of order, in the year immediately succeeding, provided appropriation for and charged the expense of the Metropolitan police force equally against the Federal Government and the District of Columbia. If there were any ambiguity this circumstance might, under the rules of legal construction, be looked to.

The Chair might recount also somewhat the history of the police force and the health board prior to 1878 and subsequent to 1878, but it seems to the Chair that the language of the section of the act upon which the point of order is sought to be based is sufficient of itself to warrant and, indeed, to impel the Chair to overrule the point of order. The organic act of June 11, 1878, charged the expense of the government of the District jointly and equally against the District and Federal Government revenues. The act of June 20, 1878, in no way changed that law, but in fact reenacted it by charging the maintenance of the Metropolitan police to the government of the District. A reenactment pro tanto. Accordingly the point of order is overruled.

1186. An appropriation to be paid from the District revenues for maintenance of bathing beaches in the District of Columbia was held to be authorized by law.

On February 6, 1913,¹ the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was read:

Bathing beach: For superintendent, \$600; watchman, \$400; temporary services, supplies, and maintenance, \$2,250; for repairs to buildings, pools, and the upkeep of the grounds, \$1,500, to be immediately available; in all, \$4,830.

Mr. Ben Johnson, of Kentucky, offered the following as a substitute for the paragraph:

Bathing beach: For superintendent, \$600; watchman, \$400; temporary services, supplies, and maintenance, \$2,250; for repairs to buildings, pools, and the upkeep of the grounds, \$1,500, to be immediately available; in all, \$4,830; all of which shall be paid out of the revenues of the District of Columbia derived from taxes and privileges.

Mr. James R. Mann, of Illinois, made the point of order that the amendment was not authorized by law.

After debate, the Chairman² ruled:

On a former day when the item of bathing beach was reached in the consideration of the bill a point of order was made against the paragraph on the ground that the provision charging the expense of upkeep, operation, and conduct of the beach on a half-and-half basis was not authorized by law. The original paragraph provided that the items covered by the paragraph should be paid half from the revenues of the District and half from the Federal Treasury. The Chair then ruled that the point of order should be sustained, because under the law no part of the expense

¹Third session Sixty-second Congress, Record, p. 2644.

²S.A. Roddenberry, of Georgia, Chairman.

was chargeable to the Government revenues. The gentleman from Kentucky now moves an amendment providing for the bathing-beach item, with a modification and proviso that all the expense of maintenance shall be paid out of the revenues of the District of Columbia derived from taxes and privileges. The gentleman from Illinois makes the point of order against the paragraph. The Chair finds in the Congressional Record, Fifty-first Congress, first session, the following:

“FREE BATHING BEACH, WASHINGTON, D.C.

“SEC. 2. That the sum of \$3,000 is hereby appropriated from any unexpended moneys in the Treasury of the United States to be immediately available for the purposes of this bill.”

It will be noted that the bill as reported from the appropriate committee provided that all the expenses should be paid from the Federal Treasury. The gentleman from Illinois, Mr. Cannon, moved to amend section 2 of the bill by striking out the clause making the appropriation payable wholly from the United States Treasury and providing that one-half of the expense should be charged against the revenues of the District of Columbia and one-half against the Federal Treasury. Thereafter Mr. Bliss, of Michigan, was recognized, and offered the following:

“That the sum of \$3,000 is hereby appropriated from the revenues of the District of Columbia, to be immediately available, for the purposes of this bill.”

It will be observed, then, that the amendment by way of substitute offered by the gentleman from Michigan, Mr. Bliss, was to provide that all the expense should be borne by and chargeable to the revenues of the District of Columbia.

And after the debate the amendment of the gentleman from Michigan, Mr. Bliss, was adopted as just above recorded, charging the entire expense against the District of Columbia. That being the law as it reads, the Chair is of the opinion that the amendment of the gentleman from Kentucky follows the only statute which authorizes an appropriation for the bathing beach to be made and is therefore in order. Accordingly the point of order is overruled.

1187. A provision of law authorizing Commissioners of the District of Columbia to take over and operate fish wharves was held not to authorize an appropriation to reconstruct such wharves.

On December 18, 1913,¹ the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Frank W. Mondell, of Wyoming, offered this amendment:

For reconstruction of wharves, \$50,000; for market buildings, \$125,000.

Mr. Robert N. Page, of North Carolina, having raised a point of order, the Chairman² held:

The only provision covering this matter that has been referred to the Chair is found on page 3 of the current law, which reads as follows:

“And the Commissioners of the District of Columbia are authorized and directed in the name of the District of Columbia to take over, exclusively control, regulate, and operate as a municipal fish wharf and market, the water frontage on the Potomac River lying south of Water Street between Eleventh and Twelfth Streets, including the buildings and wharves thereon, and said wharf shall constitute the sole wharf for the landing of fish and oysters for sale in the District of Columbia; and said commissioners shall have the power to make leases, fix and determine rentals, wharfage and dockage fees, and to collect and pay the same into the Treasury, one-half to the credit of the United States and one-half to the credit of the District of Columbia.”

Now, the rule relating to this subject is section 2 of Rule XXI, which 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, unless in continuation of appropriations for such public works and objects as are already in progress.”

¹ Second session Sixty-third Congress, Record, p. 1180.

² Cordell Hull, of Tennessee, Chairman.

This is not a work in progress, is not authorized by existing law, and therefore it is subject, in the opinion of the Chair, to the point of order made against it, inasmuch as it would be the construction of a new work. Therefore the point of order is sustained.

1188. Authorization of law for use of public-school buildings as social and recreational centers does not warrant appropriations for such purposes.

On December 17, 1920,¹ the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was reached:

For payment of necessary expenses connected with the organization and conducting of community forums and civic centers in school buildings, including equipment, fixtures, and supplies for lighting and equipping the buildings, payment of janitor service, secretaries, teachers, organizers, and clerks, and employees of the day schools may also be employees of the community forums and civic centers, including maintenance of automobile, \$35,000: *Provided*, That not more than 60 per cent of this sum shall be expended for payment of secretaries, teachers, organizers, and clerks.

Mr. Joseph Walsh, of Massachusetts, made the point of order that there was no authority for this provision.

Mr. Charles R. Davis, of Minnesota, maintained that existing law providing that control of the public schools of the District of Columbia by the Board of Education shall extend to and include the use of the buildings for community forums, was sufficient authorization for the proposed appropriations.

The Chairman² said:

It is probably a proper and very desirable part of our educational system to have the activities as provided for in this paragraph. The Chair is troubled, however, from the parliamentary standpoint, in endeavoring to find the authorization in existing law for the expenditure of money for this purpose. In this paragraph it states that the payment for expenses shall include "equipment, fixtures, supplies for lighting and equipping" the buildings. In looking at the law the Chair fails to find any authorization for the expenditure of money for those purposes. The Chair can find no authority other than for the use of the buildings, not for the expenditure of money in their upkeep and maintenance. It has been suggested that the matter of maintenance should be implied in the law. The Chair does not feel justified in going that far, and while the Chair feels that these activities are very essential and very proper, he feels compelled to sustain the point of order.

1189. An appropriation for opening, widening, or extending streets and highways in the District of Columbia was held to be authorized by law.

Opinion as to the use and effect of the terms "hereafter" and "whenever" in the enactment of permanent law.

On January 6, 1923,³ the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. A point of order made by Mr. Ben Johnson, of Kentucky, was pending against the following paragraph:

To carry out the provisions contained in the District of Columbia appropriation act for the fiscal year 1914, which authorize the commissioners to open, extend, or widen any street, avenue, road, or highway to conform with the plan of the permanent system of highways in that portion

¹Third session Sixty-sixth Congress, Record, p. 487.

²Frederick C. Hicks, of New York, Chairman.

³Fourth session Sixty-seventh Congress, Record, p. 1365.

of the District of Columbia outside of the cities of Washington and Georgetown there is appropriated such sum as is necessary for said purpose during the fiscal year 1924, to be paid wholly out of the revenues of the District of Columbia.

After debate, the Chairman¹ ruled:

The Chair realizes that the determination of this question is of considerable importance. The gentleman from Kentucky referred to the act of April 30, 1906. In the opinion of the Chair this law, the permanency of which is not questioned, authorizes the institution of condemnation proceedings for the purpose of opening, extending, and widening streets. It would seem to the Chair that in the appropriation act of 1914 the provision "that the Commissioners of the District of Columbia are authorized whenever in their judgment the public interest requires it to prepare a new highway plan," is a supplementary authority giving to the commissioners the right under the act of 1906 to extend the highway system in accordance to a definite plan, therefore the question that presents itself to the Chair is this: Is the provision in the act of 1914 permanent law, or was it only temporary? The Chair has taken the time to consider this question rather thoroughly, for he is alive to the fact that it has far-reaching consequences.

The Chair admits that this point of order is a rather close one, and so far as the Chair has been able to ascertain there are no precedents covering the exact situation presented. The present occupant of the chair has frequently been called upon to render decisions involving the placing of legislative provisions on appropriation bills and has uniformly held that unless it was clearly evident that such legislative authorization incorporated in appropriation bills was of a permanent character the authorization thus created would terminate at the end of the fiscal year for which the appropriations were made.

It has been suggested that the test of permanency of legislation on an appropriation bill should rest upon the use or nonuse of the word "hereafter," and while this is the usual and more positive method of making legislation permanent, the Chair dissents from the view that this is the only test, for the Chair feels that other words might easily be and frequently are employed to accomplish the same purpose. By reference to the appropriation act of 1914, the Chair finds that the legislative authority for the extension of the highway system—the permanency of which authority is now disputed—is clothed in this phraseology, "That the Commissioners of the District of Columbia are authorized whenever in their judgment the public interest requires it," and so forth. It seems to the Chair that the word "whenever," as used in this act, is for all intents and purposes synonymous with the word "hereafter."

From a practical standpoint it is hardly conceivable that a comprehensive plan for streets in a great, rapidly growing city could be matured in any fiscal year or that future needs could be accurately anticipated in any 12-month period. Any plan devised by any board of engineers would undoubtedly have to be modified with the growth and development of the city. From the parliamentary standpoint the Chair is cognizant of the fact that under the act of 1914 streets have been opened and extended without additional legislation and that the courts have sustained condemnation proceedings under that act. By the use of the word "whenever" and interpreting the purpose of Congress by the scope of the authority granted in 1914 it seems to the Chair that it was the evident intention to make it an authorization permanent in character, and the Chair therefore overrules the point of order.

1190. An appropriation for Americanization work in the District of Columbia was held not to be authorized by law.

On February 26, 1923,² the deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. John L. Cable, of Ohio, proposed this amendment as a new paragraph:

For salaries of teachers of the Americanization work of foreigners in night classes, at not to exceed \$3.50 per teacher per night, \$2,730.

¹ Frederick C. Hicks, of New York, Chairman.

² Fourth session Sixty-seventh Congress, Record, p. 4683.

Mr. Thomas L. Blanton, of Texas, made the point of order that the appropriation was unauthorized by law.

After debate, the Chairman¹ sustained the point of order.

1191. A law providing for establishment of specific regulations authorizes appointment of agents to enforce such regulations, and in the absence of legislative limitation on the number to be appointed, an appropriation for any number is in order on an appropriation bill.

The law empowering the Commissioners of the District of Columbia to make building regulations was held to authorize the appointment of building inspectors.

While the burden of showing authorization for an appropriation rests upon those supporting the proposed legislation, if a law apparently supporting the appropriation is cited, the burden thereupon shifts to the opposition to show limitation of such law by subsequent legislation.

An appropriation for any object in an appropriation bill provides law only for the year for which appropriated and is not authorization for appropriation in future bills.

On May 1, 1924,² the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read as follows:

Building inspection division: For personal services in accordance with the classification act of 1923, \$57,080; for temporary additional assistant inspectors, \$15,000; in all, \$72,080.

Mr. Thomas L. Blanton, of Texas, made the point of order that there was no authority for the provision.

The Chairman³ ruled:

The act of June 14, 1898, authorizes the Commissioners of the District of Columbia as follows:

“The Commissioners of the District of Columbia be, and they are hereby, authorized and directed to make and enforce such building regulations for the District as they may deem advisable.”

That is as broad as any authority can be.

The statute provides that they shall make such building regulations as they may deem advisable. Under that language they may deem it advisable to have 15 inspectors and provide for them and to get Packard automobiles. If there is no limitation, if that is all the law there is, it is as broad as any authorization could be. Under such authorizations 15 inspectors are possible or 50 are possible. Of course it is for Congress to appropriate for such expenses of this department as it desires. It is always a question of how far Congress will go.

In the course of the debate on the point of order Mr. Charles R. Davis, of Minnesota, said:

For 20 years we have had the same bill, and this is the first time a point of order has been made on these items. It has been in every bill since I have been in Congress.

The Chairman held:

The Chair has not time to look at the various statutes on this matter. The Chair understands that the parliamentary rule is that where an item is challenged on the ground that it is

¹ Clifton N. McArthur, of Oregon, Chairman.

² First session Sixty-eighth Congress, Record, p. 7655.

³ William J. Graham, of Illinois, Chairman.

not authorized by law the burden is upon the committee to sustain it. Where the legality of an appropriation is challenged the burden is then upon the proponents of the bill to show that it is sustained by law. In answer to the proposition of the gentleman from Texas the gentleman from Michigan, Mr. Cramton, has shown this statute to the Chair, which is extremely broad. If there are any limitations on that, it is now the burden of those who make the point of order to show the Chair that this statute has been limited by some subsequent enactment.

Mr. Ben Johnson, of Kentucky, having appealed from the decision the Chair was sustained, on division, yeas 105, noes 11.

1192. An appropriation to be expended in case of emergency only was held to be in order on an appropriation bill.

On May 3, 1924,¹ 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 had been reached:

To be expended only in case of emergency, such as riot, pestilence, public insanitary conditions, calamity by flood or fire or storm, and of like character; and in all cases of emergency not otherwise sufficiently provided for, in the discretion of the commissioners, \$4,000; *Provided*, That in the purchase of all articles provided for in this act no more than the market price shall be paid for any such articles, and all bids for any such articles above the market price shall be rejected and new bids received or purchases made in open market, as may be most economical and advantageous to the District of Columbia.

Mr. Thomas L. Blanton, of Texas, made the point of order that there was no authority for the paragraph.

The Chairman² held:

This is an item of appropriation to be used as an emergency fund for the District of Columbia. What is there in the law that prohibits Congress from establishing an emergency fund for any department? The Chair believes that it is a legitimate function of Congress to make such a fund if it wants to do so. For instance, Chairman Walsh on February 10, 1921, decided that an appropriation for an emergency, an extraordinary expenditure in the Navy Department, was in order as a necessary incident to the operation of the department. The point of order is overruled.

1193. The law creating a governmental agency and defining its duties impliedly authorizes an appropriation for maintenance, including allowances for automobiles, and in the absence of statutory limitation any amount may be appropriated.

On May 3, 1924,³ the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read the following paragraph:

For all expenses necessary and incident to the enforcement of an act entitled "An act to create a board for the condemnation of insanitary buildings in the District of Columbia, and for other purposes," approved May 1, 1906, including personal services when authorized by the commissioners, \$2,452, including an allowance at the rate of \$26 per month for furnishing an automobile for the performance of official duties

Mr. Thomas L. Blanton, of Texas, made a point of order that there was no authority of law for the provision.

¹ First session Sixty-eighth Congress, Record, p. 7783.

² William J. Graham, of Illinois. Chairman.

³ First session Sixty-eighth Congress, Record, p. 7781.

The Chairman¹ said:

The act to create a board for the condemnation of insanitary buildings in the District of Columbia, and for other purposes, approved May 1, 1906, is a general act. It gives broad and comprehensive powers to a board, to be known as the Board for the Condemnation of Insanitary Buildings in the District of Columbia, to do certain things in and about the District in the examination and condemnation of insanitary buildings, a very useful work and a necessary adjunct to the government of such a place as the District of Columbia.

Now, the gentleman from Texas states, in support of his point of order, that an allowance for an automobile would not be permissible and in order, unless there was some authority of law for the hiring of an automobile. The Chair can not see how that can follow. Would it be contended, for instance, that it would be necessary, before the Congress could appropriate for stationery for typewriting purposes, that there must be authority given by law to the board to buy typewriting machines?

There is no law which authorizes the Board for the Condemnation of Insanitary Buildings to buy typewriters, to buy vehicles, or buy office furniture, specifically stating it, but it is commonly conceded that they must have that right otherwise they could not function. So it must be true that if it is necessary for them to use an automobile they ought to have the right to do so, and if they can buy an automobile it follows that Congress may appropriate a reasonable amount for the maintenance of the automobile. That is always true when Congress gives broad, general powers and does not restrict and limit those powers, and Congress has not done so in this case.

If a department is authorized by law to perform certain duties, it must necessarily follow, unless Congress has limited it, that that department must have the necessary things with which to do its business and the Congress may appropriate for such purposes. The point of order is overruled.

1194. Appropriations for typewriters, filing cases, and other essential equipment for an office authorized by law are in order on an appropriation bill.

On May 3, 1924,² the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read the following paragraph:

For the purchase of special typewriting equipment, typewriters, cards, and file cases, for the use of the offices of the assessor and collector of taxes, to be immediately available, \$5,000.

Mr. Thomas L. Blanton, of Texas, raised the point of order that the appropriation was not authorized by existing law.

The Chairman¹ held:

The Chair has endeavored on several occasions to express his ideas about matters which were necessary for the conduct of an office which is authorized by law. The Chair is of opinion that such things as are necessary to carry on these legally constituted offices can be appropriated for, and therefore the point of order is overruled.

1195. An appropriation for machinery required for repair and maintenance of sewers was held to be in order on an appropriation bill.

On May 3, 1924,³ the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when

¹William J. Graham, of Illinois., Chairman.

²First session Sixty-eighth Congress, Record, p. 7783.

³First session Sixty-eighth Congress, Record, p. 7791.

Mr. Thomas L. Blanton, of Texas, raised a question of authorization against this paragraph:

For cleaning and repairing sewers and basins, including the purchase of two motor field wagons at not to exceed \$650 each, the purchase of two motor trucks at not to exceed \$650 each, and the purchase of one motor tractor at not to exceed \$650; for operation and maintenance of the sewage pumping service, including repairs to boilers, machinery, and pumping stations, and employment of mechanics and laborers, purchase of coal, oils, waste, and other supplies, and for the maintenance of motor vehicles used in this work, \$231,000.

The Chairman¹ held that the appropriation was authorized, and overruled the point of order.

1196. An appropriation for traveling expenses of the President, within the prescribed statutory limit, is authorized by law.

On July 15, 1909,² the urgent deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

For traveling expenses of the President of the United States, to continue available during the fiscal year 1910, and to be expended in his discretion and accounted for on his certificate solely, \$25,000.

Mr. Robert B. Macon, of Arkansas, made the point of order that there was no law authorizing the appropriation.

The Chairman ruled:³

The simple question is raised whether or not the House is authorized to appropriate for the traveling expenses of the President on a general appropriation bill. The act of June 23, 1906, must be presumed to have had a meaning and a purpose and its title is, "An act to provide for the traveling expenses of the President of the United States." The language which follows shows that it was not intended to make provision for a single year at all. It expressly refers to "such sum as Congress may from time to time appropriate, not exceeding \$25,000 per annum," and then makes provision for an accounting; and while this language is not, perhaps, as apt as might be desired, yet its intent and purpose, it seems to the Chair, can not be mistaken, which seems to provide, that within a limit of \$25,000 per annum, the traveling expenses of the President of the United States should be such sum as was appropriated. The Chair accordingly overrules the point of order.

1197. Although the purpose for which proposed is sanctioned by the Constitution, an appropriation is not in order on general appropriation bills unless authorized by provision of statutory law.

The provision of the Constitution directing the President to make recommendations to Congress was held not to authorize appropriations for agencies to secure information to be used in the discharge of that duty.

An appropriation enabling the President to gather tariff information by appointment of a tariff board was held not to be in order on an appropriation bill.⁴

¹ William J. Graham, of Illinois, Chairman.

² First session Sixty-first Congress, Record, p. 4482.

³ Irving P. Wanger, of Pennsylvania, Chairman.

⁴ Superseded by act of September 8, (U. S. Code, title 19, sections 91 et seq.).

On May 23, 1910,¹ the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. A point of order raised by Mr. John J. Fitzgerald, of New York, was pending on this paragraph:

To enable the President to secure information as to the effect of tariff rates or other restrictions, exactions, or any regulations imposed at any times by any foreign country on the importation into, or sale in, any such foreign country of any agricultural, manufactured, or other product of the United States, and to assist the officers of the Government in the administration of the customs laws, as required by the tariff act approved August 5, 1909, including detailed information of the cost, and of each and every element thereof, of producing at the place of production and at the place of consumption of all articles specified in said tariff act both in this country and in the country from which such articles are imported, so that the cost of all such articles produced abroad may be compared with the cost of like articles produced in this country, the President, in the employment of persons required and authorized for such service, may appoint a tariff board, and he may also employ, under his personal direction, or under the direction and supervision of such tariff board, such competent experts in the business and methods of cost keeping and such clerical and other personal services, including rent of offices in the District of Columbia, traveling and other incidental expenses, as may be necessary in the work of said board and the work of said experts engaged in such investigations; and the compensation of all such persons, whether employed permanently or temporarily, shall be fixed by the President; and to enable the President to have such information classified, tabulated, and arranged for his use in recommending to Congress such changes or modifications in any existing tariff duties as he may deem necessary to prevent undue discrimination in favor of or against any of the products of the United States, \$250,000.

After exhaustive debate, the Chairman² read both the pending paragraph and clause 2 of Rule XXI, and said:

This is one of the old rules of the House, and in all of the controversy relating to the rules which has gone on in recent years the Chair believes that no one has suggested that this rule be materially changed or modified in any particular.

It is said, however, that under the provisions of the Constitution the proposition in the bill is in order. Section 3 of Article II of the Constitution, relating to the duties and powers of the President, says:

“He shall from time to time give to the Congress information of the state of the Union and recommend to their consideration such measures as he shall judge necessary and expedient.”

And it is claimed that because of this provision of the Constitution it is in order on an appropriation bill to make an appropriation to allow the President to acquire information in order that he may intelligently recommend to Congress such provisions as to him seem meet.

It might often occur that the President desired information in order to make recommendations to Congress. The President might desire to have full information in reference to all of the water powers of the country in order that he might recommend to Congress what legislation should be enacted in reference to the construction of dams.

The President might desire information as to all matters of public works in order that he might make recommendations to Congress in regard to them. But the Chair thinks that no one will claim that under this provision of the Constitution it would be in order on an appropriation bill to give to the President unlimited power to acquire information. The acquirement of information is not mentioned in this provision of the Constitution. The acquirement of information by the President through an appropriation must be in accordance with some law of Congress; and it is not wholly within the power of the President unless Congress gives him that power, or an appropriation, to acquire information at the public expense, even although he might consider it desirable information, in order to allow him to make his recommendations to Congress.

¹ Second session Sixty-first Congress, Record, p. 6764.

² James R. Mann, of Illinois, Chairman.

And the Chair does not think that under that provision of the Constitution it is in order on an appropriation bill to provide for the expenditure of money not authorized by some provision of law, for the acquiring of information to be used by the President in making recommendations to Congress.

In section 2 of the tariff act is the provision relating to the so-called maximum and minimum tariff, and it is provided in that section that the President, after the 31st of March last—"and so long thereafter as the President shall be satisfied, in view of the character of the concessions granted by the minimum tariff of the United States, that the government of any foreign country imposes no terms or restrictions, either in the way of tariff rates or provisions, trade or other regulations, charges, exactions, or in any other manner, directly or indirectly, upon the importation into or the sale in such foreign country of any agricultural, manufactured, or other product of the United States, which unduly discriminate against the United States or the products thereof, and that such foreign country pays no export bounty or imposes no export duty or prohibition upon the exportation of any article to the United States which unduly discriminates against the United States or the products thereof, and that such foreign country accords to the agricultural, manufactured, or other products of the United States treatment which is reciprocal and equivalent."

Thereupon the President may make a proclamation awarding the minimum tariff to such country.

It will be noted that this part of section 2 applies to the question of discrimination in some form against the United States, or the manufactured, or agricultural or other products of the United States; and the discrimination is in a way defined, stating how the discrimination may be exercised, and making it then in general terms a question of discrimination which the President is authorized to ascertain.

If the discrimination exists unduly, the President then can not issue a proclamation awarding the minimum tariff, but the maximum tariff is in effect against such country. If the President finds that no undue discrimination exists, the President is authorized to issue his proclamation allowing the minimum tariff. This power of the President undoubtedly remains in force, because the President has the power at any time to make a continuing examination to ascertain whether at some future time the discrimination still does not exist, and if he finds undue discrimination has been exercised since his previous proclamation, he may issue a proclamation restoring the maximum tariff.

Then the section provides:

"To secure information to assist the President in the discharge of the duties imposed upon him by this section, and the officers of the Government in the administration of the customs laws, the President is hereby authorized to employ such persons as may be required."

Undoubtedly it is in order on an appropriation bill to make an appropriation somewhat at least in the form of the appropriation which is now existing, which was made in the law of August 5 last, which reads:

"To enable the President to secure information and to assist the officers of the Government in the administration of the customs law, as provided in section 2 of the bill relating to the maximum and minimum rates"—

And so forth.

And the question is now whether under this provision of section 2 giving authority to the President to secure information to assist him in the discharge of the duties imposed upon him by section 2 of the act, or to assist the officers of the Government in the administration of the customs laws, the pending provision is in order.

Section 2 of the law under which the President may secure information to assist him in the discharge of the duties imposed upon him by that section seems to confine the duties imposed by that section to the ascertainment of the question of undue discrimination. But it is claimed that the other provision of the section—to acquire information to assist the officers of the Government in the administration of the customs law—gives authority for the provision in the bill.

Section 8 of the customs administrative law, as amended in the Payne law, provides that when merchandise entered for customs duty has been "consigned for sale" by or on account of the manufacturer thereof, and so forth, and seems to be confined so far as the operations of

section 8 are concerned to the question of ascertaining in regard to the merchandise which has been consigned for sale.

Section 10 of the administrative law as amended provides:

“That it shall be the duty of the appraisers of the United States and every of them, and every person who shall act as such appraiser or of the collector, as the case may be, by all reasonable ways and means in his or their power to ascertain, estimate, and appraise the actual market value and wholesale price of the merchandise at the time of exportation to the United States in the principal markets of the country whence the same has been imported, and the number of yards, parcels, or quantities, and actual market value or wholesale price of every of them, as the case may require.”

That would seem to be confined, so far as direct authority is concerned, to the ascertainment of such value by the appraisers or some one acting as appraiser, or by the collector; but whether that be the case or not, it is plainly confined to the question of ascertainment of the market value of property which is actually imported at the time of the exportation to the United States. It can not be considered as general in character.

Section 11 of the administrative law as amended by the Payne Act provides:

“That when the actual market value, as defined by law, of any article of imported merchandise, wholly or partly manufactured and subject to an ad valorem duty, or to a duty based in whole or in part on value, can not be ascertained to the satisfaction of the appraising officer, such officer shall use all available means in his power to ascertain the cost of production of such merchandise at the time of exportation to the United States and at the place of manufacture, such cost of production to include the cost of material”—

and various items that are there stated. That section of the law plainly confines the law to the collection of information concerning merchandise which is subject to an ad valorem duty, or to a duty based in whole or in part on value, and can not be construed and applied to all classes of merchandise.

There is also a section in the act creating the Department of Labor which gives to the Commissioner of Labor authority to ascertain information as to the cost of articles which are imported, but that authority under the law is confined to the Commissioner of Labor or to the Department or Bureau of Labor.

The provision which is pending, and which grammatically seems not to provide an appropriation to enable the President to secure information as to the effect of tariff rates or other restrictions, but which grammatically provides that to enable the President to secure information as to the effect of tariff rates or other restrictions and to assist the officers of the Government in the administration of the customs laws, “including detailed information of the cost,” and so forth, “the President, in the employment of persons required and authorized for such service, may appoint a tariff board,” and so forth.

It seems to the Chair that that is a clear authorization to the President to do a particular thing. It is said that it is authorized by existing law. As the Chair has pointed out in reference to the different sections, the authority under the existing law is an authority confined to the particular things in particular directions. But this paragraph provides:

“Including detailed information of the cost of each and every element thereof, of producing at the place of production and at the place of consumption of all articles specified in said tariff act, both in this country and in the country from which such articles are imported, so that the cost of all such articles produced abroad may be compared with the cost of like articles produced in this country.”

There is no restriction in this authority. It authorizes—if it is an authorization—the President to secure this information concerning every item that is mentioned in the tariff act, whether the item be imported or not. The paragraph contains other provisions in regard to the employment of persons under the tariff board or under the personal direction of the President, and various directions as to the character of the work to be performed by them.

If the President, under the existing law, has the authority to employ these persons, then this provision in the bill will be obnoxious to the rule, as a limitation upon the authority of the President. If he does not have the authority it is obnoxious to the rule, because it confers an

authority which does not now exist. For the reasons stated the Chair feels compelled to sustain the point of order.

1198. An appropriation for examination of Presidential postmasters was held to be authorized by law.

On January 21, 1922,¹ the independent offices appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. William F. Stevenson, of South Carolina, reserved a point of order on this paragraph:

For examination of presidential postmasters, including travel, printing, stationery, contingent expenses, additional examiners and investigators, and other necessary expenses of examinations, \$75,000: *Provided*, That no person shall be employed hereunder at a rate of compensation exceeding \$1,800 per annum, except five at not to exceed \$3,500 each.

After debate, the Chairman² ruled:

The question arises on the paragraph making appropriation for the purpose of examination by the Civil Service Commission of presidential appointees for post offices. It is admitted that this examination is required under existing order by the President. The question is whether or not it is authorized by existing law. There must be some provision of existing law that authorizes the appropriation or else it is not authorized by existing law.

The provision referred to as existing law is in this book known as Barnes's Federal Code, page 621, and is a part of section 2859:

"It shall be the duty of said commissioners: First to aid the President, as he may request, in preparing suitable rules for carrying this act into effect, and when said rules shall have been promulgated it shall be the duty of all officers of the United States in the departments and offices to which any such rules may relate to aid, in all proper ways, in carrying said rules, and any modification thereof, into effect."

It is suggested there may possibly be an inference, at least, that these provisions might refer to merely the classified service. However, the broad scope of power is shown by the provision in the same chapter with reference to the limitation on the activities of Congressmen:

"No recommendations of any person who shall apply for office or place under the provisions of this act which may be given by any Senator or Member of the House of Representatives, except as to the character or residence of the applicant, shall be received or considered by any person concerned in making an examination or appointment under this act."

That evidences, of course, a very broad interpretation of the act, as it applies to any person who shall apply for any "office or place." That would necessarily include applicants for post offices.

As the power is granted without reservation to the President to make such appointments, and as he is authorized to prescribe rule and regulations for the Civil Service Commission, it would appear that the authority is complete in law for the appropriation of funds from the Treasury for such purpose. The giving of additional duties to an appointee of the President by an Executive order of the President, it seems, would clearly imply that such service must be paid for. As the President has the power to make orders to increase the efficiency and to regulate even the duties and prescribe rules for the conduct of the Civil Service Commission, if he has given an Executive order to the Civil Service for the performance of duties with regard to his office, and appropriation for such service is clearly within the provisions of the law. The Civil Service Commission is not limited only to duties with regard to the classified service. The President can create new duties and ask them to perform any duties under existing law that he chooses to do, and he has chosen to do that in this case.

Therefore it seems to the Chair that the appropriation is authorized by existing law, and the point of order is overruled.

¹Second session Sixty-seventh Congress, Record, p. 1545.

²Horace M. Towner, of Iowa, Chairman.

1199. Appropriations for the examination of estimates of appropriations in the field by committees or subcommittees of Congress were held not to be authorized by law.

It is incumbent on proponents to cite legislative authority for appropriations.

On January 2, 1927,¹ during consideration of the independent offices appropriation bill, the Clerk read the paragraph making appropriation for the emergency shipping fund, including the following language:

For expenses of the United States Shipping Board Emergency Fleet Corporation during the fiscal year ending June 30, 1928, for administrative purposes, the examination of estimates of appropriations in the field, miscellaneous adjustments, losses due to the maintenance and operation of ships, for the repair of ships, and for carrying out the provisions of the merchant marine act, 1920, the amount on hand July 1, 1927.

Mr. Ewin L. Davis, of Tennessee, submitted that the provision for the examination of estimates of appropriations in the field, and intended to provide transportation for committees of Congress, was not authorized by law.

The Chairman² ruled:

In the absence of the citation requested by the Chair from the chairman of the committee the Chair is unable to find in the law any provision whereby appropriations could be diverted from the Shipping Board to pay the expenses of any committee of Congress. Consequently, the Chair concludes that any provision drawn with that intent must be legislation, and therefore sustains the point of order.

1200. A declaration of policy embodied in a statute was held not to authorize appropriations for purposes germane to the policy but not specifically authorized by the act.

On January 12, 1927,³ the Committee of the Whole House on the state of the Union had under consideration the independent offices appropriation bill.

When the paragraph making appropriation for the United States Shipping Board Emergency Fleet Corporation was reached, Mr. Thomas L. Blanton, of Texas, raised a point of order against the appropriation for loans to purchasers of ships.

Mr. William R. Wood, of Indiana, in controverting the point of order, cited the declaration of policy carried in the merchant marine act as authorizing the appropriation.

The Chairman² ruled:

The Chair will decide the point of order made by the gentleman from Texas to the whole paragraph. Section 751, Barnes Code, is cited by the gentleman from Indiana as a basis for writing the language into the appropriation bill authorizing the Fleet Corporation to make loans, and that section is as follows:

“It is hereby declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine.”

If a declaration of policy were law, of course that would be a fact; but if the Congress when it passed the merchant marine act had intended to carry with the declaration of policy the author-

¹ Second session Sixty-ninth Congress, Record, p. 1523.

² James T. Begg, of Ohio, Chairman.

³ Second session Sixty-ninth Congress, Record, p. 1533.

ity to do anything and everything within the judgment of the Emergency Fleet Corporation, then, in the judgment of the Chair, the Congress would not have immediately followed the declaration of policy by an enumeration of powers that the Emergency Fleet Corporation could exercise, to wit, to buy and sell, and the restriction that when they do sell they must sell the good vessels to American citizens and can sell only the poor vessels to foreigners, and also the establishment of lines of commerce and loaning for the purpose of reconstruction for a period of 15 years. If this language is not legislation and is written into the law, then they can make a loan for 100 years, and by that loan defeat the purpose of Congress when it provides that when a ship is sold the Government must receive complete payment for the ship within a period of 15 years.

It appears to the Chair that if the Shipping Board were to sell a vessel to A and receive 50 per cent in cash and 50 per cent payable in 15 years, the only thing necessary for A to do in order to defeat the law would be to go to the same Shipping Board and borrow the 50 per cent he owes the Shipping Board for 100 years, and he would thereby postpone the payment of the 50 per cent for a period of 85 years, which is contrary to law.

It seems to the Chair that the declaration of policy does not permit the board to loan or authorize appropriations making available money for loans by this agency. The Chair, therefore, sustains the point of order against the paragraph.

1201. Appropriations for expenses of officers or employees of the United States or of the District of Columbia in attending conventions of societies or associations in connection with their official duties are in order on an appropriation bill.

On February 14, 1930,¹ the independent offices appropriation bill was being considered in the Committee of the Whole House on the state of the Union.

The Clerk read this paragraph:

For all other authorized expenditures of the Federal Trade Commission in performing the duties imposed by law or in pursuance of law, including secretary to the commission and other personal services; contract stenographic reporting services to be obtained on and after the approval of this act by the commission, in its discretion, through the Civil Service or by contract or renewal of existing contract; or otherwise; supplies and equipment; law books; books of reference; periodicals; garage rental; traveling expenses, including not to exceed \$900 for expenses of attendance, when specifically authorized by the commission, at meetings concerned with the work of the Federal Trade Commission.

Mr. Wright Patman, of Texas, made the point of order that the appropriation for the expenses of members of the Federal Trade Commission in authorized attendance upon meetings concerned with the work of the Commission was not warranted by law.

Mr. Edward H. Wason, of New Hampshire, opposed the point of order and in authorization of the appropriation quoted section 83, Title V, of the United States Code.

The Chairman² ruled:

The point of order is made against the following language:

“Including not to exceed \$900 for expenses of attendance, when specifically authorized by the commission, at meetings concerned with the work of the Federal Trade Commission.”

The point of order is made to this language because there is no authorization for it under the law. The attention of the Chair has been called by the chairman of the subcommittee to title 5, chapter 1, section 83, of the law, which was read and which is as follows:

“No money appropriated by any act shall be expended for membership fees or dues of any officer or employee of the United States or of the District of Columbia in any society or association

¹Second session Seventy-first Congress, Record, p. 3680.

²Cassius C. Dowell, of Iowa, Chairman.

or for expenses of attendance of any person at any meeting or convention of members of any society or association, unless such fees, dues, or expenses are authorized to be paid by specific appropriations for such purposes, or are provided for in express terms in some general appropriation.”

It seems to the Chair that the language used in the appropriation carries out specifically what the law says shall be done if appropriations are made. The Chair overrules the point of order.

1202. Law authorizing designated parties to take certain action was construed as not authorizing an appropriation to compensate the Government for expenditures in taking such action.

Authorization for Indians to lease their lands was held not to authorize an appropriation to enable the Government to lease the same lands.¹

On February 11, 1908,² the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

For clerical work and labor connected with the leasing of Creek and Cherokee lands, for mineral and other purposes, and the leasing of lands of full-blood Indians under the act of April 26, 1906, \$40,000: *Provided*, That the sum so expended shall be reimbursable out of the proceeds of such leases and shall be equitably apportioned by the Secretary of the Interior from the moneys collected from such leases.

Mr. James S. Davenport, of Oklahoma, raised a question of order on the paragraph.

The Chairman³ said:

There was, as the Chair understands, passed in 1906 a statute which authorized the Indians to lease certain lands. That authorized the Indians to lease these lands, but the Chair does not find in that bill any provision directing or authorizing the Government to be at the expense of that leasing, and furnish either the clerical work or labor. So the provision, to the Chair, seems to be merely an authorization by which the Indians could at their own trouble and at their own expense go on and make leases. The law of 1906 merely authorizes the Indians themselves to make leases of this character.

The present bill, instead of leaving the Indians to do that themselves, makes an appropriation of the sum of \$40,000 to pay the expenses of the work, the Government appearing and doing the work itself, and imposing as a condition that if the Government pays that expense the Government shall be repaid. The Chair is ready to rule, and though he is very loath himself to so rule, yet, after consultation with a gentleman⁴ who is an excellent authority and who seems to be very clear, the Chair sustains the point of order.

1203. Under the former practice, when jurisdiction over appropriations was distributed among several committees, an amendment proposing an appropriation for Indians of Alaska (ordinarily carried in the sundry civil appropriation bill) was held not germane to the Indian appropriation bill.

¹ Now authorized by the act of November 2, 1921 (U.S. Code, title 25, section 13).

² First session Sixtieth Congress, Record, p. 1849.

³ James B. Perkins, of New York, Chairman.

⁴ Asher C. Hinds, clerk at the Speaker's table.

On February 19, 1910,¹ the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union and the following paragraph had been read:

For the suppression of the traffic in intoxicating liquors among Indians, \$70,000.

A point of order made by Mr. Charles H. Burke, of South Dakota, was pending against the following amendment offered by Mr. John J. Fitzgerald, of New York:

Amend by inserting after "Indians" the words "including those in the Territory of Alaska."

At the conclusion of the debate on the point of order, the Chairman ruled:²

The statute to which the chair has been referred, section 462 of the Revised Statutes, providing for a Commission of Indian Affairs, was passed in 1832, long before we had Alaska. That would make no difference if Alaskans were Indians within the meaning of that act. But all the laws relating to the Indian Bureau and the Indian Department; as, for instance, section 2046 of the Revised Statutes, seem to relate to what we commonly call Indians within the United States. The President is authorized by that section to appoint from time to time superintendents of Indian affairs. Then the statute enumerates the States and Territories within which they may be appointed. Alaska is not mentioned. The Chair does not find that Alaska is mentioned in any of the acts, early or late, relating to the Indian Service, or to the creation of the Bureau of Indian Affairs. The Chair does not find that they have ever been appropriated for in bills coming from the Indian Affairs Committee, but always in bills coming from the Committee on Appropriations, such as the sundry civil bill. There is in that bill, as passed last year, provision for the education of Alaskans, a provision for the purchase of reindeer for natives of Alaska, for the instruction of Alaskan natives in the care and management of reindeer, and so forth. All the provisions of law relating to Alaska and governing the natives of Alaska are found in the sundry civil appropriation bill.

The gentleman from New York refers the Chair further to an act of Congress providing for the government of Alaska, in which it is declared that for the purposes of that act the natives of Alaska shall be considered Indians.

That is to say, they are statutory Indians for the purpose of that act only. The Chair is of the opinion that the statute upon the subject of the Indian Bureau and controlling the Indian affairs, and the rule requiring certain matters to be referred to the Committee on Indian Affairs, all have reference to the Indians of the United States and not to the natives of Alaska, which by statute have been declared to be Indians for the purposes of that particular act. The Chair thinks the amendment is not germane, and sustains the point of order.

1204. A law authorizing operations by other than governmental agencies and without expense to the Government was held not to authorize an appropriation for such operations.

A law permitting Indians to remove timber from reservations does not authorize an appropriation for that purpose.³

On February 21, 1910,⁴ the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. A point of order by Mr. James R. Mann, of Illinois, was pending on the following paragraph:

To conduct experiments on Indian school or agency farms designed to test the possibilities of soil and climate in the cultivation of trees, grains, vegetables, and fruits, using Indian labor in

¹ Second session Sixty-first Congress, Record, p. 2121.

² Marlin E. Olmsted, of Pennsylvania, Chairman.

³ Subsequently authorized by act of November 2, 1921 (U.S. Code, title. 25. section 13).

⁴ Second session Sixty-first Congress, Record, p. 2185.

the process; for the purpose of preserving living and growing timber on Indian reservations and removing dead timber, standing or fallen, therefrom, and to advise the Indians as to the proper care of forests, and to conduct such timber operations and sales of timber as may be deemed advisable and provided for by law, except on the Menominee Indian Reservation in Wisconsin; for the employment of suitable persons as matrons to teach Indian women housekeeping and other household duties, at a rate not to exceed \$60 per month, and for furnishing necessary equipments and renting quarters for them where necessary; and for the employment of practical farmers and stockmen, subject only to such examination as to qualifications as the Secretary of the Interior may prescribe, in addition to the agency and school farmers now employed, to superintend and direct farming and stock raising among Indians, \$250,000: *Provided*, That the amounts paid to matrons, farmers, and stockmen herein provided for shall not come within the limit for employees fixed by the act of June 7, 1897.

After extended debate, the Chairman ¹ ruled:

The statute, sent to the Chair, relates to specific tribes or reservations, namely, the Flathead, Chippewa, and Jicarilla. The paragraph in question seems to be limited. The act of February 16, 1889, reads as follows:

“That the President of the United States may from year to year, in his discretion, under such regulations as he may prescribe, authorize the Indians residing on reservations or allotments, the fee to which remains in the United States, to fell, cut, remove, or otherwise dispose of the dead timber, standing or fallen, on said reservation or allotment for the sole benefit of such Indian or Indians.”

Now, the act of 1889, just read, provides that the President may authorize Indians to remove dead timber, and so forth. This paragraph appropriates money for that purpose. That does not seem to be within the meaning and intentment of the act of 1889, which states that the Indians are to do it. It does not contemplate any expense to the Government in connection therewith.

The first part of the paragraph, in relation to conducting experiments on Indian school or agency farms in the cultivation of trees, grains, and so forth, seems to the Chair to be fairly covered by section 2071 of the Revised Statutes, which says that—

“The President may, in every case where he shall judge improvement in the habits and conditions of such Indians practicable and that the means of instruction can be introduced with their consent, employ persons of good moral character to instruct them in the mode of agriculture suited to their situation”—

That is very broad language—

“and for teaching their children in reading, writing, and arithmetic, and to perform such other duties as may be enjoined according to such instructions and rules as the President may give and prescribe for the regulations of their conduct in the discharge of their duties.”

That is very broad language. But it is, perhaps, unimportant to consider it further here; for if there is any provision in the paragraph which renders it subject to the point of order, then of course, the whole paragraph must go out. The Chair has just indicated one such provision. Furthermore, the provision in line 13:

“Subject only to such examination as to qualifications as the Secretary of the Interior may prescribe.”

In the opinion of the Chair this does mean to confer upon the Secretary by legislation power and discretion which he does not now possess. Then we come to the provision:

“That the amounts paid to matrons, farmers, and stockmen herein provided for shall not come within the limit for employees fixed by the act of June 7, 1897.”

It seems to the Chair that that proviso changes existing law, in violation of Rule XXI.

The Chair is therefore compelled to rule that the point of order must be sustained.

¹Marlin E. Olmsted, of Pennsylvania, Chairman.

1205. Unless specifically authorized by treaty obligations or statutory provision, any appropriation for support or civilization of Indians is within the rule and is not in order on an appropriation bill.¹

Statutory authorization for support of designated Indian tribes does not authorize appropriations for other Indians even when formerly members of the tribes enumerated.¹

An appropriation for investigation of condition of Indians was held not to be in order on an appropriation bill.

On February 21, 1910,² the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph had been reached:

For the purpose of investigating the conditions of the Seminole Indians in Florida and the Alabama Indians in Texas, \$5,000; and the Secretary of the Interior is directed to report the result of such investigation to Congress at the next session.

Mr. James R. Mann, of Illinois, in presenting a point of order said:

To that paragraph I reserve a point of order. The point of order is that there is no authority in law for this appropriation at all; there is no treaty agreement under which the Government is bound to support these Indians or to make inquiry in regard to them. There is no treaty obligation here. If there were a treaty obligation here, of course we would be bound to carry out the treaty. Without a treaty obligation, the question is whether there is any general provision of the statute which covers the question. This is not for the purpose of supporting the Indians, but for the purpose of investigating the condition of certain tribes of Indians, where there is no treaty obligation to support.

There was a special act of Congress for the removal of those Seminole Indians from Florida to the western country. Most of them were removed under that act of Congress. Some of them preferred to remain in the Everglades, as they were entitled to. There was no authority granted to the President, as I recall history, in reference to the Seminole Indians remaining in the Everglades. There was a long contest between the State of Florida and those Indians extending over years, but there was no authority granted to the President in reference to supporting them or in reference to control over them whatever. They have lived without regard to the Government ever since the settlement of the war down there, when they were trying to keep us out of the country.

The Chairman³ ruled:

It occurs to the Chair that the point of order must be sustained unless there can be shown that these particular Indians bear such a relationship to the Government as that we are charged with some supervision or guardianship over them. And if they are without that limitation, then we have no more right to appropriate money in this bill for an examination of their condition than to examine the condition of white people in any county in the United States.

A question almost identical with this one was presented to the House in the Fifty-sixth Congress, when an amendment to this effect was offered to the Indian appropriation bill.

“For the support and civilization of the Shebits, Muddy, and other Indians in southern Utah, \$2,500.”

A Member of the House by the name of Joseph G. Cannon raised the point of order, and the Chairman, in deciding it, cited Rule XXI, which the committee all know:

¹ Subsequently an act was passed authorizing appropriations for certain activities of the Bureau of Indian Affairs, U. S. Code, title 25, section 13.

² Second session Sixty-first Congress, Record, p. 2192.

³ Marlin E. Olmsted, of Pennsylvania, Chairman.

“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 here, then, is whether the support for these Indians has heretofore been authorized by law. The Chair thinks that there is much in the point the gentleman from New York has just stated in reference to the meaning of those sections 2046 and 2052.

They seemed to indicate the Indians over whom the Government was to exercise some supervisory and helpful authority; and the further reference to the subject under section 2071, the Chair thinks, is limited by the provisions of those two sections. The Chair has not had his attention called to any existing law authorizing the extension of aid to these particular Indians named in the section, and therefore sustains the point of order.

1206. The authority of the Government to exercise control over the Indian tribes authorizes an appropriation for employment of counsel to represent their interests in litigation.

On February 22, 1910,¹ the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. William E. Cox, of Indiana, made a point of order on this paragraph:

For pay of one special attorney for the Pueblo Indians of New Mexico, \$1,500; for necessary traveling and incidental expenses of said attorney, \$500; in all, \$2000.

After debate, the Chairman² decided:

It appears that these Indians live in the Indian country; they are within the class of Indians which the statutes which have been read during the discussion of this bill refer to as placed within the care of the President of the United States and the Indian Bureau. They are living, as stated, in that Indian country upon a reservation. It seems that under a fair construction of the several statutes which have been cited—and it is not necessary to consume time to refer to them again at length—the Government has the authority to employ counsel to defend the rights of those Indians where they are attacked. If there is authority for the employment, there is sufficient authority of law to support an appropriation to cover the expense.

It seems to the Chair, without further elaboration, that the point of order must be overruled.

1207. An appropriation for the support and education of Indians in a Government school was held to be in order on an appropriation bill.

On February 22, 1910,³ the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Philip P. Campbell, of Kansas, offered this amendment:

For support and education of 500 Indian pupils at the Indian school at Chilocco, Okla., and for pay of superintendent, \$83,500; for general repairs and improvements, \$6,500; in all, \$90,000.

A point of order by Mr. John H. Stephens, of Texas, against the amendment, on the ground that it was not authorized, was overruled by the Chairman.²

1208. A statute authorizing the President, within his discretion, to order survey of agricultural lands was held not to authorize a survey by the Interior Department of certain Indian lands.⁴

¹ Second session Sixty-first Congress, Record, p. 2208.

² Marlin E. Olmsted, of Pennsylvania, Chairman.

³ Second session Sixty-first Congress, Record, p. 2212.

⁴ Now authorized by the act of November 2, 1921. (U.S. Code Title 25, section 13.)

On January 7, 1913,¹ The Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. A point of order raised by Mr. John H. Stephens, of Texas, was pending on the following amendment offered as a new paragraph by Mr. Charles N. Pray, of Montana:

The sum of \$75,000, or so much thereof as may be necessary, \$25,000 of which shall become immediately available, is hereby appropriated, out of any funds, in the Treasury not otherwise appropriated, for the purpose of surveying the land within the Tongue River or Northern Cheyenne Indian Reservation, Mont., for completing the survey of the lands within the Fort Belknap Indian Reservation, Mont., and for making a meander survey around the Flathead Lake so as to identify the lands embraced within the power-site withdrawal of 100 linear feet around that lake back from the high-water mark for the year 1909.

The Chairman² said:

The Chair will now dispose of a point of order made earlier³ in the day to an amendment sent up by the gentleman from Montana, Mr. Pray. This matter could not be ruled on at the time because there were quite a number of statutes and sections of statutes that had to be examined in order to ascertain the foundation upon which the amendment was supposed to rest. The first clause in the amendment provides for a survey of the lands of the Tongue River and Cheyenne River Indian Reservations. Now of course to justify the appropriation for this purpose there must be some authority conferred somewhere by some law. The gentleman from Montana sent up the following statute as supposedly furnishing authority for this particular appropriation. Leaving out intermediate matter, the statute is as follows:

"That in all cases * * * the President of the United States, whenever in his opinion any reservation or any part thereof is advantageous for agricultural and grazing purposes, may cause such reservation to be surveyed."

This is a provision under which discretion is given to the President of the United States to have a survey made of any reservation. Under the amendment a department is authorized to make a survey of a particular reservation. The Chair is unable to see how authority that is given to the President to be exercised at his discretion furnishes authority for an amendment empowering a department to make a survey without regard to the wishes, judgment, or discretion of the President. Hence it seems to the Chair that the point of order to this portion of the amendment is certainly well taken. Under very familiar and abundant precedent, the point of order to the amendment being good as to a portion of the same, it is good as to the whole amendment. The point of order is therefore sustained.

1209. A statute providing that expenditures from a fund be made only on approval by Congress of certain estimates was held to authorize such expenditure on submission of the prescribed estimates.

It being provided by statute that funds derived from sale of timber on Indian lands be expended only after approval by Congress of estimates submitted by the Executive, submission of such estimates for approval was held to authorize corresponding appropriations from these funds.

On February 18, 1918,⁴ the urgent deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read the following paragraph:

Not to exceed \$50,000 of the funds derived from the sale of timber from the Red Lake Indian Forest, Minn., under authority of the act of May 18, 1916 (39 Stats., p. 137), may be expended

¹Third session Sixty-second Congress, Record, p. 1193.

²Edward W. Saunders, of Virginia, Chairman.

³Record, p. 1175.

⁴Second session Sixty-fifth Congress, Record, p. 2274.

by the Secretary of the Interior in the logging, booming, towing, and manufacturing of timber from burned-over areas at the Red Lake Agency sawmill and in the reimbursement from the said timber receipts of the amounts expended from other Indian tribal funds in the prosecution of such work.

Mr. Philip P. Campbell, of Kansas, having raised a question of order as to authorization, the Chairman¹ said:

The Chair would like to call attention to this language:

“After the payment of all expenses connected with the administration of these lands as herein provided, the net proceeds therefrom shall be covered into the Treasury of the United States to the credit of the Red Lake Indians.”

That does not have to be appropriated by Congress, and then it says:

“Expenditures from the principal shall be made only after the approval by Congress of estimates submitted by the said Secretary.”

This seems to come within that provision, Congress having reserved to itself the right to state how the principal shall be used. The gentleman concedes that estimates have been sent in for this item. The point of order is overruled.

1210. An appropriation for suppression of liquor traffic among Indians was held to be authorized by law.

On January 15, 1921,² the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

For the suppression of the traffic in intoxicating liquors among Indians, \$20,000.

Mr. Homer P. Snyder, of New York, made the point of order that there was no authority of law for the item.

The Chairman³ ruled:

The point of order is on the basis that there is no authority of law for this item to be carried on an appropriation bill. It has been cited that similar items have been carried in past appropriation bills, that some of those items have been objected to on a point of order and at other times had not been objected to, but the Chair finds that the authority herein exercised is found in Thirty-fourth Statutes at Large, page 1017, and Thirty-seventh Statutes at Large, page 519, which gives or confers authority upon the chief special officer for the suppression of liquor traffic among the Indians and duly authorized officers working under his supervision whose appointments are made or affirmed by the Commissioner of Indian Affairs and the Secretary of the Interior. The authority seems to be specifically granted here. Therefore the Chair overrules the point of order.

1211. An appropriation for expenses incurred in suits to determine the rights of Indians was held to be in order in an appropriation bill.

On January 15, 1921,⁴ the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Homer P. Snyder, of New York, raised the question of order that the following paragraph was not authorized by law:

For telegraph and telephone toll messages on business pertaining to the Indian Service sent and received by the Bureau of Indian Affairs at Washington, \$7,500.

¹John N. Garner, of Texas, Chairman.

²Third session Sixty-sixth Congress, Record, p. 1466.

³Simeon D. Fess, of Ohio, Chairman.

⁴Third session Sixty-sixth Congress, Record, p. 1469.

The Chairman¹ held:

The only authority that the Chair has been able to find covering the subject will be found in Twenty-eighth Statutes at Large, page 305, and Thirty-first Statutes at Large, page 760, in which the Chair finds this language:

“All persons who are in whole or in part of Indian blood or descent who are entitled to any allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment or under any grant made by Congress, or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled, by virtue of any act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper circuit court of the United States; and said circuit courts are hereby given jurisdiction to try and determine any action, suit, or proceeding arising within their respective jurisdictions involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land”—

And so forth.

While it says nothing about hearings or nothing about paying witness fees, yet it would not be a strained interpretation to permit this authority to include the authority to pay witness fees, and the Chair is inclined to think that under that section this might be authorized. Therefore the Chair overrules the point of order.

1212. An appropriation for the suppression of the traffic in peyote was held to be in order on an appropriation bill.

On January 24, 1924,² the Interior Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. A point of order raised by Mr. James V. McClintic, of Oklahoma, was pending against the words “including peyote” appearing in the following paragraph under consideration by the Committee of the Whole:

For the suppression of the traffic in intoxicating liquors and deleterious drugs, including peyote, among Indians, \$25,000.

After extended debate, the Chairman³ ruled:

The Appropriations Committee of this House is not a legislative committee, and any appropriation that it may properly place in a supply bill must be authorized by existing law. In this case the committee has brought in an item which reads:

“For the suppression of the traffic in intoxicating liquors and deleterious drugs, including peyote, among Indians, \$25,000.”

The committee has produced the Snyder Act as the law upon which this proposed appropriation is founded. The Chair does not think that any other law has been cited, although it might have been urged, perhaps, that it is in order under the general law providing for the support and civilization of the Indians. The Snyder Act, however, has been cited as the basis for this appropriation. The question then arises as to whether or not the designation “deleterious drugs” in the act referred to includes peyote. It is undoubtedly proper for the committee to particularize and to state certain things for which it appropriates while omitting others, so long as the committee seeks to appropriate only for purposes within the law. The committee, therefore, might have been more specific in this case. It might have enumerated a number of intoxicating liquors and deleterious drugs. Having a right to enumerate all, it could name one. The Chair is therefore unable to escape the conclusion that the inclusion of this particular drug, if deleterious, is within the law.

¹ Simeon D. Fess, of Ohio, Chairman.

² First session Sixty-eighth Congress, Record, p. 1422.

³ John Q. Tilson, of Connecticut, Chairman.

It was the first impression of the Chair, before going into the matter thoroughly, that this is not the proper tribunal to try out the question of fact, and that because the word “peyote” is not included in the law it should go out on a point of order; but, as has been shown by so many Members, the question finally resolves itself into whether the drug known as “peyote” is included within the term “deleterious drugs.” It seems to the Chair that by an overwhelming array of authorities he is forced to the conclusion that it is a deleterious drug. It appears that the legislatures of several States have so regarded it; a number of Government officials have so declared it; Members of this House well qualified to speak on the subject give the same testimony; while numerous scientists and other experts have found themselves in agreement that peyote is a deleterious, harmful, and dangerous drug. If the Chair should hold that the reference to this drug must go out of the bill for the reason that it is not included within existing law, it might be regarded as equivalent to holding that it is not a deleterious drug. At any rate, this committee would then have no opportunity whatever to vote upon the question of fact thus raised. On the other hand, if held to be in order, the gentleman from Oklahoma may, by means of an amendment, move to strike out of the bill the language to which he objects. He will then get the expression of the committee upon the issue as to whether, upon its merit, it should stay in the bill or go out. The Chair is irresistibly drawn to the conclusion that the committee has the right under existing law to bring in a provision making an appropriation for the purpose indicated. The Chair, therefore, overrules the point of order.

1213. An appropriation for support and education of Indian pupils at Government schools was held to be in order on an appropriation bill.

On January 20, 1921,¹ the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Joseph G. Cannon, of Illinois, raised a question of order against this paragraph:

For support and education of 200 Indian pupils at the Indian school at Cherokee, N.C., including pay of superintendent, \$40,000; for general repairs and improvements, \$10,000; in all, \$50,000.

Mr. Charles D. Carter, of Oklahoma, cited the following statute² as authorization for the appropriation:

The President may in every case where he shall judge improvement in the habits and conditions of such Indians practicable, and that the means of instruction can be introduced with their own consent, employ capable persons of good moral character to instruct them in the mode of agriculture suited to their station, and for the teaching of their children in reading, writing, and arithmetic, and performing such other duties as may be enjoined, according to such instructions and rules as the President may make and prescribe for the regulation of their conduct in the discharge of their duties.

The Chairman³ decided:

The Chair thinks that under the legislation cited by the gentleman from Oklahoma a reasonably broad construction of it would authorize expenditures for the support and education of the Indians, and therefore overrules the point of order.

1214. An appropriation for telegraph and telephone tolls on business pertaining to the Indian Service was held to be in order on an appropriation bill.

¹Third session Sixty-sixth Congress, Record, p. 1705.

²Rev. Stat., sec. 2071.

³Simeon D. Fess, of Ohio, Chairman.

On January 15, 1921,¹ the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was reached:

For telegraph and telephone toll messages on business pertaining to the Indian Service sent and received by the Bureau of Indian Affairs at Washington, \$7,500.

Mr. Homer P. Snyder, of New York, made the point of order that there was no authority for the provision.

The Chairman² said:

The Chair recognized the point of order involves two or three quite delicate discriminations. The mere fact that an item has been carried from year to year without authorization is no basis for its continuance from year to year. The new committee, the large committee known as the Appropriations Committee, would quite naturally include matters of legislation that have been reported in this bill in the past from the other committee, the Indian Affairs Committee, but the integrity of the functions of the other committees must be preserved. The fact that a matter has not been specifically mentioned as authority, although a strong inference goes with it that it would have to be exercised, has a danger in it that if you open the door to that sort of construction it would be difficult to limit it hereafter in any item that would be put upon the same basis. These three items make this a very delicate point to decide. Now, the Chair is of the opinion that in a case like this where the item referred to is for telegraph and telephone, which have come to be essential for administration, and were not included in the original authorization because at that time there was no such thing as a telephone and telegraph, the Chair is of the opinion that the inference here is strong enough that it will not strain the other items that the Chair has ruled against, and therefore the Chair will overrule this point of order.

1215. Mere statutory reference to an office is not sufficient authorization to warrant an appropriation for pay of incumbent.

A summary of authorizations of appropriations for the Indian Service.³

An appropriation for pay of Indian police was held to be unauthorized by law.⁴

On January 15, 1921,⁵ the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read the following paragraph:

For pay of Indian police, including chiefs of police at not to exceed \$50 per month each and privates at not to exceed \$30 per month each, to be employed in maintaining order, for purchase of equipments and supplies and, for rations for policemen at nonration agencies, \$150,000.

Mr. Homer P. Snyder, of New York, made the point of order that there was no authority for the expenditure.

In discussing the point of order, Mr. Frank W. Mondell, of Wyoming, said:

I do not know that there is anywhere in the Statute a provision for the appointment of Indian police, but Indian police have been appointed and appropriated for since the very beginning of our management of Indian affairs. They are an essential part of the organization necessary to enable the Commissioner of Indian Affairs to conduct his office and perform the duties laid upon him, and the law has specifically recognized this particular class of employees repeatedly.

¹Third session Sixty-sixth Congress, Record, p. 1468.

²Simeon D. Fess, of Ohio, Chairman.

³See also 41 Stat. L., p. 208.

⁴Now authorized by U.S. Code, 25 U.S.C. 13.

⁵Third session Sixty-sixth Congress, Record, p. 1472.

For instance, in the act of March 3, 1877, page 35, of volume I of the laws, entitled "Indian Affairs, Laws, and Treaties," is this language:

"And hereafter in the employment of Indian police, or any other employees in the public service among any of the Indian tribes or bands affected by this act, and where Indians can perform the duties required, those Indians who have availed themselves of the provisions of this act and become citizens of the United States shall be preferred."

That is a recognition of the employment of Indian police and a provision giving preference to Indians in such employment.

And again, Twenty-fourth Statutes at Large, 464:

"That immediately upon and after the passage of this act any Indian committing against the person of any Indian policeman appointed under the laws of the United States, or any Indian United States deputy marshal while lawfully engaged in the execution of any United States process"—

And so forth, shall be punished. It is not necessary for me to read the balance of that.

Then in Twenty-fifth Statutes, 178, page 37 of the volume I have referred to, is this provision:

"That any Indian hereafter committing against the person of any Indian agent or policeman appointed under the laws of the United States, or against any Indian United States deputy marshal, posse comitatus, or guard, while lawfully engaged in the execution of any of the United States process, or lawfully engaged in other duty imposed upon such agent, policemen, deputy marshal, posse comitatus, or guard, by the laws of the United States, any of the following crimes"—

Then follows a recitation of certain crimes and a provision for their punishment.

These are recognitions by the statute of this particular class of employees of the Indian Service, and legislation in at least three different periods for their protection, recognizing them and making special provision for preferences with regard to them.

In reply, Mr. Charles D. Carter, of Oklahoma, submitted:

Will the Chair hear me a moment on the point of order? As to the advisability of treating the situation in which the House finds itself with reference to this measure in this or another way I will not at this time say, but I should like to say that I feel sure the Chair will agree that authorization by implication must be much stronger than any language that has been presented to the Chair. As a matter of fact, certain things are authorized by law, and others are not, with reference to the Indian Service as well as with reference to other branches of the Government. They are provided in different ways—quite generally in general legislation, but other provisions are made specifically in different treaties and different acts with reference to particular tribes.

Now, if the Chair will refer to chapter 1, title 28, sections 2039 to 2072, of the Revised Statutes of the United States, he will find there the general authorization for the different offices and activities of the Bureau of Indian Affairs. If the Chair will bear with me for just a moment, I will be glad to read into the Record a list of those authorized by that general enactment: Board of Indian Commissioners, secretary to the commissioners, Indian inspectors, superintendents, temporary clerks for superintendents, Indian agents, sub-Indian agents, special agents and commissioners, interpreters, blacksmiths, and teachers in agriculture and literary branches. No police are provided for, and evidently the provision against which the gentleman from New York has made a point of order is not in harmony with the rules of the House.

The Chairman¹ held:

The only reference to Indian police that the Chair can find is in the statute referred to by the gentleman from Wyoming, Mr. Mondell. The Chair is constrained to think that a mere reference to an office would not be sufficient to establish the authorization and the statutes referred to, enumerating officers that are appointed under authority of law, not including the office of policeman, lead the Chair to sustain the point of order.

¹ Simeon D. Fess, of Ohio, Chairman.

1216. An authorization of law for appropriations should be construed strictly and any legitimate doubt as to authority for an appropriation should be resolved in the negative.

Authorization for enlargement, extension, improvement, and repair of buildings and grounds was held not to authorize a new building.

The erection of a new dormitory building to replace an old one was held not to be in continuation of public work already in progress.

On February 14, 1922,¹ the Interior Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. Mr. Willis C. Hawley, of Oregon, offered an amendment providing an appropriation of \$60,000 for a boys' dormitory at the Indian school, Salem, Oreg.

Mr. Charles D. Carter, of Oklahoma, having made the point of order that the amendment was unauthorized, Mr. Hawley explained:

Mr. Chairman, this amount was submitted in the estimates that came to the Committee on Appropriations in the Budget estimates. The purpose of this \$60,000 is to replace an old wooden building, constructed some 35 or 40 years ago. It has been used for a boys' dormitory, I think, during all that period. Being made of wood, the foundation has decayed, and the sills of the building have rotted away. They have in part been replaced from time to time, but it has reached such a point of deterioration now that the supports of the building are so far impaired as to make it a dangerous structure.

The Chairman² ruled:

The Chair is ready to rule. In passing on this point of order two things must be kept in mind. First, the words of this act of November 2, 1921, must be given their fair and ordinary interpretation; and, second, it seems to the Chair that the rule doubtless is that a strict construction should be given to every authority that is contained in any act of this kind. In other words, if there is doubt about the authority it ought not to be construed to be an authorization. The section of the act of November 2, 1921, involved in the point of order reads as follows:

"For the enlargement, extension, improvement, and repair of the buildings and grounds of existing plants and projects."

The amendment offered is for a boys' dormitory, \$60,000. This is evidently a new building. It does not come under the language of the act of November 2, 1921, because it is not an enlargement, an extension, improvement, or a repair of an existing building, but is a new building entirely. The language of the act says "the enlargement, extension, improvement, or repair" of an existing building. Under that language it must be manifest that extension or additions can be made to an existing building, but no authority is there given for the erection of a new building.

The remainder of the language of this section of the act of November 2, 1921, provides for the enlargement, extension, and improvement of grounds of existing plants and projects. A new building would not certainly be within the meaning of the language "improvement of grounds." There are some decisions along similar lines. For instance, in Hinds' Precedents, in volume 4, pages 503 and 504, several similar cases are given. The erection of a laboratory building for the Department of Agriculture was held not to be a continuation of a public work already in progress. The purchase of a site and the erection of a building for the Weather Bureau not being authorized by prior legislation an appropriation therefor is not in order on an agricultural appropriation bill as the continuation of an existing public work. The construction of barracks at the navy yard was held not to be a continuation of a public work. While these are not exactly on all fours with the present question, they are along a similar line and are precedents favorable to the position taken by the Chair. The point of order is sustained and the Clerk will read.

¹ Second session Sixty-seventh Congress, Record, p. 2578.

² William J. Graham, of Illinois, Chairman.

1217. An appropriation for payment of damage to lands and crops incurred in condemning right of way for irrigation projects was held to be authorized by law.

On February 16, 1922,¹ the Interior Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. A point of order raised by Mr. Joseph Walsh, of Massachusetts, was pending on the following provisos in a paragraph making appropriation for an irrigation and drainage system:

Provided that the entire cost of said irrigation and drainage system shall be reimbursed to the United States under the conditions and terms of the act of May 18, 1916: *Provided further*, That the funds hereby appropriated shall be available for the reimbursement of Indian and white landowners for improvements and crops destroyed by the Government in connection with the construction of irrigation canals and drains of this project.

After debate,² the Chairman ruled:

The Chair is ready to rule on this matter. The proviso which is brought in question by the point of order is, "That the funds hereby appropriated shall be available for the reimbursement of Indian and white landowners for improvements and crops destroyed by the Government in connection with the construction of irrigation canals and drains of this project."

It is stated that this is legislation, and that there is no authority for any such appropriation in existing law.

The act of November 2, 1921, in one clause gives authority to make appropriations for the following purposes:

"For extension, improvement, operation and maintenance of existing Indian irrigation systems, and for development of water supply."

Here is a plain authority to appropriate any sums of money which may be necessary for the extension, improvement, operation, and maintenance of existing Indian irrigation systems. It therefore becomes necessary to inquire somewhat into the powers that were given originally in forming the irrigation project mentioned in this section, which is, as the Chair understands it, a part of the Yakima Indian Reservation, or what was originally the Yakima Reservation.

Attention has been called to the act of June 17, 1902, which is an act appropriating the receipts from the sale of certain public lands to the construction of irrigation works for the reclamation of arid lands, including lands within the State of Washington. That act plainly gives to the Department of the Interior the right to condemn, the right of eminent domain, with all the incidents attached to that general right, all of which are familiar to the Members of the House. Whether the project is built under the operation of that act or not is in some doubt, but plainly the right which was given in that statute has been construed by the Interior Department at least as a right which continues in all these projects, and the Chair is informed that the Interior Department is now exercising that right, has been for some years, and does it in almost every reclamation project which comes up. However, be that as it may, the Chair is of the opinion that section 4 of the act of December 21, 1904, is amply sufficient to authorize the appropriation. That act provides in section 4 thereof as follows:

"SEC. 4. That the proceeds arising from the sale and disposition of the lands aforesaid, including the sums paid for mineral lands, exclusive of the customary fees and commissions, shall, after deducting the expenses incurred from time to time in connection with the appraisements and sale, be deposited in the Treasury of the United States to the credit of the Indians belonging and having tribal rights on the Yakima Reservation, and shall be expended for their benefit under the direction of the Secretary of the Interior in the construction, completion, and maintenance of irrigation ditches, purchase of wagons, horses, farm implements, material for

¹ Second session Sixty-seventh Congress, Record, p. 2662.

² William J. Graham, of Illinois, Chairman.

houses, and other necessary and useful articles, as may be deemed best to promote their welfare and aid them in the adoption of civilized pursuits and in improving and building homes for themselves on their allotments: *Provided*, That a portion of the proceeds may be paid to the Indians in cash per capita, share and share alike, if in the opinion of the Secretary of the Interior such payments will further tend to improve the condition and advance the progress of said Indians, but not otherwise.”

The Chair is absolutely unable to understand how an irrigation system can be built without the acquisition of a right of way. If the acquisition of the right of way is incident to the building of an irrigation system, it follows as a natural consequence that the reimbursement of people who have lands destroyed in the taking of the right of way must necessarily be a part of the general power for building and constructing that irrigation system. If that is true—and the Chair has not much doubt of it in his own mind, although the matter, I believe, has never been determined before by any ruling in this House—the Chair believes that the authority exists in the law for paying such damages and that under the general authorization contained in the act of November 2, 1921, this appropriation would be in order.

However, the Chair may say that he can see no reason why the proviso is necessary. This may not be necessary in the decision of this particular point, but if the Chair is right about it the general fund of \$250,000 embraced in the preceding clause of the section could be properly used for the very purpose that is set forth within this proviso. But the Chair is familiar with the fact that frequently these things are carried in bills because they have been carried in preceding bills, and that fact in itself does not make the provision bad even though the expenditure may be authorized by the preceding portion of the section.

The point of order is overruled.

1218. An appropriation for the construction of national-park and national-monument roads including necessary bridges was held to be sanctioned by law.

On February 16, 1932,¹ the Committee of the Whole House on the state of the Union was considering the Interior Department appropriation bill when the Clerk read the paragraph containing the following proviso:

Provided further, That not to exceed \$1,200,000 shall be available for national-park and national-monument approach roads, inclusive of necessary bridges.

Mr. Edward W. Goss, of Connecticut, objected that there was no authority of law for the provision.

The Chairman² ruled:

Section 8, title 16, United States Code, provides by law enacted April 9, 1924, that the Secretary of the Interior, in his administration of the National Park Service, is authorized to construct, reconstruct, and improve roads and trails, inclusive of necessary bridges in the national parks and monuments, under the jurisdiction of the Department of the Interior.

There being authority in law for the appropriation, the point of order is overruled.

1219. Authorization to appropriate for relief of distress among Indians in general was held to warrant an appropriation for certain designated Indians.

On February 16, 1922,³ the Interior Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union when the Clerk read the following paragraph:

¹First session Seventy-second Congress, Record, p. 4087.

²John J. O'Connor, of New York, Chairman.

³Second session Sixty-seventh Congress, Record, p. 2665.

For the purchase of subsistence supplies in relieving cases of actual distress and suffering among those needy St. Croix Indians of Wisconsin whose cases are referred to in report of January 30, 1915, transmitted by the Secretary of the Interior to the House of Representatives March 3, 1915, pursuant to the provisions of the act of Congress of August 1, 1914 (38 Stat. L., pp. 582-605), and printed as House Document No. 1663, Sixty-third Congress, third session, \$1,000.

Mr. Joseph Walsh, of Massachusetts, reserved a point of order, questioning as to whether there was authorization for the appropriation.

The Chairman ¹ held:

This seems to be an appropriation of \$1,000 for a specific purpose, namely, the relief of needy and distressed St. Croix Indians, of Wisconsin. When the Chair first had his attention called to this he was of the opinion that the authority for the appropriation would be found in the statute referred to in the section. However, on a closer reading of the section, it is evident that this is not the meaning of the section. One thousand dollars is appropriated for the relief of certain Indians. What Indians The Indians whose cases are referred to in a certain report of January 30, 1915, mentioned in the section. On reference to the report, which has been handed the Chair by the chairman of the committee, the Chair finds a list entitled, "A final roll of the St. Croix Chippewa Indians of Wisconsin," giving the names of the individuals. The language in the latter part of this section, in the opinion of the Chair, is identifying language—that is, it identifies certain Indians who are to be the recipients of this gratuity from the Government.

If that is true, then surely the authority for making this appropriation exists in the section of the act of November 2, 1921, which provides "for relief of distress and conservation of health." The Chair is of opinion that the point of order is not well taken, and it will be overruled.

1220. Authorization for an appropriation to be dispensed by the Executive was held not to warrant an appropriation to be jointly dispensed by the Executive and State officials.

On December 28, 1922,² the Interior Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read a paragraph providing for the establishment of Indian schools.

Mr. Bill G. Lowrey, of Mississippi, offered an amendment providing for joint control of expenditures for that purpose by the Secretary of the Interior and the public schools of the State of Mississippi.

Mr. Louis C. Cramton, of Michigan, made the point of order that the amendment was unauthorized.

The Chairman ³ ruled:

The amendment offered by the gentleman from Mississippi reads:

"Under the direction of the Secretary of the Interior and in connection with and under joint control of the public schools of the State of Mississippi."

The point of order is made that this is legislation not authorized by existing law. The provision of the law under which it is claimed that this amendment may be authorized is the act of November 2, 1921. The provision of that law is that the Bureau of Indian Affairs, under the direction of the Secretary of the Interior, shall direct and supervise the expenditure of such money as Congress may from time to time appropriate for the benefit and care of the Indians through out the United States for the following purposes: "* * * General civilization, including education."

¹ William J. Graham, of Illinois, Chairman.

² Fourth session Sixty-seventh Congress, Record, p. 1035.

³ Horace M. Towner, of Iowa, Chairman.

The members of the committee will understand that all of these general provisions must be placed under the control of the Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, under this law. There is no provision made for a division of control. It would be perfectly within the power of the Secretary of the Interior to direct that these children might be educated in the public schools. There would be no objection whatever to a provision in this law that if they were educated in the public schools it might be paid for out of the general fund or out of tribal funds. There would be no objection in either case. Still the disposition and control of the funds would be under the Secretary of the Interior. But this proposes to place the control partially at least under the school authorities of the State of Mississippi. That is not authorized by existing law. For that reason the point of order is sustained.

1221. Appropriations for the improvement of an Indian reservation were held to be authorized if for construction of roads within the reservation, and unauthorized if for construction of roads beyond the reservation.

On January 25, 1924,¹ the Interior Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. W. H. Sproul, of Kansas, offered this amendment:

For the construction of 3 miles of concrete road from the Chilocco School or campus to the Kansas State line, connecting with the Arkansas City, Kans., public road, \$30,000."

A point of order made by Mr. Louis C. Cramton, of Michigan, that the expenditure was unauthorized by law, being conceded, Mr. Sproul reintroduced the amendment in this form:

For the purchase of material for the construction of 3 miles of concrete road from the Chilocco Indian School to the Kansas State line, all upon Indian land, \$30,000."

A similar point of order made by Mr. Cramton against the amendment as modified was overruled by the Chairman.²

1222. An appropriation for examination of mineral resources and products of the national domain was held to be authorized by law.

On May 4, 1908,³ the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. James C. Needham, of California, proposed this amendment:

For the further examination of the mineral resources and products of the national domain, \$200,000, to be immediately available.

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

The Chairman⁴ ruled:

The Chair is ready to rule on the proposition. The organic act creating the Geological Survey contains this 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."

This amendment provides for a further examination of the mineral resources and products of the national domain, bringing it squarely within the statutory authorization, as the Chair

¹ First session Sixty-eighth Congress, Record, p. 1456.

² John Q. Tilson, of Connecticut, Chairman.

³ First session Sixtieth Congress, Record, p. 5675.

⁴ James E. Watson, of Indiana, Chairman.

thinks, and being exactly in line with what was held at least the last two years on this same subject the Chair thinks that the amendment is not subject to the point of order, and therefore the Chair overrules the point of order.

1223. Authorization for transfer of functions of one bureau to another is authorization for similar transfer of equipment essential to the exercise of such functions.

The act creating the Bureau of Mines and transferring to it from the Geological Survey supervision of certain investigations is sufficient authorization for transfer from the Geological Survey to the new bureau of laboratories, equipment and furniture used in connection with such investigations.

On May 31, 1910,¹ the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Albert Douglas, of Ohio, proposed this amendment:

For dismantling and removing chemical laboratories, equipment, and office furniture from the office of the Geological Survey to the office of the Bureau of Mines in Washington, D. C., and re-installing and equipping the laboratories in the office of the Bureau of Mines with fixtures, including laboratory plumbing, sinks, hoods, coal sampling, and crushing machinery, \$14,700.

Mr. John J. Fitzgerald, of New York, made the point of order that the proposal was not authorized by law.

The Chairman² said:

The Chair is prepared to rule. Section 4 of the act creating the Bureau of Mines and Mining authorizes the Secretary of the Interior to transfer to the Bureau of Mines, from the United States Geological Survey, the supervision of certain investigations, and provides that such investigations shall hereafter be within the province of the Bureau of Mines, and such experts, employees, property, and equipment as are now employed or used by the Geological Survey in connection with the subject herewith transferred to the Bureau of Mines are directed to be transferred to said bureau.

The amendment offered by the gentleman from Ohio makes an appropriation for dismantling and removing the chemical apparatus and equipment and office furniture, and so forth, from the Geological Survey to the Bureau of Mines and Mining, and provides for re-installing the equipment of the laboratory and office in the Bureau of Mines.

It seems to the Chair that a fair construction of the provision of section 4 authorizes an appropriation for the purpose of transferring the laboratories now in the Geological Survey which relate to the investigations authorized to be transferred.

If the amendment provided for the dismantling and the removing of all laboratories in the Geological Survey, a different question would arise, but the Chair must presume that in the expenditure of the appropriation the expenditure will be made in accordance with the law authorizing the transfer of these laboratories to be used in the investigations which are to be transferred. The Chair therefore overrules the point of order.

1224. A statute authorizing certain bureau work in the United States was held not to authorize an extension of that work to the Territory of Alaska.

The organic law creating the Bureau of Mines, while general in character, was construed as applying to the United States only, and authoriza-

¹ Second session Sixty-first Congress, Record, p. 7174.

² James R. Mann, of Illinois, Chairman.

tion conferred to investigate structural materials and fuels is limited to those within the States and does not extend to those of Alaska.

While an amendment offered as a new paragraph must be germane to that portion of the bill to which offered, its relative order with other paragraphs is not otherwise prescribed.

On May 31, 1910,¹ the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. Mr. Albert Douglas, of Ohio, offered an amendment including the following:

BUREAU OF MINES.

For the general expenses of the Bureau of Mines, including the pay of the director and the necessary assistants, clerks, and other employees in the office at Washington, D. C., and in the field, and for every other expense requisite for and incident to the general work of the Bureau of Mines in Washington, D. C., and in the field, to be expended under the direction and at the discretion of the Secretary of the Interior, \$54,000.

For dismantling and removing chemical laboratories, equipment, and office furniture from the office of the Geological Survey to the office of the Bureau of Mines in Washington, D. C., and re-installing and equipping the laboratories in the office of the Bureau of Mines with fixtures, including laboratory plumbing, sinks, hoods, coal sampling and crushing machinery, etc., \$14,700.

For rent of offices in the city of Washington, and for furnishing the same, together with such books, records, stationery, and appliances as the Secretary of the Interior may provide, \$15,000.

For the analyzing, testing, and treatment of coals, lignites, ores, and other mineral fuel substances, \$100,000.

For the investigation as to the causes of mine explosions, methods of mining, especially in relation to the safety of miners, the appliances best adapted to prevent accidents, the possible improvement of conditions under which mining operations are carried on, the use of explosives and electricity, the prevention of accidents, and other inquiries and technologic investigations pertinent to the mining industry, \$200,000.

For making public report of the work, investigations, and information obtained by said Bureau of Mines, with the recommendations of such bureau, \$5,000.

For the investigation of structural materials, \$150,000.

For salaries of two mine inspectors, authorized by the act approved March 3, 1891, for the protection of the lives of miners in the Territories, at \$2,000 per annum each, \$4,000; and said inspectors are hereby authorized to inspect coal and other mines in the District of Alaska to which District the provisions of said act are hereby extended and made applicable.

For per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence at a rate not exceeding \$3 per day each while absent from their homes on duty, and for actual necessary traveling expenses of said inspectors, including necessary sleepingcar fares, \$3,350.

In all, for the Bureau of Mines, \$546,050.

Mr. James A. Tawney, of Minnesota, and Mr. John J. Fitzgerald, of New York, made the point of order that the appropriation was unauthorized by law.

After extended debate, the Chairman² ruled:

The gentleman from Ohio offers an amendment, which has been reported, to come in immediately preceding the heading "United States Geological Survey," and the amendment offered by the gentleman from Ohio is headed "Bureau of Mines."

The point of order is first made that the amendment is not in order, being offered at this place in the bill, on the ground that it is not germane to the provisions of the bill at this point.

¹ Second session Sixty-first Congress, Record, p. 7164.

² James R. Mann, of Illinois, Chairman.

The bill is divided into different parts, relating to a certain extent, at least, to the different departments of the Government. Beginning on page 92 of the bill, under the heading, in large capital letters, reading "Under the Department of the Interior," is a subheading "Public buildings," in capital letters. On page 94 is another subheading in capital letters, "Public lands service." On page 99 is another heading in capital letters, "Surveying the public lands," and on page 101 is a heading in capital letters, "United States Geological Survey."

All of these branches of the service are under the heading "Department of the Interior," and are all under the Department of the Interior. The gentleman from Minnesota has insisted that the items under "Public lands service" and those under "United States Geological Survey" relate to surveying the public domain, but it seems to the Chair that, even if the Chair were captious about it, that there two branches of the service are under different bureaus or divisions of the Department of the Interior which are in no way closely related, except as other bureaus may be related, and it seems to the Chair wholly for the Committee of the Whole to determine whether it prefers the provision in one place or in another part of the bill, the amendment being germane to these provisions of the bill under consideration. This item is offered as an amendment under the head of "Bureau of Mines," to come in between the items "Public lands service" and "United States Geological Survey," all three being in the same department. That part of the point of order the Chair overrules.

It is then said that the items in the amendment if authorized at all are authorized by an act approved May 16, 1910, entitled, "An act to establish in the Department of the Interior a bureau of mines."

Section 6 of that act provides that

"This act shall take effect and be in force on and after the 1st day of July, 1910."

It has been suggested, at least in a way, that the act not being in force, it was not a law which would authorize an appropriation in accordance with clause 2 of Rule XXI. Of course, in the opinion of the Chair this act is a law, duly enacted by Congress and approved by the President. By one of its own provisions it does not take effect until July 1, 1910, but if that provision were not in the law, it would take effect from the date of its passage, and if it is not in effect, then section 6 is not in effect, which prevents the act from taking effect, so it is quite patent that the law is suspended by force of its own provisions from active effect. If it were proposed to make an appropriation to be expended prior to July 1, 1910, it would be inimical to the rule, because this act is not in effect; but this bill itself would authorize the appropriation under the amendment only from the 1st of July, 1910.

One of the provisions of the amendment is:

"For salaries of two mine inspectors, authorized by the act approved March 3, 1891, for the protection of lives of miners in the Territories at \$2,000 per annum each, \$4,000; and said inspectors are hereby authorized to inspect coal and other mines in the District of Alaska, to which District the provisions of said act are hereby extended and made applicable."

As the Chair understands, that provision is not in the current appropriation law, and is a new piece of legislation and clearly subject to the point of order. The present bill, of course, is not yet law. One item is:

"For per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence."

The Chair is not perfectly clear as to whether that would be inimical to the rule as a provision of legislation, it clearly being legislation, but possibly the Secretary without the provision "subject to such rules and regulations as the Secretary of the Interior may prescribe" would necessarily have control of the subject. Those items, of course, are not of great importance.

The law creating the Bureau of Mines, in section 2, is very general in character, and provides:

"SEC. 2. That it shall be the province and duty of said bureau and its director, under the direction of the Secretary of the Interior, to make diligent investigation of the methods of mining, especially in relation to the safety of miners, and the appliances best adapted to prevent accidents, the possible improvement of conditions under which mining operations are carried on, the treatment of ores and other mineral substances, the use of explosives and electricity, the prevention of accidents, and other inquiries and technologic investigations pertinent to said

industries, and from time to time make such public reports of the work, investigations, and information obtained as the Secretary of said department may direct, with the recommendations of such bureau.”

It is clear that the special provisions of section 2, authorizing the treatment of ores and other mineral substances and other inquiries and technologic investigations pertinent to said industries, authorize an appropriation for almost, if not all, purposes connected with mines or minerals. It is true that as the bill was introduced in the House and passed the House it authorized the department to “foster, promote, and develop the mining industries of the United States,” and if that expression were still in the law the word “industries,” as used in the act as now printed, would clearly refer to the mining industries of the United States.

But the expression “foster, promote, and develop the mining industries of the United States” was stricken out by the Senate amendment, agreed to in conference, and the Chair is required to read the act as it is now the law. So it is rather difficult for the Chair to say just what the word “industries” does refer to here, but apparently it refers to industries as to the methods of mining, safety of miners, appliances best adapted to preventing accident, possible improvement of conditions under which mining operations are carried on, the treatment of ores, and other mineral substances, the use of explosives and electricity, and is very broad in its character.

But the attention of the Chair is also asked to another section of the bill, and the Chair must construe the law in all of its parts as related to each other. Section 4 of the law provides:

“That the Secretary of the Interior is hereby authorized to transfer to the Bureau of Mines from the United States Geological Survey the supervision of the investigations of structural materials and the analyzing and testing of coals, lignites, and other mineral fuel substances and the investigation as to the causes of mine explosions; and the appropriations made for such investigation may be expended under the supervision of the Director of the Bureau of Mines in manner as if the same were so directed in the appropriations acts.”

If the language of section 4 stopped there, the present occupant of the chair might be inclined to say that the provisions of section 2, authorizing the treatment of ores and other mineral substances and other inquiries and technologic investigations pertinent to said industries, were broad enough to cover the language of this amendment, treating that part of section 4 as a mere transfer of what exists in the Geological Survey; but section 4 goes on to say:

“And such investigations shall hereafter be within the province of the Bureau of Mines, and shall cease and determine under the organization of the United States Geological Survey.”

The Chair can not presume that the Congress in writing this language intended to insert provisions in it as mere surplusage, but where there is a general provision of the law followed by a particular provision of the law relating to a particular subject it is a universal rule that the particular provision governs, so that the Chair is obliged to construe section 4 as giving control as to these investigations which are authorized to be transferred from the Geological Survey to the Bureau of Mines and Mining. Here is where the law authorizes these investigations to be carried on in the Bureau of Mines, and it says:

“And such investigations shall hereafter be within the province of the Bureau of Mines.”

Now, what investigations are referred to? The investigations that are now carried on by the United States Geological Survey, supervision of which is transferred by section 4 to the new Bureau of Mines and Mining. What are the investigations now being carried on by the Geological Survey as to the matters referred to in section 4? The investigation of structural materials and the analyzing and testing of coals, lignites, and other mineral fuel substances. The current law provides:

“For the continuation of the investigations of structural materials, both belonging to and for the use of the United States, such as stone, clay, cement”—

And so forth; and

“For the continuation of the analyzing and testing of the coals, lignites, and other mineral fuel substances belonging to or for the use of the United States in order to determine their fuel value”—

And so forth.

These are the investigations authorized by section 4 to be transferred from the Geological Survey to the Bureau of Mines and Mining and, as provided in section 4, "such investigations shall hereafter be within the province of the Bureau of Mines." It seems to the Chair that that is the controlling feature as to what investigations in this direction shall be carried on by the Bureau of Mines and Mining, the same class of investigations now carried on by the Geological Survey or authorized to be carried on by the Geological Survey. As the Chair understands, and the Chair will be glad to have further information upon that subject, the Geological Survey is not authorized to carry on investigations on any broader scope than is authorized by the current sundry civil appropriation bill, making the appropriation.

In the opinion of the Chair an amendment is in order at this place in the bill; an amendment is in order at this time providing for the work authorized by the act creating the Bureau of Mines and Mining, but it is required to be confined to the scope authorized by that bill, which is as to structural materials; coals and lignites would be those belonging to or for the use of the United States. The provision of the amendment in reference to Alaska is clearly subject to the point of order, and, as the amendment is offered as one amendment, the Chair is compelled to sustain the point of order.

1225. An appropriation for the maintenance of a private educational institution unauthorized by law was held not to be in order on an appropriation bill.

Appropriations for the support of Howard University are not authorized by law.

On February 12, 1915,¹ the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read the following paragraph:

HOWARD UNIVERSITY.

For maintenance, to be used in payment of part of the salaries of the officers, professors, teachers, and other regular employees of the university, ice and stationery, the balance of which shall be paid from donations and other sources, of which sum not less than \$1,500 shall be used for normal instruction, \$65,000.

Mr. Thomas U. Sisson, of Mississippi, made the point of order that this appropriation was not authorized by law.

After debate, the Chairman² ruled:

The gentleman from Mississippi makes a point of order against the appropriation in the bill for Howard University, on the ground that it is not authorized by law. Clause 2, 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"—

And so forth.

The Chair called upon the chairman of the committee, Mr. Fitzgerald, to cite any authority of law for this appropriation, and he failed to do so. Section 3597 of Hinds' Precedents provides and that is a ruling by this House—that "those upholding items in an appropriation bill should have the burden of showing the law authorizing it." That is the unbroken precedent of this House.

Now, the gentleman from New York, Mr. Fitzgerald, stated that this appropriation had been made from year to year. That is true. But under the rulings of the House the fact that an appropriation has been made from year to year, if unauthorized by law, does not make it in order. I cite section 3588 of Hinds' Precedents, which reads as follows:

"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 continuation of the appropriation."

¹Third session Sixty-third Congress, Record, p. 3691.

²Charles R. Crisp, of Georgia, Chairman.

Following the rulings above cited and on account of the fact that there is no authority of law cited to authorize this appropriation, the Chair sustains the point of order, and the item is stricken from the bill.

1226. On January 29, 1924,¹ the Department of the Interior appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when a paragraph providing for the maintenance of Howard University was read, as follows:

For maintenance, to be used in payment of part of the salaries of the officers, professors, teachers, and other regular employees of the university, ice, and stationery, the balance of which shall be paid from donations and other sources, of which sum not less than \$2,200 shall be used for normal instruction, \$125,000.

Mr. James F. Byrnes, of South Carolina, made the point of order that there was no authority of law for the appropriation.

The Chairman² held:

The same point of order has been made in previous years, and whenever made it has been decided uniformly in the same way that the present occupant of the chair must decide it. If the appropriation is not authorized by law—and it is conceded that it is not—then it is clearly subject to a point of order. The Chair therefore sustains the point of order.

1227. On December 6, 1924,³ the Interior Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The Clerk read as follows:

HOWARD UNIVERSITY.

For maintenance, to be used in payment of part of the salaries of the officers, professors, teachers, and other regular employees of the university, ice, and stationery, the balance of which shall be paid from donations and other sources, of which sum not less than \$2,200 shall be used for normal instruction, \$125,000.

Mr. James F. Byrnes, of South Carolina, raised the question of authorization.

The Chairman⁴ ruled:

The gentleman from South Carolina makes a point of order against the paragraph on the ground that it is an appropriation not authorized by law. Whenever a point of order has been made against an appropriation to this item the point of order has been sustained, and in this case the Chair is inclined to think that the point of order is well taken. The last time the point of order was decided was on January 29, 1924. The Chair sustained the point of order. The present occupant of the chair is in entire agreement with that position as to the merits and as to the point of order, and therefore the point of order is sustained.

The bill having been passed by the House, and by the Senate with amendments, was sent to conference and the conference report was called up in the House and agreed to on February 28, 1925.⁵

Among the Senate amendments remaining in disagreement was Senate amendment No. 50, providing:

¹ First session Sixty-eighth Congress, Record, p. 1660.

² John Q. Tilson, of Connecticut, Chairman.

³ Second session Sixty-eighth Congress, Record, p. 245.

⁴ Everett Sanders, of Indiana, Chairman.

⁵ Record, p. 5054.

HOWARD UNIVERSITY.

For maintenance, to be used in payment of part of the salaries of the officers, professors, teachers, and other regular employees of the university, ice, and stationery, the balance of which shall be paid from donations and other sources, of which sum not less than \$2,200 shall be used for normal instruction, \$125,000;

For tools, material, salaries of instructors, and other necessary expenses of the department of manual arts, of which amount not to exceed \$21,800 may be expended for personal services in the District of Columbia, \$34,000;

Medical department: For part cost needed equipment, laboratory supplies, apparatus, and repair of laboratories and buildings, \$9,000;

For material and apparatus for chemical, physical, biological, and natural history studies and use in laboratories of the science hall, including cases and shelving, \$5,000;

For books, shelving, furniture, and fixtures for the libraries, \$3,000;

For improvement of grounds and repairs of buildings, \$30,000;

Fuel and light: For part payment for fuel and light, Freedmen's Hospital and Howard University, \$15,000;

Total, Howard University, \$221,000.

When this Senate amendment was reached Mr. Louis C. Cramton, of Michigan moved to recede and concur with an amendment adding the following:

For the construction of a building for the medical department, \$370,000: *Provided*, That no part of the sum hereby appropriated shall be available until there is filed with the Secretary of the Interior a guaranty by the trustees of the university that a suitable equipment for such building will be provided at a cost of not less than \$130,000 by subscription of alumni and other friends of the university.

Mr. Joseph W. Byrns, of Tennessee, made the point of order that the amendment to the Senate amendment was unauthorized by law and was not germane.

The Speaker ¹ held:

It seems to the Chair that the first point of order made by the gentleman from South Carolina that this is legislation is, of course, true, but this is all legislation, and it has been put on by the Senate, and it seems to the Chair that makes anything germane to it in order. If there was only one item, the Chair might hold that it was not germane, but here are appropriations for a dozen different items, some of them for buildings or for repairs to the Howard University. The Chair thinks that would make this in order, and the Chair overrules the point of order.

1228. While requisite publications of bureaus are authorized by law a provision for a specified bureau publication was held not to be in order on an appropriation bill.

The fact that the Government is to be reimbursed for an unauthorized expenditure does not make it in order on an appropriation bill.

On January 5, 1921,² the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the paragraph providing for expenditures from the reclamation fund was reached.

Mr. James R. Mann, of Illinois, reserved a point of order against the paragraph and said:

I notice that this paragraph proposes to provide specifically for the publication of the Reclamation Record. I apprehend that in view of the present law on the subject of publications all of the bureaus will seek to have specific provisions inserted in the appropriation bills for the

¹ Frederick H. Gillett, of Massachusetts, Speaker.

² Third session Sixty-sixth Congress, Record, p. 1006.

publications issued by their bureaus; but is there any warrant of law for making appropriations for this specific purpose? I make the point of order against the language:

“Including a publication called the Reclamation Record.”

There is no authority in the reclamation law—no express authority, at least—for the publication of this Reclamation Record.

Mr. James W. Good, of Iowa, submitted:

The Reclamation Record is a publication issued by the Reclamation Service, and the water users in the main subscribe for it, and they pay the subscription price. The money gets back into the fund. Now, unless there is authority to publish it they would have no right to publish it. In this case the publication is paid for out of the reclamation fund, not out of the Treasury, and the members of the water users' association subscribe for it and pay an amount at least equal to the cost of the publication.

After further debate, the Chairman¹ sustained the point of order.

1229. An appropriation for publication of the Reclamation Record was held to be unauthorized by law.

On February 16, 1922,² the Interior Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read the paragraph providing appropriations authorized by the reclamation law and including the following:

Including a publication called the Reclamation Record.

Mr. James R. Mann, of Illinois, raised a question of order on the authority of law for this item.

After debate, the Chairman³ sustained the point of order.

1230. Appropriations for equipment and materials essential to the convenient and efficient conduct of public business by the House or Senate are in order on an appropriation bill.

The committee, overruling the Chairman, decided that an appropriation for packing boxes was authorized by law.

On February 9, 1922,⁴ the legislative appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Thomas L. Blanton, of Texas, raised a question of order on an appropriation for the purchase of packing boxes for the use of the Senate, and referred to an instance in which a similar point of order was sustained in a preceding session.

Mr. James R. Mann, of Illinois, in discussing the point of order, said:

Mr. Chairman, this comes under the head of contingent expenses of the Senate. There is no specific authority of law providing postage stamps for the Secretary of the Senate or the Sergeant at Arms; no authority of law especially providing for fuel oil or cotton waste or advertising or purchasing of furniture or repair of furniture, and yet it would be ridiculous to say that because there is no specific authority of law for these things that under the title of contingent expenses they could not be allowed. The same is true of packing boxes.

¹ Simeon D. Fess, of Ohio, Chairman.

² Second session Sixty-seventh Congress, Record, p. 2667.

³ William J. Graham, of Illinois, Chairman.

⁴ Second session Sixty-seventh Congress, Record, p. 2358.

The Chairman¹ ruled:

Under the ruling cited by the gentleman from Texas this item has been held out of order. While the present occupant of the chair, aside from that ruling, does not desire to so hold, yet in view of the ruling cited the Chair feels that he should follow the precedent established and sustain the point of order.

Whereupon Mr. Joseph Walsh, of Massachusetts, appealed from the decision of the Chair. The question being put, was decided in the negative, and the point of order was overruled.

1231. Appropriations for payment of expenses incurred in contested-election cases are in order on an appropriation bill when duly certified by Committee on Elections and not otherwise.

On June 4, 1924,² the second deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

For payment to Walter M. Chandler for expenses incurred as contestant in the contested-election case of *Chandler v. Bloom*, audited and recommended by the Committee on Elections No. 3, \$2,000.

Mr. Thomas L. Blanton, of Texas, having raised the question of authorization, Mr. Martin B. Madden, of Illinois, said:

Mr. Chairman, these items are all authorized by law. The law provides that not to exceed \$2,000 shall be paid to any person who has a contest when receipted bills are filed with the committee having charge of the contest. The chairman of the committee having charge of the contest has certified over his own signature that these bills are on file and receipted.

The Chairman³ held:

The gentleman from Illinois states that all the provisions of the law relative to the action of the Committee on Elections have been complied with. The Chair must take the gentleman's word, and if that has been done this is authorized by the statute, and if authorized by statute it is a proper appropriation. The point of order is overruled.

Thereupon Mr. Blanton offered the following amendment:

At the end of the Madden amendment add the following: To pay E. W. Cole his expenses as contestant for a seat in the House of Representatives, \$2,000.

Mr. Madden made the point of order that the appropriation proposed was without authority of law.

The Chairman ruled:

There is no certificate from the Committee on Elections No. 1, which indicates the accounts have been filed as provided by law, and hence the amendment is subject to a point of order. In view of the fact that the gentleman from Illinois has stated that the formalities of the law have not been complied with, the point of order is sustained.

1232. Statutory direction to establish a naval station was construed as authorizing the paving of streets and erection of warehouses as incidental thereto.

¹ Horace M. Towner, of Iowa, Chairman.

² First session Sixty-eighth Congress, Record, p. 10528.

³ William J. Graham, of Illinois, Chairman.

On May 25, 1912,¹ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. This paragraph was reached:

Naval Station, Pearl Harbor, Hawaii: Dry dock (limit of cost is hereby increased to \$3,350,000), to complete, \$1,050,000; water-front development, \$100,000; street paving, \$25,000; water system, \$17,000; power distribution, mains and conduits, \$75,000; metal and lumber storehouse, \$25,000; paint and rigging loft, \$25,000; pattern shop, \$60,000; storehouses, \$100,000; latrines, \$10,000; railroad equipment, \$45,000; floating crane, to complete, \$210,000; in an, \$1,742,000.

Mr. Samuel J. Tribble, of Georgia, made the point of order that the items for street paving and metal and lumber warehouses were not authorized by law.

Mr. Lemuel P. Padgett, of Tennessee, submitted:

Mr. Chairman, I do not think the point of order is well taken. The act establishing the naval station at Pearl Harbor provided:

“The Secretary of the Navy is hereby authorized and directed to establish a naval station at Pearl Harbor, Hawaii, on the site heretofore purchased for that purpose, and to erect thereat all the necessary machine shops, storehouses, coal sheds, and other necessary buildings.”

So that Congress does not fix any limit, does not define the scope of such buildings as may be necessary. It is in the discretion of the Congress and, of course, is in order on an appropriation bill. Pearl Harbor is a new place, out on an island, but there is nothing there in the way of highways. This paving of streets is simply the making of roads, so that the heavy machinery and heavy guns can be hauled over the roads.

The Chairman,² after debate, overruled the point of order.

1233. When the question of authorization is raised against a paragraph in an appropriation bill it is incumbent upon the committee reporting the bill to cite the law sanctioning the appropriation.

An appropriation for advertisements for naval recruits was held to be unauthorized and therefore not in order on an appropriation bill.

On February 24, 1913,³ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Martin D. Foster, of Illinois, made a point of order against a paragraph making an appropriation to pay for advertisements for recruits to the naval service.

No authority for the appropriation having been cited, the Chairman⁴ sustained the point of order.

Mr. William F. Murray, of Massachusetts, inquired:

Did the Chair sustain the point of order in the absence of proof that there is no law? Does the Chair rule in the absence of any affirmative proof of the existence of the law that the point of order should be sustained?

The Chairman said:

The burden is on the committee to show the law authorizing the appropriation. That is the ground on which the Chair rules.

¹ Second session Sixty-second Congress, Record, p. 7185.

² Cordell Hull, of Tennessee, Chairman.

³ Third session Sixty-second Congress, Record, p. 3846.

⁴ Joshua W. Alexander, of Missouri, Chairman.

1234. The law authorizing regulations for examination of midshipmen was held not to sanction an appropriation for transportation of successful candidates to the academy.

On February 11, 1921,¹ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when an item providing an appropriation for transportation of successful candidates for appointment as midshipmen to the Naval Academy was reached.

Mr. Fred A. Britten, of Illinois, made a point of order that there was no authority for the provision.

The Chairman² said:

The gentleman from Illinois makes the point of order that the language—"and for mileage, at 5 cents per mile to midshipmen entering the Naval Academy while proceeding from their homes to the Naval Academy for examination and appointment as midshipmen"—is subject to the point of order, being legislation on an appropriation bill and not authorized by law. The gentleman from Michigan, Mr. Kelley, cites section 1515 of the United States Revised Statutes, edition of 1878, which reads:

"All candidates for admission to the Navy shall be examined according to such regulations and at such stated times as the Secretary of the Navy may prescribe. Candidates rejected at such examinations shall not have the privilege of another examination for admission to the same class, unless recommended by the board of examiners."

The Chair interprets this language to mean what it says, that it is for mileage allowance to midshipmen while proceeding from their homes to the Naval Academy for examination and appointment as midshipmen, and it is the view of the Chair that the section cited by the gentleman from Michigan, authorizing the Secretary of the Navy to make regulations for the examinations and to prescribe times when the examinations may be held, is not sufficient authority on which to base an allowance in an appropriation bill to pay mileage and, therefore, sustains the point of order.

1235. Statutory authorization for maintenance of a governmental service authorizes essential expenses incident thereto.

Expenses incurred by Naval officers on shore patrol duty, although not specifically authorized by law, are necessarily incidental to their service, and appropriations to pay them are in order on an appropriation bill.

On February 11, 1921,³ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read as follows:

Actual expenses of officers while on shore patrol duty.

Mr. Fred A. Britten, of Illinois, having raised the point of order that there was no authority of law for the appropriation, Mr. James R. Mann, of Illinois, said:

Mr. Chairman, there are two ways of looking at an appropriation bill appropriating money for a governmental service. One is that every item must be authorized by a specific provision of law, that you can not by a pen or the ink with which to use it appropriate unless a legislative provision of law authorizes the appropriation. That rather narrow view of the law, I think, has never, or at least seldom, prevailed in the rulings in the House. Where the Government provides for a service the incidental expenses which are absolutely necessary and essential to the conduct of the service, in my judgment, have been included as authorized by the creation

¹Third session Sixty-sixth Congress, Record, p. 3008.

²Joseph Walsh, of Massachusetts, Chairman.

³Third session Sixty-sixth Congress, Record, p. 3009.

of the service, and that you could appropriate for the ordinary incidental expenses necessary in the conduct of the service. Take this case. We have a Navy. The Navy is authorized to send its battleships to any port in the world. It goes to a foreign port or to a home port or some other port. The Navy is authorized, and I think no one will contradict that, to permit the officers of the Navy to allow the enlisted men shore duty. The Navy is authorized to permit the commanding officer of the vessel to detail officers to go on shore on patrol duty as one of the routine matters of the Navy, authorized in the maintenance of the Navy; the Government is authorized to pay the expense of that detail. I am inclined to think that one follows the other.

The Chairman¹ held:

The gentleman from Illinois makes a point of order to the language in the bill reading—
“Actual expenses of officers while on shore patrol duty”—in that it is an appropriation unauthorized by law.

The Chair has examined the decisions of existing law with reference to items of expense for officers in the Navy, such as travel and allowances made in lieu of mileage, also commutation of quarters and provisions for men when quarters are not available, and for the payment for travel between places in the United States, and also for travel between places abroad.

In all of these provisions specific authority is given to pay the travel and expenses or the allowance in lieu thereof, and while there is nothing to indicate that this particular item of expense is to be incurred for duty performed abroad or within the United States, the Chair feels that this item does not come within the provisions of the existing law for that character of expenses, and that there is no specific authority in the law authorizing the payment of the mileage, or for payment for travel between points within the United States or between foreign ports, or for the commutation of quarters, or for expenses ashore where quarters are not available. And there is a decision that no allowance shall be made in settlement of any account for travel expenses unless the same be incurred on the order of the Secretary of the Navy or the allowance be approved by him.

In the view of the Chair the question seems to come down to whether this duty is such an incident of the operation of the Navy Department which is to be performed by officers acting under orders as to make it a necessary part of the conduct of the Navy for which an expenditure can be incurred without specific detailed authority in a legislative act.

The Chair gathers from the statement of the gentleman from Michigan, as supplemented by the statement of the gentleman from Illinois, that this is a well-known duty in the Navy Department; that officers may be assigned to that duty under orders and that the requirement that the actual expenses while on that duty shall be paid. If there is no authority for this in the appropriations made for naval purposes, it would seem that it would impose a duty on the officers of the Navy, and that the incidental expenses in the performance of that duty would necessarily fall on the officer, which the Chair feels can not be the real intent of the existing laws or of Congress in setting up appropriations for the maintenance of the Naval Establishment. The Chair feels that while it does not come within the various classes specified authorized by law, in view of the information furnished by the gentleman in charge of the measure, as supplemented by statements made in discussion of the point of order on both sides of the question, the actual expenses of officers while performing this particular class of duty, which is a well-recognized duty in the Navy, is such a necessary incident as to authorize its inclusion in this bill, and therefore the Chair overrules the point of order.

1236. An appropriation for boards of inspection was held to be in order on an appropriation bill.

On February 11, 1921,² the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Fred A.

¹Joseph Walsh, of Massachusetts, Chairman.

²Third session Sixty-sixth Congress, Record, p. 3013.

Britten, of Illinois, raised a point of order against an item in the bill providing an appropriation for "boards of inspection, examining boards for clerks."

In support of the appropriation, Mr. Patrick H. Kelley, of Michigan, said:

Mr. Chairman, the expense of boards of inspection is definitely authorized by law under the act of August 5, 1882. Twenty-second Statutes at Large, 296. It is section 2786 of the compiled statutes.

"It shall be the duty of the Secretary of the Navy as soon as may be after the passage of this act, to cause to be examined by competent boards of officers of the Navy to be designated by him for that purpose all vessels belonging to the Navy not in actual service at sea, and vessels at sea as soon as practical after they shall return to the United States, and hereafter"

And the word "hereafter" puts it beyond all doubt in respect to its being permanent. "and hereafter all vessels on their return from foreign stations, and all vessels in the United States as often as once in three years, when practical, shall be examined; and said board shall ascertain and report to the Secretary of the Navy in writing which of said vessels are unfit for further service, etc."

The Chairman¹ ruled:

The gentleman from Illinois makes the point of order to the language—

"Boards of inspection, examining boards, with clerks"—in the bill. The statute which has been cited by the gentleman from Michigan would seem to the Chair to authorize the Secretary of the Navy to convene such boards for the duties therein specified, and the mere fact that any one of these particular items in the paragraph might require the expenditure of the total appropriation seems to the Chair has no bearing on the point of order. The Chair feels that the statute cited clearly authorizes the appropriation and, therefore, overrules the point of order.

1237. An appropriation for hire of vessels in Asiatic waters was held to be in order on an appropriation bill as an incidental expense to maintenance of an authorized service.

On February 11, 1921,² the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Fred A. Britten, of Illinois, raised a question as to authority of law for an appropriation for "hire of launches or other small boats in Asiatic waters."

The Chairman¹ held the appropriation to be authorized as necessarily incidental to maintenance of the Navy, and overruled the point of order.

1238. An appropriation for the recovery of valuables from shipwrecks was held to be authorized by law.

On February 11, 1921,³ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the question as to authorization of an appropriation carried by the bill for "recovery of valuables from shipwrecks" was raised by Mr. Fred A. Britten, of Illinois.

The Chairman¹ held:

The gentleman from Illinois makes the point of order against the language "recovery of valuables from shipwrecks." The Chair has examined the statute and finds that not only is the President given authority to cause a suitable number of vessels to cruise and afford aid to distressed navigators, but the Secretary of the Navy is authorized to cause vessels under his control

¹ Joseph Walsh, of Massachusetts, Chairman.

² Third session Sixty-sixth Congress, Record, p. 3013.

³ Third session Sixty-sixth Congress, Record, p. 3014.

adapted for the purpose to afford salvage to public or private vessels in distress, and is further authorized to collect reasonable compensation therefor. While this is not perhaps expressed in maritime language, yet it is the view of the Chair that it comes within the rule and is authorized by the two paragraphs of the statutes to which the gentleman from Michigan has referred. The Chair, therefore, overrules the point of order.

1239. An appropriation for “collection of information at home and abroad” by the naval service was held to be authorized by law.

On February 11, 1921,¹ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Fred A. Britten, of Illinois, made the point of order against language in the bill reading as follows:

Information from abroad and at home, and the collection and classification thereof.

Mr. Patrick H. Kelley, of Michigan, submitted the following statute² as authorizing the appropriation:

The President may, when the necessities of the service permit it, cause any suitable number of public vessels adapted to the purpose to cruise upon the coast in the season of severe weather and afford such aid to distressed navigators as their circumstances may require, and such public vessels shall go to sea fully prepared to render such assistance.

The Chairman³ construed this statute to authorize the appropriation, and overruled the point of order.

1240. An appropriation for recreation of enlisted men, although without specific statutory authorization, was held to be in order on an appropriation bill as necessary to the efficient maintenance of naval operations.

On February 11, 1921,⁴ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read:

Recreation for enlisted men: For the recreation, amusement, comfort, contentment, and health of the Navy, to be expended in the discretion of the Secretary of the Navy, under such regulations as he may prescribe: *Provided*, That not more than two persons shall be employed hereunder at a rate of compensation exceeding \$1,800 per annum, \$800,000.

A point of order that there was no authorization of law for this appropriation having been made by Mr. Fred A. Britten, of Illinois, the Chairman³ said:

The gentleman from Illinois makes the point of order on the paragraph beginning “Recreation for enlisted men.” The Chair recalls there was some discussion of this matter when the Army bill was under consideration. Not a point of order, I think, but some question, was raised against providing moving pictures for Army enlisted men at the various camps, to which the argument was made by one of the members of the committee that:

“The purpose of these recreational exercises is largely to keep the enlisted men of the Army in the camps instead of sending them into the town near by to obtain recreation not so innocent. If we can maintain better discipline in the Army and better order in the Army by providing pictures for men to look at in the camp rather than to send them to see vice in a neighboring joint, I think it is quite within our power to appropriate for that purpose, as included in the general purpose of maintaining the Army.”

¹Third session Sixty-sixth Congress, Record, p. 3014.

²Revised Statutes, section 2776.

³Joseph Walsh, of Massachusetts, Chairman.

⁴Third session Sixty-sixth Congress, Record, p. 3024.

The Chair believes that the reasoning which is there applied to the appropriation for recreational purposes in the Army could equally well be applied to the naval service, and that the appropriation for the recreation, amusement, comfort, contentment, and health of the Navy is necessarily incident to preserving the naval organization and good order, and therefore overrules the point of order.

1241. An appropriation for contingent expenses and unforeseen emergencies was held to be in order on an appropriation bill.

On February 11, 1921,¹ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read a paragraph appropriating for contingent expenses of the Navy.

Mr. Fred A. Britten, of Illinois, made the point of order that there was no law authorizing an appropriation for this purpose.

The Chairman² ruled:

The Chair believes that this language in the paragraph headed "contingent," which enumerates several contingencies and then provides for other contingent expenses and emergencies arising in the cognizance of the Bureau of Navigation, and so forth, comes within the precedent established where an emergency fund to meet unforeseen contingencies in the maintenance of the Navy was held in order. The Chair overrules the point of order.

1242. An appropriation for the establishment of shooting ranges and the purchase of prizes and trophies was held not to be in order on an appropriation bill.

On February 11, 1921,³ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was reached:

Gunnery and engineering exercises: Prizes, trophies, and badges for excellence in gunnery, target practice, engineering exercises, and for economy in fuel consumption, to be awarded under such rules as the Secretary of the Navy may formulate; for the purpose of printing, recording, classifying, compiling, and publishing the rules and results; for the establishment and maintenance of shooting galleries, target houses, targets, and ranges; for hiring established ranges, and for transporting equipment to and from ranges, \$100,000.

Mr. Fred A. Britten, of Illinois, raised the question of order that there was no authorization for this expenditure.

The Chairman¹ said:

The gentleman from Illinois makes the point of order against the paragraph, and the paragraph contains language which does not appear to be necessarily incidental or requisite for the proper conduct of the Naval Establishment. Further, there is the establishment or maintenance of shooting galleries for which there appears to be no authorization of law, notwithstanding the fact that this item has been carried in the bill for many years. If there is any language in the paragraph subject to the point of order, of course, the entire paragraph is. Does the gentleman contend that the Postmaster General could give prizes to letter carriers, such as badges and trophies, for efficient delivery of the mail, without authorization of law? The Chair feels that the paragraph contains language that is not necessarily incident to the maintenance of the Naval Establishment. It carries legislation providing for trophies and prizes and also for the establishment of shooting galleries. The Chair sustains the point of order.

¹Third session Sixty-sixth Congress, Record, p. 3026.

²Joseph Walsh, of Massachusetts, Chairman.

³Third session Sixty-sixth Congress, Record, p. 3027.

1243. An appropriation for experiments by the Bureau of Ordnance, while not specifically authorized by statute, was held to be in order on an appropriation bill.

On February 12, 1921,¹ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read the following paragraph:

Experiments, Bureau of Ordnance: For experimental work in the development of armor-piercing and other projectiles, fuses, powders, and high explosives in connection with problems of the attack of armor with direct and inclined fire at various ranges, including the purchase of armor, powder, projectiles, and fuses for the above purposes and of all necessary material and labor in connection therewith; and for other experimental work under the cognizance of the Bureau of Ordnance in connection with the development of ordnance material for the Navy, \$250,000.

Mr. Fred A. Britten, of Illinois, raised the question of order that the paragraph was not authorized by law:

The Chairman² held:

The gentleman from Illinois makes the point of order on the paragraph headed "Experiments, Bureau of Ordnance." This paragraph provides for experimental work in the development of armor-piercing and other projectiles, fuses, powders, and high explosives in connection with problems of the attack of armor with direct and inclined fire at various ranges, including the purchase of armor, powder, projectiles, and fuses for the above purposes and of all necessary material and labor in connection therewith; and for other experimental work under the cognizance of the Bureau of Ordnance in connection with the development of ordnance material for the Navy, \$250,000. But the question seems to resolve itself into one as to whether this work is necessarily incidental to the proper conduct of one of the recognized and legally established bureaus of the Navy Department, and that it may make experiments with projectiles, armor, high explosives, and other facilities which are necessarily a part of naval ships, or which may be included in the proper work of the Navy under this particular bureau; and while it is not a question exactly similar to that presented by appropriations for emergencies, it would seem to the Chair that this might be held to be one of the necessary incidentals to the operations of this particular activity of the Navy Department, and as such might properly be appropriated for in the appropriation bill for the Naval Establishment. The Chair will overrule the point of order upon that ground.

1244. An appropriation for hire of quarters for naval personnel when otherwise unobtainable was held to be in order on an appropriation bill.

On February 12, 1921,³ the naval appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the paragraph providing pay for the Navy was read.

Mr. Fred A. Britten, of Illinois, made a point of order against the language contained in the paragraph, as follows:

Mr. Chairman, I make the point of order against the paragraph:

"For hire of quarters for officers serving with troops where there are no public quarters belonging to the Government, and where there are not sufficient quarters possessed by the United States to accommodate them or commutaton of quarters not to exceed the amount which an

¹Third session Sixty-sixth Congress, Record, p. 3083.

²Joseph Walsh, of Massachusetts, Chairman.

³Third session Sixty-sixth Congress, Record, p. 3094.

officer would receive were he not serving with troops, and hire of quarters for officers and enlisted men on sea duty at such times as they may be deprived of their quarters on board ship due to repairs or other conditions which may render them uninhabitable, \$25,000.”

That is legislation on an appropriation bill not authorized by law.

The Chairman ¹ ruled:

The gentleman from Illinois makes the point of order upon the language indicated. The Chair finds that there is provision of law for commutation of quarters for officers, and also a provision when quarters are not available, and this language seeks, apparently, to make an appropriation to carry out the authority to incur the expenses under the provisions of existing law. Then there is a provision that the Secretary of the Navy may determine where and when there are no public quarters available for persons in the Navy and Marine Corps within the meaning of acts or parts of acts relating to the assignment of quarters or the commutation therefor. The Chair overrules the point of order.

1245. Appropriations for hire of automobiles, hire of launches, and rent of offices outside of navy yards were held incidental to the maintenance of the Naval Establishment and therefore in order on an appropriation bill.

On February 8, 1929,² the Committee of the Whole House on the state of the Union was considering the naval appropriation bill.

When the paragraph providing for the Naval Establishment was reached, Mr. Carl Vinson, of Georgia, made a point of order against the following language:

Including the hire of automobiles when necessary for the use of shore-patrol detachments; hire of launches or other small boats in Asiatic waters.

Also,

for rent of buildings and offices not in navy yards.

The Chairman ³ held:

The Chair is of opinion that by an attempt to put into the law minute provision for all possible manner of expenditure the size of the statute books would be largely increased, and that by reason of the impossibility of foresight in matter of detail more harm than good would result. It has been the uniform ruling of preceding Chairmen, so far as the Chair can ascertain, that these minor and incidental objects of expenditures are natural to the conduct of the business establishment concerned.

Furthermore, the Chair is supported in his conviction by the fact that these items have passed under the scrutiny of repeated Congresses, and therefore might be assumed to have in this particular received at least the tacit approval of preceding Congresses as matters incidental to the conduct of the business establishment. While, of course, such approval, if it be assumed, is never conclusive, yet when the question is one of the interpretation of existing law the construction accepted by previous Congresses may be somewhat persuasive.

For these reasons the Chair overrules the point of order.

1246. A provision in a general appropriation bill authorizing the expenditure of money therein appropriated for the protection of the naval petroleum reserve was held to be authorized by the holding statute.

A statute imposing certain duties on a departmental executive was held not to authorize an appropriation to enable the President to discharge such duties.

¹ Joseph Walsh of Massachusetts, Chairman.

² Second session Seventieth Congress, Record, p. 3085.

³ Robert Luce, of Massachusetts, Chairman.

If a part of a paragraph is out of order, the entire paragraph is subject to a point of order.

On May 13, 1930,¹ during consideration of the naval appropriation bill, the Clerk read:

To enable the Secretary of the Navy to carry out the provisions contained in the act approved June 4, 1920, requiring him to conserve, develop, use, and operate the naval petroleum reserves, \$175,000, of which \$100,000 shall be available exclusively toward repairs to shut-in wells, naval petroleum reserve No. 1: *Provided*, That out of any sums appropriated for naval purposes by this act, any portion thereof, not to exceed \$10,000,000, shall be available to enable the President to protect naval petroleum reserve No. 1, established by Executive order of September 2, 1912, by drilling wells and performing any work incident thereto.

Mr. Albert Johnson, of Washington, made a point of order that both the paragraph and the proviso embodied legislation.

After debate, the Chairman² ruled:

The gentleman from Washington makes the point of order on the paragraph on the ground that it is new legislation on an appropriation bill. The gentleman from Idaho, Mr. French, relies upon two sections as authorization for this appropriation—the act of June 25, 1910,³ and the act approved June 4, 1920.⁴ The first-named statute seems to the Chair to deal almost exclusively with the matter of withdrawal of public land for purposes of naval petroleum reserves.

The other act provides that—

“The Secretary of the Navy is directed to take possession of all properties within the naval reserves as are or may become subject to the control and use by the United States for naval purposes, and on which there are no pending claims or applications for permits or leases under the provisions of sections 223–229 of title 30, Mineral Lands and Mining, or pending applications for United States patent under any law; to conserve, develop, use, and operate the same in his discretion, directly or by contract, lease, or otherwise, and to use, store, exchange, or sell the oil and gas products thereof, and those from all royalty oil from lands in the naval reserves, for the benefit of the United States.”

The Chair thinks that statute is amply broad to sustain the language. In fact, the language is almost identical with the language of the statute which the Chair has just read, and in the opinion of the Chair is sufficient law to authorize this appropriation under which the Secretary of the Navy can conserve, use, and operate naval petroleum reserves. Therefore, as to the first point of order made by the gentleman from Washington against the language, the Chair overrules the point of order.

However, as to the latter part of the proviso, the Chair does not believe that either of the two statutes cited authorizes the appropriation proposed here to enable the President to drill wells on these reserves. The Chair thinks that an appropriation might be made to permit the Secretary of the Navy to drill wells, but the Chair does not believe that the statutory authority given to the Secretary of the Navy is sufficient to authorize an appropriation placing this power directly and solely in the President to drill wells on the naval reserves. That is, you can not usurp by legislation on an appropriation bill powers specifically granted by statute to the Secretary of the Navy and place them directly in the President in an appropriation bill. Inasmuch as the point of order was made against the entire section, the Chair therefore sustains the point of order against the entire section.

¹Second session Seventy-first Congress, Record, p. 8874.

²Homer Hoch, of Kansas, Chairman.

³Title 43, section 141–143, U.S. Code.

⁴Title 34, section 524, U.S. Code.

Mr. Burton L. French, of Idaho, then offered an amendment identical with the paragraph just stricken out on the point of order, with the exception that “the Secretary of the Navy” was substituted for “the President.”

Mr. Johnson submitted the same point of order.

The Chairman said:

The Chair is of the opinion that the act of June 4, 1920, is amply broad to provide authorization for the appropriation carried in the proviso and, for reasons stated in the recent ruling of the Chair, the Chair overrules the point of order.

1247. Ratification by law of appointment of delegates to a convention was not construed to authorize appropriations for expenses of an international commission organized by the convention.

On February 9, 1918,¹ the diplomatic and consular appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read as follows:

To defray the actual and necessary expenses on the part of the United States section of the International High Commission, arising in such work and investigations as may be approved by the Secretary of the Treasury, \$25,000, to be expended under the direction of the Secretary of the Treasury:

Mr. William H. Stafford, of Wisconsin, raised the question of order that there was no authorization of law.

After debate, the Chairman² said:

The gentleman from Wisconsin makes the point of order against the provision in the bill making an appropriation for the International High Commission on the ground that it is legislation on an appropriation bill not authorized by law. It is undoubtedly the practice of the House under its rules that a committee proposing legislation must show authority of law for the legislation to make it in order on an appropriation bill. The Chair has listened attentively to the arguments and the acts of Congress read bearing on the case. It is contended that the Secretary of the Treasury appointed delegates to attend a convention, and that those delegates, in connection with delegates from other countries, organized this International High Commission. It is admitted that there was no provision of law authorizing the Secretary of the Treasury to appoint said delegates. Subsequently Congress passed a law ratifying the appointment by the Secretary of the Treasury of the aforesaid delegates and made an appropriation to pay their expenses while attending the conference. The gentleman from Virginia contends that in the act of Congress ratifying the appointment of such delegates Congress approved their act in establishing the International High Commission and making it a permanent organization.

The Chair is of the opinion there has been no specific authority of law cited the Chair that authorizes the creation of a permanent high commission. The Chair does not believe Congress could be said by simply ratifying the appointment of delegates to a convention to approve the legislation of the convention to which the delegates were accredited unless Congress specifically so stated in the act itself. The Chair does not believe Congress will ever delegate its legislating functions to any other body or convention. Therefore the Chair is constrained to hold that there is no law authorizing the creation of this high commission; that the paragraph is new legislation and is not in order on an appropriation bill. The Chair sustains the point of order.

1248. The power of the President to appoint diplomatic representatives to foreign governments and to determine their rank is derived from the Constitution and may not be circumscribed by statutory enactments.

¹ Second session Sixty-fifth Congress, Record, p. 1910.

² Benjamin G. Humphreys, of Mississippi, Chairman.

Where the President has appointed a diplomatic representative and the appointment has been approved by the Senate, a point of order does not lie against an appropriation for the salary of such representative unless the rate of pay has been otherwise fixed by law.

A statute prohibiting the creation of new ambassadorships except by act of Congress is in contravention of the President's constitutional prerogatives and will not support a point of order against an appropriation for the salary of an ambassadorship not created by act of Congress but appointed by the President and confirmed by the Senate.

The President, at will, may raise a legation to an embassy or reduce an embassy to a legation, any statute to the contrary notwithstanding, and where the President has made such change and followed it with an appointment which has been approved by the Senate, an appropriation for the salary of the appointee is in order unless the rate of pay is in contravention of law.

In the absence of an actual appointment by the President, or of confirmation of such appointment by the Senate, an appropriation for the salary of a minister to a country to which a statute authorizes the appointment of an ambassador is subject to a point of order.

Where a statute authorizes a diplomatic mission to a designated government it is in order to appropriate for the salary of diplomatic officers thereto prior to their appointment by the President.

On January 27, 1921,¹ while the House was in the Committee of the Whole House on the state of the Union considering the diplomatic and consular appropriation bill, the Clerk read the following paragraph:

Ambassadors extraordinary and plenipotentiary to Argentina, Belgium, Brazil, Chile, China, France, Germany, Great Britain, Italy, Japan, Mexico, Peru, and Spain, at \$17,500 each, \$227,500.

Mr. Henry D. Flood, of Virginia, made a point of order against the appropriation for an ambassador to China, on the ground that the existing mission was a legation and could not be elevated to the rank of an embassy without legislation by Congress, citing in support of his contention the act of March 2, 1909, prohibiting the creation of new ambassadorships unless provided for by act of Congress.

Mr. John Jacob Rogers, of Massachusetts, in charge of the bill, while asserting² the constitutional right of the President to raise a legation to an embassy, conceded that in this instance the President had taken no such action, and the Chairman³ sustained the point of order.

Later⁴ in the day the following paragraph was reached:

Envoys extraordinary and ministers plenipotentiary to Austria, Bolivia, Bulgaria, Colombia, Costa Rica, Denmark, Dominican Republic, Ecuador, Finland, Greece, Guatemala, Haiti, Honduras, Hungary, Nicaragua, Norway, Panama, Paraguay, Uruguay, Persia, Portugal, Rumania, Salvador, Siam, Sweden, Switzerland, Turkey, and Venezuela, at \$10,000 each, and to the Serbs, Croats, and Slovenes, \$10,000; in all, \$290,000.

¹Third session Sixty-sixth Congress, Record, p. 2145.

²Record, p. 2168.

³Horace M. Towner, of Iowa, Chairman.

⁴Record, p. 2148.

Mr. Thomas L. Blanton, of Texas, raised points of order against the appropriations for ministers to Turkey, Finland, and to the Serbs, Croats and Slovenes, on the ground that they were not authorized by law.

The committee of the Whole House on the state of the Union having risen during debate on the point of order and before the Chairman could render an opinion, Mr. Rogers said on the following day,¹ when the bill was again under consideration in the Committee of the Whole:

Mr. Chairman, I desire further recognition to discuss the point of order which was pending when the committee rose last evening. The point of order made by the gentleman from Texas related to three items in the third paragraph of the bill—one appropriating a salary for the minister to Finland, another appropriating a salary for the minister to the Serbs, Croats, and Slovenes, and the third appropriating a salary for the minister to Turkey.

The Chair, as I gathered from comments which he interjected, agrees with my contention that it is the function of the Executive to recognize foreign countries, but the Chair was apparently in some doubt whether the right to recognize carried with it the right to appoint a minister or ambassador without the express and direct sanction of Congress in each case. I desire at this point to read into the Record the paragraph of the Constitution on which I rely in my assertion that the three missions in question are authorized by law, for the authority of law in this instance is the supreme law of the land—the Constitution.

Article II, section 2, of the Constitution provides, in part:

“He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for and which shall be established by law. * * *”

The question presents itself at the outset as to whether the final clause which I have read “and which shall be established by law” must be construed as relating so far back into the previous language of the paragraph as to limit the authority of the President to appoint ambassadors, other public ministers and consuls. So far as I know, that exact question has never been decided by the Supreme Court of the United States. But in a case decided by Mr. Justice Marshall, while sitting in the Circuit Court of the United States for the District of Virginia and North Carolina, during the year 1823, there is a discussion by Judge Marshall of the general questions which are presented by this phase of the present controversy. This case is *United States against Maurice and others*, Brockenbrough’s Reports, volume 2, page 96, especially at pages 100 to 103. Justice Marshall found it necessary to consider the antecedent of “which” in the clause which I have quoted. In the course of his discussion he says:

“I feel no diminution of reverence for the framers of this sacred instrument when I say that some ambiguity of expression has found its way into this clause. If the relative ‘which’ refers to the word ‘appointments,’ that word is referred to in a sense rather different from that in which it had been used. It is used to signify the act of placing a man in office, and referred to as signifying the office itself. Considering this relative as referring to the word ‘offices,’ which word, if not expressed, must be understood, it is not perfectly clear whether the words ‘which’ offices ‘shall be established by law’ are to be construed as ordaining that all offices of the United States shall be established by law or merely as limiting the previous general words to such offices as shall be established by law. Understood in the first sense, this clause makes a general provision that the President shall nominate and, by and with the consent of the Senate, appoint to all offices of the United States, with such exceptions only as are made in the Constitution, and that all offices (with the same exceptions) shall be established by law. Understood in the last sense, this general provision comprehends those offices only which might be established by law, leaving it in the power of the Executive, or of those who might be intrusted with the execution of the laws, to create in all laws of legislative omission such offices as might be deemed necessary for their execution, and afterwards to fill those offices. * * *”

¹Record, p. 2164.

"In this ignorance of the course which may have been pursued by the Government, I shall adopt the first interpretation, because I think it accords best with the general spirit of the Constitution, which seems to have arranged the creation of office among legislative powers, and because, too, this construction is, I think, sustained by the subsequent words of the same clause, and by the third clause of the same section."

In other words, Justice Marshall regarded the "which" as relating back to the word "offices" and not as relating back to the word "appointments."

But his so holding carries with it the corollary that he did not deem it a possible construction that the "and which" clause which I have quoted could possibly relate to the portion of the language which refers to ambassadors, other public ministers and consuls. Therefore, while the authority is not a square one, it seems to indicate that in the opinion of John Marshall the President's power to appoint ambassadors and public ministers did not depend upon any statutory enactment by Congress, but found its source directly in the Constitution itself.

Mr. Chairman, this general problem was apparently first considered by the executive officers of the United States Government in 1790. I quote from volume 4 of Moore's International Law Digest, section 632:

"Thomas Jefferson was asked for an opinion upon the situation in relation to the appointment of our foreign representatives, and he gave this opinion:

"The Constitution having declared that the President shall nominate and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, the President desired my opinion whether the Senate has a right to negative the grade he may think it expedient to use in a foreign mission as well as the person to be appointed. I think the Senate has no right to negative the grade."

Again, James Monroe, when President of the United States in 1822, consulted ex-President James Madison upon a somewhat similar question, and Mr. Madison answered thus:

"The practice of the Government has from the beginning been regulated by the idea that the places or offices of public ministers and consuls existed under the law and usages of nations and were always open to receive appointments as they might be made by competent authority."

In the second volume of Hinds' Precedents, section 1546, there is a very extended discussion of a matter which came before this House of Representatives in 1825.

On December 6, 1825, in his annual message to Congress, President John Quincy Adams referred to the independence of the South American Republics and said:

"Among the measures which have been suggested to them by the new relations with one another resulting from the recent changes in their condition is that of assembling at the Isthmus of Panama a congress, at which each of them shall be represented, to deliberate upon objects important to the welfare of all. The Republics of Colombia, of Mexico, and of Central America have already deputed plenipotentiaries to such a meeting, and they have invited the United States to be also represented there by their ministers. The invitation has been accepted, and ministers on the part of the United States will be commissioned to attend at these deliberations and to take part in them, so far as may be compatible with that neutrality from which it is neither our intention nor the desire of other American States that we should depart."

The question came before the House on March 25, 1826, as to whether an appropriation should be made for the expenses of the mission which President Adams had announced he was proposing to send. The Committee on Ways and Means reported a bill making an appropriation for the commission. The bill was very hotly argued in the House of Representatives, many able Representatives being heard in favor of the appropriation and others being equally urgent in opposition to the appropriation. This is the line of argument, as quoted in Hinds' Precedents, advanced by Daniel Webster, who 16 years after that time became Secretary of State. Webster strongly urged the passage of the appropriation:

"Those who argued that the appropriation should be made called attention to the fact that public ministers were created not by statute but by the law of nations and were recognized by the Constitution as existing. They were appointed by the President and the Senate. Acts of Congress limited their salaries, but did no more. By voting the salaries the House simply empowered another branch of the Government to discharge its own duties. In so voting the House

had no responsibility for the conduct of the negotiations. To refuse the appropriation would be to prevent the action of the Government according to constitutional plan. Of course, the House could break up a mission by withholding salaries, as it could break up a court, but the House should not, and could not, share Executive duty."

Then James Buchanan, later Secretary of State under Polk and still later President of the United States, joined in the discussion on the same side with Daniel Webster. He said in substance this:

"The House is morally bound to vote the salaries of ministers duly created by the President and the Senate. The obligation is as strong as it is to carry into effect a treaty. The power to create the minister was contained in the same clause that provided for treaties. The House might not prejudice the determination of the President and Senate in regard to those officers. Their salaries might not be withheld any more than the House could withhold the salaries of the President and the Supreme Court. If the salaries were withheld the ministers would be legally appointed and their acts would be valid. Of course, however, the House has the physical power to withhold an appropriation."

In 1856 Congress passed a general act regulating in detail the Foreign Service of the United States. I shall not read it in full because it is rather an extended statute. But it begins as follows (11 Stat., 52):

"Ambassadors, envoys extraordinary, and ministers plenipotentiary, ministers resident, commissioners, chargés d'affaires, and secretaries of legation appointed to the countries hereinafter named in Schedule A shall be entitled to compensation for their services, respectively, at the rates per-annum hereinafter specified. That is to say, ambassadors, envoys extraordinary, and ministers plenipotentiary, the full amount specified therefor in Schedule A"—

And so forth.

The question of the powers of the President to make diplomatic and consular appointments was referred to Attorney General Cushing shortly before the enactment of this statute. Cushing rendered this opinion (reported in 4 Moore's Digest, sec. 632):

"The President under the Constitution has power to appoint diplomatic agents of any rank at any place and at anytime, subject to the constitutional limitations in respect to the Senate. The authority to make such appointments is not derived from and can not be limited by any act of Congress except in so far as appropriations of money are required to provide for the expenses of this branch of the public service. During the early administrations of the Government the appropriations made for the expenses of foreign intercourse were to be expended in the discretion of the President, and from this general fund ministers whom the President saw fit to name were paid. Congress in any view can not require that the President shall make removals or reappointments or new appointments of public ministers at a particular time, nor that he shall appoint or maintain ministers of a prescribed rank at particular courts. It was therefore held that where the act of March 1, 1855 (10 Stat. 619), declared that from and after the end of the present fiscal year the President shall appoint envoys, etc., this was not to be construed to mean that the President was required to make any such appointments, but only to determine what should be the salaries of the officers in case they have been or shall be appointed."

In volume 11 of the Federal Statutes Annotated, page 49, there is this comment upon the question now before the committee:

"The President has power by the Constitution to appoint diplomatic agents for the United States at any rank at any place and at any time in his discretion, subject always to the constitutional conditions of relation to the Senate. The power to appoint diplomatic agents and to select for employment any one out of the varieties of the class according to his judgment of the public service is a constitutional function of the President not derived from nor limited by Congress but requiring only the ultimate concurrence of the Senate."

A citation that statement refers to the opinion of the Attorney General from which I have already read. There is also cited the opinion of the Attorney General in 1855 to the effect that—

"Consuls are officers created by the Constitution and the laws of nations, not by acts of Congress, and it belongs exclusively to the President, by and with the advice and consent of the Senate, to appoint consular officers to such places as he and they deem to be meet."

So much for the principal authorities I find upon the constitutional and parliamentary question before the committee.

It appears that so far as the appointment of ministers is concerned the power of the President has always been recognized by Congress over those questions, and appropriations have always followed for the payment of the salaries of the men whom the President has sent forth as ministers.

I gathered from the comment of the Chair yesterday that possibly he was somewhat troubled by the fact that Congress had legislated upon this general question first in 1893 and again in 1909. The substance of the statute of 1893 was that whenever the President should find that a foreign country was sending a diplomatic representative to the United States the President might send to the foreign country from the United States a diplomatic representative of the same rank. My contention is, Mr. Chairman, that the statute had no effect whatever to limit the power of the President to send an ambassador or minister as he chose to any country, irrespective of the provisions of the act of Congress. The real effect of the act of Congress was twofold.

In the first place, it indicated the terms upon which the Senate and House of Representatives would be prepared to make a salary appropriation in case the appointment was made by the President. And, second, so far as the Senate was concerned, it indicated a willingness on the part of the Senate to confirm a proper appointee to a particular country which the President might choose to recognize by making the appointment. So far as the statute of 1909 was concerned, the effect was very similar. The statute of 1909 forbade, as far as Congress could forbid, the sending forth of an ambassador unless the specific authority of Congress had been given in each case. There again the President, in my opinion, could have sent forth a new ambassador the next day to a country, even though we had never before sent an ambassador to that country, and even though that country was not represented in Washington by an ambassador.

But the Congress by the statute of 1909 was suggesting that it was unlikely to appropriate a salary in such a case, and the Senate was suggesting that it was unlikely that such an appointment would be confirmed. In other words, the power of the President can not be curtailed, because that power flows directly from the Constitution. But Congress also has safeguards upon the exercise of the power. In effect, it can usually make the exercise of the power practically null and void, either by withholding the confirmation or by withholding the salary. And, I repeat, when Congress passed those two acts it was indicating its policy so far as the policy was one upon which legislation could take hold.

In my opinion, therefore, the point of order in so far as it relates to the minister to the Serbs, Croats, and Slovenes, and in so far as it relates to the minister to Finland, is clearly not valid.

It should not be lost sight of that one way of recognizing a foreign power is by the act of sending a minister or ambassador. As a matter of practice and custom in our international relationship, that has been our usual way of recognizing a country for the first time, namely, by the act of sending forth a minister. So, it seems to me, that when the Chair is inclined to feel, as I suspect he is inclined to feel, that recognition is solely an Executive function with which Congress has no direct contact at all, the corollary follows that the usual manner of according recognition, namely, by sending forth an ambassador or minister, must also be within the constitutional power of the President, and therefore not subject to a point of order on an appropriation bill.

In a colloquy with Mr. James R. Mann, of Illinois, Mr. Rogers explained in detail the practice and the statutes governing the appointment of diplomatic representatives to foreign Governments and the fixing of their salaries.

The Chairman held:

The point of order made by the gentleman from Texas is that there is no legislation authorizing an appropriation for the payment of the salary of an envoy extraordinary and minister plenipotentiary to Finland, to Turkey, and to the Kingdom of the Serbs, Croats, and Slovenes.

It is admitted, I think, by all that there is no statutory authority which authorizes these appropriations. It is contended, however, that there is constitutional authority, because the Constitution provides that the President may appoint envoys extraordinary and ministers

plenipotentiary, and that having exercised that power of appointment the superior law of the Constitution authorizes the House, without statutory authority, to make the appropriation.

The authority of the President with regard to diplomatic matters is exclusively committed to him and is not shared in any particular, except by the provision of the Constitution which says that with regard to treaties two-thirds of the Senate must concur and that with regard to diplomatic appointments they must be confirmed by the Senate.

Regarding the power of the President in relation to diplomatic matters the Chair desires to cite McClain's Constitutional Law in the United States, page 213, which states somewhat strongly, but perhaps with entire justification, the international law as well as the constitutional law of the country with regard to this exercise of power by the President:

“Toward foreign powers”—

He says—

“the United States collectively constitute one single power, represented by the Federal Government, and the relations between that Government and foreign governments are through the executive department and in the name of the President as Chief Executive.

“Congress can not deal with foreign powers, and the courts can only take cognizance of their existence and rights by recognizing, interpreting, and applying the action of the executive department, evidenced by treaties or otherwise. The action of the executive department in determining in a controversy with a foreign government whether certain territory is territory of the United States can not be interfered with by the courts. (See *Jones v. United States.*) So also it is for the executive department to determine whether this Government will recognize as an independent sovereign power a foreign state claiming such recognition. In short, the entire diplomatic relations between this and other countries are under the control of the Executive; and the action of the Executive in such matters is binding upon Congress, the courts, and all Federal and State officers.”

The gentleman from Illinois, Mr. Mason, says that Congress has passed resolutions which in effect recognized foreign governments. The Supreme Court of the United States has said that the President has the sole power of recognition. However, there is no real difference between them, because, after all, if the President shall appoint an ambassador or a minister, and Congress shall refuse to appropriate for him, there can be no exercise of the power of the President. He has done his duty. Congress perhaps have done theirs, but they negative each other in practical effect. And so it is with regard to recognition by Congress. Congress may pass an act recognizing any country struggling for independence; and I will say that Congress might even go further and authorize the appointment of an ambassador or a minister and make an appropriation for that purpose. All these things might be done, but if the President did not appoint the ambassador or the minister diplomatic relations between those countries could not exist.

Of course, in these cases it is possible for the President, under the constitutional authority, to appoint an ambassador, or a minister, if he chooses to do so. He should know, however, that Congress will sanction his action in the appointment by appropriating for its support before it can be effective.

Congress in 1809 passed an act to the effect that the President should not appoint ambassadors except upon the authority of Congress. That had no effect upon the constitutional power of the President. He could make such appointments nevertheless, but it did have the practical effect of serving notice upon the President that thereafter he must not make ambassadorial appointments except upon the authority of the Congress of the United States. So that the practical effect of that legislation was what I have stated, although it might be considered that that act was absolutely unconstitutional, because it encroached upon the prerogatives of the President of the United States. Now, in this case, coming down to the practical application of these principles, let us see how it leaves us with regard to Turkey. There is statutory authority for the appointment of an ambassador to Turkey. There is, however, no statutory authority for the appointment of a minister to Turkey. In the past there have been appointments of ambassadors to Turkey who have served, but at this time there is not only no ambassador appointed, there has been no minister appointed, and no diplomatic relations whatever exist between the two countries. It can not be said that the appointment of a minister would rest upon the statutory

authority to appoint an ambassador. Neither can it be said that it rests upon the President's act in appointing a minister, because he has not appointed a minister; so that it seems to the Chair that with regard to this particular item the point of order made by the gentleman from Texas is good, and the Chair sustains it.

With regard to the other propositions, however, the Chair is of the opinion that there is ample constitutional authority for the power which has been exercised by the President both in the case of Finland and in the case of the appointment to the Kingdom of the Serbs, Croats, and Slovenes. In these cases the President has made the appointments, and both of these appointments have been confirmed by the Senate. So it would seem to the Chair that there is ample authority in law for the Congress, if it desires to do so, to appropriate for the payment of their salaries.

Therefore the point of order raised by the gentleman from Texas with regard to these two items in the bill as to those two countries is overruled.

1249. Mere authority conferred by law to issue passports was held not to authorize creation of a bureau for that purpose.

On January 11, 1921,¹ the legislative, executive, and judicial appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Frederick C. Hicks, of New York, proposed this amendment:

New York, N. Y., passport bureau: Passport agent, \$2,000; clerks—2 of class 4, 3 of class 3, 3 of class 2, 2 of class 1; messenger; messenger boy, \$480; stationery, furniture, fixtures, and other miscellaneous expenses, \$2,500; in all, \$20,820.

San Francisco, Calif., passport bureau: For salaries and expenses of maintenance of the passport bureau, \$7,500.

Mr. William R. Wood, of Indiana, having raised the question of authorization, Mr. Hicks argued:

I would like to call the attention of the Chair to this fact that in the statute there is this provision about the issuing of passports:

“The Secretary of State may grant and issue passports and cause passports to be granted, issued, and verified in foreign countries”—

And so forth. On that broad authorization, by which the Secretary of State is authorized to issue passports, I claim that he could issue them in Washington, in New York, or in San Francisco; that in order to issue passports he must have clerical help and he must have an office; and as that broad authorization gives him the right to issue passports that right extends not only to the city of Washington, but it can be carried to the city of New York or the city of San Francisco, and therefore it is authorized by law.

The Chairman,² after further discussion of the point of order, held:

The Chair thinks it would be a violent presumption to hold that mere authority to issue passports would authorize the creation of a bureau, with employees and office expenses, and therefore the Chair sustains the point of order.

1250. An appropriation for loss on bills of exchange to and from embassies and legations was held to be in order on an appropriation bill.

A provision to be in force “hereafter” was held to involve legislation and ruled out of order on an appropriation bill.

On January 29, 1921,³ the diplomatic and consular appropriation bill was under consideration in the Committee of the Whole House on the state of the

¹Third session Sixty-sixth Congress, Record, p. 1278.

²Nicholas Longworth, of Ohio, Chairman.

³Third session Sixty-sixth Congress, Record, p. 2262.

Union, when Mr. Thomas L. Blanton, of Texas, reserved a point of order on this paragraph:

CONTINGENT EXPENSES, FOREIGN MISSIONS.

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, repairs, postage, telegrams, furniture, typewriters, including exchange of same, messenger service, compensation of kavasses, guards, drago-mans, and porters, including compensation of interpreters, and the compensation of dispatch agents at London, New York, San Francisco, and New Orleans, 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, including such loss on bills of exchange to officers of the United States Court for China, and payment in advance of subscriptions for newspapers (foreign and domestic) under this appropriation is hereby authorized, \$800,000: *Provided*, That hereafter no part of any sum or sums appropriated for contingent expenses, foreign missions, shall be expended for salaries or wages of persons not American citizens performing clerical services, whether officially designated as clerks or not, in any foreign mission.

The Chairman ¹ held:

Let me say that it seems to the Chair that the explanation made indicates quite clearly that this is a necessary incident of the legations, no matter in what form it may be, and I think the point of order as against that language is not well taken as it was stated. Of course, the word "hereafter" still carries an objection.

1251. An appropriation for transportation and subsistence of diplomatic and consular officers en route to and from their posts was held to be in order on an appropriation bill.

On January 29, 1921,² the diplomatic and consular appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The following paragraph was read:

To pay the itemized and verified statements of the actual and necessary expenses of transportation and subsistence, under such regulations as the Secretary of State may prescribe, of diplomatic and consular officers and clerks in embassies, legations, and consulates and their families and effects in going to and returning from their posts, or when traveling under orders of the Secretary of State, but not including any expense incurred in connection with leaves of absence, \$300,000.

Mr. Thomas L. Blanton, of Texas, raised a question of order as follows:

Mr. Chairman, I make a point of order against the paragraph because of the inclusion of the following matter, which constitutes new legislation on an appropriation bill without any authority of law therefor, namely, the word "subsistence"; the words "and their families and effects"; and to that part of the amount of the appropriation to cover these unauthorized items where the committee has increased the normal appropriation from \$50,000 to \$300,000.

In debate, Mr. John Jacob Rogers, of Massachusetts, argued:

Mr. Chairman, this item in identically its present form has been carried in prior appropriation bills, but I make no point of that. The amount is not a Statutory amount, and, as a matter of fact, the size of the item for the last fiscal year was \$270,000. The recommendation asks for an increase to \$300,000, because a change of administration always involves a very considerable increase in the amount of travel.

¹ Horace M. Towner, of Iowa. Chairman.

² Third session Sixty-sixth Congress, Record, p. 2267.

Dealing with the actual question presented by the point of order, it is contemplated in the law that our officials in the Diplomatic and Consular Service shall be moved from post to post. As the chairman very well knows, our appointments to the Diplomatic and Consular Service are not to a specific post, but as members of a specific class. The Secretary of State has authority, and frequently exercises that authority, to move our diplomatic and consular officers from station to station all over the world. But any increase in class or salary involves a new confirmation by the Senate. An earlier item in this very bill makes provision for the payment of salaries of diplomatic and consular officers while in transit to and from their posts.

In other words, the payment of the travel expense account of members of the Diplomatic and Consular Service seems to me to be one of the necessary incidents of the proper maintenance of the service. I therefore contend the item is in order under prior decisions of the Chair on this bill and on other recent appropriation bills.

The Chairman¹ held that in the absence of any provision of law limiting such payments by the Government, the paragraph was authorized, and overruled the point of order.

1252. An appropriation for the transportation of officers of the United States Court for China was held to be authorized by the organic act creating the court.

On April 7, 1922,² the Departments of State and Justice appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. John Jacob Rogers, of Massachusetts, proposed this amendment:

The appropriation of \$175,000 for the transportation of diplomatic and consular officers carried elsewhere in this act shall be available for the transportation of the officers of the United States Court for China to the same extent as for the transportation of such diplomatic and consular officers.

Mr. Thomas L. Blanton, of Texas, having made the point of order that the appropriation was not authorized by law, the Chairman³ ruled:

The Chair thinks the statute contemplates necessary transportation incidental to the appointment of this court, and overrules the point of order.

1253. The reappropriation of an unexpended balance for an object authorized by law may be made on an appropriation bill.

Appropriations for essential and appropriate equipment for transacting official business of authorized governmental agencies are in order on appropriation bills although unauthorized by specific statute.

Hire of a steam launch was held to be a necessary expense incident to maintenance of an embassy at Constantinople, and an appropriation therefor was admitted on an appropriation bill.

On January 29, 1921,⁴ the diplomatic and consular appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was read:

The unexpended balance of the appropriation of \$1,800 for hiring of steam launch for use of embassy at Constantinople made in the diplomatic and consular appropriation act for the fiscal

¹James R. Mann, of Illinois, Chairman.

²Second session Sixty-seventh Congress, Record, p. 5196.

³Cassius C. Dowell, of Iowa, Chairman.

⁴Third session Sixty-sixth Congress, Record, p. 2267.

year 1921 is reappropriated and made available for the same purpose for the official use of the legation at Constantinople for the fiscal year 1922.

Mr. Thomas L. Blanton, of Texas, made the point of order that there was no law authorizing the expenditure.

Mr. John Jacob Rogers, of Massachusetts, said in debate:

Mr. Chairman, I freely admit that there is no substantive statute upon which this item is based. It has been carried for many years—since 1892, I believe—but I make no point of that. My contention on this item, as on the preceding item and on the contingent-expense item, is that this is a natural and proper instrumentality for carrying on the service of the United States at a particular post. In the case of Constantinople, the summer quarters of the embassy are some distance out in the country.

The climate of that city is such that all the diplomatic representatives of other countries as well as of our own country simply have to get away from the heat and transact their business in the summer at what is called the summer capital of Therapia. The journey to Therapia is necessarily by water. This item would have been in order if carried in the contingent-fund paragraph, and it bears a very close resemblance and analogy to the items which are specifically set forth and held permissible under the contingent fund. I submit to the Chair that there should be no less authority for carrying the item, because we carry it separately, so that the committee may see at once the precise purpose which is contemplated in connection with the use of this \$1,800.

The Chairman¹ said:

The Chair thinks that is an incident connected with the embassy quite within the power of Congress to appropriate for without specific authorization, the same as for the purchase of pens and ink, or anything else necessary for the conduct of the embassy. The Chair overrules the point of order.

1254. Provision by law for appointment of an international commission with appropriation for its maintenance for the fiscal year was held not to authorize appropriations for subsequent years.

The title of an act is not law and is not considered in construing its provisions.

On January 29, 1921,² the diplomatic and consular appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the question was raised by Mr. Thomas L. Blanton, of Texas, as to authority of law for the following paragraph:

To defray the actual and necessary expenses on the part of the United States section of the Inter-American High Commission arising in such work and investigations as may be approved by the Secretary of the Treasury, \$25,000, to be expended under the direction of the Secretary of State.

In support of the paragraph, Mr. John Jacob Rogers, of Massachusetts, submitted:

Mr. Chairman, the authority of law upon which this item is based is an act approved February 7, 1916, which provides for the appointment of delegates, to be known as the United States section of the International High Commission. That same law provides that the delegates shall cooperate with the other sections of the commission in taking action upon the recommendations of the first Pan American financial conference. It is further provided that the President shall fill any vacancies which may occur in the said United States section of the International Commission. This

¹James R. Mann, of Illinois, Chairman.

²Third session Sixty-sixth Congress, Record, p. 2278.

is a substantive law and is not merely part of an appropriation act. It seems to me to be ample authority for the continuance of this commission.

The Chairman¹ decided that the law cited provided an appropriation for the year 1916 only, and in the absence of other authorization the proposed expenditure was not in order. He therefore sustained the point of order.

1255. While estimates by Secretary of State of appropriations for acquisition of sites and buildings for diplomatic and consular establishments are provided for by law, the submission of such estimate is not a condition precedent to appropriation by Congress, and an appropriation for which no estimate had been made was held to be in order on an appropriation bill.

On January 29, 1921,² the diplomatic and consular appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Nicholas Longworth, of Ohio, offered this amendment:

For the acquisition of land and buildings in Paris, France, to be used as the American Embassy, under the provisions of the act of February 17, 1911, \$150,000, or so much thereof as may be necessary.

Mr. James R. Mann, of Illinois, raised a point of order on the amendment.

The Chairman¹ held:

In passing on the point of order, perhaps the Chair should be somewhat specific because the proposition is important, and there is some conflict in the decisions that have been made with regard to it. The contention of the gentlemen from Ohio in regard to the interpretation of the statute, it seems to the Chair, is well founded. This first provision of the act is absolutely without limitation. It states:

"That the Secretary of State be, and he is hereby, authorized to acquire in foreign countries such sites and buildings as may be appropriated for by Congress for the use of the diplomatic and consular establishments of the United States, and to alter, repair, and furnish the said buildings; suitable buildings for this purpose to be either purchased or erected, as to the Secretary of State may seem best, and all buildings so acquired for the Diplomatic Service shall be used both as the residences of diplomatic officials and for the offices of the diplomatic establishment."

That is the positive, affirmative, and material part of the statute. Now, unless that is limited in some way or other by the provisos that have been added, certainly there is ample authority for the committee considering the amendment.

The first proviso is:

"*Provided, however,* That not more than the sum of \$500,000 shall be expended in any fiscal year under the authorization herein made."

That limitation, it would seem, as a matter of fact has not been exceeded, and there are, so far as has been called to the attention of the Chair, no other authorizations for expenditures where the total would exceed the limit of \$500,000.

Now we come to the next proviso, which is the difficult proposition involved in this case:

"*Provided further,* That in submitting estimates of appropriation to the Secretary of the Treasury for transmission to the House of Representatives the Secretary of State shall set forth a limit of cost for the acquisition of sites and buildings and for the construction, alteration, repair, and furnishing of buildings at each place in which the expenditure is proposed (which limit of cost shall not exceed the sum of \$150,000 at any one place), and which limit shall not thereafter be exceeded in any case, except by new and express authorization of Congress."

Unless this proviso makes it obligatory before Congress can make the appropriation that the Secretary of State shall submit to the Secretary of the Treasury an estimate, then the limitation

¹Horace M. Towner, of Iowa, Chairman.

²Third session Sixty-sixth Congress, Record, p. 2279.

does not apply in this case. The language used, as the committee will notice, is "that in submitting estimates of appropriation." That is, if estimates are made, they must be made in the manner prescribed.

Of course, the usual method in which these matters are called to the attention of the committee having the matter in charge for consideration is upon estimates furnished by the department. The provision in this act is, in effect, that if an estimate is made by the Secretary of State and transmitted to the Secretary of the Treasury, it shall be done in the manner prescribed. But there is no requirement that such estimate must be made. It is admitted in argument that no such estimate was submitted, and the question is as to whether it could be inferred that such an estimate would be required. The Chair would not be justified in any such inference; and as the language does not specifically state that it is a prerequisite, and does not specifically state that the appropriation must not be made until such estimate has been made, the Chair thinks it is perfectly within the right of the committee to consider the amendment, and the point of order is overruled.

1256. Appropriations for the annual quota of the United States in support of the International Trade-Mark Bureau and the International Hydrographic Bureau were held not to be authorized by existing law.

On April 7, 1922,¹ the Departments of State and Justice appropriation bill was under consideration in the Committee of the Whole House on the state of the Union when the following paragraph was read:

For the annual share of the United States for the expenses of the maintenance of the International Trade-Mark Registration Bureau at Habana, including salaries of the director and counselor, assistant director and counselor, clerks, translators, secretary to the director, stenographers and typewriters, messenger, watchmen, and laborers, rent of quarters, stationery and supplies, including the purchase of books, postage, traveling expenses, and the cost of printing the bulletin, \$9,600.

A point of order that there was no authorization of law, made by Mr. Thomas L. Blanton, of Texas, was sustained by the Chairman.²

A similar provision for the maintenance of the International Hydrographic Bureau was also ruled out by the Chairman on a point of order presented by Mr. Blanton.

1257. An appropriation for commercial attachés to be appointed by the Secretary of Commerce was held by the House to be authorized by the organic law creating the Department of Commerce.³

On March 2, 1920,⁴ the legislative, executive, and judicial appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Thomas U. Sisson, of Mississippi, offered the following amendment:

Commercial attachés: For commercial attachés, to be appointed by the Secretary of Commerce, after examination to be held under his direction to determine their competency, and to be accredited through the State Department, whose duties shall be to investigate and report upon such conditions in the manufacturing industries and trade of foreign countries as may be of interest to the United States; and for one clerk to each of said commercial attachés to be paid a salary not to exceed \$1,500 each and for necessary traveling and subsistence expenses of officers, rent outside of the District of Columbia, purchase of reports, books of reference, and periodicals, travel to and from the United States, exchange on official checks, and all other necessary expenses

¹ Second session Sixty-seventh Congress, Record, p. 5196.

² Cassius C. Dowell, of Iowa, Chairman.

³ Now specifically authorized by the act of March 3, 1927, 44 Stat. L., p. 1394.

⁴ Second session Sixty-sixth Congress, Record, p. 3771.

not including in the foregoing; such commercial attachés shall serve directly under the Secretary of Commerce and shall report directly to him, \$165,000.

Mr. William R. Wood, of Indiana, having lodged a point of order against the amendment, Mr. Sisson said:

Mr. Chairman, it is our contention that under the act creating the Department of Commerce, these powers were granted the Commerce Department, as such promoting the development of foreign and domestic commerce. Section 670 of that act, under the head of "Powers and duties of the department," reads as follows:

"SEC. 3. That it shall be the province and duty of said department to foster, promote, and develop the foreign and domestic commerce, the mining, manufacturing, shipping, and fishery industries, the labor interests, and the transportation facilities of the United States; and to this end it shall be vested with jurisdiction and control of the departments, bureaus, offices, and branches of the public service hereinafter specified, and with such other powers and duties as may be prescribed by law."

Now, when this bureau was created the Department of Commerce had in it the Department of Labor. The act which separated the Department of Labor from the Department of Commerce left the Department of Commerce with all powers over commerce enumerated in this act. Therefore, if in the judgment of Congress it is necessary to promote foreign commerce and foreign trade by commercial attachés, Congress has that right under this legislation.

In reply, Mr. Wood cited a decision on a similar point of order arising on April 14, 1914.

After further debate, the Chairman¹ ruled:

The Chair has been impressed with the force of the arguments that this proposed provision offered as an amendment is in order on account of the very broad jurisdiction and discretion granted in the act creating the Department of Commerce. The Chair, if this came to him in the first instance, would hesitate considerably about holding such an amendment to be out of order. However, the Chair is confronted by the precedent referred to by the gentleman from Indiana which is absolutely in point. At that time it was offered to insert in this bill a provision precisely similar to that just now offered by the gentleman from Mississippi, excepting only that the amount appropriated was \$100,000 instead of \$165,000. It was sought to justify it on the ground of the very broad field of the organic law, just as it is here. But the gentleman from Illinois, Mr. Henry T. Rainey, a very excellent parliamentarian, made the point of order, and during the course of his argument laid stress upon the overlapping of this jurisdiction between the State Department and the Department of Commerce. The gentleman from Illinois said:

"The act creating the Department of Commerce does not authorize the creation of new consular agents in a new manner, but it simply authorizes the Secretary of Commerce to collect commercial data at home and abroad in various ways and through our commercial agents abroad. But our commercial agents and attachés abroad are required by the act to report directly to the Secretary of State, and through the Secretary of State the reports may be transmitted to the Secretary of Commerce. This is clearly new legislation and it is contrary to the existing law. I am compelled to make the point of order."

The Chair promptly sustained the point of order.

The situation to-day is precisely what it was then, and while the Chair admits that he would be in some doubt if this matter came before him as a new proposition, yet in view of the only precedent directly controlling, namely, that just cited, the Chair is compelled to sustain the point of order.

Mr. Sisson thereupon appealed from the decision of the Chair. The Chairman having called to the chair Mr. James R. Mann, of Illinois, the question was taken

¹Nicholas Longworth, of Ohio, Chairman.

by tellers and was decided in the negative—yeas 63, nays 105. So the decision of the Chair was not sustained and the amendment was held to be authorized by law.

1258. An appropriation for purchase of vessels generally for the Lighthouse Service was held not to be authorized by statutory provision for purchase of a specified class of vessels for the Lighthouse Service.

On January 6, 1921,¹ the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

Lighthouse vessels, general service: Constructing or purchasing and equipping lighthouse tenders and light vessels for the Lighthouse Service, \$1,000,000.

Mr. James R. Mann, of Illinois, made the point of order that there was no authority for the provision:

The Chairman² said:

The Chair will state that on June 5, 1920, the House passed an act to authorize aids to navigation and other work of the Lighthouse Service. It carried an authorization “for constructing or purchasing and equipping lighthouse tenders and light vessels for the Lighthouse Service, \$5,000,000.” Then, there was a proviso that the Secretary of War and the Secretary of the Navy and the Shipping Board shall report to the Secretary of Commerce such vessels as they might have which they were willing to dispose of, and which, with reasonable alteration, could be restored and utilized for the purpose of the Lighthouse Service in the Department of Commerce, and the sum authorized shall be available for such repairs and reduced by the sum saved by the use of such vessels. The language of the paragraph to which the gentleman from Illinois makes the point of order is a new authorization, apparently. It is not confined to the authorization contained in the provisions of the previous act, nor does it refer to it in any way. In the view of the Chair it permits the expenditure of this \$1,000,000 for the construction, equipment, or purchase of lighthouse tenders outside of the authorization contained in the act of June 5, 1920, and the Chair sustains the point of order.

1259. Authorization of an appropriation for an investigation is not construed to include authorization of an appropriation for demonstrating results of such investigation.

An appropriation for demonstrating uses of fish as food was held not to be authorized by the organic act creating the Bureau of Fisheries.

On January 6, 1921,³ the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. John E. Raker, of California, offered an amendment as a new paragraph as follows:

For the conduct of demonstrations and imparting of instruction in correct, cheap, and wholesome methods of preparing and cooking fish, including the payment of salaries and traveling expenses and the purchase of materials and supplies, \$15,000.

In rebutting a point of order made by Mr. James R. Mann, of Illinois, that the proposed appropriation was unauthorized, Mr. Raker contended that it was sanctioned by the organic act creating the Bureau of Fisheries and authorizing investigations.

After debate, the Chairman² overruled Mr. Raker’s contention and sustained the point of order.

¹ Third session Sixty-sixth Congress, Record, p. 1060.

² Joseph Walsh, of Massachusetts, Chairman.

³ Third session Sixty-sixth Congress, Record, p. 1064.

1260. An appropriation for investigations in cooperation with industries of problems in industrial development was held to be authorized by the organic law creating the Bureau of Standards.

On May 24, 1921,¹ the second deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The following paragraph was read:

For technical investigations in cooperation with the industries upon fundamental problems involved in industrial development following the war, with a view to assisting in the permanent establishment of the new American industries developed during the war, including personal services in the District of Columbia and elsewhere, \$100,000.

Mr. Otis Wingo, of Arkansas, raised a question of order as to authority of law for the appropriation.

The Chairman² held:

The decisions of the Chair enlarging the activities of the Department of Agriculture and all departments of the Government, including the Departments of Commerce and Labor, have under the general authority, which is very sweeping in the creation of this department, held in order items for activities of this kind in appropriation bills. This item comes within the general scope of the activities of the Bureau of Standards, which are as follows:

“The functions of the bureau shall consist in the custody of the standards; the comparison of the standards used in scientific investigations, engineering, manufacturing, commerce, and educational institutions with the standards adopted or recognized by the Governments; the construction, when necessary, of standards, their multiples and subdivisions; the testing and calibration of standard measuring apparatus; the solution of problems which arise in connection with standards; the determination of physical constants and the properties and materials, when such data are of great importance to scientific or manufacturing interests and are not to be obtained of sufficient accuracy elsewhere. The bureau shall exercise its functions for the Government of the United States, for any State or municipal government within the United States, or for any scientific society, educational institution, firm, corporation, or individual within the United States engaged in manufacturing or other pursuits requiring the use of standards or standard measuring instruments.”

It provides for doing that for which the Bureau of Standards was created and simply appropriates for the activity, and the Chair overrules the point of order.

1261. An appropriation for promotion of commerce in the Far East was held to be authorized by organic law establishing the Department of Commerce.

On January 23, 1925,³ the Departments of State, Justice, Commerce, and Labor appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The following paragraph was read:

Promoting commerce in the Far East: To further promote and develop the commerce of the United States with the Far East, including personal services in the District of Columbia and elsewhere, purchase of furniture and equipment, stationery and supplies, typewriting, adding and computing machines, accessories and repairs, books of reference and periodicals, reports, documents, plans, specifications, manuscripts, maps, newspapers (both foreign and domestic) not exceeding \$400, and all other publications, rent outside of the District of Columbia, traveling and subsistence expenses of officers and employees, and all other incidental expenses not included in the foregoing, to be expended under the direction of the Secretary of Commerce, \$243,734.

¹ First session Sixty-seventh Congress, Record, p. 1715.

² Philip P. Campbell, of Kansas, Chairman.

³ Second session Sixty-eighth Congress, Record, p. 2396.

Mr. Thomas L. Blanton, of Texas, made the point of order that there was no law authorizing the expenditure.

The Chairman¹ ruled:

It seems from a reading of the organic law that it is provided that the bureau can carry on these general activities at various places. The Chair finds a direct ruling by Chairman Campbell when the gentleman from Texas made the same point of order, and the Chair at that time overruled his point of order. The point of order is overruled at the present time.

1262. Where the organic act creating a department provides for certain definite activities it is in order on a general appropriation bill to appropriate for such activities.

An appropriation for investigation of infant mortality and dangerous occupations was held to be authorized by law.

On April 14, 1914,² the legislative, executive, and judicial appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. James W. Good, of Iowa, offered as a new paragraph the following:

To carry into effect the provisions of the act approved April 9, 1912, providing for the investigation of questions of infant mortality and dangerous occupations, \$50,000.

Mr. Joseph T. Johnson, of South Carolina, having raised a question of order, Mr. Good said:

Mr. Chairman, clearly the amendment is not subject to a point of order. I have followed the words of the statute creating the Children's Bureau. I have followed the provision carried in this bill for a number of years with regard to the Bureau of Standards. Every item that we have carried in the appropriations for the work done by the Bureau of Standards would be subject to a point of order if the provisions of this amendment are subject to a point of order. The law creating the Children's Bureau provides that it shall especially investigate—and I quote the words of that statute—

“And shall especially investigate the questions of infant mortality”—

And further on—

“Dangerous occupations.”

Those are the exact words of the statute, and no amendment could be offered, and no provision could be brought before the House by the committee that would be in order if this provision is not in order. It is to carry into effect those things that were specially provided for, the things that were particularly in the mind of Congress when the bureau was created, namely, to investigate the question of infant mortality and of dangerous occupations.

After further debate, the Chairman³ overruled the point of order.

1263. On December 16, 1916,⁴ the legislative, executive, and judicial appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. Mr. James W. Good, of Iowa, proposed this amendment as a new paragraph:

To investigate and report upon matters pertaining to the welfare of children and child life, and especially to investigate the question of infant mortality, \$72,120.

¹ Bertrand H. Snell, of New York, Chairman.

² Second session Sixty-third Congress, Record, p. 6713.

³ John N. Garner, of Texas, Chairman.

⁴ Second session Sixty-fourth Congress, Record, p. 449.

Mr. Joseph W. Byrns, of Tennessee, made the point of order that the amendment was not authorized by law.

The Chairman¹ ruled:

The Chair thinks it is not the province of the Chair to pass upon the effect of the appropriation. The law of 1912 was passed on by Chairman Garner in 1914, and the Chair thinks the point of order is not well taken, and overrules the point of order.

1264. The general statement of purpose for which a department is established, as set forth in the organic act creating it, is not to be construed as authorization for appropriations not specifically provided for in succeeding sections of the act providing for bureaus designated to carry out the declaration of purpose.

An appropriation to enable the Secretary of Labor to advance opportunities for profitable employment of wage earners was held not to be in order on an appropriation bill.

On February 28, 1919,² the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. Mr. James A. Gallivan, of Massachusetts, offered the following amendment as a new section:

To enable the Secretary of Labor to advance the opportunities for profitable employment of the wage earners of the United States there is hereby appropriated out of available money in the Treasury, \$10,033,808.10.

Mr. Thomas L. Blanton, of Texas, and Mr. Norman J. Gould, of New York, raised the point of order on the amendment.

Mr. Gallivan submitted the statement of purpose of the organic act creating the Department of Labor as sufficient authorization for the appropriation.

Mr. James F. Byrnes, of South Carolina, argued that the statement was merely an introductory declaration of purpose and the authorizations of the act were contained in subsequent sections providing for the various bureaus necessary to carry out this declaration and as these sections made no mention of the purpose for which the amendment sought to appropriate, the amendment was unauthorized.

After extended debate, the Chairman³ ruled:

The gentleman from Massachusetts offers an amendment to insert a new section, as follows:

"To enable the Secretary of Labor to advance the opportunities for profitable employment of the wage earners of the United States there is hereby appropriated out of available moneys in the Treasury \$10,023,000"—

And so forth.

To that amendment the gentleman from Texas and the gentleman from New York make the point of order. Arguing the point of order, gentlemen who have discussed it cited certain language in the organic act which created the Department of Labor. That language is:

"The duties of the Department of Labor shall be to foster, promote, and develop the welfare of the wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment."

¹ Pat Harrison, of Mississippi, Chairman.

² Third session Sixty-fifth Congress, Record, p. 4664.

³ John N. Garner, of Texas, Chairman.

That language is relied upon, as the Chair understands, to make this amendment in order. The House has always been extremely careful in conferring the legislative power upon committees; at least it has been so for 50 years. It has withheld from the Committee on Appropriations any power of legislation, and, naturally, having withheld that power, it has provided that no amendment to an appropriation bill if it carried legislation should be in order if offered on the floor of the House. This is very peculiar language as contained in this organic act. If the Committee on Appropriations could have rightfully brought in a proposition such as is contained in the amendment of the gentleman from Massachusetts, and, of course, if it could not, an amendment from the floor of the House would be subject to the point of order. The Chair is unable to see where the limit on the Committee on Appropriations would end. If this—like the whereas of a resolution—should be held to authorize appropriations by the Committee on Appropriations, there is absolutely no limitation that you could put upon your Committee on Appropriations.

And, of course, if the Appropriations Committee could bring in a proposition, any amendment from the floor would be in order. The Chair thinks this amendment that is offered by the gentleman from Massachusetts makes new legislation, not authorized by any existing law, and that therefore it is obnoxious to the rule of the House. Therefore, the Chair sustains the point of order.

Mr. Gallivan having appealed, the decision of the Chair was sustained, yeas 114, noes 58.

Thereupon Mr. Meyer London, of New York, offered the following amendment:
For the purpose of continuing the present system of unemployment exchanges, \$10,000,000.

Mr. Blanton having again raised the point of order, the Chairman¹ held:

The amendment offered by the gentleman from New York reads as follows:

“For the purpose of continuing the present system of unemployment exchanges, \$10,000,000.”

All that has been cited is the very language that was cited in the argument upon the amendment offered by the gentleman from Massachusetts. No statute has been directed to the attention of the Chair other than the general language upon which the Chair undertook to pass. The Chair thinks it stands exactly as the other amendment stood, and sustains the point of order.

Mr. Perl D. Decker, of Missouri, then proposed this amendment:

For expenses of Department of Labor, made necessary by the act of March 4, 1913, entitled “An act to create a Department of Labor,” \$10,000,000.

Mr. Blanton renewed the point of order. The Chairman having sustained the point of order for the reasons previously given, Mr. Decker appealed from the decision of the Chair. The question being taken, was decided in the affirmative, yeas 106, nays 33, and the decision of the Chair stood as the judgment of the committee.

1265. Statements of purpose embodied in the organic act creating the Department of Labor were held not to authorize appropriations for establishment of an employment service.

On January 6, 1921,² the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was reached:

EMPLOYMENT SERVICE.

To enable the Secretary of Labor to foster, promote, to develop the welfare of the wage earners of the United States, to improve their working conditions, to advance their opportuni-

¹ Finis J. Garrett, of Tennessee, Chairman.

² Third session Sixty-sixth Congress, Record, p. 1078.

ties for profitable employment by maintaining a national system of employment offices and to coordinate the public employment offices throughout the country by furnishing and publishing information as to opportunities for employment and by maintaining a system for clearing labor between the several States, including personal services in the District of Columbia and elsewhere, and for their actual necessary traveling expenses while absent from their official station, together with their per diem in lieu of subsistence, when allowed pursuant to section 13 of the sundry civil appropriation act approved August 1, 1914, supplies and equipment, telegraph and telephone service, and printing and binding, \$250,000.

Mr. Thomas L. Blanton, of Texas, made the point of order that there was no authority of law for the expenditure.

The Chairman¹ said:

The Chair appreciates that some points of order can be determined a little quicker than others, especially when the precedents are immediately at hand and the Chair has had his attention directed to the fact that this identical language was in the bill which was under consideration on the 11th day of May, 1920, when a point of order was made. The point of order was sustained on the ground that the language of the paragraph went beyond the authority of the act creating the Department of Labor, and that previously a similar paragraph, somewhat broader in scope, however, was included in a bill under consideration in a previous Congress and was held out of order, and in view of those precedents the Chair sustains the point of order.

1266. An appropriation for "other needed work and improvement" was held to be sanctioned by law authorizing the service for which proposed.

On January 6, 1921,² the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, and the section providing for the immigrant station at Ellis Island had been reached, when Mr. Adolph J. Sabath, of Illinois, offered this amendment:

And for other needed work and improvements; in all, \$250,000.

Mr. Thomas L. Blanton, of Texas, having raised a question of order as to authorization, the Chairman³ decided:

The Chair thinks that the language "and for other needed work and improvement" would mean that within previous authorizations or within the provisions of existing law, and that it would not permit anything that is unauthorized by law. The Chair, therefore, overrules the point of order.

1267. The enactment establishing an institution was held not to authorize construction of a new building therein.

Law limiting the labor of inmates to duties necessary for the construction and maintenance of an institution was held not to authorize an appropriation for construction of additional buildings for the institution.

On February 26, 1927,³ the Committee of the Whole House on the state of the Union was considering the second deficiency appropriation bill, when the Clerk read:

United States Industrial Reformatory, Chillicothe, Ohio: Not to exceed \$100,000 of the appropriation "United States Industrial Reformatory, Chillicothe, Ohio, 1927," shall remain

¹ Joseph Walsh, of Massachusetts, Chairman.

² Third session Sixty-sixth Congress, Record, p. 1069.

³ Second session Sixty-ninth Congress, Record, p. 4942.

available until June 30, 1928, for the erection of dryers, kilns, and other buildings, purchase and installation of machinery, supplies, and equipment, and all other expenses necessary and incident to the construction of a plant to manufacture brick to be used in constructing such reformatory and other Federal buildings.

Mr. Thomas A. Jenkins, of Ohio, made the point of order that the appropriation was unauthorized.

Mr. Louis C. Cramton, of Michigan, opposed the point of order and submitted as authorizing the appropriation, the act of January 7, 1925, establishing the Chillicothe Reformatory, as follows:

The Attorney General shall employ the labor of such United States prisoners confined in the United States Penitentiary at Atlanta, Ga., * * * who are eligible for confinement in such United States industrial reformatory under the provisions of this act and who can be used under proper guard in the work necessary to construct the buildings.

Also section 6 of the act:

That the inmates of the United States Industrial Reformatory shall be employed only in the production and manufacture of supplies for the United States Government for consumption in the United States institutions and in duties necessary for the construction and maintenance of the institution.

The Chairman ¹ ruled:

Here is a proposition, as stated in this paragraph, to build a complete plant, including driers, kilns, and other buildings, machinery, supplies, and equipment, and all other expenses incident to the construction of a plant to manufacture brick to be used in constructing such reformatory and other Federal buildings. Under the law it can not be maintained that there is any express authority given for the construction of the building.

There is, however, a claim that there is an implied authority to construct a building in the provision establishing the institution. It is quite evident that the framers of the statute contemplated that a building might be erected. Of course, if Congress were to authorize the purchase of a site, the site was necessarily purchased under the expectation that Congress would sometime authorize a building, but nobody would contend that because a site was provided for, the construction of a building was authorized. The provision in the law as to what kind of labor should be used did not authorize the construction of buildings. Altogether it seems to the Chair that the point of order ought to be sustained, and so rules.

1268. An appropriation for compensation of temporary employees to be fixed by the Executive was held to be authorized by law.

On January 30, 1920,² the second deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read as follows:

OFFICE OF AUDITOR FOR TREASURY DEPARTMENT.

For compensation to be fixed by the Secretary of the Treasury, of such temporary employees (non-apportioned) as may be necessary to audit the accounts and vouchers of the bureaus and offices of the Treasury Department, \$25,000.

Mr. Thomas L. Blanton, of Texas, made the point of order that there was no authority of law for the provision.

¹ William R. Green, of Iowa, Chairman.

² Second session Sixty-sixth Congress, Record, p. 2264.

The Chairman¹ ruled:

Section 169 of the Revised Statutes 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, laborers, and other employees, and at such rates of compensation, respectively, as may be appropriated for by Congress from year to year.”

A case in point was raised in the House on March 23, 1906. The legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and Mr. Hardwick, of Georgia, made a point of order that there was no law to authorize the proposed appropriation for one telephone switchboard operator in the Department of State. After debate the Chairman of the committee, Mr. Hopkins, of Illinois, held that “a telephone switchboard operator may be fairly classed as a sort of laborer, skilled laborer, within the spirit of the statute.”

The Chair is of opinion that this case is covered by the law and that the appropriation is authorized by section 169 of the statute. The statute does not say permanent or temporary, but “such other employees as may be appropriated for by Congress from time to time.”

1269. Legislation unobjected to and admitted on general appropriation bills may authorize appropriations in future bills.

An appropriation for maintenance of an assay office permanently established by law was held to be in order on an appropriation bill.

On January 12, 1921,² the legislative, executive, and judicial appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. Mr. Harry L. Gandy, of South Dakota, offered the following amendment:

Insert as a new paragraph:

“Deadwood, S. Dak., assay office: Assayer in charge, who shall also perform the duties of melter, \$1,800; assistant assayer, \$1,200; clerk, \$1,000; in all, \$4,000. For wages of workmen and other employees, \$2,000, and for incidental and contingent expenses, \$1,200.”

A point of order being made by Mr. Thomas L. Blanton, of Texas, Mr. William R. Wood, of Indiana, said:

Mr. Chairman, my opinion is that its original authorization was in an appropriation bill. I call the attention of the Chair to the United States Compiled Statutes, 1918, section 6427, which reads:

“Assay office at Deadwood, S. Dak.: For establishing an assay office at Deadwood, in the State of South Dakota.”

Then, section 6428 reads as follows:

“Assay office at Deadwood, S. Dak.: * * * and said assay office shall be conducted under the provisions of the act entitled ‘An act revising and amending the laws relative to the mints, assay offices, and coinage of the United States,’ approved February 12, 1873.”

The Chairman³ held:

In view of the citation of the gentleman from Indiana, the Chair is inclined to think that this is authorized by law. That provides for an assay office. The Chair thinks the amendment is in order and overrules the point of order.

1270. Provision for the collection and dissemination of information to encourage law enforcement was held not to be in order on an appropriation bill.

¹John Q. Tilson, of Connecticut, Chairman.

²Third session Sixty-sixth Congress, Record, p. 1332.

³Nicholas Longworth, of Ohio, Chairman.

On December 5, 1930,¹ during consideration of the Treasury and Post Office appropriation bill in the Committee of the Whole House on the state of the Union, the Clerk read the paragraph providing for the Bureau of Industrial Alcohol and including the following:

Provided, That not exceeding \$10,000 may be expended for the collection and dissemination of information and appeal for law observance and law enforcement, including cost of printing, purchase of newspapers, and other necessary expenses in connection therewith.

Mr. Thomas L. Blanton, of Texas, raised the question of authorization. The Chairman² sustained the point of order.

1271. While the fortifications appropriation bill carried general appropriations for a plan of work in progress, specific appropriations for individual works not authorized by law and not in progress were held not to be in order thereon.

On February 27, 1912,³ the fortifications appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. E. E. Holland, of Virginia, offered this amendment:

Add an independent section as follows:

"For the purchase, if a satisfactory price can be agreed upon between the Secretary of War and the owners thereof, and if this can not be done, then for the acquisition by condemnation proceedings, which the Secretary of War is authorized to cause to be instituted, of a sufficient quantity of land at Cape Henry, Va., on which to begin the construction of fortifications at the mouth of Chesapeake Bay, and a sum not exceeding \$150,000 is hereby appropriated."

Mr. John J. Fitzgerald, of New York, made the point of order against the amendment that it was not authorized by law.

After extended debate, the Chairman⁴ read from section 3611 of Hinds' Precedents and sustained the point of order.

1272. The statute prohibiting purchase of land except by authority of law was held not to apply to a purchase of land for aviation stations, such purchase being authorized by law.

The reappropriation of an unexpended balance for acquisition of land for aviation stations was held to be authorized by law.

A provision making an appropriation available beyond the fiscal year supplied by the pending bill was held to be legislation and not in order on an appropriation bill.

On April 13, 1920,⁵ the fortifications appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. John J. Eagan, of New Jersey, proposed this amendment:

Insert a new paragraph, as follows:

"The sum of \$9,617,179.38 of appropriations heretofore made for aviation purposes for use in connection with the seacoast defenses of the United States is hereby continued and made

¹ Third session Seventy-first Congress, Record, p. 265.

² Earl C. Michener, of Michigan, Chairman.

³ Second session Sixty-second Congress, Record, p. 2521.

⁴ William C. Houston, of Tennessee, Chairman.

⁵ Second session Sixty-sixth Congress, Record, p. 5633.

available for obligation until June 30, 1922, and the Secretary of War may expend from said sum \$596,725, or so much thereof as may be necessary, for the purchase or acquisition of land necessary for aviation stations for use in connection with the coast defenses within the continental limits of the United States.”

Mr. Joseph Walsh, of Massachusetts, raised a point of order on the clause making the appropriation available until 1922.

The Chairman¹ having sustained the point of order, Mr. Eagan again offered the amendment changing the date from 1922 to 1921.

Mr. James W. Good, of Iowa, raised the question of authorization, and further submitted that the provision for purchasing land was in contravention of the statute:²

No land shall be purchased on account of the United States except under a law authorizing such purchase.

The Chairman ruled:

Under the war legislation of August 29, 1916, and other acts that followed the Secretary of War was given the broadest possible power to acquire by purchase, condemnation, or otherwise for the United States such land as might be necessary for aviation purposes. Those general statutes have not been repealed. That war power is still lodged in the Secretary of War. In recognition of such power Congress adopted different aviation projects, and this amendment proposes to continue one or more of these projects, and therefore the Chair feels constrained to rule that the amendment proposes expenditure for a purpose authorized by law and is not subject to a point of order. The Chair therefore overrules the point of order.

1273. The organic law creating a department authorizes necessary contingent expenses incident to its maintenance.

On February 13, 1919,³ the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read the following paragraph:

For contingent expenses of the Military Intelligence Division, General Staff Corps, including the purchase of law books, professional books of reference; subscription to newspapers and periodicals; drafting and messenger service; and of the military attachés at the United States embassies and legations abroad; the cost of special instruction at home and abroad, and in maintenance of students and attachés; and for such other purposes as the Secretary of War may deem proper; to be expended under the direction of the Secretary of War, \$200,000.

Mr. Otis Wingo, of Arkansas, raised a question of order as to its authorization. In debate, Mr. James R. Mann, of Illinois, said:

There are a number of items that are clearly subject to a point of order in the bill; but this is an appropriation for the maintenance of the Army. Now, everyone knows that every department of the Government must necessarily have various contingent expenses. And the creation of the department itself is, in my judgment, a sufficient warrant for an appropriation for the contingent expenses. It would be ridiculous, Mr. Chairman, to say that when we created a department or provided an army we should in detail describe the character of the buttons that the men had to wear. It would be ridiculous to say that we can not appropriate for buttons because it is not authorized by law. Buttons are no more authorized by law than many various other contingent expenses necessary for the Army, which no one can foresee, in many cases, in advance.

¹ Rollin B. Sanford, of New York, Chairman.

² Rev. Stat., sec. 3736.

³ Third session Sixty-fifth Congress, Record, p. 3309.

Here is a provision which provides for the payment of contingent expenses of officers of the Army abroad under proper provision of law. I do not see how the gentleman can contend we can not make an appropriation for the contingent expenses.

The Chairman¹ ruled:

If a particular Army officer, drawing an Army salary, is assigned to do a particular work, and in connection with that work incurs certain expenses, the Chair can not see why that is not an appropriate Army expense, to be paid out of the contingent allowance for Army expenses. So far as the Chair has been furnished with any information, it has been of an argumentative character; and, dealing with that, the Chair thinks this is clearly an Army expense, and the Chair overrules the point of order.

1274. Directions to the Secretary of War to issue stores and material to the National Guard is authorized by law.

On May 17, 1932,² while the Army appropriation bill was being considered in the Committee of the Whole House on the state of the Union, the Clerk read a paragraph containing this proviso:

Provided, That the Secretary of War is hereby directed to issue from surplus or reserve stores and material on hand and purchased for the United States Army such articles of clothing and equipment and Field Artillery, Engineer, and Signal material and ammunition as may be needed by the National Guard. This issue shall be made without charge against militia appropriations except for actual expenses incident to such issue.

Mr. Edward W. Goss, of Connecticut, made the point of order that there was no authority of law for the provision.

The Chairman³ cited section 32 of title 44 of the United States Code as authority for the provision and overruled the point of order.

1275. The maintenance of students and attachés was held not to be a necessary incidental departmental expense and therefore unauthorized by the organic act creating the department.

Those upholding an item in an appropriation bill have the burden of showing the law authorizing it.

On February 13, 1919,⁴ the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read:

The cost of special instruction at home and abroad, and in maintenance of students and attachés.

Mr. Otis Wingo, of Arkansas, made the point of order that there was no authority for the provision.

The Chairman¹ said:

The Chair will ask the chairman of the Committee on Military Affairs to answer this question: Can he refer the Chair to some authority which justifies this item? The point of order has been made, and the burden is upon the chairman of the committee to refer the Chair to some authority that supports it.

¹ Edward W. Saunders, of Virginia, Chairman.

² First session Seventy-second Congress, Record, p. 10465.

³ Fritz G. Lanham, of Texas, Chairman.

⁴ Third session Sixty-fifth Congress, Record, p. 3310.

No citation to such authority being submitted, the Chairman sustained the point of order.

1276. A question of authorization being raised against an item in an appropriation bill, it is incumbent upon the Member in charge of the bill to submit citation of authority.

A provision in permanent law authorizing establishment of rifle ranges open to “all able-bodied males capable of bearing arms” authorizes an appropriation for “transportation of instructors of employees and civilians engaged in target practice.”

An appropriation made “available until expended” is in the nature of legislation and not in order on a general appropriation bill.

A point of order being made against an entire paragraph, the whole of it must go out, although a portion only is subject to the objection.

On February 15, 1919,¹ the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was read:

To establish and maintain indoor and outdoor rifle ranges for the use of all able-bodied males capable of bearing arms, under reasonable regulations to be prescribed by the National Board for Promotion of Rifle Practice and approved by the Secretary of War; for the employment of labor in connection with the establishment of outdoor and indoor rifle ranges, including labor in operating targets; for the employment of instructors, for clerical services; for badges and other insignia; for the transportation of employees, instructors, and civilians to engage in practice; for the purchase of materials, supplies, and services, and for expenses incidental to instruction of citizens of the United States in marksmanship, to be expended under the direction of the Secretary of War and remain available until expended, \$10,000.

Mr. Joseph Walsh, of Massachusetts, made the point of order that the language “and remain available until expended” was legislation.

Mr. James C. McLaughlin, of Michigan, raised the question of authorization against the entire paragraph.

Mr. Hubert S. Dent, jr., of Alabama, in charge of the bill, having conceded the first point of order, the Chairman² said:

The gentleman from Michigan makes the point of order to the whole paragraph. If the language cited by the gentleman from Massachusetts is subject to a point of order, then the point of order made by the gentleman from Michigan to the entire paragraph is good. It is a familiar principle in our parliamentary procedure that if any part of a paragraph is out of order a point of order directed to the entire paragraph must be sustained.

Mr. Dent maintained there was law for the appropriation but submitted no citation.

The Chairman ruled:

When a point of order is made to a provision it is incumbent upon the chairman of the committee to furnish the authority. The Chair is seeking to point out that the gentleman from Michigan has directed a point of order to the entire paragraph, and if there is an appending item in the paragraph the point of order applies to the whole paragraph. Hence nothing remains in that case for the Chair but to sustain the point of order of the gentleman from Michigan. Of

¹ Third session Sixty-fifth Congress, Record, p. 3494.

² Edward W. Saunders, of Virginia, Chairman.

course, it will then be competent for the chairman of the committee to offer the paragraph with the offending matter stricken out as an amendment to the bill.

Whereupon Mr. Dent offered the following amendment:

To establish and maintain indoor and outdoor rifle ranges for the use of all able-bodied males capable of bearing arms, under reasonable regulations to be prescribed by the National Board for Promotion of Rifle Practice and approved by the Secretary of War, \$10,000.

Mr. McLaughlin renewed the point of order.

After debate, the Chairman said:

The Chair will read the provision of the national defense act on which this provision in the bill is based:

“SEC. 113. Encouragement of rifle practice.—The Secretary of War shall annually submit to Congress recommendations and estimates for the establishment and maintenance of indoor and outdoor rifle ranges, under such a comprehensive plan as will ultimately result in providing adequate facilities for rifle practice in all sections of the country. And that all ranges so established and all ranges which may have already been constructed, in whole or in part, with funds provided by Congress shall be open for use by those in any branch of the military or naval service of the United States and by all able-bodied males capable of bearing arms, under reasonable regulations to be prescribed by the controlling authorities and approved by the Secretary of War. That the President may detail capable officers and noncommissioned officers of the Regular Army and National Guard to duty at such ranges as instructors for the purpose of training the citizenry in the use of the military arm. Where rifle ranges shall have been so established and instructors assigned to duty thereat, the Secretary of War shall be authorized to provide for the issue of a reasonable number of standard military rifles and such quantities of ammunition as may be available for use in conducting such rifle practice.”

The Chair will call the attention of the committee to the fact that the language read is very comprehensive. The point of order raised by the gentleman from Michigan is not without difficulty, but the language cited is so sweeping that the Chair will not undertake to say that the details contained in the appropriation bill are outside the scope of the act, reasonably construed. With some hesitation the Chair overrules the point of order.

1277. A statute general in form authorizing salaries is superseded by a subsequent statute specifying the personnel to be paid, and an appropriation for salaries of others than those specified is not in order.

On February 17, 1920,¹ the Military Academy appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when a point of order was made by Mr. Edward C. Little, of Kansas, against this paragraph:

For pay of three battalion commanders (majors) in addition to pay as captains, \$1,800.

After debate, the Chairman² held:

The gentleman from Kansas makes the point of order against the paragraph, beginning with line 23, on page 2, that the paragraph is not in order under subdivision 2, Rule XXI, on the ground that there is no authority of law for this item. It is not for the Chair to pass upon the desirability of this provision of the bill, or necessarily upon its effect upon the conduct of the Military Academy. If there are defects in the law, the Committee on Military Affairs may remove those defects by appropriate legislation, but in an appropriation bill you must show some authority. That is the clear intendment of the rule. It is not necessarily specific authority, it may be general, but it must be one or the other. Now, the committee refers to a statute general in form enacted many years ago which places the supervision and charge of the academy in the War Department

¹Second session Sixty-sixth Congress, Record, p. 3023.

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

under such officers as the Secretary of War may assign to that duty, but there is a subsequent statute which has been referred to which specifically sets forth the personnel at the academy, the number of officers, professors, etc., and the Chair has been unable to find and the committee has not referred the Chair to any statute which authorizes the appointment of three battalion commanders at the academy. The Chair is therefore constrained to rule that there is no existing law authorizing this appropriation, and therefore sustains the point of order.

1278. An appropriation of land for aviation purposes was held to be authorized by law.

On April 15, 1920,¹ the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

For the establishment, enlargement, and improvement of public buildings and facilities at aviation stations, schools, and depots, \$245,000.

Mr. W. Frank James, of Michigan, offered the following amendment:

For the acquisition, by purchase, condemnation, or otherwise, of 640 acres of land more or less and the appurtenances thereunto belonging, situate in Macomb County, State of Michigan, now occupied by the Air Service of the Army as an aviation station and known as Selfridge Field, not to exceed \$190,000.

Mr. Thomas L. Blanton, of Texas, having reserved a point of order against the amendment, the Chairman² ruled:

There can be no doubt that during the war legislation was enacted and is yet in force authorizing the Secretary of War to acquire, by purchase, donation, or by condemnation, such land sites throughout the United States as are immediately necessary for the permanent establishment of aviation schools, aviation posts, and experimental aviation stations and proving grounds for the United States Army. For this authority let me cite the act of July 9, 1918, as also legislation previously enacted thereto. Since the legislation referred to has not yet been repealed the rights and powers above mentioned are yet lodged in the Secretary of War. A similar situation arose on April 13, 1920, when the Chairman [Mr. Sanford, of New York] held that an appropriation for the acquisition of land necessary for aviation stations in connection with coast defense was in order as an amendment to the fortifications appropriation bill, since under existing war legislation the Secretary of War was granted power to acquire, by purchase or otherwise, land for aviation purposes. The Chairman, by reason of existing law and decisions thereunder, therefore overrules the point of order.

1279. The expenditure of an appropriation for expenses provided in an act creating a permanent commission was construed not to terminate the operation of the act, and a further appropriation for maintenance of the commission was held to be in order on an appropriation bill.

An appropriation for the expenses of the California Débris Commission was held to be authorized by law.

On May 8, 1920,³ the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

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

¹ Second session Sixty-sixth Congress, Record, p. 5693.

² John M. Rose, of Pennsylvania, Chairman.

³ Second session Sixty-sixth Congress, Record, p. 6774.

Mr. Ben Johnson, of Kentucky, in presenting a point of order said:

Mr. Chairman, I reserve a point of order on the paragraph. In 1893, by act of Congress, this commission was given \$15,000 for the year in order to defray its expenses. Since that time \$15,000 has been appropriated for it every year, amounting to \$375,000. That commission has a large revolving fund. It collects thousands of dollars in fees, out of which may be paid everything that this \$15,000 would pay. For that reason I shall make the point of order against the item because as an unauthorized appropriation.

At the conclusion of the act of Congress there is this language. It will be found in volume 27, Statutes at Large, page 511.

“The sum of \$15,000 is hereby appropriated from moneys in the Treasury not otherwise appropriated, to be immediately available to defray expenses of said commission.”

Now, I take the position that by that language an annual authorization has not been made, and as conclusive evidence of that is the language in the money clause of the bill that it is to be “immediately available.” I do not think Congress was then looking to future appropriations, because it would not look years ahead and say that each and every subsequent appropriation should be “immediately available.”

There is no language anywhere to be found which justifies the annual appropriation of this money, and because of that, and because the commission does not need it, I make the point of order on the paragraph.

The Chairman¹ ruled:

The language of the paragraph to which the gentleman from Kentucky makes the point of order is as follows:

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

If the law did not authorize this expenditure, the appropriation would not be effective, because it could not be expended, by its express terms. The Chair has read the language of the act creating the California Débris Commission. It creates a permanent commission, with powers which clearly are intended to extend indefinitely—very broad powers with reference to the regulation of the silt from hydraulic mining and the navigability of streams. The gentleman from Kentucky contends that the language in the last paragraph of the act, which provides as follows—

“The sum of \$15,000 is hereby appropriated from moneys in the Treasury not otherwise appropriated, to be immediately available, to defray the expenses of said commission”—is in fact a limitation upon the appropriation which may be made for the use of the commission. The language of the act itself negatives that contention; and even if it did not, the language the gentleman from Kentucky refers to is clearly an appropriation and not an authorization for an appropriation. The mere fact that it is made immediately available simply indicates that the commission might begin to expend it at once instead of at the beginning of the fiscal year.

The Chair thinks that the paragraph is clearly authorized by law and therefore overrules the point of order.

1280. An appropriation for expenses of the General Staff College was held to be in order on an appropriation bill.

A change in the name of an institution from that carried in the law authorizing appropriation for its maintenance was held not to vitiate such authorization where identity of the institution was not thereby obscured.

On February 2, 1921,² the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read the following:

For expenses of the General Staff College, being for the purchase of the necessary stationery; typewriters and exchange of same; office, toilet, and desk furniture; textbooks, books of reference,

¹Sydney Anderson, of Minnesota, Chairman.

²Third session Sixty-sixth Congress, Record, p. 2450.

scientific and professional papers and periodicals; printing and binding; maps; police utensils; the necessary fuel for heating the General Staff College building and for lighting the building and grounds; employment of temporary technical or special services and expenses of special lectures; and for all other absolutely necessary expenses, including \$25 per month additional to regular compensation to chief clerk for superintendence of the General Staff College building; also for pay of a chief engineer at \$1,400, an assistant engineer at \$1,000, a carpenter at \$1,000, 4 firemen at \$720 each, an elevator conductor at \$720; in all, \$25,000.

Mr. Thomas L. Blanton, of Texas, made the point of order that there was no authority of law for the provision.

The Chairman¹ said:

The Chair thinks that he may well leave out of the discussion entirely the change in the name of this college. It is a fact repeatedly recognized in the law that there was established a college known, first, as the Army War College. Considerable sums of money were appropriated, buildings were erected, equipment provided, and the institution has been maintained for a number of years. In the Army reorganization act of June 4, 1920, the existence of this college is recognized, but it is referred to in that act as the General Staff College, and is so designated in the present bill. So far as the Chair is able to ascertain, the items enumerated in this paragraph are all necessary for the maintenance, in fact for the continuance, of this college. Therefore it seems to the Chair that the paragraph carrying these items is authorized by law so as to warrant Congress in making an appropriation for such purpose, in case this body should deem it wise to make such appropriation. The Chair, therefore, overrules the point of order.

1281. An appropriation for Army service schools was held to be authorized by law.

A provision prescribing method of appointing instructors in Army schools constitutes legislation and is not in order on an appropriation bill.

On February 2, 1921,² the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was reached:

GENERAL SERVICE SCHOOLS.

Fort Leavenworth, Kans.: For the purchase of textbooks, books of reference, scientific and professional papers, instruments, and material for instruction; employment of temporary, technical, or special services, including the services of one translator, at the rate of \$150 per month, to be appointed by the commandant of the school, with the approval of the Secretary of War; and for other necessary expenses of instruction, at the School of the Line and the General Staff School, Fort Leavenworth, Kans., \$35,000.

A point of order presented by Mr. Thomas L. Blanton, of Texas, that the expenditure was unauthorized was overruled by the Chairman.¹

Thereupon Mr. Charles P. Caldwell, of New York, made the further point of order that the provision for appointment of a translator constituted legislation.

The Chairman sustained the point of order.

1282. An appropriation for extension of a military telegraph system was held to be in order on an appropriation bill.

¹ John Q. Tilson, of Connecticut, Chairman.

² Third session Sixty-sixth Congress, Record, p. 2461.

On February 2, 1921,¹ the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Thomas L. Blanton, of Texas, raised a point of order against this paragraph:

For defraying the cost of such extensions, betterments, operation, and maintenance of the Washington-Alaska Military Cable and Telegraph System as may be approved by the Secretary of War, to be available until the close of the fiscal year 1923, from the receipts of the Washington-Alaska Military Cable and Telegraph System which have been covered into the Treasury of the United States, the extent of such extensions and betterments and the cost thereof to be reported to Congress by the Secretary of War, \$140,000.

The Chairman² ruled:

It is clear that this is a military cable, supposed to be necessary for carrying on the military arm of the Government. It is certainly authorized by law if anything in the bill is authorized by law, and the Chair overrules the point of order.

1283. An appropriation for purposes not enumerated which an Executive might deem advisable was held to be unauthorized.

A portion of a paragraph being out of order the entire paragraph is subject to a point of order.

On February 4, 1921,³ the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read as follows:

For continuing the construction, equipment, and maintenance of suitable buildings at military posts and stations for the conduct of the post exchange, school, library, reading, lunch, amusement rooms, and gymnasium, including repairs to buildings erected at private cost, in the operation of the act approved May 31, 1902, for the rental of films, purchase of slides, supplies for and making repairs to moving-picture outfits and for similar and other recreational purposes at training and mobilization camps now established, or which may be hereafter established, and for such other purposes not enumerated above as the Secretary of War may deem advisable, to be expended in the discretion and under the direction of the Secretary of War, \$150,000.

Mr. James V. McClintic, of Oklahoma, made the point of order that there was no authority of law for the expenditure.

The Chairman² said:

It is clear to the Chair that the last four lines of the paragraph carry it beyond what is now authorized by law, that language being—

“And for such other purposes not enumerated above as the Secretary of War may deem advisable.”

It seems to the Chair that while it might be very desirable to leave that language in the bill, at the same time it would not come within any existing law. Therefore as to the language the Chair sustains the point of order. Does the gentleman make the point of order against the whole paragraph on that account?

Mr. McClintic having lodged the point of order against the entire paragraph, the Chairman continued:

The point of order having been made against the entire paragraph and a portion of the paragraph being subject to a point of order, the Chair sustains the point of order as to the entire paragraph.

¹Third session Sixty-sixth Congress, Record, p. 2468.

²John Q. Tilson, of Connecticut, Chairman.

³Third session Sixty-sixth Congress, Record, p. 2610.

1284. An appropriation to encourage breeding of horses for the Army was held to be in order under the law authorizing appropriations for purchase of Army horses.

On May 9, 1921,¹ the Army appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Thomas L. Blanton, of Texas, raised the question as to the existence of law for this language in the bill:

And \$150,000 for encouragement of the breeding of riding horses suitable for the Army, including cooperation with the Bureau of Animal Industry, Department of Agriculture, and for the purchase of animals for breeding purposes and their maintenance.

The Chairman² decided:

This paragraph provides, among other things, for the procuring of horses for animal transportation and mounts for the Army. The gentleman from Texas makes a point of order against the language: "And \$150,000 for encouragement of the breeding of riding horses suitable for the Army."

It is clear that the constitutional authority to raise armies and properly equip them would authorize the procuring of horses for the Cavalry and for other necessary horse transportation. It seems to the Chair that the breeding of riding horses suitable for the Army might be a proper method for securing them. Horses have been purchased for the use of the Army from the beginning of the Government, and for a number of years considerable sums of money have been appropriated for the breeding of Army horses. The only question which has caused the Chair to hesitate arises from the use of the words "for encouragement of." It is not entirely clear just what this language means, and such information as the Chair has received during the discussion on the point of order has not entirely clarified the matter, because most of the debate went to the merits of the proposition rather than to the point of order. It is urged that in order to make it possible for the Government to procure by purchase suitable horses for military purposes it is necessary to encourage in the way provided in the bill or otherwise the breeding of the type of horse required. The question is not free from doubt in the mind of the present occupant of the chair, but resolving the doubt in favor of the Army in case the necessity should exist as claimed, it seems to the Chair that under the authority for raising and equipping the Army it ought to be proper for Congress to appropriate not only for the purchase of horses but also to acquire horses by breeding them, or to encourage the breeding of such horses as might not be otherwise available. Therefore the Chair overrules the point of order.

1285. Decisions on authorization of appropriations for the promotion of rifle practice.

On March 28, 1924,³ the War Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. A point of order made by Mr. Ben Johnson, of Kentucky, was pending on this paragraph:

To establish and maintain indoor and outdoor rifle ranges for the use of all able-bodied males capable of bearing arms, under reasonable regulations to be prescribed by the National Board for the Promotion of Rifle Practice and approved by the Secretary of War; for the employment of labor in connection with the establishment of outdoor and indoor rifle ranges, including labor in operating targets; for the employment of instructors; for clerical services; for badges and other insignia; for the transportation of employees, instructors, and civilians to engage in practice; for

¹ First session Sixty-seventh Congress, Record, p. 1232.

² John Q. Tilson, of Connecticut, Chairman.

³ First session Sixty-eighth Congress, Record, p. 5168.

the purchase of materials, supplies, and services; and for expenses incidental to instruction of citizens of the United States in marksmanship and their participation in national and international matches, to be expended under the direction of the Secretary of War and to remain available until expended, \$89,900.

The Chairman¹ sustained the point of order and ruled out the paragraph.

Whereupon Mr. Daniel R. Anthony, jr., of Kansas, offered the paragraph as an amendment, omitting the following language:

For the employment of instructors; for clerical services; for badges and other insignia; for the transportation of employees, instructors.

Mr. Johnson having again made the point of order, the Chairman ruled:

There is nothing in the amendment relating to international rifle matches. Section 113 of the national defense act is a provision entitled "Encouragement of rifle practice," and under that heading the act, as it seems to the Chair, attempts to authorize the holding of matches, the establishment and maintenance of indoor and outdoor rifle ranges, and authorizes the Secretary of War to prepare comprehensive plans such as will ultimately result in providing adequate facilities for rifle practice in all sections of the country, and in general to secure, maintain, and carry on these rifle ranges and indoor targets for the purpose of encouraging rifle practice.

It seems to the Chair that an act of this kind ought to be liberally construed to carry out the evident intent of the law itself. If the Secretary of War decides to carry it out through the National Board for the Promotion of Rifle Practice, it would seem, without evidence to the contrary, that this would be a proper means for carrying out the provisions of this law. Believing that the provisions contained in the amendment do not go beyond the authorization of the law itself, if properly interpreted, the Chair is constrained to overrule the point of order.

Immediately thereafter the Clerk read this paragraph:

For the purpose of furnishing a national trophy and medals and other prizes to be provided and contested for annually, under such regulations as may be prescribed by the Secretary of War, said contest to be open to the Army, Navy, Marine Corps, and the National Guard or Organized Militia of the several States, Territories, and of the District of Columbia, members of rifle clubs, and civilians, and for the cost of the trophy, prizes, and medals herein provided for, and for the promotion of rifle practice throughout the United States, including the reimbursement of necessary expenses of members of the National Board for the Promotion of Rifle Practice, to be expended for the purposes hereinbefore prescribed, under the direction of the Secretary of War, \$7,500.

A point of order on the paragraph made by Mr. Johnson was sustained by the Chairman.

The next paragraph in the bill was as follows:

For arms, ammunition, targets, and other accessories for target practice for issue and sale in accordance with rules and regulations prescribed by the National Board for the Promotion of Rifle Practice and approved by the Secretary of War, in connection with the encouragement of rifle practice, in pursuance of the provisions of law, \$10,000.

In response to a point of order by Mr. Johnson, the Chairman suggested:

The attention of the Chair is called to this provision of the law:

"2608. The Secretary of War is hereby authorized to issue, under such rules and regulations as he may prescribe, for use in target practice, target-practice materials and other accessories to rifle clubs organized under the rules of the National Board for Promotion of Rifle Practice"—

And so forth—

"for the proper conduct of target practice."

¹ John Q. Tilson, of Connecticut, Chairman.

Mr. Johnson said:

Now, Mr. Chairman, I concede that the Secretary of War has the right to issue them, provided they are available. That is the law in section 113, and the National Board for Promotion of Rifle Practice is not mentioned in the national defense act, section 113.

There is nothing whatever in the law which authorizes this gun club to "buy" arms and ammunition. Nor is there anything in it which authorizes them to either buy or sell.

Will the Chair read the last part of section 113 and note that it provides that if "available" the Secretary of War may issue them under that act? He can not go into the market and buy for this gun club.

Let me call the Chair's attention to one distinction right there. That language may authorize the Secretary of War to buy, but the proposed language authorizes this gun club to buy. An authority given to the Secretary of War to buy is no authority to this gun club to buy with public money.

Thereupon the Chair sustained the point of order.

1286. On February 8, 1928,¹ during consideration in the Committee of the Whole House on the state of the Union of the War Department appropriation bill, Mr. John C. Speaks, of Ohio, proposed the following amendment:

For every expenditure requisite for and incident to the conduct of the national matches and the maintenance and operation of the Small Arms Firing School held in conjunction therewith as authorized by section 113 (c) of the national defense act (act of June 3, 1916, as amended by the acts of June 7, 1924, and February 14, 1927), including procurement and installation of equipment, ammunition, supplies, materials, flooring and frames for tents, construction of shooting galleries, and shelters for rifle practice; nonstructural improvements; repairs and alterations to buildings, water systems, sewer and lighting systems; repairs and alterations to equipment and supplies; communication service; pay and allowance of officers and enlisted men of the National Guard participating in the national matches and the Small Arms Firing School from the date of departure from their homes to the date of return thereto; pay and allowance of reserve officers called to active duty in connection with the national matches and the Small Arms Firing School; personal and nonpersonal services; subsistence, including commutation of rations, to authorized teams from the National Guard, Organized Reserve, Reserve Officers' Training Corps, citizens' military training camps, and civilian teams representing the States and including the enlisted men of teams from the Regular Army from the date of departure from their homes or stations to the date of return thereto at the rate of not exceeding \$1.50 per day each; transportation, including repair, operation, and maintenance of motor-propelled and animal-drawn vehicles, travel of authorized teams representing the Regular Army, National Guard, Organized Reserve, Reserve Officers' Training Corps, citizens' military training camps, and civilian teams representing States, including officers and enlisted men of the Regular Army; travel of commissioned and enlisted personnel of the Regular Army, National Guard, and Organized Reserve on duty in connection with the national matches and the Small Arms Firing School, including mileage of officers; reimbursement of travel expenses or allowances in lieu thereof as authorized by law for officers of the Regular Army and Organized Reserve; travel of civilian employees to and from the national matches, including a per diem allowance in lieu of subsistence while traveling to and from said matches and while on duty thereat; all to be expended under the direction of the Secretary of War, \$500,000.

Mr. Henry E. Barbour, of California, made the point of order that the amendment was not authorized by law.

After debate, the Chairman² held:

¹First session Seventieth Congress, Record, p. 2748.

²Walter H. Newton, of Minnesota, Chairman.

The Chair has the act before him. It is chapter 12 of title 32 of the United States Code. After examining section 181 of title 32 of the United States Code the Chair is impressed with the very broad language of the act. For example:

“The Secretary of War shall, within the limits of appropriations made from time to time by Congress, and in accordance with reasonable rules and regulations approved by him upon the recommendation of the National Board for the Promotion of Rifle Practice, authorize and provide for”—

And the Chair calls attention to the further very general and sweeping language of the authorization act—

“(a) Construction, equipment, maintenance, and operation of indoor and outdoor rifle ranges and their accessories and appliances.

“(b) Instruction of able-bodied citizens of the United States in marksmanship and, in connection therewith, the employment of necessary instructors.

“(c) Promotion of practice in the use of rifled arms, the maintenance and management of matches or competitions in the use of such arms, and the issuance in connection therewith of the necessary arms, ammunition, targets, and other necessary supplies and appliances, and the award to competitors of trophies, prizes, badges, and other insignia.”

It is not necessary for the Chair to read the other provisions of the act. What has been read will give a very good idea on the very general and broad language used in the authorization act.

The Chair’s attention has been called to an opinion rendered in construing the same act by Chairman Tilson, March 28, 1924. A similar point of order had been raised in reference to appropriations for international rifle matches.

The Chairman then read the decision ¹ referred to and continued:

The Chair is of the opinion that with the broad language of the basic law and with the benefit of the observations made by the distinguished chairman the point of order should be overruled.

1287. The payment of a claim for liquidated damages is unauthorized by law and not in order on an appropriation bill.

On January 29, 1908,² the urgent deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was reached:

For reimbursement of expenses incurred by the Wabash Railroad Company in the assembling of transportation for the movement of two squadrons of the Eleventh United States Cavalry, ordered by the War Department in April 1906, \$283.39.

Mr. James R. Mann, of Illinois, made the point of order that the appropriation was for payment of unliquidated damages and therefore not authorized by law.

The Chairman ³ said:

It seems to the Chair that the appropriation provided for in this section can not be made in a general appropriation bill unless it is either a judgment of the Court of Claims or an audited claim. The Chair understands that it is neither a judgment of the Court of Claims nor an audited claim, and therefore sustains the point of order.

1288. 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.

¹ Sec. 1285, *supra*.

² First session Sixtieth Congress, Record, p. 1285.

³ George P. Lawrence, of Massachusetts, Chairman.

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

Mr. John H. Small, of North Carolina, offered an amendment including the following paragraph, on which Mr. Thomas L. Blanton, of Texas, raised the question of authorization:

Readjustment of contracts: The sum of \$194,742.65 is hereby appropriated to pay amounts found to be due various contractors under the provisions of section 10 of the river and harbor act approved March 2, 1919, on certain contracts for work on river and harbor improvements entered into but not completed prior to April 6, 1917, for work performed between April 6, 1917, and July 18, 1918, as set forth in detail in the report submitted in House Document No. 986, Sixty-sixth Congress, third session.

The Chairman² ruled:

The last paragraph of the amendment offered by the gentleman from North Carolina provides for readjustment of contracts, and it appropriates the sum of one hundred and ninety-four thousand and odd dollars to pay the amounts found to be due to various contractors under the provisions of section 10 of the river and harbor act of March 2, 1919. The paragraph provides for the payment of a large sum of money for amounts found to be due under section 10 of the river and harbor act of March 2, 1919. Section 10 of the river and harbor act of March 2, 1919, simply provides that the Secretary of War may investigate and report to Congress the amounts which he thinks should be paid to the several contractors, but it does not provide for any audit, and is insufficient authorization, in the opinion of the Chair, to support an appropriation for payment in general appropriation bills. The Chair would call the attention of the gentleman to a decision in Hinds' Precedents, volume 4, section 3639. In that ruling the Chairman of the Committee of the Whole held that the fact that a department officer had reported on a claim in accordance with a direction of law did not thereby make an audited claim, for which provision might be made on appropriation bills. The present occupant of the Chair is inclined to think that that ruling is sound and based on correct reasoning, and the Chair therefore, sustains the point of order.

1289. A proposition to pay an unliquidated claim against the Government is not in order on an appropriation bill.

On January 28, 1908,³ the urgent deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was reached:

Reimbursement of J. Nota McGill and others: For the reimbursement of J. Nota McGill, Chapin Brown, Rufus H. Thayer, Robert C. Wilkins, and J. Wesley Bovee for amount expended for plumbing in the building for male employees in the Reform School for Girls of the District of Columbia, \$391.

Mr. James R. Mann, of Illinois, made the point of order against the paragraph.
The Chairman⁴ ruled:

The Chair is ready to rule on the point of order. The pending section provides for reimbursement of certain persons for an amount expended for plumbing in the building for male employees in the Reform School for Girls in the District of Columbia. Congress authorized, the Chair understands, the construction of this building at the limited cost of \$6,000. The amount called for in this section is in excess of that amount, and it seems to the Chair it is a claim against

¹Third session Sixty-sixth Congress, Record, p. 2352.

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

³First session Sixtieth Congress, Record, p. 1255.

⁴George P. Lawrence, of Massachusetts, Chairman.

the Government, and is a claim that must be audited by the proper authorities before it can be in order upon a general appropriation bill. The Chair, therefore, sustains the point of order.

1290. An appropriation to refund amounts erroneously collected from corporations and covered into the Treasury is not in order unless authorized by specific law.

On June 29, 1926,¹ during consideration of the second deficiency appropriation bill in the Committee of the Whole House on the state of the Union, the Clerk read as follows:

Refunds to railroads for interest collected: For refunds to such railroads as made payments of interest, that were covered into the United States Treasury, on overpayments made by the United States under sections 209 (g) and 212 of the transportation act, as amended, to be settled and adjusted by the General Accounting Office, fiscal year 1926, \$48,852.83, to remain available until June 30, 1927.

Mr. Eugene Black, of Texas, made a point of order that the proposed appropriation was not authorized by law.

The Chairman² sustained the point of order.

1291. It is in order on a deficiency bill to appropriate for the payment of judgments of the courts certified to Congress in the form of a public document transmitted to the Speaker by the Executive, but not otherwise and a mere certified copy of a mandate of the Supreme Court of the United States transmitted informally was held not to justify an appropriation in an appropriation bill.

On July 20, 1909,³ the urgent deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. J. Van Vechten Olcott, of New York, offered this amendment:

Judgment of Court of Claims. Insert "to pay the judgment of the Court of Claims in the case of *J. M. Ceballos & Co. v. The United States*, No. 23689 in said court, entered on mandate of the Supreme Court of the United States, \$205,614.37."

Mr. James R. Mann, of Illinois, reserved a point of order on the amendment and asked if the claim had been certified to Congress by the Secretary of the Treasury.

Mr. Olcott said:

It has not, but I have a certified copy of the mandate of the Supreme Court of the United States. The Supreme Court found that the money was due.

After further debate, the Chairman⁴ held:

It is well settled that it is in order upon a deficiency bill to pay judgments certified to Congress in accordance with law. Now, the question is whether or not this is a judgment certified to Congress in accordance with law. It is not exemplified in the entire record, and does not purport to be. It is simply a certified copy of the mandate of the United States Supreme Court. It does not come before the House in the form of a public document transmitted by a chief of an

¹ First session Sixty-ninth Congress, Record, p. 12249.

² Willis C. Hawley, of Oregon, Chairman.

³ First session Sixty-first Congress, Record, p. 4581.

⁴ Irving P. Wanger, of Pennsylvania, Chairman.

executive department to the Speaker of the House, and, in accordance with the ruling of the present occupant of the chair a day or two since, the Chair feels compelled to sustain the point of order.

1292. While it is in order to appropriate for payment of judgments of the courts certified to Congress in accordance with law, mere findings of fact by the Court of Claims were held not to authorize an appropriation.

On February 28, 1911,¹ the general deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. Mr. Willis C. Hawley, of Oregon, proposed this amendment:

Insert as a new paragraph:

“Relief of the State of Oregon: To enable the Secretary of the Treasury to reimburse the State of Oregon for expenditures made by said State, at the request of the authorities of the United States, during the Civil War, in the enlistment of soldiers mustered into the service of the United States; and there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of \$193,543.02, this sum being the amount determined upon by the Court of Claims in a finding of fact printed in Senate Document No. 28, Sixty-first Congress, first session.”

In contravention of a point of order made against the amendment by Mr. John J. Fitzgerald, of New York, Mr. Hawley said:

This claim was submitted to the Court of Claims by the Senate of the United States, and the amount specified in the amendment I offer is the amount stated by that court in the finding of fact. It is not a judgment; it is a finding of fact.

The Chairman² ruled:

If this was a judgment of the Court of Claims, it would be in order on a deficiency bill. The gentleman from Oregon states that it is not a judgment of the Court of Claims, but is a mere finding of fact by that court. Findings of fact filed by the Court of Claims do not authorize an appropriation on a general deficiency bill.

1293. An appropriation for balance due under an authorized contract was held to be in order on a deficiency appropriation bill although the item had not been audited.

On May 24, 1921,³ the deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. Mr. James W. Good, of Iowa, offered the following amendment:

Navy yard, Norfolk, Va.: For dry dock and accessories: To enable the Secretary of the Navy to pay the George Leary Construction Co. under the contract No. 2258, and changes thereto, for completion of Dry Dock No. 4, in full compensation for the construction of such dry dock, \$167,500.

Mr. Thomas L. Blanton, of Texas, made the point of order that the appropriation was not authorized by existing law.

Mr. Good explained:

It does not have to be an audited claim. It is a balance due on a contract. Here is the contract. I have made a statement of what the contract contains. Under that contract there

¹Third session Sixty-first Congress, Record, p. 3729.

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

³First session Sixty-seventh Congress, Record, p. 1691.

is a balance due of this amount, and it is a valid claim against the Government. The amendment is to liquidate the balance due under the contract. The work has been performed; the work has been accepted; and the department certifies that this amount is due and that they do not have the money to pay it. It does not have to be audited. It is for a balance due under a written contract authorized by law, where we have appropriated all the money, over \$5,000,000, except this amount. They made a claim for a greater amount, but we disallowed it. This is in full payment for that work done under that contract, and it is in accordance with the terms of the contract. It is not in the nature of a claim against the Government.

The Chairman¹ overruled the point of order.

1294. The authorization to conduct investigations conferred by the organic law establishing the Department of Agriculture does not extend to investigations conducted by other departments in connection with the Department of Agriculture.

On February 10, 1908,² the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read as follows:

To enable the Commissioner of Indian Affairs to conduct experiments on Indian school or agency farms, in cooperation with the Department of Agriculture, designed to test the possibilities of soil, climate, and so forth, in the cultivation of trees, grains, vegetables, and fruits not hitherto raised in those neighborhoods, using Indian labor in the process, \$5,000.

Mr. John J. Fitzgerald, of New York, made the point of order that there was no authority of law for the expenditure.

The Chairman³ ruled:

While the Department of Agriculture undoubtedly has general authority to carry on experiments in the cultivation of trees, and so forth, the Chair understands that no such authority is now given by law to the Commissioner of Indian Affairs. It was suggested that we have power to carry on schools. That is undoubtedly so; but under the guise of carrying on schools it would be impossible, it seems to the Chair, at least it would be illegal, to give authority to enter into new and altogether different fields of activity. This provision would authorize the Commissioner of Indian Affairs to expend money to test the cultivation of trees, grain, and vegetables in certain portions of the country. As the Chair understands, no such authority is now possessed by the Commissioner of Indian Affairs. In view of that, he feels, without discussing the merits, constrained to sustain the point of order.

1295. A proposition to appropriate for demonstrating processes of manufacturing denatured alcohol at an exposition was held not to be authorized by general law giving the Secretary of Agriculture authority to acquire and diffuse information pertaining to agriculture.

On March 31, 1908,⁴ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Ernest M. Pollard, of Nebraska, offered as an amendment:

To enable the Secretary of Agriculture to make demonstrations of the different processes of manufacturing denatured alcohol, and such other demonstrations as he may think advisable, at the corn exposition to be held in Omaha next October.

¹ Philip P. Campbell, of Kansas, Chairman.

² First session Sixtieth Congress, Record, p. 1771.

³ James B. Perkins, of New York, Chairman.

⁴ First session Sixtieth Congress, Record, p. 4190.

Mr. James R. Mann, of Illinois, made the point of order that there was no authority of law for the provision.

The Chairman¹ ruled:

The Chair will ask the gentleman to permit him to call the gentleman's attention to one precedent only, which, it seems to the Chair, is decisive of the whole matter:

"A provision to appropriate for compiling tests of dairy cows at an exposition was held not to be authorized as an expenditure by general law giving to the Secretary of Agriculture authority to acquire and diffuse information pertaining to agriculture."

The Chair does not see how it could possibly get around that precedent, in favor of the proposition of the gentleman from Nebraska. The Chair therefore sustains the point of order.

1296. An appropriation for investigating sources of raw materials for making paper was held not to be authorized by the provision of the organic law creating the Department of Agriculture.

On April 2, 1908,² the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The following paragraph was read by the Clerk:

To enable the Secretary of Agriculture to inquire into additional sources of raw materials for making paper, and processes of manufacture, in cooperation with the several bureaus of the department and the paper mills, \$10,000, or so much thereof as may be necessary, including the employment of labor in Washington or elsewhere.

Mr. Edgar D. Crumpacker, of Indiana, raised a point of order on the paragraph, contending that it was unauthorized.

The Chairman¹ held:

It seems to the Chair this proposition goes beyond the provision in the original law under which the department was organized, and therefore the Chair sustains the point of order.

1297. Recent decisions hold an appropriation to investigate the drainage of wet lands not to be authorized by law.

On February 3, 1910,³ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The Clerk read this paragraph:

Drainage investigations: To enable the Secretary of Agriculture to investigate and report upon the drainage of swamp and other wet lands and to prepare plans for the removal of surplus waters by drainage and for the preparation and illustration of reports and bulletins on drainage, including rent and the employment of labor in the city of Washington and elsewhere, and all necessary expenses, \$78,860.

Mr. James R. Mann, of Illinois, made the point of order that there was no authority of law for this character of investigation, and said:

There is no authority of law for this investigation or this experiment. The Agricultural Department, by its organic act or by any subsequent act, has not been authorized to make this investigation in reference to swamp and other wet lands; and while the appropriation has been carried from year to year, and I apprehend it will be carried when this appropriation bill becomes law, I think it is just as well to say it is subject to the point of order, and might properly go out here, considering the desire to stick in a lot of extraneous matters for the investigation of such things.

¹ David J. Foster, of Vermont, Chairman.

² First session Sixtieth Congress, Record, p. 4300.

³ Second session Sixty-first Congress, Record, p. 1457.

Subsequently Mr. Mann withdrew the point of order. Thereupon Mr. James B. Perkins, of New York, renewed it.

The Chairman¹ sustained the point of order.

But on March 12, 1912, this decision² was overruled in express terms, and the later decision has since been followed.

1298. An appropriation for investigation of foods in their relation to commerce and consumption is not so authorized by law as to sanction an appropriation on an appropriation bill.

On February 3, 1910,³ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The following paragraph was read:

And the Secretary of Agriculture is hereby authorized to investigate the cost of food supplies at the farm and to the consumer, and to disseminate the results of such investigation in whatever manner he may deem best; this authorization to be effective upon the approval of this act.

Mr. Swagar Sherley, of Kentucky, made the point of order that the paragraph was unauthorized by law.

The Chairman⁴ said:

The paragraph against which a point of order is made proposes that the Secretary of Agriculture shall be authorized to investigate the cost of food supplies at the farm and to the consumer and to disseminate the results of such investigation. It further provides that the authorization shall be effective on the approval of this act.

In the opinion of the Chair this is clearly legislation. Even if it were an appropriation authorizing this on an appropriation bill, it would still be subject to a point of order as something unauthorized by law. It has been heretofore held that the investigation of foods in their relation to commerce and consumption was not authorized by law in such a way as to permit an appropriation on the agricultural appropriation bill. The Chair therefore sustains the point of order.

1299. The broad powers of investigation conferred by the organic act creating the Department of Agriculture were held to authorize an investigation to determine possible sources of mineral fertilizers.

On February 10, 1911,⁵ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Asbury F. Lever, of South Carolina, proposed an amendment, as follows:

Amend by adding a new paragraph, as follows:

“For exploration and investigation within the United States to determine a possible source of supply of potash, nitrates, and other natural fertilizers, \$12,500, \$2,500 of which shall be immediately available.”

Mr. Charles F. Scott, of Kansas, having reserved a point of order on the amendment, the Chairman⁶ held:

It is quite apparent from the language of the fundamental law that the Secretary of Agriculture is given very broad powers for making different investigations here in furtherance of the

¹David J. Foster, of Vermont, Chairman.

²Section 1318 of this chapter.

³Second session Sixty-first Congress, Record, p. 1468.

⁴Philip P. Campbell, of Kansas, Chairman.

⁵Third session Sixty-first Congress, Record, p. 2300.

⁶Joseph H. Gaines, of West Virginia, Chairman.

interests of agriculture, and the Chair is inclined to think, from a careful reading of this amendment, and especially the words "and other natural fertilizers," that it is clear the investigations as to the source of supply of potash and nitrates are clearly in furtherance of the interests of agriculture. In other words, that it comes within the very broad powers given to the Secretary. The Chair therefore overrules the point of order.

1300. On January 25, 1932,¹ in the course of the consideration of the Department of Agriculture appropriation bill in the Committee of the Whole House on the state of the Union, the following paragraph was reached:

Fertilizer investigations: For investigations within the United States of fertilizers and other soil amendments and their suitability for agricultural use, \$358,535.

To this paragraph Mr. A. J. May, of Kentucky, offered the following amendment:

After the word "fertilizers," insert "fertilizer ingredients, including phosphoric acid and potash."

Mr. Robert G. Simmons, of Nebraska, raised the question of order that appropriations for the purposes proposed by the amendment were without legislative authority.

The Chairman² referred to the decision of February 10, 1911,³ on a similar question and overruled the point of order.

1301. While an appropriation to enable the Secretary of Agriculture to make certain investigations is authorized under the organic law creating the Department of Agriculture, it is not in order to require cooperation of States, companies, or individuals therein.

On March 5, 1912,⁴ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. This paragraph was read by the Clerk:

For studying methods of clearing off "logged-off" lands with a view to their utilization for agricultural and dairying purposes; for their irrigation; for testing powders in clearing them; and for the utilization of by-products arising in the process of clearing, in cooperation with States, companies, or individuals, or otherwise, \$5,000.

Mr. John J. Fitzgerald, of New York, made a point of order on the paragraph. The Chairman,⁵ in sustaining the point of order, said:

The Chair is of the opinion that the general purpose of preparing logged-off lands for agriculture and studying methods of doing that would not be subject to a point of order, but that the provision for the cooperation with States, companies, or individuals would be new legislation. The point of order to the entire paragraph is therefore sustained.

1302. On March 13, 1914,⁶ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. Mr. J. Hampton Moore, of Pennsylvania, offered this amendment:

¹ First session Seventy-second Congress, Record, p. 2679.

² John W. McCormack, of Massachusetts, Chairman.

³ Reported in section 1299 of this chapter (next above).

⁴ Second session Sixty-second Congress, Record, p. 2854.

⁵ William P. Borland, of Missouri, Chairman.

⁶ Second session Sixty-third Congress, Record, p. 4831.

That the Department of Agriculture shall cooperate with such States as may have provided by appropriation for the investigation and suppression of the mosquito.

Mr. Asbury F. Lever, of South Carolina, made the point of order that the requirement for cooperation with the States was new law and not in order on an appropriation bill.

The Chairman¹ sustained the point of order.

1303. While the organic law creating the Department of Agriculture confers broad powers of investigation, it does not authorize investigations abroad.

On February 11, 1913,² the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read:

Irrigation 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 water at home and abroad, with especial suggestions of the best methods for the utilization of irrigation waters in agriculture, and upon the use of different kinds of power and appliances for irrigation, and for the preparation and illustration of reports and bulletins on irrigation, including the employment of labor in the city of Washington and elsewhere, rent outside of the District of Columbia, and all necessary expenses, \$108,000.

Mr. William E. Cox, of Indiana, made the point of order that there was no authorization of law for investigations "abroad."

After debate, the Chairman³ sustained the point of order.

1304. An appropriation for collection of market statistics on agricultural products was held to be authorized by the organic act creating the Department of Agriculture.

On January 31, 1919,⁴ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union when Mr. Frederick W. Dallinger, of Massachusetts, offered this amendment:

For furnishing to producers, dealers, newspapers, and consumers accurate information regarding supplies of fruits, vegetables, dairy and poultry products, meats, fish, and other food products received on farmers', municipal, and other city markets and prices for which such products are sold; and information regarding such products when in abundance or oversupply, and other related matters, \$42,880.

Mr. William H. Stafford, of Wisconsin, raised a point of order on the amendment.

The Chairman¹ said:

The organic act reads 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 the word, and to procure, propagate, and distribute among the people new and valuable seeds and plants."

¹ Courtney W. Hamlin, of Missouri, Chairman.

² Third session Sixty-second Congress, Record, p. 2997.

³ Jack Beall, of Texas, Chairman.

⁴ Third session Sixty-fifth Congress, Record, p. 2474.

It seems to be rather general and broad. The Chair will call attention to the fact that this amendment is general and applies to work all over the United States. The Chair thinks that the point of order is not well taken, and he overrules the point of order.

1305. An appropriation providing for the daily issue of a price list reporting prices of farm products received by producers was held to be authorized by the organic act creating the Department of Agriculture.

On March 3, 1928,¹ during consideration of the bill making appropriations for the Department of Agriculture, in the Committee of the Whole House on the state of the Union, Mr. Fiorello H. LaGuardia, of New York, proposed an amendment providing for—

including a daily price list of farm products paid to farmers or producers, such price list to be widely diffused and published for the information of consumers in all cities having a population of over 500,000 inhabitants.

Mr. L. J. Dickinson, of Iowa, having interposed a point of order, the Chairman² ruled:

The language of the organic act with reference to the establishment of the Department of Agriculture reads as follows:

“The general design and duties of which shall be 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.”

In view of that very broad language, the Chair is disposed to overrule the point of order. The question is on agreeing to the amendment offered by the gentleman from New York.

1306. An appropriation for investigation of road materials was held to be unauthorized by law.

On January, 26, 1921,³ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union when Mr. Sydney Anderson, of Minnesota, offered an amendment as follows:

Insert a new paragraph, as follows:

“For investigations of the chemical and physical character of road materials, for conducting laboratory and field experiments, and for studies and investigations in road design, independently or in cooperation with the State highway departments and other agencies, \$148,200.”

Mr. Marvin Jones, of Texas, having lodged a point of order against the amendment on the ground that it was unauthorized, the Chairman⁴ said:

The Chair feels that there is no authorization in law for this work. The Chair may have overlooked some provision of law, but not being able to find any and not having any pointed out to him the Chair feels constrained to sustain the point of order and does sustain the point of order.

1307. While an appropriation for investigation of road materials was held not to be authorized under the organic act creating the Department of Agriculture, because not devoted exclusively to agricultural purposes, an appropriation for investigation of irrigation was held to come within the law and to be in order on an appropriation bill.

¹First session Seventieth Congress, Record, p. 4044.

²Allen T. Treadway, of Massachusetts, Chairman.

³Third session Sixty-sixth Congress, Record, p. 2077.

⁴Frederick C. Hicks of New York, Chairman.

On February 13, 1920,¹ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. Mr. Thomas L. Rubey, of Missouri, offered this amendment:

Insert a new paragraph, as follows:

“For conducting field experiments and various methods of roadconstruction and maintenance, and investigations concerning various road materials and preparations; for investigating and developing equipment intended for the preparation and application of bituminous and other binders; for the purchase of materials and equipment; for the employment of assistants and labor; such experimental work to be confined as nearly as possible to one point during the fiscal year, \$45,000.”

Mr. Bertrand H. Snell, of New York, made the point of order that there was no authorization for an investigation of this character.

The Chairman² held:

The Chair has referred to the authorization of law for the Bureau of Public Roads, and finds by reference to the Book of Estimates that the first authorization was made in the appropriation bill approved March 3, 1905. Subsequent to that date appropriations have been made and items carried in the agricultural appropriation bill providing for various investigations and activities on the part of this bureau. But the Chair finds nothing in the organic act for the establishment of the Department of Agriculture authorizing this particular activity, nor does he think the very general language used establishing that department is sufficient to warrant this particular appropriation unless specific authority is found in some other law. The Chair does not believe that the establishment of this bureau or making appropriations for these various activities in the annual appropriation bill or in the language used in the various appropriation bills is sufficient to warrant or to provide for their establishment as a permanent branch of the department. In view of the Chair the amendment offered by the gentleman from Missouri is such activity as is not warranted by existing law, and the Chair therefore sustains the point of order.

The Clerk read as follows:

For investigating and reporting upon the utilization of water in farm irrigation, including the best methods to apply in practice; the different kinds of power and appliances, and the development of equipment for farm irrigation; the flow of water in ditches, pipes, and other conduits; the duty, apportionment, and measurement of irrigation water; the customs, regulations, and laws affecting irrigation; for the purchase and installation of equipment for experimental purposes; for the giving of expert advice and assistance; for the preparation and illustration of reports and bulletins on irrigation; for the employment of assistants and labor in the city of Washington and elsewhere; for rent outside of the District of Columbia; and for supplies and all necessary expenses, \$62,440.

Mr. Snell having again raised the same question of order, Mr. James R. Mann, of Illinois, said:

Mr. Chairman, this is entirely different from a road proposition. Roads are not confined to agriculture. This proposition is for the purpose of investigating and reporting on the use of water in farm irrigation. Now, I have no doubt it is familiar to the Chair, as it is to everybody else, that irrigation is just as important on the farm as any other operation on the farm. We investigate the diseases of horses, and we investigate animals on the farm, of all sorts; we investigate the raising of wheat and corn and other farm products. Now, irrigation is just as much a part of the work of the farm as the raising of wheat or corn. That is not true in the State of New York or in the State of Illinois, but notwithstanding those two great States are very important in agri-

¹ Second session Sixty-sixth Congress. Record, p. 2863.

² Joseph Walsh, of Massachusetts, Chairman.

culture, they are not the only places in the country where there are farms. Now, the organic act authorizes the collection and diffusion of knowledge in its broadest sense, relating to agriculture. That certainly would include the use of irrigation on the farms. That is all this item is.

The Chairman ruled:

The gentleman from New York makes the point of order to the pending paragraph. The Chair understands he bases his contention on the ground that it provides for a general investigation, which is not authorized to be made upon a general appropriation bill. From the language of the pending paragraph, taken as a whole, it seems to authorize an investigation and report upon matters connected with the utilization of water in farm irrigation and the preparation of reports and distribution of the results of that investigation. And the Chair may again refer to the organic act establishing this department, found in the Revised Statutes, second edition, of 1878, page 87, Title II, which provides for the Department of Agriculture:

“The general design and duties of which shall be to acquire and diffuse among the people of the United States useful information of subjects connected with agriculture in the most general and comprehensive sense of that word.”

It also provides for securing and preserving the information concerning agriculture by practical and scientific experiments, an accurate record of which experiments shall be made. It seems to the Chair, in view of the broad, general language used in the organic act, that this is such an investigation as would be authorized, and that it comes within the authority of the department to make investigation and diffuse the information concerning it among the people of the United States. The Chair does not think that this language, taken as a whole, provides for a general investigation, but rather a thorough investigation of a particular subject, namely, the utilization of water in farm irrigation. The Chair overrules the point of order.

1308. While the organic act creating the Department of Agriculture was held to authorize an appropriation for maintenance of a highway weather service, it was ruled not to justify an appropriation for collection of data as to the effects of weather on such highways.

On January 22, 1921,¹ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. Mr. Carl Hayden, of Arizona, offered an amendment, as follows:

For the maintenance of a highway weather service for the collection of reports concerning the effects of weather on public highways, and the issuing of advice, forecasts, and warnings in the aid of highway travel, in cooperation with Federal, State, and local agencies, including salaries, travel, and all other expenses in the city of Washington and elsewhere, \$20,000.

Mr. Sydney Anderson, of Minnesota, in making a point of order against the amendment said:

Mr. Chairman, I did not intend to make the point of order, but as long as it has been made, it is important that it should be determined correctly. I assume the weather is not different over the highways than anywhere else in their vicinity, and that the general authority of the Weather Bureau would apply with respect to a weather service directed particularly to informing motorists as to what the weather was going to be, just as much as to anyone else. But the language which I think is questionable is the language in the first part of the amendment, namely:

“For the maintenance of a highway weather service.”

I think that is all right. Then it says:

“For the collection of reports concerning the effect of weather on public highways.”

I do not think there is any law which authorizes the Weather Bureau to make reports concerning the effects of the weather upon public highways. It has authority to report what the

¹Third session Sixty-sixth Congress, Record, p. 1901.

weather is in the vicinity of the highways, but I do not think it has the authority to investigate the effects of the weather upon the highways. And that part of the amendment, is clearly subject to a point of order.

The Chairman¹ held:

This amendment brings up a rather close question, in the opinion of the Chair. The Chair feels it is impossible for him to determine which of the three activities enumerated in the act creating the Weather Bureau will be benefited. He also doubts if the authorization is broad enough to cover a specific case outside the three mentioned. This amendment is to ascertain "the effect on public highways," and the Chair doubts very much if the law contemplated that a specific subject of that kind should be included. The Chair, therefore, sustains the point of order.

Thereupon Mr. Hayden offered this amendment:

For the maintenance of a highway weather service and the issuing of advices, forecasts, and warnings in aid of highway travel in cooperation with Federal, State, and local agencies, \$20,000.

Mr. Thomas L. Blanton, of Texas, again raised the point of order.

The Chairman ruled:

The precedent that we have in Hinds in which, on an amendment, the Weather Bureau was directed to cooperate with the States, and because of that wording it was ruled out of order. The Chair ventures the assertion that there is no direction of authority in this amendment. The Chair feels that under the broad authority creating the Weather Bureau for the public good, and on which the only limitation so far as the Chair can ascertain is that it shall be for the benefit of agriculture, commerce, or navigation, and as this is clearly for the benefit of one of those three, preferably agriculture, for highways are of vital importance to the farmers. The Chair feels that this amendment comes within the law creating the Weather Bureau and therefore overrules the point of order.

1309. An appropriation for control of the European corn borer was held to be authorized by the organic act establishing the Department of Agriculture.

On February 12, 1920,² the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. Mr. Thomas L. Rubey, of Missouri, offered an amendment proposing an appropriation to enable the Secretary of Agriculture to meet the emergency caused by the spread of the European corn borer in the New England States.

Mr. Thomas L. Blanton, of Texas, made the point of order that the appropriation was not germane and was unauthorized by law.

The Chairman³ said:

The gentleman from Texas makes the point of order to the amendment offered by the gentleman from Missouri—

"To enable the Secretary of Agriculture to meet the emergency caused by the establishment of the European corn borer in Massachusetts, New York, and other States, and to provide means for the control and spread of this insect in these States or elsewhere in the United States, in cooperation with the State or States concerned, including rent outside of the District of Columbia, and the Department of Labor in the city of Washington and elsewhere, and all other necessary expenses, \$300,000."

The Chair overrules the point of order that the amendment is not germane to the particular paragraph or place in the bill which it follows.

¹ Frederick C. Hicks, of New York, Chairman.

² Second session Sixty-sixth Congress, Record, p. 2807.

³ Joseph Walsh, of Massachusetts, Chairman.

With reference to the point of order that the amendment introduces legislation unauthorized by law, the Chair finds that the organic act establishing the Department of Agriculture provides that there shall be a Department of Agriculture to acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture, in the most general and most comprehensive sense of that word; and further, that the Secretary of Agriculture is to procure and preserve all information concerning agriculture which he can obtain by means of books and correspondence and by practical and useful experiments, an accurate record of which shall be kept in his office, by the collection of statistics and by any other appropriate means within his power; and then it provides for the collection of valuable seeds and plants.

It will be noticed that with reference to this authority very broad and general language is used, and apparently the intention was in providing for this department, to permit a wide latitude in whatever action might be taken either by Congress or by the head of the department. This amendment is offered to a place in the bill having to do with the Bureau of Entomology, which is for the investigation of insects affecting vegetation. In the view of the Chair the amendment proposes to meet an emergency and to provide for investigation and to provide a means of control and prevention of an insect which is destroying an agricultural crop; and the Chair is inclined to rule that it is in order to offer the amendment and that it does not violate the rule against new legislation or the introduction of a new subject. The Chair overrules the point of order.

1310. An appropriation to give employees of the House a month's pay in addition to the annual salary is not in order on an appropriation bill.

On July 20, 1909,¹ the urgent deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Marlin E. Olmsted, of Pennsylvania, offered this amendment:

To enable the Secretary of the Senate and the Clerk of the House of Representatives to pay to the officers and employees of the Senate and the House borne on the annual and session rolls on the 1st day of July, 1909, including the Capitol police, the official reporters of the Senate and House, and W. A. Smith, Congressional Record clerk, for extra services during the extra session of the Sixty-first Congress a sum equal to one month's pay at the compensation then paid them by law, the same to be immediately available.

Mr. Robert B. Macon, of Arkansas, having made a point of order against the amendment, Mr. Olmsted cited several decisions holding a similar provision in order on an appropriation bill and said:

It has been done from year to year from a time whereof the memory of man runneth not to the contrary. It may be said to have become a part of the law of the land by prescription. By immemorial custom it is a part of the salary of these officials. They accept their positions with that understanding. It would be unfair, almost dishonest, to them to deprive them of it in this way.

The Chairman² sustained the point of order and said:

There is no question about the decisions having been rendered that were cited by the distinguished gentleman from Pennsylvania, and the last instance cited by him was in the Fifty-fifth Congress, where a decision of the Chair sustaining the point of order was overruled by the committee. But the Chair is, of course, bound by the last precedent upon the question. In the Fifty-sixth Congress, on May 14, 1900, an amendment providing an extra month's pay for employees was ruled out of order on the general deficiency bill by Mr. Chairman Hopkins, and on an appeal the decision was sustained—ayes 58, noes 24.

¹ First session Sixty-first Congress, Record, p. 4572.

² Irving P. Wanger, of Pennsylvania, Chairman.

1311. Action by the House authorizing Members to appear in court in connection with their official duties is construed to imply authorization for employment of counsel to represent them.

On June 17, 1910,¹ the general deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

To pay George E. Hamilton and John W. Yerkes for services as counsel to the Members of the House of Representatives of the Joint Committee on Printing in the suit of the Valley Paper Company, plaintiff, against the Joint Committee on Printing of Congress, respondents, \$5,000.

Mr. William H. Stafford, of Wisconsin, made the point of order that there was no authority of law for the provision.

The Chairman² ruled:

It is not within the province of the Chair to rule as to the wisdom or unwisdom of the passage of this original resolution; nor is it any more within the province of the Chair to pass upon the reasonableness or unreasonableness of the fee included in the amendment against which the point of order has been made. The only question presented to the Chair is whether this expenditure or liability has been authorized, and for that authorization we must look to the resolution itself which has been read by the gentleman from Wisconsin.

The part of that resolution which gives authority, if it is given at all for this expenditure, is this: "Grant permission to enter an appearance in response to said rule for the purpose of pleading to the jurisdiction of the court and taking such further action and interposing such further defense as to them may seem proper."

Now the question is, Having been granted permission to appear in court and plead to the jurisdiction and make such other defense as to them seems proper, leaving it within their discretion, is it a fair construction of that resolution to assume that the House meant that they should appear without counsel or procure counsel at their own personal expense? True, all the members of the Committee on Printing on the part of the House happen to be lawyers, but lawyers in various States not accustomed to the practice of the District of Columbia, to say nothing of compelling them to be both client and counsel in the same cause. Having thus authorized them to appear and plead to the jurisdiction and make such other defense as to them might seem proper, it seems to the Chair that the House by that resolution did authorize them to appear as other parties appear in court, and being in court to make their defense as parties generally make defense, the employment of counsel being incident to a proper appearance in court to plead to the jurisdiction, make defense, or take any other action.

It seems to the Chair that the authorization contained in this resolution is sufficient to justify this item in the bill. The Chair therefore overrules the point of order.

1312. The House having passed a resolution authorizing members to appear in court in official capacity, a provision for salary of counsel to represent them on that occasion is in order on an appropriation bill.

On February 28, 1911,³ the general deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. George C. Sturgiss, of West Virginia, offered this amendment:

To Richard Randolph McMahon, for legal services as of counsel to the Members of the House of Representatives of the Joint Committee on Printing in a suit at law, No. 52342, Valley

¹Third session Sixty-first Congress, Record, p. 3739.

²John Q. Tilson, of Connecticut, Chairman.

³Second session Sixty-first Congress, Record, p. 8436.

Paper Co., plaintiff, *v.* The Joint Committee on Printing of Congress, respondents, in the supreme court of the District of Columbia, in February, 1910, \$500.

Mr. James R. Mann, of Illinois, raised a question of order against the amendment.

The Chairman¹ held:

On June 17, 1910, it was held by the Chairman of the Whole House on the state of the Union, Mr. Tilson, that a resolution authorizing certain Members to appear and act in response to a rule of a court was sufficient authorization for an appropriation in a general appropriation bill for their counsel. From that decision an appeal was taken and the Chair was sustained without division. The Chair, therefore, overrules the point of order. The ruling last year was that the resolution authorizing certain Members to appear and act in response to a ruling of a court was held to be sufficient authorization for an appropriation in a general appropriation bill for their counsel.

1313. 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, but such provision shall conform with the provisions of the resolution.

On February 9, 1922,² the legislative appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

For compensation of W. Ray Loomis as assistant in the document room, \$2,500.

Mr. James T. Begg, of Ohio, made the point of order against the paragraph:
The Chairman³ ruled:

The resolution authorizing the employment of this man was passed in July, 1919, presented by the chairman of the Committee on Accounts. The resolution is as follows:

Resolved, That there shall be paid, out of the contingent fund of the House until otherwise provided for by law, compensation at the rate of \$3,000 per annum, payable monthly, to W. Ray Loomis for his services as editor and compiler of the Weekly Compendium and Monthly Compendium and as assistant in the document room."

There was an amendment to the resolution which reduced the amount to \$2,500. The appropriation in the bill reads as follows:

"For compensation of W. Ray Loomis as assistant in the document room, \$2,500."

The question is whether this appropriation is warranted under the authority which I have read which constitutes the law justifying the appropriation. It appears to the Chair that there is no possible question about that. The appropriation was only authorized by existing law for the purpose of providing, as stated, for the services of compiling a compendium and as assistant in the document room. This appropriation is not for such purpose, but for the purpose of paying for an assistant. The identification of the individual would not help, in the judgment of the Chair, in making it possible for the Chair to hold that it was authorized by existing law when the only existing law is distinctly different from the appropriation, and the point of order is sustained.

1314. Provision of law establishing a Government plant or station was held not to justify an appropriation for designated personnel necessary for its operation.

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

² Second session Sixty-seventh Congress, Record, 2268.

³ Horace M. Towner, of Iowa, Chairman.

While completion of a biological station is such a work in progress as to justify a lump-sum appropriation for that purpose, an appropriation for designated personnel to operate such station is not to be construed as provision for a work in progress and is not in order on an appropriation bill.

On February 25, 1909,¹ the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read:

Biological Station, Fairport, Iowa: Director, at the rate of \$1,800 per annum; superintendent of fish culture, at the rate of \$1,500 per annum; scientific assistant, at the rate of \$1,400 per annum; scientific assistant, at the rate of \$1,200 per annum; foreman, at the rate of \$1,200 per annum; shell expert, at the rate of \$1,200 per annum; engineer, at the rate of \$1,000 per annum; two firemen, at the rate of \$600 per annum each; two laborers, at the rate of \$600 per annum each; in all, \$7,800 or so much thereof as may be necessary.

Mr. William E. Cox, of Indiana, having made the point of order on the paragraph, Mr. Albert F. Dawson, of Iowa, said:

Mr. Chairman, it does not seem to me the point of order can possibly lie against this paragraph in the bill. The act approved May 27, 1908, provided for the establishment of a biological station on the upper Mississippi Valley, and appropriated \$25,000 for that purpose. Under the authorization of the act the Commissioner of Fisheries has gone forward and established this station at Fairport, Iowa. The paragraph in this bill, against which the gentleman now seeks to raise the point of order, simply provides for the personnel of that station. If the point of order is sustained, Mr. Chairman, we will be in the position of Congress by law establishing this biological station and yet being prevented from appropriating or providing the officials necessary to conduct that station. By law we have provided for the station and appropriated the money for its construction. It seems to me it would be perfectly ridiculous and absurd to think that the point of order would lie against an appropriation simply to provide the employees for that station. If the point of order is good, then we would simply have a station located out there on the Mississippi River, with no one to conduct it. Certainly that provision of law creating the station carries with it the authority to provide the necessary personnel for the management and conduct of that station. It seems to me, Mr. Chairman, there can be no question but that the point of order does not lie against the paragraph.

Mr. James A. Tawney, of Minnesota, further submitted:

Mr. Chairman, in addition to the fact that this biological station is authorized by law, the station has been established, the work of completing it or preparing it for the uses for which it was established is now going on—a public work in progress, originally authorized by law.

The Chairman² decided:

The law providing for the establishment of this station, as the Chair understands it, reads as follows:

“Biological station, Mississippi River Valley: To enable the Secretary of Commerce and Labor to establish a biological station for the propagation of fresh-water mussels in the upper Mississippi Valley, at some suitable point to be selected by the Secretary of Commerce and Labor, including the purchase of site, construction of buildings and ponds, and equipment, \$25,000.”

The Chair thinks the section is subject to the point of order and is clearly obnoxious to the rule. It has been held, for instance, that a specific appropriation for designated officials of an exposition at stated salaries, there being no prior legislation creating those places and fixing

¹Second session Sixtieth Congress, Record, p. 3138.

²Marlin E. Olmsted, of Pennsylvania, Chairman.

those salaries, is subject to the point of order, although a general appropriation for the exposition was authorized by law. There is no question, in the opinion of the Chair, but that a lump-sum appropriation might be made to continue this particular establishment, but that does not authorize creating the posts and fixing various salaries. The Chair thinks it is clearly obnoxious to the rule and sustains the point of order.

1315. While a statute creating a bureau for a declared purpose may authorize a lump-sum appropriation for carrying out that purpose, it does not create offices or warrant appropriations for salaries of specific offices. The statute creating the Bureau of Education was held not to justify an appropriation for specific offices not otherwise authorized by law.

On January 7, 1911,¹ the legislative, executive, and judicial appropriation bill was under consideration in the Committee of the Whole House on the State of the Union, when Mr. James R. Mann, of Illinois, made the point of order that the following language, in a paragraph appropriating salaries for the Bureau of Education, was not authorized by existing law:

Specialist in higher education, specialist in rural education, specialist in school hygiene, at \$3,000.

The Chairman² ruled:

On February 28, 1898, the gentleman from New York, Mr. Payne, being Chairman of the Committee of the Whole House on the state of the Union, the sundry civil bill being under consideration, a section was reached making an appropriation of \$100,000 for the participation of the United States in the Paris Exposition. 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, and so forth.

A point of order was made that this was legislation on an appropriation bill. The Chair 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."

On February 25, 1909, when the sundry civil bill was under consideration, the gentleman from Indiana, Mr. Watson, being Chairman of the Committee of the Whole House on the state of the Union, ruled as follows:

"The authorization of a Government establishment without legislation establishing offices and salaries does not authorize specific appropriations for such salaries, even although a lump sum might be appropriated to carry out the work."

The Chair thinks it is conceded that the language to which the point of order is directed does create new offices, and the Chair sustains the point of order.

¹Third session Sixty-first Congress, Record, p. 624.

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

1316. Statutes authorizing the employment of such departmental clerks “as may be appropriated for by Congress from year to year” or “as Congress may from time to time provide” were held to warrant appropriations for clerkships not otherwise authorized.

On February 4, 1911,¹ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. When the paragraph providing appropriations in the Bureau of Plant Industry was reached Mr. Charles L. Bartlett, of Georgia, reserved a point of order on items for clerkships not previously provided for.

Mr. James R. Mann, of Illinois, in discussing the point of order, said:

The organic act creating the Department of Agriculture provides, in section 523 of the Revised Statutes:

“The Commissioner of Agriculture shall appoint a chief clerk, and he shall appoint such other employees as Congress may from time to time provide, with salaries corresponding to the salaries of similar offices in other departments of the Government; and he shall, as Congress may from time to time provide, employ other persons for such time as their services may be needed, including chemists, botanists, entomologists, and other persons skilled in the natural sciences pertaining to agriculture.”

The question is whether under that provision Congress can provide for a new office.

Mr. Chairman, I had the honor to report to this House the bill creating the Department of Commerce and Labor, the last department that was created in the Government. In that department we created several new bureaus. We studied that subject very thoroughly in the committee, knowing that it was impossible to put in the statute the number of employees that should be engaged in the bureau permanently and do it successfully. We undertook to write the statute in such a way that in the annual appropriation bills the number of employees might be varied as requirements would suggest. And in that law, creating the Bureau of Corporations, the language is “as Congress may from time to time authorize,” or “provide,” whichever it is. It does not say “appropriate,” for, as I recall it, it was the understanding then in the House, and was so stated, that that language was intended to mean that under it Congress could vary the number of employees in the bureau from time to time. It would be preposterous to say that Congress should legislate every year by direct legislation fixing the number of employees in a bureau which may expand or contract in the exigencies of the service. I think there is no escape from the proposition that the language “may from time to time provide” means to provide in an appropriation act.

The Chairman² held:

The Chair is not inclined to believe that the statutes intend to make any difference between the Department of Agriculture and other departments of the Government in the matter of the power of Congress to appropriate for places from year to year. It is true that title 4, section 169, of the Revised Statutes, reads 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 language referring to the Department of Agriculture in similar connection reads as follows:

“SEC. 523. The Commissioner of Agriculture shall appoint a chief clerk * * * and he shall appoint such other employees as Congress may from time to time provide, with salaries corresponding to the salaries of similar officers in other departments of the Government, etc.”

¹Third session Sixty-first Congress, Record, p. 1943.

²Joseph H. Gaines, of West Virginia, Chairman.

The point of difference comes on the comparison of the language—
 “As may be appropriated for by Congress from year to year”—
 and the language—

“As Congress may from time to time provide.”

There was certainly no question that Congress might from time to time provide by additional proper legislation for new places, even without a previous statute on the subject, and therefore, unless the statute just read with reference to the Department of Agriculture is construed to be of similar import as section 169 of the Revised Statutes, relative to other departments, the language would have no meaning at all. The Chair, therefore, overrules the point of order.

1317. Construction of the law authorizing the employment of mechanics and laborers and other employees in the executive departments.

On March 1, 1912,¹ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The paragraph providing for salaries of employees in the office of the Secretary of Agriculture was read, when Mr. Frank Clark, of Florida, made a point of order that the provision for “two cabinetmakers or carpenters, at \$1,000 each,” formerly carried in the agricultural appropriation bill as “two carpenters at \$ 1,000 each,” was not authorized by law.

The Chairman² held:

The Chair holds that the construction placed upon that statute³ would authorize the employment of this class of mechanics and laborers. In section 3669, of Hinds' Precedents, a point of order was made against the employment of a telephone switchboard operator, and in the same section a point of order was made against the employment of a wireman, both of whom were evidently skilled mechanics. The point of order was overruled, and the point of order is overruled at this time.

1318. The law authorizing the heads of departments to employ such labor as may be appropriated for does not apply to labor not at the seat of government.

Contravening a former ruling, an appropriation for drainage investigations was held in order on the agricultural appropriation bill.

On March 12, 1912,⁴ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read the following paragraph:

Drainage investigations: To enable the Secretary of Agriculture to investigate and report upon the drainage of swamp and other wet lands and to prepare plans for the removal of surplus waters by drainage and for the preparation and illustration of reports and bulletins on drainage, including the employment of labor in the city of Washington and elsewhere, rent outside of the District of Columbia, and all necessary expenses, \$96,700.

Mr. James R. Mann, of Illinois, made the point of order that there was no authority of law for the appropriation.

The Chairman² said:

¹ Second session Sixty-second Congress, Record, p. 2678.

² William P. Borland, of Missouri, Chairman.

³ Rev. Stat., section 169.

⁴ Second session Sixty-second Congress, Record, p. 3220.

The Chair has given this paragraph some little attention, and has studied in connection therewith the ruling of a former Chairman of the Committee of the Whole when this identical language was under consideration. The Chair is aware that at that time the identical language was held subject to a point of order. The objection is made that the language does not limit these activities or investigations to land which would be the subject of agriculture. As far as that point is concerned, the Chair is not able to see the distinction between this paragraph and numerous other paragraphs in the bill, including the one in regard to natural deposits of potash. It is perfectly apparent that there are a great many of the activities of the Department of Agriculture that may be advantageous in manufacturing, and some possibly in mining, but if the main purpose must necessarily be agricultural, it undoubtedly would come within the scope and powers of the Department of Agriculture.

The gentleman from Illinois, Mr. Mann, says that it is impossible to conceive of a discovery of a natural deposit of potash or other natural fertilizer which would not directly affect agriculture, and the same argument applies to the drainage of swamp lands, that it is impossible to conceive of the drainage of swamp land that would not affect agriculture, not only at that locality, but of the entire country dependent for its food supply upon agricultural land available in the market. The Chair is unable to see anything in the scope of that paragraph that removes it at all from the general jurisdiction of the Department of Agriculture, and with the exception of a very small technical point, the Chair would be entirely convinced that the paragraph was in order, and was within the powers of the Department of Agriculture.

The language of the section is that the money shall be expended for the employment of labor in the city of Washington and elsewhere and for rent outside of the District of Columbia. The language of the decisions—not one isolated decision on a particular set of words, but a long line of precedents establishing a general rule of construction in this House—has been that language in an appropriation bill attempting to give the head of a department power to employ labor is limited to the department in the city of Washington. That being a general line of precedents, and well settled by repeated decisions, the Chair feels bound to follow it. The Chair must very reluctantly, therefore, sustain the point of order.

1319. It is in order to appropriate specifically a specified salary previously paid from a lump-sum appropriation made under authority of law for an office created by an executive in charge of the lump-sum appropriation.

On April 5, 1912,¹ the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read:

For pay of one financial clerk, at \$600, and one physician, at \$480 per annum, in addition to employees otherwise provided for at the Sac and Fox Agency, Iowa; in all, \$1,080.

To this paragraph Mr. Robert H. Fowler, of Illinois, made a point of order, as follows:

Mr. Chairman, I desire the attention of the Chair for one moment to make myself clear on the proposition. The lump sum which has been appropriated heretofore, I presume, was under authority of law. That lump sum was placed under the control of the commissioner to carry out this work as he saw proper. He could hire a man 1 day or 20 days or a year, if he saw fit under that authorization, and pay him any sum agreed upon.

Now, it is proposed to take a portion of this work away from the control of the commissioner and give it to two specified created offices, entirely new, without any authorization under the law as it stands now, and fix their salaries, over which the commissioner has no control whatever. Therefore it becomes new legislation, creating new offices and fixing the salaries therefor, different from what the authorization is now, and hence, I take it, Mr. Chairman, it is new legislation. I do not desire to take up the time of the House, but I insist upon my point of order.

¹Second session Sixty-second Congress, Record, p. 4356.

In reply, Mr. James R. Mann, of Illinois, said:

Mr. Chairman, it has been more or less of a controverted question in the House where a lump-sum appropriation was made under authority of law and an office was created by the person in charge of that lump-sum appropriation, as to whether that office could then be specifically carried in an appropriation bill by name at the same salary as under the lump-sum appropriation. I do not propose to discuss it at length, but perhaps the latest ruling made on the subject was during the discussion of the agricultural appropriation bill. There the question was distinctly presented on a point of order whether it was in order to appropriate specifically for an office at a specified salary, which office had heretofore been filled and paid out of a lump-sum appropriation. I have forgotten at present who was in the chair, but the Chairman of the Committee of the Whole at that time ruled distinctly that where an office was created and paid out of a lump-sum appropriation that then it was in order for the committee to report in order on a bill making appropriations an item for that office with the salary carried which was already being paid. I take it, Mr. Chairman, that there is no doubt Congress, either by express provision of law or by reason of the policy of the Government, is entitled to maintain Indian agencies. I do not now recall just what was said, but I referred awhile ago to the fact that I made a point of order on the item in the bill for the Seminole Indians last year or the year before when it first appeared. I thought it was a perfectly good point of order. We were under no obligations, so far as treaties were concerned, to aid in the support of those Indians. So far as we were concerned, they were like other citizens of the United States, but for reasons which were then presented on the floor the then Chairman held that it was the policy of the United States, either by expressed law or by inference of law, to give aid and support to the Indians, and to the end of that policy it was in order to make an appropriation for the first time without specific treaty or other authority of law for the benefit of the Seminole Indians, and that item went into the bill and remained in the bill. The same rule would apply in general terms to the maintenance of the Indian agencies, would apply in general terms to the lump-sum items in the bill, or in the existing law out of which these officers are now paid, and if that rule is to be followed and then the ruling made recently by the Chair on the agricultural bill is to be followed, why this item would have to be held in order.

The Chairman¹ held:

The Chair fully appreciates that the point of order made against the paragraph is similar to the one made against the previous paragraph. The Chair's ruling on that paragraph was based largely upon the information received from the committee, that this appropriation, for such it may be called, is merely an itemization of the lump sum provided on the previous page of the bill. Heretofore, as the Chair understands it, this appropriation has been made in a lump sum, and the manner of the distribution of the amount has been left to some other authority than to Congress. Under the action of the committee in this bill the committee has undertaken to distribute these item to the several States where they think they properly belong, and with that understanding the Chair held that the point of order was not well taken. If the Chair was right in the previous ruling, as he believes rulings of this sort have been made before, he must also overrule the point of order in this instance, and he does so, and the Clerk will read.

1320. The law authorizing the heads of departments to employ such clerks as may be appropriated for was held to warrant an appropriation for clerks in the field force of the Civil Service Commission.

On December 6, 1912,² the legislative, executive, and judicial appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The Clerk read the paragraph providing appropriations for salaries of district secretaries in the field force of the Civil Service Commission.

¹ Henry A. Barnhart, of Indiana, Chairman.

² Third session Sixty-second Congress, Record, p. 234.

Mr. Robert H. Fowler, of Illinois, raised a question of order on the paragraph. Mr. James R. Mann, of Illinois, said:

Mr. Chairman, if the Chair will permit, I would like to make an observation in reference to the rule. Mr. Chairman, the rulings in regard to matters of this sort are so arbitrary and artificial that sometimes it is necessary to restate them. The rulings are uniform for many years that so far as the salary is concerned the salary in the current law fixes the salary for the bill. In other words, an increase in the salary of an official when that salary is covered by the current law can not be made over a point of order. This is a purely artificial ruling, because there is no salary fixed by law for these places, but long ago some Chairman held that current law fixed the salary, because without that the House was in confusion. Now, there is also no law fixing the number of these places, but there is a uniform ruling that where the position was authorized at all you could increase the number of places in that position unless the law fixed the number. Take, for instance, the most common illustration, which is the Post Office Department. The number of clerks and carriers in the Post Office Department is not fixed by law except the current law. They have to be increased every year. It is impossible as a matter of practice to pass a law definitely fixing for future years the number of clerks or carriers in the Post Office Department. The same is true of clerks in the different departments in Washington, but where a certain number is carried in the current law, say, two at \$1,800, while the salary fixed is in the present bill and current law the number is not governed by the current law, and in this case the Civil Service Commission, being authorized to do this work and have these employees, the number of employees in the current law does not control the House in fixing the number in the bill each year, although the salary is controlled by the current law. Now, these officers being authorized by the law, the number may be increased by Congress from time to time without being subject to a point of order.

The Chairman¹ held:

It seems to the Chair that the first question for the Chair to ascertain is whether or not section 169 of the Revised Statutes authorized these clerks or whether the head of a department has the right to employ these five clerks. In 1906 Mr. Boutell was in the chair, and this identical question came up and was decided² by him on a point of order made by Mr. Tawney upon clerks of a similar nature in the War Department. Mr. Boutell held at that time, quoting section 169, that where the statute had authorized the heads of the department to employ clerks and other laborers that it was in order, and he overruled the point of order. He used this language:

"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:"

Here he quotes the statute. This is a similar case, where the gentleman from New York [Mr. Fitzgerald] cites the statute, section 169, as authority for this legislation. Mr. Boutell made this comment:

"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, 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."

And he went on and held that these clerks were to be employed as contemplated in section 169 of the Revised Statutes. The Chair is of the opinion that section 169 would apply to the clerks in this item, and therefore overrules the point of order.

1321. The law authorizing the heads of departments to employ such clerks as may be appropriated for was held to authorize clerkships not otherwise authorized.

¹ John N. Garner. of Texas. Chairman.

² Hinds' Precedents, section 3670.

On February 7, 1913,¹ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. When the paragraph providing salaries for the office of the Secretary of Agriculture was reached Mr. Robert H. Fowler, of Illinois, made a point of order against appropriations for salaries of various positions carried in the paragraph on the ground that they were not authorized by law.

The Chairman² said:

The Chair remembers the controversy which took place in the House on the consideration of the agricultural bill last year. The gentleman from Florida, Mr. Clark, directed a point of order against this item in the bill. Those supporting the item predicated that support upon the original act creating the Department of Agriculture, which authorized the head of that department to do certain things, and upon a statute that gave certain authority to various heads of departments; also upon the language contained in the agricultural appropriation act of 1910. That language is this:

“Solicitor, \$4,500; hereafter the legal work of the Department of Agriculture shall be performed under the supervision and direction of the solicitor.”

The recollection of the Chair is that the gentleman from Missouri, Mr. Borland, presided over the committee at that time and held that the point of order was not well taken, and suggested that even if the original act, or the provision of the statute to which I have referred, was not sufficient to authorize the provision the appropriation act of 1910 was in itself sufficient, because while it was an appropriation act still there was legislation on it, and the provision with respect to the solicitor was not limited to that particular year, but contained the word “hereafter.”

The Chair reads from section 3687 of Hinds' Precedents, volume 4:

“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.”

If this position had been created by a separate and distinct statute establishing the position and fixing a definite salary for it, that salary would govern, and if a committee in the preparation of an appropriation bill should increase the salary or the allowance for that salary at any subsequent time and a point of order should be made against it, the point of order would be good. But as the Chair understands the language of the appropriation act of 1910, it did not attempt to fix a definite salary for the position of solicitor, and under the precedent that the Chair has cited, inasmuch as Congress in its last appropriation bill fixed the salary at \$5,000, it is the opinion of the Chair that that would be the law with respect to the salary and therefore the point of order is overruled.

In the opinion of the Chair, the precedents are almost uniform to the effect that, under the authority of the act creating the Department of Agriculture, as well as under the authority of the article of the statute which has been read here, it is within the province of this committee to consider any item on an appropriation bill to create and care for such an employee as this, and therefore the Chair overrules the point of order.

1322. A general law authorizing the heads of departments to employ such clerks as may be appropriated for, a provision making appropriation for clerks so employed was held to be in order.

On January 22, 1921,³ the Agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. The paragraph providing for salaries of clerks in the office of the Secretary of Agriculture had been read.

¹Third session Sixty-second Congress, Record, p. 2732.

²Jack Beall, of Texas, Chairman.

³Third session Sixty-sixth Congress, Record, p. 1894.

Gilbert N. Haugen, of Iowa, reserved a point of order against the following provision:

Director of scientific work, \$5,000; director of regulatory work, \$5,000.

Debating the point of order, Mr. Sydney Anderson, of Minnesota, said:

It is true, Mr. Chairman, there is no law which specifically provides for the employment of a director of scientific work or a director of regulatory work in the department. But, Mr. Chairman, there are employed in the Department of Agriculture agronomists, chemists, meteorologists, all sorts of men of various sundry and diverse designations, and there is no specific authorization of law for these employments. There is, however, a general law applicable to all the departments, which has been frequently construed and which may have an applicability to this situation. That general law is as follows, and is in section 169 of the Revised Statutes:

“Each head of a department is authorized to employ in the departments such number 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.”

Now, I do not maintain, of course, that these two places are authorized under this law. I refer to it only because I shall have occasion later to refer to the decisions under it, which I think are applicable as well to another provision which I am now going to read.

Section 523 of the Revised Statutes provides:

“The Commissioner of Agriculture shall appoint a chief clerk, with the salary of \$2,000 a year, who in all cases during the necessary absence of the commissioner, or when the office of the commissioner shall become vacant, shall perform the duties of the commissioner.”

Now, this is the language to which I wish to direct the attention of the Chair:

“And he shall appoint such other employees as Congress may from time to time provide in other departments of the Government, and he shall, as Congress may from time to time provide, employ other persons for such time as their services may be needed, including chemists, botanists, entomologists, and other persons skilled in the natural sciences pertaining to agriculture.”

Now, it is clearly the intention of Congress in putting that language into the statute to give to the Secretary of Agriculture the broadest possible power to employ persons necessary to carry on the work which Congress provides for by appropriations, and also to give the general authority to appoint the persons for whom Congress might by appropriation provide these salaries.

The Chairman¹ held:

The Chair is aware that this is a very close question and that there is some conflict in the precedents.

Section 169 of the Revised Statutes has been quoted, which refers to the power of the department to appoint clerks of various classes, messengers, and so forth. If that was the only law in existence the Chair would have no doubt as to his decision, for he would base it on a precedent in Hinds', volume 4, section 3590, in which case a nearly similar proposition was ruled out of order. But referring to the law creating the Department of Agriculture, paragraph 778 of Chapter I, the Chair reads:

“The Secretary of Agriculture shall appoint a chief clerk”—

And so forth; and then this further power is given him:

“He shall, as Congress may from time to time provide, employ other persons for such time as their services may be needed, including scientists, botanists, entomologists, and other persons skilled in the natural sciences pertaining to agriculture.”

It seems to the Chair in reading the part of the bill to which objection has been made that the Director of Scientific Work must be assumed to be a scientist in order to be qualified to be a director of that work. The Chair also thinks that the man in charge of the regulatory work should be a scientist.

¹Frederick C. Hicks, of New York, Chairman.

The Chair fortifies his position by a further authorization in the law. The Chair finds that in addition to the power to appoint scientists the Secretary of Agriculture has the power to appoint other persons, persons skilled in science pertaining to agriculture. It seems to the Chair that the authority granted to the Secretary of Agriculture is extremely broad—undoubtedly intended to be so in order to be sufficiently comprehensive to provide for the needs of the department as it develops. While a precedent can be referred to which does not allow the creation of a bureau for the purpose of carrying on scientific investigations without specific authorization, the Chair does not think that ruling applies in this case. Other rulings would make it clear that the authorization is not broad enough to cover officers high up in the department. But the Chair thinks that in order to carry on the work of the department the Secretary is authorized under the organic law to appoint men who are not at the very top of the department. Therefore the Chair feels that the point of order made by the gentleman from Iowa is not well taken. To further fortify the Chair's decision, he refers to page 2732 of the Congressional Record, February 7, 1913, where a ruling was made which is in line with the ruling of the present occupant of the chair. The Chair also cites the ruling of Chairman Madden on May 27, 1919, in a case almost parallel to the present one. The Chair overrules the point of order.

1323. Statutory authorization for paying expenses of "advertisement of sale" was construed not to justify payment of salaries of employees in connection with such sale.

On January 7, 1913,¹ the Indian appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. John H. Stephens, of Texas, made a point of order against the following amendment offered by Mr. Charles H. Burke, of South Dakota:

For payment of salaries of employees and other expenses of advertisement of sale in connection with the disposition of the unallotted lands and other tribal property belonging to any of the Five Civilized Tribes, to be paid from the proceeds of such sales when authorized by the Secretary of the Interior as provided by the act approved March 3, 1911, not exceeding \$25,000 reimbursable from the proceeds of sale.

After debate, the Chairman² held:

The Chair is inclined to think that the authority of the act cited which provides for depositing in certain banks the net receipts from the sales of surplus and unallotted lands, less the necessary expense of advertising and sale, is hardly authority to support the amendment under consideration relating to the salaries of employees and other things. The Chair is not very well satisfied in his own mind about this ruling, because it is difficult for him to get at all the provisions of law back of the amendment, and which are supposed to justify it. On the whole, however, though with some hesitation, the Chair sustains the point of order.

1324. A position having been created by law without fixing the amount of salary to be paid incumbent, any amount of salary provided therefor in an appropriation bill is not subject to a point of order.

On February 21, 1913,³ the sundry civil appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. Robert H. Fowler, of Illinois, raised a question of order against this paragraph:

Office of the Deputy Public Printer: Deputy Public Printer, \$4,500; clerks—two of class 1, one \$900; chemist, \$1,600; messenger, \$840; in all, \$10,240.

Mr. John J. Fitzgerald, of New York, said:

¹ Third session Sixty-second Congress, Record, p. 1189.

² Edward W. Saunders, of Virginia, Chairman.

³ Third session Sixty-second Congress, Record, p. 3596.

Mr. Chairman, the act of February 26, 1907, which was the legislative appropriation act, provides as follows:

“The office of Deputy Public Printer shall be filled by the selection and appointment by the Public Printer of a person skilled as a practical printer and versed in the art of bookbinding, and who shall perform the duties heretofore required of the chief clerk, have supervision of the buildings occupied by the Government Printing Office, and perform such other duties as may be required of him by the Public Printer.”

That provision unquestionably provides for the appointment of a Deputy Public Printer. The amount of his compensation is not fixed in that act or in any other act, and under the decisions where a compensation is not fixed the amount provided in the current law is the sum to be considered in disposing of points of order. The compensation here is the same as in the current law, and I submit the gentleman's point of order is not well taken.

The Chairman ¹ held:

The Chair is of the opinion that this provision in the act of 1907 conveys the intention of Congress to create the office of Deputy Public Printer, and in this provision there is no salary fixed for the office. In the judgment of the Chair it is within the province of the Appropriations Committee to appropriate what in its judgment is necessary, and for it to become a law by the approval of Congress. Therefore, the Chair overrules the point of order.

The Chair is of the opinion that it was the intention of Congress at this time to create the office of Deputy Public Printer. It did not fix the salary, and the Appropriations Committee is acting within its power when it fixes the salary of that office. And then it is for Congress to determine whether that salary shall be allowed or not. So the Chair thinks this is entirely within the rules and is not subject to the point of order.

1325. Statutory provision for such employees “as may be authorized by law” is construed to authorize appropriations to pay classes of employees so authorized.

The organic acts creating the Departments of Commerce and Labor, and subsequently the Department of Labor, were held to authorize lumpsum appropriations for special employees.

On April 14, 1914,² the legislative, executive, and judicial appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

For compensation and per diem, to be fixed by the Secretary of Commerce, of special attorneys, special examiners, and special agents, for the purpose of carrying on the work of said bureau, as provided by the act approved February 14, 1903, entitled “An act to establish the Department of Commerce and Labor,” the per diem to be, subject to such rules and regulations as the Secretary of Commerce may prescribe, in lieu of subsistence, at a rate not exceeding \$4 per day to each of said special attorneys, special examiners, and special agents, and also of other officers and employees in the Bureau of Corporations while absent from their homes on duty outside of the District of Columbia, and for their actual necessary traveling expenses, including necessary sleeping-car fares; in all, \$175,000.

Mr. Horace M. Towner, of Iowa, made the point of order that the paragraph was not authorized by law.

Mr. James R. Mann, of Illinois, said:

Mr. Chairman, I will state that I am the author of that law. The matter of employment of officials in the department under authorization of law has long been one of some contention.

¹ Martin D. Foster, Of Illinois, Chairman.

² Second session Sixty-third Congress, Record, p. 6687.

In recent years in creating departments, and that was the case in creating the Department of Commerce and Labor, the authority was given for the employment of certain experts or other persons when authorized by law, the purpose of that being, under construction of the rules of the House in force, that the authorization would be in the appropriation bill itself.

The authorization for the employment was in the original organic act, except that that authorization instead of specifying the amount which may be appropriated for the number of experts who may be employed, says "such number as may be authorized by law." That was under a construction of the rules of the House holding that in such cases that language authorized the appropriation bill to carry a provision for those experts. And gentlemen can easily see the reason for that construction. It is not possible in creating a new department or a new bureau to provide specifically for the number of the employees who may be in the department and the bureau, unless you leave it so that there can be no growth or, if there is growth, so that every time there is a growth it is subject to a point of order. Hence under the construction of the rules of the House in the organic act creating the Department of Commerce and Labor, and I think also in the organic act creating the Department of Labor, and in creating a good many other bureaus of the Government, there is the provision that persons may be employed as authorized by law. That authorization by law means the appropriation acts. That has been the construction all the time. That was the construction before this language was used in the organic act of the Department of Commerce and Labor and has been the construction of that language ever since.

The Chairman ¹ overruled the point of order.

1326. A provision in an annual appropriation bill that rates of compensation therein appropriated should constitute the permanent rate of compensation until otherwise provided by law was held to establish salaries only and not the offices for which provided.²

On December 17, 1914,³ the legislative, executive, and judicial appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read the paragraph providing appropriations for salaries of personnel of the Indian Office.

Mr. Charles L. Bartlett, of Georgia, made the point of order that there was no authority of law for certain offices provided for therein.

Mr. James R. Mann, of Illinois, also reserving a point of order, said:

If any portion of the clause is subject to a point of order, the entire clause is subject to it. There is no doubt whatever that under the law and the rules existing prior to the passage of the legislative act of last year the mere carrying of an office in any appropriation bill was not to be considered as permanent law to authorize it to be inserted in an ensuing appropriation bill;

¹John N. Garner, of Texas, Chairman.

²Subsequently the following provision in reference to the employees carried in the legislative, executive and judicial appropriation bill was enacted:

"The officers and employees of the United States whose salaries are herein appropriated for are established and shall continue from year to year to the extent they shall be appropriated for by Congress." Volume 38, U. S. Statutes at Large, p. 1049.

On a similar question of order on Mar. 10, 1916, Record, p. 3923, first session Sixty-fourth Congress, Chairman Crisp referred to this law as establishing such offices and fixing the salaries.

On Jan. 6, 1922, Congressional Record, p. 907, second session Sixty-seventh Congress, Chairman John Q. Tilson referred to this law as sufficient authorization for appropriations for officers and employees appropriated for by this appropriation bill

³Third session Sixty-third Congress, Record, p. 308.

and I take it to be true—I think the gentleman so asserted, and his assertion is good—that there is no permanent law in the form of an enactment providing for a second assistant commissioner in the Indian Office. That is also true, I believe, of the various financial clerks, of various chiefs of division, law clerk, of assistant chief of division, expert accountant, private secretary, examiner of irrigation accounts, draftsmen, and various other officials, and I shall make the point of order on all of them if this is sustained.

Let us find out where we are. Last year, because of the fact that most of the items in the legislative bill were subject to a point of order, and because of the fact that it is practically impossible in one year to name all the officers in the different departments of the Government for permanent employment without there being an opportunity to increase the number next year, because most of the places named in the legislative act were subject to a point of order under the rules as heretofore construed, Congress provided in the legislative act in section 6, which my friend from Georgia has already quoted, as follows:

“That all laws or parts of laws to the extent they are inconsistent with rates of salaries or compensation appropriated by this act are repealed, and the rates of salaries or compensation of officers or employees herein appropriated shall constitute the rate of salary or compensation of such officers or employees, respectively, until otherwise fixed by annual rate of appropriation or other law.”

The Chair is called upon now to make a very important ruling, and the question is whether where Congress fixes a salary for an office it thereby authorizes the office itself. That is the only question involved here.

Now, if we fail to make an appropriation for an office, the officer can not bring a claim in the Court of Claims. If we specifically provided by legislation for the office of Second Assistant Commissioner of Patents at \$2,750 a year and failed to make the appropriation, the Second Assistant Commissioner of Patents could bring a suit in the Court of Claims, and we would have to pay the salary. This section 6 was carefully prepared, and it gives to the House the right this year to treat as permanent law any office the salary of which was fixed in the legislative bill of last year. But if we drop it out this year, it does not give the officer any chance to make a claim in the Court of Claims.

If the Chair holds that while we fix the salary for the office we do not authorize the office, the legislative bill becomes the whim of any one Member of the House. You can not provide by law that there shall be so many clerks, so many other officials, so many law clerks, so many private secretaries, so many chiefs of division, as permanent law without tying the hands of the House, which primarily makes the appropriation for the departments in Washington. I hope the Chair will overrule the point of order made by myself, as well as the point of order made by my distinguished friend from Georgia.

The Chairman¹ ruled:

The Chair remembers distinctly when this matter was before the House in reference to the points of order made against increase of salaries on appropriation bills above that fixed by law. The Chair thinks and believes that it was the intention of Congress that the salary of all officers which were provided for by law and which were authorized to be provided for in appropriation bills should be permanently fixed according to the appropriation bill of 1914 of last year.

Now, the Chair does not take it that Congress intended in that provision to authorize all offices not provided by law, but only to fix the salaries of those offices which were provided by law according to section 6 of the act of July 16, 1914, and that the contention of the gentleman from Illinois that that provision made permanent all offices provided for in the last year's appropriation bill was not the intention of Congress, and the provision in the law did only apply to salaries and not to the offices not provided by law, and so the Chair sustains the point of order.

¹Martin D. Foster, of Illinois, Chairman.

1327. Construction of the law authorizing the employment of “watchmen, messengers, and laborers” in the executive departments.

On February 19, 1916,¹ the Post Office Department appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when this paragraph was reached:

For compensation to watchmen, messengers, and laborers, 1,800, at \$840 each; in all, \$1,400,000.

Mr. Thomas U. Sisson, of Mississippi, made the point of order that there was no authority for the appropriation.

The Chairman² ruled:

The item carried in last year’s appropriation bill provided for the payment of 1,800 watchmen, messengers, and laborers, 900 of them to receive \$840 and 900 to receive \$720 each. The item we are considering provides for the payment of \$840 to each of 1,800 watchmen, messengers, and laborers. 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.”

Now, if this item remains in the bill, Congress will appropriate this year for 1,800 watchmen, messengers, and laborers at the rate of \$840 each per year if the head of this department desires to employ that many at that compensation. This matter has been considered in the House before. It came up on March 27, 1906, upon the proper construction of the law authorizing the employment of watchmen, laborers, and other employees in the executive departments. I have just read the statute.

On March 23, 1906, the legislative appropriation bill was being considered in the Committee of the Whole House on the state of the Union when the gentleman from Georgia, Mr. Hardwick, made the point of order that there was no law to authorize a proposed appropriation for “one telephone-switchboard operator in the Department of State.” At that time the Chairman, Mr. Olmsted, of Pennsylvania, said:³

“This is an appropriation for a telephone-switchboard operator in the Department of State, which is an executive department.”

Then, after quoting the section of the Revised Statutes I have read, he proceeded as follows:

“The 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.”

The Chair thinks that section 169 of the Revised Statutes applies here, and under section 169 of the Revised Statutes, if this section is enacted into law, the Postmaster General would be authorized by law to employ these 1,800 clerks at \$840 each, or as many of them as may be needed. The law clearly provides that he can employ them—messengers, watchmen, and laborers—at the compensation fixed each year by Congress.

The point of order is overruled.

1328. A general law authorizing the promotion of clerks from one class to another, without limitation as to number, a provision for the promotion of any number is in order.

On January 11, 1917,⁴ the Post Office Department appropriation bill was under consideration in the Committee of the Whole House on the state of the

¹ First session Sixty-fourth Congress, Record, p. 2850.

² Henry T. Rainey, of Illinois, Chairman.

³ Hinds’ Precedents, section 3669.

⁴ Second session Sixty-fourth Congress, Record, p. 1238.

Union, when the Clerk read a paragraph providing an appropriation to permit the promotion of clerks from one grade to another.

Mr. William E. Cox, of Indiana, made the point of order that the paragraph provided for the promotion of a larger percentage of clerks than provided for in previous appropriation bills and was unauthorized.

The Chairman¹ said:

The Chair confesses that he has some doubts about the, point of order, but as the Chair sees it, the classification act simply classified certain postal employees, and the law did not require any number to be promoted in one year. The last appropriation bill provided that 75 per cent of these particular carriers and clerks might be promoted. That was not permanent law; but it was simply to obtain during that current law. The Chair is of the opinion that as this section authorizes the promotion of clerks within those classes that the point of order is not good. Therefore, the Chair overrules the point of order.

1329. Payment of per diem allowances in lieu of subsistence due employees of the executive departments is authorized by law.

On February 3, 1920,² the second deficiency appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when the Clerk read the following paragraph:

BUREAU OF LABOR STATISTICS.

For per diem in lieu of subsistence, special agents, and employees, and for their transportation; experts and temporary assistance for field service outside of the District of Columbia, to be paid at the rate of not exceeding \$8 per day; traveling expenses of officers and employees, purchase of reports and materials for reports and bulletins of the Bureau of Labor Statistics, and for subvention to "International Association for Labor Legislation," and necessary expenses connected with representation of the United States Government therein, \$12,250.

Mr. Thomas L. Blanton, of Texas, raised the question of order that the paragraph was not authorized by law.

Mr. James W. Good, of Iowa, submitted:

Mr. Chairman, the sundry civil appropriation act for the fiscal year 1915 provides:

"That the heads of executive departments and other Government establishments shall authorize and prescribe per diem rates of allowance not exceeding \$4 in lieu of subsistence to persons engaged in field work or traveling on business outside of the District of Columbia and away from their designated posts of duty, when not otherwise fixed by law. For the fiscal year 1916 and annually thereafter estimates of appropriations from which per diem allowances are to be paid shall specifically state the rates of such allowances."

The section just read is permanent law, and has been so construed by the auditor and Comptroller of the Treasury.

The Chairman³ overruled the point of order.

1330. The law creating the Department of Agriculture authorizes appropriations for salaries of employees essential to its proper maintenance without designating the names of positions in which they shall serve, and in the absence of statutory provision to the contrary it is in order in an appropriation bill to name such position or to change the name of any division, bureau, or office previously appropriated for.

¹ Charles R. Crisp, of Georgia, Chairman.

² Second session Sixty-sixth Congress, Record, p. 2401.

³ John Q. Tilson, of Connecticut, Chairman.

On December 20, 1922,¹ the agricultural appropriation bill was under consideration in the Committee of the Whole House on the state of the Union. A paragraph was read providing appropriations for salaries of employees in the offices of editorial and distribution work, including "Assistant in charge of editorial office, \$5,000," on which Mr. Albert Johnson, of Washington, made a point of order.

Mr. John Q. Tilson, of Connecticut, explained that this position was one carried in previous bills under a different title, and paid for out of the lump sum appropriation for extension work.

Mr. Tilson continued:

As I view this question, Mr. Chairman, it makes no difference whether it is a new position or an old one. Whether it is a transfer from a lump-sum appropriation or whether it is entirely new, the question is whether the service here proposed to be appropriated for is a service authorized by the law.

Some of us who sometimes give attention to parliamentary questions have been fooled on this Agricultural appropriation bill before. The organic law of the Department of Agriculture is broader than that of any other department in the whole Government, so that the rules applicable to other departments do not apply in many cases to the Agricultural Department on account of this difference in the organic law of the department.

"For the diffusion among the people of the United States of useful information in connection with the subject of agriculture in the most general and comprehensive sense of that word."

If these words were stricken out here it would make no difference. The Secretary of Agriculture could put the same man now holding the position on again at the same salary. In order to prevent this, the gentleman would have to put in a limitation by means of an amendment to the effect that no man who is employed by the Department of Agriculture as an editor shall receive more than \$3,500, if that is the limit to which the gentleman is willing to go in salaries for editors.

This service is authorized by the fundamental law creating the Department of Agriculture, and we are here called upon to appropriate for it under a name. It makes no difference what the name is, whether it has a name at all. We are authorized under the law to appropriate for it if we so desire, and therefore, in my judgment, Mr. Chairman, it is not subject to a point of order. I do not think anyone here claims this creates an office. It is not legislation at all. It is simply an appropriation.

The Chairman² ruled:

The Chair realizes that there are complications in this point of order and appreciates the force of the argument advanced, but last year an almost similar situation arose, and at that time the Chair went into the matter very thoroughly and quoted a number of authorities. Without taking the time of the committee to rehearse the precedents, it seems to the Chair that the gentleman from Connecticut, Mr. Tilson, has expressed the controlling factor in this case, and that is: Does the authority to engage these employees rest with the Department of Agriculture under existing law? The law creating that department and the law under which it is operated is probably the broadest of any law relating to any department of the Government, and last year when an appropriation for a new employee was presented against which a point of order was made the Chair addressed himself to the question whether the Secretary of Agriculture has the authority. The Chair thought then and thinks now that he has, and basing his decision on that decision rendered by the present occupant of the chair, and fortified further by a decision of Chairman Towner on January 24 last, the Chair believes that this item is in order and therefore overrules the point of order.

¹ Fourth session Sixty-seventh Congress, Record, p. 796.

² Frederick C. Hicks, of New York, Chairman.

Mr. Gilbert N. Haugen, of Iowa, here interposed a further point of order that: It changes the title of "Division of publications" to "Offices of editorial and distribution work."

The Chairman concluded:

The gentleman from Iowa makes the point of order that it is a change of title and therefore legislation. The Chair agrees with the gentleman from Minnesota that the appropriations have not been altered by a change of name and that it is not legislation. By giving a title is simply a method to designate certain activities, and therefore a change of name by the department is not a change of authority or the creation of a new activity. No legislation was enacted to create the title and no legislation is proposed creating a new bureau. The Chair overrules the point of order.

1331. An appropriation to increase the authorized salary of the engineer commissioner of the District of Columbia was held not to be in order on an appropriation bill.

On May 1, 1924,¹ 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 providing appropriations for personal services was reached.

Mr. Thomas L. Blanton, of Texas, made the point of order that the increase of salary for the engineer commissioner of the District from \$5,000 to \$7,000 proposed in the paragraph was not authorized by law.

The Chairman² decided:

The Chair thinks that he has a fairly intelligent idea of this matter. The appropriation act covering the general expenses of the District of Columbia for 1924 is found in Twenty-first Statutes at Large, on page 460. It first provides for two commissioners at \$5,000 each, for a secretary and certain other subordinate officers who are named, and then contains this language:

"And hereafter the engineer commissioner shall be entitled to receive such compensation in addition to his Army pay and allowances as will make his compensation equal to \$5,000 per annum, and a sum sufficient to pay such additional compensation is hereby appropriated."

The committee will observe that that language is legislative, that hereafter he shall receive a certain amount for his salary. How it got into this appropriation act I do not know. Evidently no point of order was made to it, or similar rules did not obtain at that time as obtain now. In any event it is legislation and nothing has been indicated to the Chair that there has been any change in that legislation, so that the salary is fixed by law at \$5,000. The language in the bill does not purport to change the law. It simply makes an appropriation. It reads:

"For personal services in accordance with the classification act of 1923, \$40,500, plus so much as may be necessary to make the salary of engineer commissioner \$7,500."

That, of course, is appropriation language and not legislative, so that no change of law is made by that. The Chair is referred to the hearings before the subcommittee of the House Committee on Appropriations in regard to the District of Columbia appropriation bill for 1925, page 546, giving the classification of salaries as established by the reclassification act. It is true, as the gentleman from Michigan [Mr. Cramton] says, that in that report indicating the base pay of the District commissioners for 1924, the sum of \$5,000 is fixed, and then the report fixes the pay for 1925 at \$7,500, for two commissioners. But that is not all that appears here. The line to read it in full, is as follows:

"Commissioners, 2, service, C. A. & F., grade 14, \$7,500."

That shows plainly that the classification act extends only to the two commissioners and not to the engineer commissioner. The Chair thinks that must be the situation, that the classification act did not extend at all to the Army officer who temporarily sits with the District Commissioners, and for that reason the point of order is sustained.

¹First session Sixty-eighth Congress, Record, p. 7650.

²William J. Graham, of Illinois, Chairman.