

Chapter CCXXXVIII.¹

SUBJECTS REQUIRING CONSIDERATION IN COMMITTEE OF THE WHOLE.

1. Rule applicable to amendments. Section 2381.
2. Senate amendments. Sections 2382–2337.
3. The charge on the Government must appear with a certain degree of certainty. Sections 2388–2391.
4. General decisions. Sections 2392–2402.
5. Decisions relating to use of public lands. Sections 2403–2413.
6. Payment and adjudication of claims. Section 2414.
7. Expenditures from the contingent fund. Sections 2415, 2416.

2381. The fact that a House bill was considered in Committee of the Whole is not taken into consideration in determining whether Senate amendments thereto require consideration in the Committee of the Whole, but the question as to whether a charge upon the Government is involved is applied to each amendment received from the Senate.

On April 21, 1922,² the Speaker laid before the House the bill (H. R. 2185) to provide for monthly payment of pensions, with Senate amendments.

Mr. John N. Garner, of Texas, raised a question of order and submitted that the amendments required consideration in the Committee of the Whole because the bill had been considered in the Committee of the Whole.

The Speaker³ said:

The rule does not require that every bill which must be considered in Committee of the Whole House on the state of the Union, when it comes back from the Senate with a Senate amendment thereto, must be considered in the Committee on the Whole House on the state of the Union for the consideration of the Senate amendments, unless the Senate amendments require such consideration. The Chair is informed that these amendments do not require such consideration. The Clerk will report the Senate amendments.

2382 A Senate amendment merely increasing or decreasing the amount of a House appropriation, without providing new subjects of expenditure, does not require consideration in the Committee of the Whole.

A Senate amendment authorizing expenditures from a naval hospital fund is not required to be considered in the Committee of the Whole.

¹Supplementary to Chapter CVIII.

²Second session Sixty-seventh Congress, Record, p. 5817.

³Frederick H. Gillett, of Massachusetts, Speaker.

Senate amendments to House bills on the Speaker's table not requiring consideration in the Committee of the Whole may be disposed by motion authorized by the committee reporting the bill.

On February 7, 1931,¹ Mr. George P. Darrow, of Pennsylvania, called up from the Speaker's table the bill (H. R. 10166) to authorize the Secretary of the Navy to proceed with the construction of certain public works at Philadelphia, with Senate amendments.

The Clerk read the Senate amendments increasing the amounts provided in the House bill for hospital buildings and equipment and directing that they "be expended from the naval hospital fund."

Mr. John N. Garner, of Texas, questioned the privilege of the motion to take the bill from the Speaker's table.

The Speaker² said:

The gentleman from Pennsylvania is calling this up as matter of right under the rule for the purpose of moving that the House concur in the Senate amendments.

The Chair thinks he has a right to do this inasmuch as it does not seem to the Chair that it is necessary to consider the Senate amendments in Committee of the Whole House on the state of the Union.

2383. A Senate amendment which is a modification merely of a House proposition is not required to be considered in Committee of the Whole.

A Senate amendment restricting the powers granted by a House bill to a commission to refund foreign loans does not require consideration in Committee on the Whole.

When Senate amendments to a House bill are considered in the House a separate vote may be had on each amendment.

On February 3, 1922,³ Mr. Joseph W. Fordney, of Michigan, called up the bill (H. R. 8762) for refunding obligations of foreign governments, with Senate amendments thereto.

Mr. Joseph Walsh, of Massachusetts, as a parliamentary inquiry asked if the amendments of the Senate were acted upon separately or in gross.

The Speaker⁴ said:

Any Member has the right to have them acted upon separately.

Mr. James R. Mann, of Illinois, raised the point of order that one of the Senate amendments proposed to fix the rate of interest on Government securities, and therefore required consideration in the Committee of the Whole House on the state of the Union.

The Speaker ruled:

It does not seem to the Chair that these amendments involve an expenditure by the Government. That is a limitation on the provisions of the House bill. The bill as passed gives the commission full control over the rate of interest, and this reduces rather than increases their power.

¹Third session Seventy-first Congress, Record, p. 4248.

²Nicholas Longworth, of Ohio, Speaker.

³Second session Sixty-seventh Congress, Record, p. 1922.

⁴Frederick H. Gillett, of Massachusetts, Speaker.

It does not seem to the Chair that it requires consideration in Committee of the Whole House on the state of the Union.

2384. On June 30, 1926,¹ the Speaker laid before the House a bill of the House with Senate amendments, the title of which the Clerk read as follows:

A bill (H. R. 7893) to create a division of cooperative marketing in the Department of Agriculture; to provide for the acquisition and dissemination of information pertaining to cooperation; to promote the knowledge of cooperative principles and practices; to provide for calling advisers to counsel with the Secretary of Agriculture on cooperative activities; to authorize cooperative associations to acquire, interpret, and disseminate crop and market information, and for other purposes.

Mr. James B. Aswell, of Louisiana, made the point of order that the Senate amendments were such as to require consideration in the Committee of the Whole.

The Speaker² held:

The rule on the subject is this:

"But House bills with Senate amendments which do not require consideration in a Committee of the Whole may be at once disposed of as the House may determine."

As the Chair understands, it is not necessary to consider these amendments in the Committee of the Whole. It is a question of fact whether it is necessary and whether they involve questions which must be determined under the rule in Committee of the Whole. The Chair does not think that either of these amendments requires consideration in the Committee of the Whole.

The Chair has read the two amendments. The first amendment is on page 1, striking out the words "and naval stores." Unquestionably that does not have to be considered in the Committee of the Whole. The only other amendment is on page 4, after the words "cooperative associations," by the addition of the words "and others." Unquestionably, in the opinion of the Chair, that does not require consideration in the Committee of the Whole.

2385. A Senate amendment merely modifying a House provision by increasing the amount of an appropriation, and which does not involve new and distinct expenditure, is not required to be considered in Committee of the Whole.

On February 21, 1931,³ Mr. Fred A. Britten, of Illinois, by direction of the Committee on Naval Affairs, called up the bill (H. R. 9676) to authorize the Secretary of the Navy to proceed with certain public works at the United States naval hospital with the following Senate amendments:

Page 1, line 4, strike out "construct suitable buildings for hospital purposes" and insert "replace, remodel, or extend existing structures and to construct additional buildings with the utilities, accessories, and appurtenances pertaining thereto."

Page 1, line 6, strike out "\$1,500,000" and insert "\$3,200,000."

Page 1, line 7, strike out "\$250,000" and insert "\$100,000."

Page 2, after line 4, insert:

Mr. William H. Stafford, of Wisconsin, made the point of order that the Senate amendments involved a charge on the Government and should be considered in the Committee of the Whole.

¹First session Sixty-ninth Congress, Record, p. 12454.

²Nicholas Longworth, of Ohio, Speaker.

³Third session Seventy-first Congress, Record, p. 5649.

The Speaker¹ said:

The Chair will call the gentleman's attention to a decision by Mr. Speaker Randall, found in Hind's Precedents, Volume IV, section 4797:

"A Senate amendment which is a modification merely of a House proposition, like the increase or decrease of the amount of an appropriation, or a mere legislative proposition, and does not involve new and distinct expenditure, is not required to be considered in Committee of the Whole."

The Chair thinks that is this case exactly.

The Chair thinks this comes under the decision made by Mr. Speaker Randall and therefore overrules the point of order.

2386. To require consideration in Committee of the Whole the text of Senate amendments must indicate beyond a doubt a charge upon the Treasury.

In passing upon the question as to whether a legislative proposition involves a charge upon the Treasury the Speaker is confined to the provisions of the text and may not take into consideration personal knowledge not directly deducible therefrom.

On February 11, 1927,² Mr. Gilbert N. Haugen, of Iowa, called up from the Speaker's table the bill (H. R. 11768) to regulate the importation of milk, with Senate amendments thereto, and moved to concur in the amendments of the Senate.

Mr. Loring M. Black, of New York, made the point of order that the amendments involved a reduction in the revenue by authorizing the waiver of permits, and should be considered in the Committee of the Whole.

The Speaker³ ruled:

A very recent decision of the House itself holds that if any amendment or provision makes a charge upon the Treasury it must appear upon the face of the bill itself. The House went so far even as to hold that the Speaker might not make use of any knowledge he might possess that a charge on the Treasury would necessarily follow. The effect of the decision of the House is that any provision must show on its face beyond any possibility of speculation or doubt that a charge upon the Treasury is in fact created. The Chair is unable to see language in these amendments on their face which would cause the Chair to be certain of there being a charge on the Treasury and overrules the point of order.

2387. Where the question of requiring consideration in Committee of the Whole was raised against a Senate amendment which on its face apparently placed a charge upon the Treasury the Speaker held it devolved upon those opposing the point of order to cite proof to the contrary.

A motion to take from the Speaker's table a House bill with Senate amendments, disagree to the amendments, and send to conference, precludes the motion to concur and is not in order.

On August 11, 1921,⁴ Mr. Andrew J. Volstead, of Minnesota, moved to take from the Speaker's table the bill (H. R. 7294) supplemental to the national prohibition act, disagree to Senate amendments thereto, and agree to the conference asked by the Senate.

¹ Nicholas Longworth, of Ohio, Speaker.

² Second session Sixty-ninth Congress, Record, p. 3532.

³ Nicholas Longworth, of Ohio, Speaker.

⁴ First session Sixty-seventh Congress, Record, p. 4890.

Mr. James R. Mann, of Illinois, raised a question of order and said:

That motion is not in order, Mr. Speaker, and I make the point of order that it is not. The gentleman can not make such a motion. He may move to take the bill from the Speaker's table. He can not go beyond that at this stage of the proceedings, because the right to move to concur takes precedence of the motion to disagree to the Senate amendments.

The Speaker¹ sustained the point of order.

Mr. Volstead thereupon moved to take the bill with amendments from the Speaker's table for consideration.

Mr. Joseph Walsh, of Massachusetts, submitted that the motion was not in order for the reason that the Senate amendments required consideration in the Committee of the Whole.

The bill as it passed the House carried this provision:

SEC. 3. That this act shall apply to the United States and to all territory subject to its jurisdiction, including the Territory of Hawaii and the Virgin Islands; and jurisdiction is conferred on the courts of the Territory of Hawaii and the Virgin Islands to enforce this act and the national prohibition act in such Territory and Islands.

A Senate amendment provided:

That this act and the national prohibition act shall apply to the United States, including Hawaii.

Mr. Volstead argued that the national prohibition act was already in force in Hawaii and the Virgin Islands and the Senate amendment added nothing to the expense of its enforcement.

The Speaker said:

The gentleman from Massachusetts makes the point of order that the words "and the national prohibition act" being Senate amendment No. 17 in section 3 of the bill under consideration, makes the bill subject to consideration in the Committee of the Whole House on the state of the Union because those words involve an expenditure and a charge upon the Treasury. The gentleman from Minnesota, Mr. Volstead, rebuts that claim by saying that those words mean nothing because they are already in the law. The Chair has asked the gentleman to submit the phrase in the original law substantiating his position, and the Chair thinks the gentleman should have a reasonable time in which to examine the law to find those words.

Subsequently the Speaker ruled:

The gentleman from Massachusetts claims that the clause "and the national prohibition act shall apply not only to the United States but to all territory subject to its jurisdiction," being a Senate amendment, extends the operation of the present prohibition law and, therefore, that the bill must be first considered in Committee of the Whole House on the state of the Union and consequently can not be brought up here now. It seems clear to the Chair that extending the operation of the act to all territory subject to the jurisdiction of the United States, if the provision is new, does involve a charge upon the Government, and, therefore, obviously the bill must be first considered in Committee of the Whole House on the state of the Union and, therefore, can not be considered in the House at this time. The gentleman from Minnesota responds that the original prohibition law contains this same provision. The Chair has asked him to cite to the Chair that provision and the gentleman says now that he can not find the provision which he thought was in the original law. Until it is shown that this provision is in the original act, and no evidence of that is now offered, the Chair must sustain the point of order.

¹Frederick H. Gillett, of Massachusetts, Speaker.

2388. Where the expenditure is a mere matter of speculation the rule requiring consideration in Committee of the Whole does not apply.

On January 5, 1909,¹ when the bill (H. R. 21898) to provide for the establishment of judicial divisions in the district of Indiana was called up under call of committees, Mr. R. Wayne Parker, of New Jersey, made the point of order that it required consideration in the Committee of the Whole, and called attention to the following section in the bill:

And said clerk and marshal shall appoint deputies in said division in which a deputy clerk and deputy marshal does not already reside, who shall reside in and keep their offices at the place of holding court in each of said divisions.

Mr. John J. Jenkins, of Wisconsin, explained that the expenses of such deputies were paid from fees and did not involve a charge upon the Government.

The Speaker² said:

It seems to the Chair that it is a matter of speculation or surmise as to whether there is a charge on the Treasury. In such cases has been usual to consider these bills in the House as belonging on the House Calendar. Points of order in such cases have not been sustained. The Chair therefore overrules the point of order.

2389. On December 14, 1911,³ during call of committees, Mr. William B. Wilson, of Pennsylvania, from the Committee of Labor, called up the bill H. R. 9061, the eight-hour labor bill.

Mr. James R. Mann, of Illinois, made the point of order that the bill should be on the Union Calendar, for the reason that the shortening of hours of labor necessarily tended to increase the expenditures of the Government.

The Speaker⁴ ruled:

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

Speaker Henderson rendered the following opinion:

"To require consideration in Committee of the Whole, a bill must show on its face that it falls within the requirements of the rule (IV, 4811-4817), but where the expenditure is a mere matter of speculation (IV, 4818-4821), or where the bill might involve a charge, but does not necessarily do so (IV, 4809, 4810), the rule does not apply."

Now, you can speculate what effect this eight-hour business would have, but it does not seem to the Chair it comes within that rule. The Chair knows it has been contended that people do more work in 8 hours a day than in 10. The Chair does not know whether that is true or not, but the point of orders is overruled.

¹ Second session Sixtieth Congress, Record, p. 487.

² Joseph G. Cannon, of Illinois, Speaker.

³ Second session Sixty-second Congress, Record, p. 376.

⁴ Champ Clark, of Missouri, Speaker.

2390. On December 13, 1917,¹ following the disposition of business on the Speaker's table, Mr. Finis J. Garrett, of Tennessee, rose to a parliamentary inquiry and said:

I desire to direct the attention of the Chair to House joint resolution 174, and to make a parliamentary inquiry. This is a joint resolution "for the purpose of promoting efficiency, for the utilization of the resources and industries of the United States, for lessening the expenses of the war, and restoring the loss caused by the war by providing for the employment of a discovery or invention called the 'Garabed,' claiming to make possible the utilization of free energy." Now, that is on the House Calendar. The Committee on Rules, I may state as the reason for making this inquiry, proposes to report a rule for the consideration of this measure, and the question has arisen with some of the members of the committee as to whether this should not be on the Union Calendar. The form of the rule will be determined by that proposition. I submit the inquiry to the Chair now as to whether it is properly on the House Calendar. It does not necessarily carry an expense upon the Treasury. But it may do it. The possibility exists.

The Speaker² said:

The Chair thinks the remarks made by the gentleman from Tennessee show that any expenditure is purely speculative. It says, "If", and so forth and so on; so that it is not plain that there ever would be an expenditure. The Chair leaves it on the House Calendar.

2391. In determining whether a bill comes within the purview of the rule requiring consideration in Committee of the Whole the Speaker is restricted to the provisions of the bill itself and may not take into consideration information derived from other sources.

Consent to construction of a bridge across a navigable stream was held to be a regulation of commerce and not a conveyance of public property or an easement therein.

Provision for contingent hearings conducted by Cabinet members to determine requirements for a bridge across navigable waters was held by the House (overruling the Speaker) not to be sufficiently patent as a charge upon the Government to require consideration in Committee of the Whole.

The length of time a House bill transmitted from the Senate with Senate amendments lies on the Speaker's table before reference is within the discretion of the Speaker.

On January 6, 1927,³ Mr. Nicholas J. Sinnott, of Oregon, rising to a question of order submitted that the bill (H. R. 11608) granting consent of Congress to the construction of a bridge across the Columbia River, received from the Senate with amendments, should be referred to the appropriate committee.

Mr. Sinnott made the further point of order that the bill set in motion a train of circumstances destined ultimately to involve certain expenditures in that it authorized the Secretary of War, Secretary of Commerce, and Secretary of Agriculture, acting jointly, to hold hearings and should therefore be on the Union Calendar. In support of this contention Mr. Sinnott submitted a letter from the Secretary of War expressing the opinion that such hearings would cost from \$2,000 to \$5,000.

¹ Second session Sixty-fifth Congress, Record, p. 246.

² Champ Clark, of Missouri, Speaker.

³ Second session Sixty-ninth Congress, Record, p. 1178.

Mr. Finis J. Garrett, in controverting the point of order, said:

If the Chair can mentally dis sever the information that has come to him from private conversations and from the letters read by the gentleman from Oregon from that which is contained in the bill itself, I respectfully submit the Chair would have to overrule the point of order. This is the very reason that a bill must show expenditures upon its face; that is why the Speakers have so held in the past. I respectively submit that it is not parliamentarily proper for the Chair to go outside the bill itself to determine the point of order and that the Chair has no right to rely upon information that has come to him other than from the bill, and no right to rely upon letters read from other officials of the Government.

The fact that there may be a hearing does not necessarily imply expense to the Government. Those gentlemen who are opposed to this measure are going to come before these Secretaries voluntarily. They are not going to have to be sent for. There is no authority given in the bill to subpoena witnesses. There is no power given to this board composed of the three Secretaries to compel the attendance of any person. The hearings which they are to have will be voluntary, and those who appear will voluntarily appear to make their statements, both those who are for and those who are against the proposition. That is a fair assumption. If it is otherwise, then the bill does not provide the machinery requisite to carry out the purposes of the act.

After further debate the Speaker¹ ruled:

The gentleman from Oregon has made several points of order, the first being against the Senate bill because it is improperly upon the Speaker's table, the second against the House bill on the ground that it appropriates public property, and the third against the House bill in that it necessarily involves a charge upon the Treasury.

In regard to the first point of order, the point of order being that the bill is improperly upon the Speaker's table, and should be referred to the committee, the Chair thinks that that matter is within the discretion of the Chair. As a matter of fact, in this instance the Chair was requested to hold that bill upon the Speaker's table by the gentleman from Washington, Mr. Johnson, representing his delegation, and the Chair held it with knowledge that a similar House bill had been reported by the Committee on Interstate and Foreign Commerce, but that such bill was reported without instructions to any Member to bring it up. The Chair thinks that even without such instructions, a bill similar to a Senate bill being on the calendar, it is entirely within the discretion of the Chair, at the request of the gentlemen interested, to retain the bill upon the table.

With regard to the second point, that the House bill appropriates public property, the Chair is in entire accord with the gentleman from Tennessee, Mr. Garrett. To hold otherwise would unquestionably be to hold that every bridge bill should be referred to the Union Calendar. The Chair would not so hold. The Chair thinks that bridge bills in general—in fact, practically every bridge bill he has ever seen—should be referred, as the custom is, to the House Calendar.

The only question in the Chair's mind is whether this bill does not so greatly differ from all other bridge bills that an exception must be made in this case, and the Chair thinks that, in view of the suggestion of the gentleman from Illinois that the committee, with his approval, will never report out another bill like this one, it is perfectly safe for the Chair to say that all future bridge bills reported from that committee will be referred to the House Calendar and not to the Union Calendar.

The Chair is in very grave doubt as to how he ought to decide the third point of order. He has been much interested in and instructed by the arguments made by gentlemen on both sides of this question. To the mind of the Chair, it comes down simply to one point, and that is whether or not the provision that public hearings are to be held and other provisions also do not necessarily involve or predicate a charge upon the Treasury. We know that in the case of this particular bill there is a great diversity of opinion as to whether or not it ought to pass. Of course, the Chair is not concerned with that; but we all know that one great State is practically unanimously in favor of the construction of this bridge, while another great State, in so far as we can judge by the opinion and actions of its Representatives here, is equally opposed to it. Thus on the face of the facts it seems to the Chair evident that there will be public hearings upon this bill, probably protracted

¹Nicholas Longworth, of Ohio, Speaker.

and probably demanding the summoning of witnesses from different and distant points. Does that on the face of it show that a charge will be laid upon the Public Treasury? the gentleman from Oregon has read two letters which show conclusively that this bill will in fact be a charge on the public Treasury. He has read a letter from the Secretary of Commerce saying that the three Secretaries have agreed to the demand for public hearings, and he has read a letter from the Secretary of War showing that the cost of the investigation will be considerable.

The Chair is in very grave doubt about this question. The Chair would be loath to set any precedent which would go further than the general precedent that a bill must show on its face that it will involve a charge. Of course, there is the precedent referred to by the gentleman from Illinois, that "where a bill sets in motion a train of circumstances destined ultimately to involve certain expenditures it must be considered in Committee of the Whole," and the Chair would be very loath to render a decision which would broaden that in any sense.

Do these provisions in this bill, unlike any other bridge bill, show conclusively upon their face that a public charge will be necessarily involved and that the bill should be on the Union Calendar? That is the question.

The Chair agrees with the gentleman from Tennessee, that knowledge of facts previously acquired should not be a factor in determining this parliamentary question.

The Chair, however, makes the distinction there that this is to be a public hearing which is to be held away from home and by a new organization, and will not come under a regular organization like the Committee on Rules, so it would involve expense.

The Chair is not relying on the definite statement of the Secretary of War that it will involve expense, though he happens to know that now. The only question in the Chair's mind is whether he should dismiss from his mind entirely knowledge of a definite fact which seemed very patent to him when he read the bill that public hearings held by three Secretaries thousands of miles away would necessarily involve expense. That is the only question in the Chair's mind.

The Chair, with very grave doubt as to the wisdom of his decision, but with knowledge that it will not create a precedent which will affect any other bridge bills or a precedent which will generally affect reference of bills to the House or Union Calendar, will overrule the first point of order made against the Senate bill and the first point of order made against the house bill in that it involves the appropriation of public property, and will sustain the third point of order against the bill in that it shows on its face it would create a charge on the public Treasury.

Mr. Garrett appealed from the decision of the Speaker on the third proposition as to whether the provision for public hearings constituted such an ultimate charge upon the Treasury as to require consideration in the Committee of the Whole.

The question being taken, it was decided without division in the negative, and the decision of the chair was not sustained.

2392. Reference of bills to calendars is governed by text of bills as referred to committees and amendments reported by committees are not considered.

A bill involving a charge upon the Treasury is referred to the Union Calendar notwithstanding a committee amendment striking out the charge upon the Treasury.

On January 27, 1908,¹ following the disposition of business on the Speaker's table, Mr. Samuel W. Smith, of Michigan, made the point of order that the bill (H. R. 11776) for the opening of certain streets in the District of Columbia was improperly on the Union Calendar and should be referred to the House Calendar.

¹First session Sixtieth Congress, Record, p. 1126.

The Speaker¹ said:

The bill that the gentleman refers to, H. R. 11776, as it was introduced and referred to the Committee on the District of Columbia, did provide:

“SEC. 3. That there is hereby appropriated, one-half from the revenues of the District of Columbia and one-half from any moneys in the Treasury not otherwise appropriated, an amount sufficient to pay the necessary costs and expenses of the condemnation proceedings taken pursuant hereto and for the payment of amounts awarded as damages, to be repaid to the District of Columbia from the assessments for benefits and covered into the Treasury to the credit of the revenues of the District of Columbia and the United States in equal parts.”

Now, the Committee on the District of Columbia reports this bill back with an amendment striking out the clause that charges the Federal Treasury with the payment of the damages or the expenses. The Chair submits to the gentleman that the bill that the committee recommends for amendment does make a charge upon the Treasury.

So the Chair takes it that the bill is properly on the Union Calendar. If the bill introduced did not make a charge upon the Treasury, the Chair would sustain the point of order; but whether the House may adopt the amendment recommended by the committee the Chair, of course, can not tell.

2393. The giving of unanimous consent for the consideration of a measure waives any requirements as to consideration in committee of the whole. Consent to consideration of a measure may be given conditionally by reserving the right to consideration in Committee of the Whole.

On February 16, 1920,² during the call of the Unanimous Consent Calendar the House gave unanimous consent for the consideration of the bill (S. 2454) for the relief of members of the Flathead Nation of Indians.

Mr. Joseph Walsh, of Massachusetts, raised the question as to the requirement of consideration in the Committee of the Whole.

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

Mr. Speaker, for a great many years it was the practice of the House, where a bill was on the Union Calendar and unanimous consent was given for its consideration, to consider the bill in the House. For some years after that, while Mr. Clark was Speaker, he held that it still required unanimous consent to dispense with the consideration of the bill by the Committee of the Whole House on the state of the Union. If the Speaker announces his ruling on the subject, that, I think, disposes of it. We will know then that, if unanimous consent be given, the bill is not to be considered in the Committee of the Whole House on the state of the Union, although I suppose a request might be made for unanimous consent to consider the bill without interfering with the right to go into the Committee of the Whole House on the state of the Union.

The Speaker³ ruled:

The Chair has been considering the precedents, and he finds that it was held some years ago that when the House gave unanimous consent for the consideration of a bill it thereby dispensed with consideration of it under the Union Calendar. The Chair is disposed to follow that precedent.

The Chair thinks that if any Member desires to go into the Committee of the Whole House he could state that and give unanimous consent only upon the condition that the bill would be considered in Committee of the Whole House on the state of the Union.

¹ Joseph G. Cannon, of Illinois, Speaker.

² Second session Sixty-sixth Congress, Record, p. 2964.

³ Frederick H. Gillett, of Massachusetts, Speaker.

2394. The ruling holding that the giving of unanimous consent for consideration of a measure waives requirement as to consideration in Committee of the Whole was held not to apply to a bill not on the Unanimous Consent Calendar.

On May 17, 1920,¹ Mr. William R. Wood, of Indiana, from the Committee on Appropriations, reported, in lieu of a similar bill returned by the President without approval, the legislative, executive, and judicial appropriation bill, which was referred to the Union Calendar.

On motion of Mr. Wood, by unanimous consent, the bill was immediately called up for consideration, when Mr. James R. Mann, of Illinois, rising to a parliamentary inquiry, asked if the bill would be considered in the Committee of the Whole.

The Speaker² replied:

The Chair ruled once recently—and the Chair thinks that it would apply to this request—that when a request is made for unanimous consent for the consideration of a bill on the Union Calendar that dispenses with the consideration in the Committee of the Whole.

Mr. Mann suggested:

That is on the Unanimous Consent Calendar. I do not think the Chair has ever ruled on a bill of this sort.

Mr. Thomas L. Blanton, of Texas, made the point of order that the bill was in effect a new bill and required consideration in Committee of the Whole.

The Speaker sustained the point of order and entertained a request by Mr. Wood for unanimous consent to dispense with consideration in the Committee of the Whole.

2395. A joint resolution proposing an amendment to the Constitution is not required to be placed on a calendar of the Committee of the Whole.

On January 12, 1910,³ the Speaker⁴ called attention to the fact that on the preceding day the joint resolution (H. J. Res. 115) proposing an amendment to the Constitution of the United States, had been erroneously referred to the Committee of the Whole House on the state of the Union, and announced a change of reference of the joint resolution to the House Calendar.

Mr. John J. Fitzgerald, of New York, suggested that an indirect charge upon the Treasury was provided through the proposed extension of terms of certain officials.

The Speaker said:

That would be purely a matter of argument. It does not appear on its face.

¹ Second session Sixty-sixth Congress, Record, p. 7176.

² Frederick H. Gillett, of Massachusetts, Speaker.

³ Second session Sixty-first Congress, Record, p. 544.

⁴ Joseph G. Cannon, of Illinois, Speaker.

2396. Bills providing for the reapportionment of Representatives in Congress have been referred to the Union Calendar.

An instance wherein the Speaker by unanimous consent reserved his decision on a point of order.

On January 13, 1911,¹ Mr. Edgar D. Crumpacker, of Indiana, by direction of the Committee on the Census, submitted the report² of that committee on the bill (H. R. 30566) for the apportionment of Representatives in Congress among the several States under the Thirteenth Decennial Census.

The Speaker,³ addressing Mr. Crumpacker, inquired:

Is there any expenditure involved or authorization of expenditure that would send this bill, under the rule, to the Committee of the Whole House on the state of the Union?

After listening to conflicting opinion from several Members the Speaker said:

With the indulgence of the House, the Chair will examine the bill and make the proper reference to the calendar. Is there objection? [After a pause.] The Chair hears none.

Subsequently the Speaker referred the bill to the Committee of the Whole House on the state of the Union.

2397. On January 8, 1921,⁴ Mr. Isaac Siegel, of New York, from the Committee on the Census, reported by delivery to the Clerk, the bill (H. R. 14498) for the apportionment of Representatives in Congress amongst the several States under the Fourteenth Census, which with the report was referred to the Committee of the Whole House on the state of the Union.

2398. A resolution requesting the President to invite foreign nations to participate in a national celebration was held not to require consideration in the Committee of the Whole.

On August 15, 1911,⁵ the House gave unanimous consent to the consideration of the concurrent resolution (H. Con. Res. 11) requesting the President to extend to foreign nations an invitation to participate in a celebration at Key West, Florida.

The concurrent resolution having been read by the Clerk, Mr. James R. Mann, of Illinois, made the point of order, first, that the resolution should go to the Union Calendar because requesting the President to direct the Army and Navy to be present and participate and, second, that Congress could not by concurrent resolution direct the President to take action.

After debate, the Speaker⁶ overruled the point of order.

2399. A bill which sets in motion a train of circumstances destined ultimately to involve certain expenditure must be considered in Committee of the Whole.

A bill leasing Government property falls within the class of bills requiring consideration in Committee of the Whole.

¹Third session Sixty-sixth Congress, Record, p. 1181.

²House Report No. 1911.

³Joseph G. Cannon, of Illinois, Speaker.

⁴Third session Sixty-first Congress, Record, p. 852.

⁵First session Sixty-second Congress, Record, p. 3990.

⁶Champ Clark, of Missouri, Speaker.

Where the purpose of a bill is to raise revenue, even though that purpose is affected indirectly, the bill should be considered in Committee of the Whole.

A bill authorizing officials in certain contingencies to alienate Government property was held to require consideration in the Committee of the Whole.

On June 30, 1914,¹ the Speaker announces that the regular order was the bill (H. R. 16053) to regulate construction of dams across navigable waters.

Mr. James R. Mann, of Illinois, made the point of order that the bill required consideration in the Committee of the Whole.

After extended debate, the Speaker² ruled:

The rule under which this reference is made is as follows:

“First, a Calendar of the Committee of the Whole House on the state of the Union, to which shall be referred any bills raising revenue, general appropriation bills”—

That is a particular class—

“and bills of a public character directly or indirectly appropriating money or property.”

The Chair is of the opinion that this bill raises revenue. That is the intention of a certain portion of the House, at least; it remains to be seen whether it constitutes a majority or not. Of course, it is an indirect way of raising revenue. That is proposition No. 1. The Chair thinks that it indirectly appropriates Government money or property. Now, it says in section 14, leaving out the part on which the gentleman raised the point of order that the Secretary of War shall lease, after consulting with the Chief of Engineers. Well, now, a lease may run for 999 years or 999,000,000 years, the Chair supposes. We have fallen into the habit in this country of making two kinds of long leases, one for 99 years and one for 999 years. Now, as far as this generation is concerned, a lease of 99 years is the same as selling, and the Chair believes that the bill ought to be on the Union Calendar for both reasons, that it intends to raise revenue and that it authorizes a lease of Government property. The latter part, of course, appropriates Government property indirectly. It may never make a lease, but still they have the power to do all the leasing they want to do, and therefore the Chair rules the bill ought to be on the Union Calendar.

The Chair desires further to call attention to another rule which has not figured in the discussion, but which has been privately called to the Chair's attention. Clause 3 of Rule XXIII provides as follows:

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

Under this rule it has been held that a bill which sets in motion a train of circumstances destined ultimately to involve certain expenditures must be considered in Committee of the Whole. It seems clear to the Chair that this bill authorizes an official, in certain contingencies, to make contracts which will cause the United States to part either temporarily or permanently with property belonging to the United States; and for this reason it seems that the bill should be considered in the Committee of the Whole.

¹ Second session Sixty-third Congress, Record, p. 11404.

² Champ Clark, of Missouri, Speaker

2400. A provision authorizing payment of rewards from fines collected through the Department of Justice was held not to require consideration in Committee of the Whole.

When a House bill with Senate amendments is taken from the Speaker's table and laid before the House the Senate amendments must be reported, and any Member may demand a separate vote on any amendment.

On January 7, 1915,¹ the Speaker laid before the House the bill (H. R. 6060), the immigration bill, with Senate amendments thereto.

Mr. William H. Stafford, of Wisconsin, made the point of order that the bill must first receive consideration in the Committee of the Whole House on the state of the Union, and in support of that contention cited the following provision of the bill:

The Department of Justice may from any fines or penalties received pay rewards to persons other than Government employees who may furnish information leading to the recovery of any such penalties, or to the arrest and punishment of any person, as hereinafter in this section provided.

The Speaker² overruled the point of order.

Before the Clerk could report the Senate amendments Mr. John L. Burnett, of Alabama, moved that the House disagree to the amendments and ask for a conference.

Mr. James R. Mann, of Illinois, made the point of order that the motion was not in order until the amendments had been read and opportunity afforded for any Member to demand a separate vote on any amendment.

The Speaker sustained the point of order, and directed the Clerk to read the Senate amendments.

2401. A bill authorizing an undertaking by a governmental agency which will incur an expense to the Government, however small, must be considered in the Committee of the Whole.

On September 3, 1919,³ Mr. Edmund Platt, of New York, when the Committee on Banking and Currency was reached under the Calendar Wednesday call of committee, called up the bill (S. 2395) to amend the Federal Reserve Act.

Mr. Champ Clark, of Missouri, made the point of order that it was not in order to call up the bill on Calendar Wednesday for the reason that it was improperly on the House Calendar. Mr. Clark submitted that the bill required consideration in the Committee of the Whole House on the state of the Union for the reason that it authorized a charge upon the Government under the following provision in the concluding paragraph of the bill:

The Federal Reserve Board may order special examinations of the said branches, banks, or corporations at such time or times as it may deem best.

The Speaker⁴ ruled:

The Chair is disposed to think that it does impose a charge, although it may not be large. The Chair will order it changed from the House Calendar to the Union Calendar, and therefore

¹Third session Sixty-third Congress, Record, p. 1129.

²Frederick H. Gillett, of Massachusetts, Speaker.

³First session Sixty-sixth Congress, Record, p. 4790.

⁴Champ Clark, of Missouri, Speaker.

the House will automatically resolve itself into Committee of the Whole House on the state of the Union for the consideration of this bill.

2402. A bill ratifying a tax by the Philippine Legislature was held not to require consideration in the Committee of the Whole.

On January 28, 1925,¹ Mr. Benjamin L. Fairchild, of New York, under the Calendar Wednesday call of committees, called up the bill (H. R. 11956) to amend an act making appropriations to supply urgent deficiencies for the fiscal year ending June 30, 1909.

Mr. Thomas L. Blanton, of Texas, made the point of order that the bill must be first considered in the Committee of the Whole House on the state of the Union for the reason that it affected appropriations from the Treasury.

Mr. Finis J. Garrett, of Tennessee, explained:

Mr. Speaker, the Philippine Legislature passed an act levying a sales tax back in 1909, and under the organic act of the Philippines as then existing, it was necessary that the tax feature be validated by act of Congress; and so in the deficiency bill referred to in this measure there was inserted a legislative provision validating that act of the Philippine Legislature, and this act does not in any way carry a charge upon the Treasury of the United States. All these matters are administered entirely by the insular government. The Treasury of the United States has nothing to do with them.

The Speaker² said:

The Chair will state that, although this act was passed by Congress, because of the organic law of the Philippines compelling such action, the Chair does not see why that would require that this bill should be considered in the Committee of the Whole House on the state of the Union. The Chair will overrule the point of order.

2403. The granting of easements across military reservations is a subject requiring consideration in the Committee of the Whole.

On April 27, 1910,³ the Speaker⁴ announced that the recent reference of the bill (H. R. 24723) granting permission to the city of San Francisco to operate a pumping station on the Fort Mason Military Reservation, to the Private Calendar was erroneous.

He thereupon referred the bill to the Union Calendar under the rule.

2404. A bill authorizing cession of territory belonging to the United States requires consideration in the Committee of the Whole.

On May 7, 1912,⁵ Mr. William A. Jones, of Virginia, rising to a question of order submitted that the bill (H. R. 12243) to establish a qualified independent government for the Philippines and to fix the date when such qualified independence shall become absolute and complete, did not properly belong on the Union Calendar.

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

If it was a bill disposing of a part of the public domain it should go to the Union Calendar, and when the gentleman proposes to give it away to wholesale the same rule ought to apply.

¹ Second session Sixty-eighth Congress, Record, p. 2593.

² Frederick H. Gillet, of Massachusetts, Speaker.

³ Second session Sixty-first Congress, Record, p. 5476.

⁴ Joseph G. Cannon, of Illinois, Speaker.

⁵ Second session Sixty-second Congress, Record, p. 6046.

The Speaker¹ ruled:

There are two provisions of the rules that affect the matter. the first is the second subdivision of Rule XIII, which reads as follows:

“A calendar of the committee of the Whole House on the state of the Union, to which shall be referred bills raising revenue, general appropriation bills, and bills of a public character directly or indirectly appropriating money or property.”

The second is subdivision 3 of Rule XXIII, which reads as follows:

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

It seems to the Chair that if this bill provides for the release of the Philippine Islands, then it would fall under that rule and go to the Union Calendar.

2405. A bill authorizing the erection of a memorial on land belonging to the Government requires consideration in Committee of the Whole.

On February 13, 1918,² under the Calendar Wednesday call of committees, Mr. James. L. Slayden, of Texas, on behalf of the Committee on the Library, called up the joint resolution (H. J. Res. 70) authorizing the erection on the public grounds in the city of Washington, D.C., of a statue of James Buchanan, a former President of the United States.

Mr. William H. Stafford, of Wisconsin, made the point of order that the joint resolution was erroneously on the Union Calendar in that it involved no charge upon the Treasury.

The Speaker¹ overruled the point of order.

2406. A bill waiving a lien of the Government requires consideration in the Committee of the Whole.

A point of order that a bill called upon Calendar Wednesday from the House Calendar belongs on the Union Calendar being sustained, the Speaker transferred the bill to the latter calendar and the House automatically resolved itself into the Committee of the Whole for its consideration.

On January 23, 1918,³ it being Calendar Wednesday, Mr. Edward T. Taylor, of Colorado, from the Committee on Irrigation of Arid Lands, called up the bill (H. R. 4954) to provide for the application of the reclamation law to irrigation districts.

Mr. William H. Stafford, of Wisconsin, made the point of order that the bill should be considered in the Committee of the Whole House on the state of the Union, and said:

Mr. Speaker, I wish to make a point of order as to this bill. This bill is on the House Calendar. As I construe the provisions of the bill it waives the lien that the Government now has to

¹ Champ Clark, of Missouri, Speaker.

² Second session Sixty-fifth Congress, Record, p. 2081.

³ Second session Sixty-fifth Congress, Record, p. 1174.

the extent of \$100,000,000 on irrigated land, and waives that lien in favor of irrigation districts provided under State enactment. Under the act of 1910, whereby authorization was granted to the Reclamation Service to use \$20,000,000 of Government money for the continuation of reclamation projects, it was provided that 50 per cent of all the funds arising from returns on reclamation projects should be paid into the United States Treasury to reimburse the amount of the advancement of \$20,000,000. This bill seeks to lift the lien the National Government to-day has on all the lands of the reclamation projects and transfer that absolutely and allow State organizations to go ahead without any obligation under this law to repay that money, except a mere promise.

After further debate, the Speaker¹ ruled:

To guard the rights of the Government in the premises, the Chair decides that this particular bill ought to be on the Union Calendar; and he further decides that the House automatically resolves itself into the Committee of the Whole House on the state of the Union to consider the bill.

2407. A bill incorporating land from the public domain in a Federal forest reserve was held to require consideration in Committee of the Whole.

Bills on the wrong calendar are transferred to the proper calendar by direction of the Speaker without reference to the House.

On January 3, 1919,² Mr. Edward T. Taylor, of Colorado, raised a question of order as to the reference of the bill (S. 1847) to authorize the addition of certain lands to the Wyoming National Forest to the House Calendar, and explained:

I want to call attention to the reference of a bill, which has been wrongly referred. It is Senate bill 1847, referred to the House Calendar, and it should have been referred to the Union Calendar.

Mr. Taylor asked unanimous consent to have the bill transferred from the House to the Union Calendar.

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

It is a matter of change of reference for the Speaker whether unanimous consent is given or not.

Thereupon the Speaker¹ directed that the bill be rereferred as requested.

2408. Bills for surveys are prima facie authorization for expenditures and require consideration in the Committee of the Whole.

On March 1, 1921,³ Mr. Riley J. Wilson, of Louisiana, called up from the Speaker's table the bill (S. 5000), substantially the same as a House bill already favorably reported and on the House Calendar.

The Clerk read the bill as follows:

Be it enacted, etc., That an examination and survey, with a report to Congress, shall be made by the Mississippi River Commission, of the Atchafalaya, Black, and Red Rivers in Louisiana, specifying a general plan with recommendations for the execution thereof that will give the greatest measure of protection to the basins of said rivers from the flood waters of the Mississippi River consistent with all other interests of the lower Mississippi Valley.

Mr. James R. Mann, of Illinois, made the point of order that the surveys proposed to be authorized could not be made without expenditure of public funds, and must first be considered in the Committee of the Whole.

¹ Champ Clark, of Missouri, Speaker.

² Third session Sixty-fifth Congress, Record, p. 1002.

³ Third session Sixty-sixth Congress, Record, p. 4205.

Mr. Wilson took the position that appropriations had already been made for operations of the Mississippi River Commission and no additional expenditure was involved.

Mr. Mann held that passage of the bill would be authorization for immediate appropriations.

The Speaker¹ decided that the bill required consideration in the Committee of the Whole and recognized Mr. Wilson to ask unanimous consent to take the bill from the Speaker's table for consideration.

2409. A bill granting leave of absence to homesteaders was held not to come within the rule requiring consideration in Committee of the Whole.

On August 11, 1911,² Mr. Edward T. Taylor, of Colorado, by direction of the Committee on Public Lands, when that committee was reached in a call of committees, called up the bill (S. 3052) to grant leave of absence to certain homesteaders.

Mr. James R. Mann, of Illinois, made the point of order that the bill properly belonged on the Union Calendar and not on the House Calendar.

The Speaker³ overruled the point of order.

2410. Under the former practice bills authorizing acceptance of land proposed to be ceded to the United States for park purposes were held not to require consideration in the Committee of the Whole.

On August 24, 1921,⁴ Mr. Nicholas J. Sinnott, of Oregon, when the Committee on Public Lands was reached during a Calendar Wednesday call of the committees, called up the bill (H. R. 7109) to accept the cession by the State of Arkansas of exclusive jurisdiction over a tract of land within the Hot Springs National Park.

Mr. Joseph Walsh, of Massachusetts, made the point of order that the bill involved a charge on the Treasury incident to maintenance of a public park, and should be considered in Committee of the Whole.

The Speaker¹ held:

The Chair is inclined to think that the cession of land to the Government does not necessarily involve an expense, but on the contrary, a gift to the Government is an advantage to the Government rather than an expense, although, as the gentleman says, we probably know by experience that it will add to the expense.

The Chair thinks that ceding lands to the Government is not a charge on the Government. The Chair overrules the point of order.

2411. Under the former practice, a bill providing for the withdrawal of public lands from the forest reserve to be set apart as a public park was held not to require consideration in the Committee of the Whole.

On February 27, 1929,⁵ Mr. Samuel B. Hill, of Washington, by direction of the Committee on the Public Lands, proposed to call up the bill (S. 675) to establish the Ouachita National Park in the State of Arkansas, providing for the withdrawal of land from a national forest reserve to be dedicated as a national park.

¹ Frederick H. Gillett, of Massachusetts, Speaker.

² First session Sixty-second Congress, Record, p. 3834.

³ Champ Clark, of Missouri, Speaker.

⁴ First session Sixty-seventh Congress, Record, p. 5671.

⁵ Second session Seventieth Congress, Journal, p. 403; Record, p. 4625.

Mr. Don B. Colton, of Utah, made the point of order that the bill was improperly on the House Calendar in that it involved a charge on the Treasury.

Mr. Colton said:

In this case the lands are now embraced within a forest reserve. They are liquid assets of the United States, where the timber may be sold and the lands used for commercial purposes. This sets them apart as exclusive for a particular use, and comes squarely within the definition of the word "appropriated."

But, Mr. Speaker, there is an even stronger point. If you will notice, the bill refers in express terms to the act of August 25, 1916, which is the basic act for the creation of the national-park system.

The act of August 25, 1916, confers upon the Secretary of the Interior the right to incur necessary expenses in the administration of a park.

For the reason that the bill appropriates a great area of land now belonging to the United States, making direct reference to the act which authorizes the use of money by the Secretary of the Interior; and does appropriate property and money of the United States, it should be upon the Union Calendar and not upon the House Calendar.

The Speaker¹ read a letter from the Chief of Engineers of the War Department holding that the passage of the bill would involve eventually expenditures for maintenance, and indicated that he considered the information so transmitted sufficient grounds for sustaining the point of order but referred to a former decision² in which he had sustained a similar point of order and had been overruled by the House, and said:

The Chair thinks that he is bound by that decision, that he must examine the face of the bill alone, and not use any discretion or judgment or knowledge or information of any kind. The Chair, therefore, overrules the point of order.

2412. Under the later practice bills accepting donations of land, or apportioning public lands, for dedication as national parks must be considered in Committee of the Whole.

Overruling the Speaker, at his invitation, the House decided that a bill providing for the establishing of a national park and conferring authority of the Secretary of the Interior to administer, protect, and develop it, required consideration in the Committee of the Whole.

On February 21, 1931,³ Mr. Don B. Colton, of Utah, by direction of the Committee on the Public Lands, proposed to call up from the Speaker's table, as privileged, the bill (S. 5410) to provide for the establishment of the Everglades National Park in the State of Florida, an identical bill being on the calendar.

Mr. Bertrand H. Snell, of New York, made the point of order that the bill involved a charge upon the Treasury and belonged on the Union Calendar and therefore could not be called up under the rule.

After debate, the Speaker¹ ruled:

The Chair states with entire frankness that were it not for the decision of the House in overruling the Chair on a previous occasion he would say, without hesitation, that it is quite apparent that this bill creates a charge upon the Treasury. Section 3 of the bill provides:

¹Nicholas Longworth, of Ohio, Speaker.

²See section 2391, *infra*.

³Third session Seventy-first Congress, Record, p. 5648.

“The administration, protection, and development of the aforesaid park shall be exercised under the direction of the Secretary of the Interior by the National Park Service.”

Is it conceivable that it does not cost money to administer a national park? Is it conceivable that it does not cost money to protect it? Is it conceivable that it does not cost money and possibly very large sums of money to develop it, particularly such a park as this, embracing as it does, as I understand, some 2,000 square miles? Is there anyone who has any power of mental reasoning who would say it would not cost money to develop a park 2,000 square miles in extent? Yet this bill does not say so on its face; it has not, as the gentleman from New York said, the dollar mark upon it. The Chair does not believe it to be necessary that an immediate charge should be had. The Chair thinks the correct ruling is that of Mr. Speaker Cannon, on December 12, 1904, to be found in volume 4, *Hinds' Precedents*, section 4837:

“A bill which sets in motion a train of circumstances destined ultimately to involve certain expenditure must be considered in Committee of the Whole.”

That was confirmed in almost the same language by Mr. Speaker Clark on June 30, 1914. (*Cannon's Precedents*, section 9352.) Is there anyone here who will say that a proposition to administer, protect, and develop a park, situated in swampy ground, 2,000 square miles in extent, does not set in force a train of circumstances—

“Destined ultimately to involve certain expenditure?”

Is there anyone who will say that? But the Chair under the decision of the House is not permitted to exercise even that very slight degree of intelligence which would be necessary to come to such a conclusion.

On January 6, 1927, a bridge bill was under consideration. The building of the bridge was a matter of great concern to two States. One State, the State of Oregon, was very strongly against it, and another State, the State of Washington, was very strongly in favor of it. The provision in the bill was that the work should be undertaken and estimates made, and so forth, by three different Secretaries—the Secretary of War, the Secretary of Commerce, and the Secretary of Agriculture. Provision was made for the summoning of witnesses from all parts of the country. It seemed to the Chair, on that occasion, exercising that very slight degree of intelligence to which he referred, that that on the face of it was going to cost money, but in order to be perfectly sure he corresponded with various Secretaries, and they submitted to the Chair preliminary estimates of the amount of money it was going to cost to make that investigation. It involved, they stated, a good many thousand dollars. The Chair thus had official information from the heads of the departments undertaking the work that a large sum of money would be necessary if the bill should become a law, and the Chair has been informed since then that very much money, many thousands of dollars, has been expended by the Government on this bridge proposition. The Chair knew as well as he knows that he is standing here to-day that that bill would create a charge on the Treasury, inevitably, but the argument used by the gentleman from Tennessee, Mr. Garrett, the former very able minority leader and an excellent parliamentarian, was apparently very appealing to the House. On that occasion ¹ Mr. Garrett said:

“Mr. Speaker, take my own situation. The Chair speaks of the knowledge the Chair has of the controversy. The Chair I know is perfectly familiar with it. Now, I am not. It may be that inasmuch as there have been various publications in the papers in connection with this bill, I ought to have known more about it, but all I know of the matter, excepting what has been developed here this morning, I derive from the reading of the bill itself, from the bill only, and I dare say that every Member of the House who has not had personal knowledge touching the situation, such as naturally comes to the Chair, derives the information from the bill, and the bill does not show upon its face the fact that expenditures will be engendered.”

The Chair finds himself in the position that, in order to agree with the statement of the gentleman from Tennessee and a subsequent decision of the House in matters of this sort, he must endeavor to be a profound ignoramus; and he feels that in the face of the decision of the House which he held two years ago binding upon him he can not undertake to overrule it. However, such action as the House might see fit to take, the Chair would abide by with equanimity. The Chair overrules the point of order.

¹Second session Sixty-ninth Congress, Record, p. 1173.

Mr. Fiorello H. LaGuardia, of New York, appealed from the decision of the Chair, and Mrs. Ruth Bryan Owen, of Florida, moved to lay the appeal on the table.

The question being taken, the yeas were 59, nays 185, and the motion to lay on the table was not agreed to.

The question recurring on the appeal from the decision of the Chair, it was decided in the negative without division.

So the decision of the Chair was overruled.

2413. Indian lands have not been considered “property” of the Government within the meaning of the rule requiring consideration in Committee of the Whole.

A bill providing that Indian funds held in trust in the Treasury should draw interest was construed not to require consideration in Committee of the Whole.

On February 23, 1927,¹ Mr. Carl Hayden, of Arizona, by direction of the Committee on Indian Affairs, moved to take from the Speakers’s table the bill (S. 4893) to authorize gas and mining leases upon unallotted lands within Executive order Indian reservations, substantially the same as a House bill already favorably reported and on the House Calendar.

Mr. W. H. Sproul, of Kansas, made the point of order that the bill provided for the alienation of Indian lands owned by the government and authorized a charge against the Treasury through the payment of interest on Indian funds, and should therefore be first considered in Committee of the Whole.

After debate, the Speaker² ruled:

The question presented is this: Is the House bill properly on the Union Calendar or might it not be properly on the House Calendar? If it could be properly on the House Calendar, the motion of the gentleman from Arizona is in order; but if it should be properly on the Union Calendar it is not in order. The gentleman from Kansas makes the point of order that the bill should be on the Union Calendar or that it should be considered in the Committee of the Whole under paragraph 3, of Rule XXIII, which provides:

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

The gentleman from Kansas makes the point of order on two grounds. First, that the bill disposes of property owned by the United States and not owned by the Indians; and, second, that section 2 of the bill provides for an appropriation of money.

Section 2 of the bill provides that the proceeds from rentals, and so forth, of this property—

“Shall draw interest at the rate of 4 per cent per annum and be available for appropriation by Congress.”

Query: Is this an appropriation?

The Chair will put it in another way. Does section 2 on its face provide a charge on the Treasury?

¹ Second session Sixty-ninth Congress, Record, p. 4572.

² Nicholas Longworth, of Ohio, Speaker.

The Chair thinks it is a little doubtful on its face, but in view of the statement made by the gentleman from Illinois, Mr. Madden, that under the rules and procedure of his committee this is not an appropriation, the Chair will so hold. As the Chair understands it, this is not a direct charge on the Treasury, but is a fund which is kept to the credit of the Indians and available for all sorts of uses by the Treasury. A mere book account is kept and 2 per cent semiannually is credited to this fund, and the fund is available for any proper use by the Treasury and probably draws interest at the rate of 4 per cent or perhaps more than 4 per cent. Under these conditions the Chair does not think that section 2 of this bill of itself and on its face creates a charge on the Treasury.

As to the question whether this is public land or Indian land, the Chair listened attentively to the argument of the gentleman from Kansas; but if it was doubtful in the past as to whether there is a distinction between lands given to the Indians by treaty or by Executive order, all doubt is removed by the opinion of the Attorney General, as follows:

“When by an Executive order public lands are set aside, either as a new Indian reservation or an addition to an old one, without further language indicating that the action is a mere temporary expedient, such lands are thereafter properly known and designated as an Indian reservation; and so long, at least, as the order continues in force the Indians have the right of occupancy and use and the United States has the title in fee.”

The following statement also occurs in his opinion:

“The important matter here, however, is that neither the courts nor Congress have made any distinction as to the character or extent of the Indian rights as between Executive-order reservations and reservations established by treaty or act of Congress.”

Furthermore—

“In *Spalding v. Chandler*, which involved an Executive-order Indian reservation, the Supreme Court said (pp. 402, 403):

“It has been settled by repeated adjudications of this court that the fee of the lands in this country in the original occupation of the Indian tribes was from the time of the formation of this Government vested in the United States. The Indian title as against the United States were merely a title and right to the perpetual occupancy of the land, with the privilege of using it in such mode as they saw fit until such right of occupation had been surrendered to the Government. When Indian reservations were created, either by treaty or Executive order, the Indians held the land by the same character of title, to wit, the right to possess and occupy the lands for the uses and purposes designated.”

Under these circumstances the Chair thinks, first, that this bill does not create, on its face, a charge on the Treasury; second, that it disposes of lands which are held in trust for the Indians; and being convinced about these two propositions, the Chair thinks the bill does not require consideration in Committee of the Whole.

This being the case, the motion of the gentleman for Arizona is in order and the Chair overrules the point of order made by the gentleman from Kansas.

2414. Bills for the adjudication and payment of claims require consideration in Committee of the Whole.

A bill authorizing a court to enter judgment against the United States under certain contingencies was held to require consideration in Committee of the Whole.

On January 5, 1909,¹ when the Committee on the Judiciary was reached in the call of committees during the morning hour, Mr. John J. Jenkins, of Wisconsin, by direction of that committee called up the bill (S. 390) to confer jurisdiction on the circuit court of the United States for the ninth circuit to determine in equity the rights of American citizens under the award of the Bering Sea arbitration of Paris and to render judgment thereon.

¹Second session Sixtieth Congress, Record, p. 496.

Mr. James R. Mann, of Illinois, made the point of order that the bill should be first considered in the Committee of the Whole.

The Speaker¹ decided:

The Chair notices the point of order made by the gentleman from Illinois, Mr. Mann. Clause 3 of Rule XXIII provides—

“All motions or propositions involving a tax or charge upon the people”—

And so forth—

“shall be first considered in a Committee of the Whole.”

There have been many rulings under this clause of the rule. Where claims are referred to the Court of Claims in express language, they shall receive their first consideration in Committee of the Whole. This, however, as the gentleman from Illinois says, is not a reference to the Court of Claims, but is a reference to the circuit court. It is not necessary for the Chair to announce what the ruling might be if that were the only point of order, but the second point of order is that the bill provides—

“And the court shall enter judgment thereon.”

Now, under the precedents such a provision has, so far as the Chair has been able to find, been uniformly held to subject the proposed legislation, or the bill, to the operation of clause 3 of rule XXIII, and requires the consideration of the same to be in Committee of the Whole House on the state of the Union. It is true, you may say, that Congress is not bound to appropriate, nor is Congress bound to appropriate for the public debt, or the interest on the same, or to pay any judgment. It is in the power of Congress to refuse to pay, but in the construction of the rule, so far as the Chair has been able to ascertain, it has never been assumed that Congress would resort to repudiation. Of course, the class of claims that are referred to the courts from time to time for investigation and report to Congress for its consideration present another question, but this provides for absolute adjustment, and therefore, in the opinion of the Chair, the point of order is well taken.

2415. Resolutions from the Committee on Accounts authorizing expenditures from the contingent fund do not require consideration in Committee of the Whole.

On April 24, 1911,² Mr. James T. Lloyd, of Missouri, by direction of the Committee on Accounts, reported the resolution (H. Res. 117) providing for payment out of the contingent fund of compensation for the services of a clerk to the Committee on the Disposition of Useless Executive Papers.

Mr. Charles L. Bartlett, of Georgia, raised the question of order that the resolution should be first considered in the Committee of the Whole House on the state of the Union.

The Speaker³ held:

If it were an original question, the present occupant of the chair would hold that the point of order made by the gentleman from Georgia was well taken, but for the last 10 or 15 years resolutions similar to this one have been considered in the House with the universal acquiescence of Members on both sides. Therefore the point of order is overruled.

2416. Resolutions from committees other than the Committee on Accounts authorizing expenditures from the contingent fund require consideration in the Committee of the Whole.

¹ Joseph G. Cannon, of Illinois, Speaker.

² First session Sixty-second Congress, Record, p. 574.

³ Champ Clark, of Missouri, Speaker.

A point of order that a resolution was on the wrong calendar being sustained, the Speaker directed the Clerk to refer the resolution to the appropriate calendar.

On August 15, 1911,¹ under call of committees, the Committee on Labor called up the resolution (H. Res. 90) for investigation² of the “Taylor system” of shop management, containing this provision:

Said committee is hereby authorized to employ certain stenographic or clerical assistance as may be necessary for the purpose of carrying out the provisions and purposes of this resolution, and to pay the expense thereof, in a sum not to exceed in the aggregate \$10,000, from the contingent fund of this House upon warrants signed by the chairman of said committee.

Mr. James R. Mann, of Illinois, made the point of order that this paragraph required consideration in the Committee of the Whole, and said:

I am familiar with the rulings of the Chair that resolutions reported from the Committee on Accounts providing for the payment of sums out of the contingent fund are not Union Calendar bills, although the wording of the rule would require the consideration of those resolutions in Committee of the Whole House on the state of the Union.

Now, because an exception has been made in these cases, although the wording of the rule requiring that all bills and resolutions providing for an expenditure of money should be considered in Committee of the Whole House on the state of the Union, because of the wording of the resolution and the exception made on reports from the Committee on Accounts, my opinion does not warrant any further exception. I think there has been no exception to the wording of the resolution, except in those cases where the Committee on Accounts has reported providing for the payment of money out of the contingent fund. Undoubtedly that ruling grew up because the House was constantly called upon to pay small sums of money out of the contingent fund on resolutions reported from the Committee on Accounts, and it would be a great waste of time to require on each occasion the House to go into Committee of the Whole House on the state of the Union. But when it comes to providing that there may be \$10,000 paid out of the contingent fund by a resolution reported from a committee which ought not to have had jurisdiction of it at all, the shoe is on the other foot.

After debate, the Speaker³ ruled:

The gentleman from Illinois, Mr. Mann, raises the point of order that this resolution ought to be on the Union Calendar instead of the House Calendar.

The governing section about this is section 3 of Rule XXIII, found on page 413 of the Manual:

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

¹ First session Sixty-second Congress, Record, p. 3986.

² Resolutions providing for investigations now are referred to the Committee on Rules and, if when reported from the committee they contain provisions authorizing payments from the contingent fund of the House, such provisions are subject to a point of order, and may be embodied in a separate resolution for reference to the Committee on Accounts. Usually, however, the Committee on Rules, in the light of the present practice, itself eliminates such objectionable matter as irrelevant to its jurisdiction.

³ Champ Clark, of Missouri, Speaker.

Rule XIII, Calendars and Reports of Committee, section 729, page 361 of the Manual, says:

“There shall be three calendars to which all business reported from committees shall be referred, viz:

“First. A calendar of the Committee of the Whole House on the state of the Union, to which shall be referred bills raising revenue, general appropriation bills, and bills of a public character, directly or indirectly appropriating money or property.”

The third provision is Rule XI, section 56, the last clause on page 358, referring to privileged matters:

“And the Committee on Accounts on all matters of expenditures of the contingent fund of the House.”

The Chair agrees thoroughly with the statements made by the gentleman that this bill ought to go to the Union Calendar. The ruling of the present occupant of the chair was simply on the question whether, when the Committee on Accounts reports a resolution segregating a part of the contingent fund or reappropriating it, it should go to the Committee of the Whole. The Chair stated that if it was an original proposition he would rule against it, but rulings of previous Speakers on both sides had been—and for 17 years, to the Chair’s certain knowledge, nobody had raised that question—that where the Committee on Accounts reports a resolution taking a part of the contingent fund, it does not go to the Committee of the Whole House on the state to the Union. That is the exception to the general rule, and it would be inadvisable, it seems to the Chair, from every point of view, to enlarge the proposition so that you can consider resolutions or bills appropriating money or things of value beyond the Committee on Accounts. For these reasons the point of order made by the gentleman from Illinois is sustained.

Mr. William B. Wilson, of Pennsylvania, inquired if the sustaining of the point of order automatically referred the resolution to the Union Calendar.

The Speaker said:

The Chair directs the Clerk to put the bill on the Union Calendar. The gentleman from Illinois, Mr. Cannon, states the exact fact, that there are thousands of bills to be referred, and sometimes it happens that you can refer a bill with equal propriety to any one of two or three committees, and in the rush of matters it may go to the wrong committee. This bill is now on the Union Calendar.