

Chapter XCV.

AUTHORIZATION OF APPROPRIATIONS ON GENERAL APPROPRIATION BILLS.

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3578. A rule forbids in a general appropriation bill any appropriation not previously authorized by law, unless for continuation of works or objects in progress.

A rule forbids any legislative provision in a general appropriation bill.

The old form of rule which admitted on appropriation bills legislation intended to retrench expenditures.

Form and history of section 2 of Rule XXI.

Section 2 of Rule XXI makes provision against legislation in general appropriation bills, as follows:

No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress; nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto.

The origin of this rule is found about the year 1835. On December 10¹ of that year the delays of the appropriation bills were discussed, from which it appears that an important cause of that delay was the practice of including in the bills matters of legislation. Mr. John Quincy Adams, of Massachusetts, suggested at this time the desirability of a plan that the bills should “be stripped of everything but the appropriations.” The fortifications appropriation bill failed at the preceding

¹First session Twenty-fourth Congress, Debates, pp. 1949–1957.

session¹ to become a law because the Senate would not agree to a provision for \$3,000,000 to be disbursed by the President for certain extraordinary military and naval purposes. On January 5, 1836,² the Committee on Rules recommended a rule in this language:

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

The House, however, did not adopt the rule at that time, and on February 25, 1837,³ Mr. John Bell, of Tennessee, secured the addition to the fortifications bill of a "rider" to provide for the distribution of the surplus in the National Treasury. This caused the loss of the bill, the Senate adhering to its opposition. Apparently aroused by this result, in the next Congress, on September 14, 1837,⁴ the House agreed to the rule which the Committee on Rules² had proposed in 1836.

In the year following the adoption of the rule, while the civil and diplomatic appropriation bill⁵ was under consideration, certain important legislation was attempted by an amendment in relation to the salaries of customs officials, and which also included a provision for refurnishing the President's house.

The rule being invoked, the Chairman of the Committee of the Whole ruled the amendment out of order.⁶ On the succeeding day, March 8, 1838, Mr. George N. Briggs, of Massachusetts, after referring to the difficulty which arose on the preceding day, proposed the following addition to the rule, which was agreed to a few days later, on March 13, 1838:⁷

Unless in continuation of appropriations for such public works and objects as are already in progress and for the contingencies for carrying on the several departments of the Government.

With this amendment, the rule remained in operation for thirty-eight years, until 1876, when, at the suggestion of Mr. William S. Holman, of Indiana, the House adopted the following rule:⁸

No appropriation shall be reported in such general appropriation bills, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress, nor shall any provision in any such bill or amendment thereto, changing existing law, be in order except such as, being germane to the subject-matter of the bill, shall retrench expenditures.

The debate on the adoption of this form of rule shows that the old rule had been construed to permit increases of salaries, but not decreases. Although jealousy of increased power which might come to the Committee on Appropriations as a result of the rule was manifested, it was agreed to by the House, Messrs. Samuel

¹ Second session Twenty-third Congress, Journal, p. 518; Globe, p. 332.

² First session Twenty-fourth Congress, House Report No. 83. The committee making this report was composed of able Members: Messrs. Abijah Mann, of New York; John Quincy Adams, of Massachusetts; Francis Thomas, of Maryland; Lewis Williams, of North Carolina; Churchill C. Cambreleng, of New York; Edward Everett, of Massachusetts; Gorham Parks, of Maine; James Parker, of New Jersey, and George Chambers, of Pennsylvania.

³ Second session Twenty-fourth Congress, Journal, p. 605; Globe, p. 219.

⁴ First session Twenty-fifth Congress, Globe, p. 31.

⁵ These services are now provided for in two bills.

⁶ Second session Twenty-fifth Congress, Globe, p. 224.

⁷ Second session Twenty-fifth Congress, Journal, p. 607.

⁸ First session Forty-fourth Congress, Record, p. 445.

J. Randall, of Pennsylvania, and James A. Garfield, of Ohio, asking for it, with the especial object of enabling the Appropriations Committee to report in their bills reductions of salaries.

When the rules were revised, in 1880, the Committee on Rules, not being agreed as to the proper changes, reported the form of 1876.¹ But when the subject came before the House, after long and learned debate, the following form,² suggested by Mr. William R. Morrison, of Illinois, was agreed to:

No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress. Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as, being germane to the subject-matter of the bill, shall retrench expenditures by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill, *Provided*, That it shall be in order further to amend such bill upon the report of the committee having jurisdiction of the matter of such amendment, which amendment, being germane to the subject-matter of the bill, shall retrench expenditure.

The rule adopted in 1880 remained in use five years, until the adoption of the rules in the first session of the Forty-ninth Congress. The admission of a certain class of riders³ had caused some opposition to the old rule, and the Committee on Rules recommended the following:

No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress, and for the contingencies for carrying on the several departments of the Government.

¹ Second session Forty-sixth Congress, Congressional Record, p. 201.

² Congressional Record, second session Forty-sixth Congress, pp. 851–862, 954–958.

³ Thus, on February 5, 1879 (third session Forty-fifth Congress, Record, p. 1038), an extensive scheme of legislation for the reorganization of the Army was admitted as an amendment to the army appropriation bill on the discovery by the Chairman of the Committee of the Whole that the general effect of it would be to reduce expenditures. Again, on February 19, 1879 (third session Forty-fifth Congress, Record, pp. 1568, 1597), an amendment to repeal a portion of the Federal election laws was admitted upon discovery by the Chairman of the Committee of the Whole that there would be a retrenchment of expenditures. (Also see first session Forty-sixth Congress, Record, p. 114.) The general subject of riders was exhaustively discussed in connection with this and similar amendments on appropriation bills in the Forty-fifth and Forty-sixth Congresses, when appropriation bills were vetoed because of these riders. (For further discussion, see Record, first session Forty-sixth Congress, p. 336.) On May 18, 1880 (second session Forty-sixth Congress, Record, p. 3488), an amendment providing for free seed distribution was admitted to the agricultural appropriation bill without a question of order, the wording being so arranged as to reduce the total appropriation from \$80,000 to \$79,000. The extent to which legislation was placed on appropriation bills at this time was illustrated on July 27, 1882 (first session Forty-seventh Congress, Record, pp. 6551–6569), the naval appropriation bill being before the Senate, when Mr. John Sherman, of Ohio, deplored the change which the House had made in its rule to prevent legislation on appropriation bills, and said of the pending bill: "Here is a bill 40 pages long passed at the heel of the session. * * * It is sent to us * * *. I will say that three-fourths of this bill either contains matter of a mere recitative character or is general legislation affecting the whole organization of the Navy from beginning to end."

Later on the same day Mr. J. Donald Cameron, of Pennsylvania, moved that the bill be recommitted to the Committee on Appropriations with direction to strike out all the general legislation changing existing laws. This motion was disagreed to, yeas 29, nays 34.

This form the House, on motion of Mr. George E. Adams, of Illinois, modified by striking out the words “and for the contingencies for carrying on the several departments of the Government” and inserting:

Nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto.¹

Thus the rule was adopted² in its present form, which it has retained since, with the exception of the four years of the Fifty-second and Fifty-third Congresses, when there was a return to the form adopted in 1880, with a slight modification relating to reports of commissions in the proviso.

3579. A law passed by a prior Congress may not authorize legislation-like the specifying of contracts—on a general appropriation bill as against a rule of the existing House forbidding such legislation.—On February 20, 1907,³ the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the clerk read:

For the transmission of mail by pneumatic tubes or other similar devices, \$1,250,000; and the Postmaster-General is hereby authorized to enter into contracts not exceeding, in the aggregate, \$1,388,759, under the provisions of the law, for a period not exceeding ten years: *Provided*, That said service shall not be extended in any cities other than those in which the service is now under contract under authority of Congress, except the borough of Brooklyn, of the city of New York, and the cities of Baltimore, Md.; Cincinnati, Ohio; Kansas City, Mo.; Pittsburg, Pa., and San Francisco, Cal.

Mr. Swager Sherley, of Kentucky, made the point of order that the paragraph proposed legislation.

Mr. Jesse Overstreet, of Indiana, argued that the making of the contracts was authorized by the act of June 13, 1903, saying:

The provision for the transmission of mail by pneumatic service and the general method of advertisement and inspection before the contracts are made are recited. Then follows this:

“That the Postmaster-General shall not, prior to June 30, 1904, enter into contracts under the provisions of this act involving an annual expenditure in the aggregate in excess of \$800,000, and thereafter—”

Now, that language undoubtedly fixes it as permanent law—“and thereafter when such contracts shall be made as may from time to time be provided for in the annual appropriation act for the postal service, and all provisions of law contrary to this herein contained are repealed.”

Under that act contracts were authorized and entered into for the establishment of pneumatic-tube service in the cities of Boston, Philadelphia, Chicago, St. Louis, and New York.

After further debate, the Chairman⁴ held:

The Chair finds that this paragraph contains this language:

“And the Postmaster-General is hereby authorized to enter into contracts, etc., for a period not exceeding ten years—”

Extending away beyond, of course, the time for which the appropriations in this bill are to be used. The authority for that is said to be found in permanent legislation contained in the provisions of an appropriation bill approved April, 1902, which, fixing June 30, 1904, as the date for certain purposes, says:

“And thereafter only such contracts shall be made as may from time to time be provided for in the annual appropriation act for the postal service.”

¹ As the rule was thus perfected it was almost exactly in the words of a draft proposed on February 19, 1880 (second session Forty-sixth Congress, Record, p. 1020), during the revision of the rules, the proposer being Mr. George M. Robeson, of New Jersey.

² First session Forty-ninth Congress, Record, p. 333.

³ Second session Fifty-ninth Congress, Record, pp. 3463, 3464.

⁴ Marlin E. Olmsted, of Pennsylvania, Chairman.

Now, the best that could be said for that would be that contracts might be appropriated for from year to year in successive appropriation bills. It is doubtful if it contemplated ten-year contracts. But no matter what its construction, the present occupant of the chair does not think that that provision, although a permanent provision in a former appropriation bill, can be held to change the rule of this House that in a general appropriation bill there can be made no change in existing law. The Constitution itself expressly provides that "each House may determine the rules of its proceedings." This present House has adopted a positive rule that there shall not be in order in any general appropriation bill or in any amendment thereto "any provision changing existing law." That rule is not controlled by any act of any preceding Congress. Had the act of 1902 itself authorized ten-year contracts to be made such provision might support a subsequent appropriation, but it was not competent for the act of 1902 to authorize or direct this House in 1907 to provide for contracts in an appropriation bill in a way to change existing law. This is clearly an authorization to the Postmaster-General, which he does not now possess under existing law, to enter into contracts for a period of ten years. The Chair therefore sustains the point of order.

3580. It is not in order to propose on an appropriation bill an expenditure prohibited by law.—On February 7, 1901,¹ the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, the following amendment, offered by Mr. James R. Mann, of Illinois, being read:

Insert "by transportation of mail by pneumatic tube or other similar device by purchase or otherwise in St. Louis, Mo., and Chicago, Ill., two hundred and sixty-five thousand dollars."

Mr. Eugene F. Loud, of California, made a point of order against the amendment.

After debate, and after the Chairman² had read section 2 of Rule XXI,³ he held:

The Chair finds in the act of June 2, 1900, making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1901, the following language:

"For transportation of mail by pneumatic tube or other similar a devices, by purchase or otherwise, \$225,000: *Provided*, That no part of this appropriation shall be used in extending such pneumatic service beyond the service for which contracts already are entered into, and no additional contracts shall be made unless hereafter authorized by law."

Now, under the law as it is to-day, the service as proposed by the amendment is not authorized. But in addition to that, under the second clause of the rule just read, the amendment is absolutely prohibited; so that it seems perfectly plain to the Chair that the amendment comes within the prohibitory clause of Rule XXI, and therefore the Chair sustains the point of order.

3581. An appropriation for the improvement of the Yosemite National Park was held not in order on a general appropriation bill, existing law declaring the expenditure not authorized.—On May 26, 1892,⁴ the House was in Committee of the Whole House on the state of the Union, considering the sundry civil appropriation bill, Mr. Anthony Caminetti, of California, having offered this amendment:

For the improvement and protection of the Yosemite National Park, \$10,000, the same to be expended by and under the direction of the Secretary of War.

Mr. William S. Holman, of Indiana, made the point of order that the object was without authorization of law.

¹ Second session Fifty-sixth Congress, Record, p. 2097.

² Henry S. Boutell, of Illinois, Chairman.

³ See section 3578 of this chapter.

⁴ First session Fifty-second Congress, Record, pp. 4726, 4727.

The Chairman¹ ruled:

The amendment offered by the gentleman from California, Mr. Caminetti, is to appropriate \$10,000 for the improvement and protection of the Yosemite National Park. The law which created that park provided for it in various ways, appropriated some money, and then closed with this clause:

"Nothing in this act shall authorize rules or contracts touching the protection and improvement of said reservation beyond the sums that may be received by the Secretary of the Interior under the foregoing provisions, or authorize any charge against the Treasury of the United States."

The gentleman proposes to appropriate a sum of money for the improvement of the park in addition to this, and therefore the Chair considers that this amendment is not only without law, but against law. * * * The Chair sustains the point of order.

3582. The policy of making no more appropriations for sectarian schools having been declared by law, an amendment authorizing appropriations for contract schools was held to involve a change of law.—On February 2, 1900,² while the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union, Mr. John J. Fitzgerald, of New York, offered this amendment:

After the word "Alaska," in line 14, page 45, insert the following:

"*Provided*, That the Secretary of the Interior may make contracts with present contract schools for the education of Indian pupils during the fiscal year ending June 30, 1901, but shall only make such contracts at places where the Government has not provided school facilities for all the children of school age residing thereat, and to an extent not exceeding the number of children in attendance at certain contract schools at the close of the fiscal year ending June 30, 1900."

Mr. John S. Little, of Arkansas, made the point of order against the amendment.

On February 3, after debate, the Chairman³ held as follows:

The Chair is ready to rule. The gentleman from New York offers an amendment to this section which authorizes the Secretary of the Interior to expend the appropriation under contracts with the present contract schools, with certain limitations upon his power not necessary to state.

The gentleman from Arkansas makes the point of order against that amendment under Rule XXI, and, if the Chair understands him correctly, under the last clause of that rule, which is as follows:

"Nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto."

* * * The Chair regrets that the gentleman from New York did not call his attention to the authority before, but will consider the effect of that authority in the decision which he is about to give. The question presented is not one of policy, but one of parliamentary law. The legislation with reference to the particular schools began in the Fifty-fourth Congress. The Chair thinks that it is agreed that the contract schools are sectarian schools. In the Fifty-fourth Congress, first session, the Indian appropriation act contains this language:

"It is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school."

The act then proceeds to make an appropriation for contract schools in an amount not exceeding 50 per cent of the amount used for the preceding fiscal year. The next Indian appropriation act, in the second session of the Fifty-fourth Congress, contains the same language with regard to the policy of the Government, and makes an appropriation for the contract schools in an amount not exceeding 40 per cent of the amount used in the fiscal year 1895. Again, the appropriation act passed at the first session of the Fifty-fifth Congress contains an appropriation for contract schools in an amount not to exceed 30 per cent of the amount so used in the fiscal year 1895. The appropriation act of the third session of the

¹ Rufus E. Lester, of Georgia, Chairman.

² First session Fifty-sixth Congress, Record, pp. 1463, 1472.

³ William H. Moody, of Massachusetts, Chairman.

Fifty-fifth Congress makes an appropriation for contract schools in an amount not exceeding 15 per cent of the amount so used in the fiscal year 1899, and concludes with this language:

“This being the final appropriation for sectarian schools.”

What does that language mean, taken in connection with the declaration of policy in the first session of the Fifty-fourth Congress and the action of successive Congresses in reducing the amount of appropriation for that purpose? It seems very clear to the Chair—and he has given most careful attention to this question—that, in effect, it is a law forbidding appropriations for that purpose. In effect it is as if Congress had passed a separate act in substantially these terms:

“*Be it enacted, etc.*, That hereafter there shall be no appropriations for sectarian schools for the Indians.”

The language which Congress has used must be given some meaning. It is not to be supposed that it was a mere stump speech injected into the body of the statute. What meaning can the language which has been recited have except a meaning which will forbid such appropriations in the future? The Chair thinks it has that meaning.

Now, some gentleman may say, “One Congress can not bind another Congress.” That is true. A Congress can not even bind itself. A Congress may enact a law to-day and repeal it to-morrow. But that law can not be repealed upon a general appropriation bill, under the rules of this House. It is clearly within the power of the House, upon the report of the Committee on Indian Affairs, in a suitable legislative bill to repeal the provision of law which is now upon the statute books; but it is not within the power of that committee, under our rules, to report in a general appropriation bill a provision repealing that law; nor is it in the power of the House to repeal the law by an amendment to a general appropriation bill. No legislation, whether it is good or bad legislation, is in order on such a bill.

Therefore, it seems clear, if the reasoning of the Chair is correct on this point, that the amendment offered by the gentleman from New York is in effect a repeal for one year—and that is a repeal pro tanto—of a provision of existing law.

The gentleman from New York cites to the Chair a decision in regard to pneumatic-tube service. The Chair recalls very well that in the last Post-Office appropriation bill there was enacted a provision in effect similar to that contained in the Indian appropriation bill—that hereafter there shall be no appropriation or no contract for pneumatic-tube service. The Chair remembers very well that the gentleman from California [Mr. Loud] at that time pointed out to the House that if that provision were made a law, the House thereafter, under its rules, could make no such appropriation, while the Senate, under its rules, could do so—conceding, apparently, that a point of order would lie against an appropriation in the House for the further continuance of the pneumatic-tube service. That was the understanding of the Chair, as an individual Member of the House, at that time; and it is his understanding now. The question raised here is not the question raised in the precedent cited by the gentleman from New York, but would be the question raised if upon the coming Post-Office appropriation bill an amendment were offered, against the provisions of law, to appropriate further for pneumatic-tube service.

The Chair is sustained by an authority created in the last session of the last Congress. The Chair in his own mind had come to the conclusion which he has announced before learning of this precedent. It is well, perhaps, to state it carefully. The law existing at the time of this precedent was as follows:

“From and after the 30th of June, 1898, no money appropriated for charitable purposes in the District of Columbia shall be paid to any church or religious denomination or to any institution or society which is under sectarian or ecclesiastical control.”

That, in effect, although not in language, is the provision that is now law with regard to contract schools. The gentleman from Iowa [Mr. Henderson] on the 13th of December, 1898, offered an amendment to the District of Columbia appropriation bill providing for an appropriation for the St. Joseph Asylum. The gentleman from Vermont [Mr. Grout] made the point of order under Rule XXI. The gentleman from Pennsylvania [Mr. Dalzell] was in the chair, and after some discussion sustained the point of order.

The Chair thinks that this precedent is exactly in point. It confirms his views which were formed by reading the provisions of the successive Indian appropriation bills. The Chair thinks that the amendment of the gentleman from New York would change existing law, and is therefore obnoxious to the point of order made by the gentleman from Arkansas, which is accordingly sustained.

3583. The law having fixed the limit of cost of buildings at army posts, an appropriation in excess of the limit is a change of law.—On January 25, 1904,¹ the Army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the following paragraph was read:

Construction and repair of hospitals: For construction and repair of hospitals at military posts already established and occupied, including the extra-duty pay of enlisted men employed on the same, and including also all expenditures for construction and repairs required by the Army and Navy Hospital at Hot Springs, Ark., except quarters for the officers, and for the construction and repair of general hospitals and expenses incident thereto, and for additions needed to meet the requirements of increased garrisons, \$475,000: *Provided*, That out of the above appropriation not to exceed \$50,000 may be used to construct a hospital at any one post.

Mr. James A. Hemenway, of Indiana, made the point of order that this was in violation of section 1136 of the Revised Statutes, which prohibited the erection of such buildings at a cost of over \$20,000 without specific authorization of law.

After debate the Chairman² said:

The Chair finds that section 1136 of the Revised Statutes appears to limit the amount which may be appropriated for such a purpose, without previous special authority of Congress, to \$20,000. The proviso against which the point of order is made authorizes the expenditure of \$50,000 for the construction of a hospital. It seems to have that effect, although the language is somewhat indefinite. That seems to be the proper construction of it. The Chair is therefore of the opinion that the point of order is well taken and must be sustained.

3584. An appropriation for a public building in excess of the limit of cost fixed by law is not in order on an appropriation bill.—On March 31, 1904,³ the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Power house for public buildings: For the preparation, by the superintendent of the Library building and grounds, of preliminary plans and estimates of cost for the location, construction, and equipment of a power house with distributing mains for heat, steam, and electric power to the existing and projected Government buildings on the Mall and in the vicinity of the White House, said superintendent to report thereon in full to Congress at its next session, \$5,000.

Mr. Dewitt C. Badger, of Ohio, proposed this amendment:

On page 143, between lines 22 and 23, insert: "For extension and completion of the Government building at Columbus, Ohio, \$300,000."

Mr. James A. Hemenway, of Indiana, made the point of order that the object was not authorized by law.

After debate the Chairman⁴ held:

The Chair would state that this amendment, if in order, must be sustained under clause 2 of Rule XXI—that is, as an expenditure "in continuation of appropriations for such public works and objects as are already in progress." There is a great variety of decisions on this subject. It has been held that an appropriation for "an enlargement of the lands and water rights of a fish-culture station" was in order as the continuation of a public work. So, also, provision for a bridge on a public road in the District of Columbia has been sustained. The same may be said of "the repair of a bridge built at

¹ Second session Fifty-eighth Congress, Record, p. 1148.

² Marlin E. Olmsted, of Pennsylvania, Chairman.

³ Second session Fifty-eighth Congress, Record, pp. 4063, 4064.

⁴ Theodore E. Burton, of Ohio, Chairman.

Government expense," and the construction of "necessary fireproof outbuildings for the Bureau of Engraving and Printing."

On the other hand, in another decision—and it is very hard to reconcile this with the one just cited by the Chair—it has been held that "the erection of laboratory buildings for the Department of Agriculture" was not a continuation of a public work.

It seems, however, to be a well-established rule in reference to so-called "public buildings" that they are recommended by the Committee on Public Buildings and Grounds, and a bill is passed fixing a limit. No appropriation can be made in excess of that limit. The rule seems to be established that although an appropriation has been made for a site, an amendment providing for the construction of the building is out of order; also that an order for a survey does not give ground for an appropriation in an appropriation bill. Under these rulings, especially the one last mentioned, the Chair feels compelled to hold that the amendment is not in order.

There might, perhaps, have been another question raised—as to the germaneness of this proposition to the paragraph to which it was offered, but the question having been decided on other grounds, it is unnecessary to dwell upon that.

3585. The number of enlisted men in the Marine Corps being fixed, it was held not in order to provide for additional ones on an appropriation bill.—On February 20, 1905,¹ the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

Pay of noncommissioned officers, musicians, and privates, as prescribed by law; and the number of enlisted men shall be exclusive of those undergoing imprisonment with sentence of dishonorable discharge from the service at expiration of such confinement, and for the expenses of clerks of the United States Marine Corps traveling under orders; including additional compensation for enlisted men of the Marine Corps regularly detailed as gun pointers, messmen, signalmen, or holding good-conduct medals, pins, or bars; and the following additional enlisted men, namely, 10 first sergeants, 67 sergeants, 142 corporals, 10 drummers, 10 trumpeters, and 1,000 privates, \$1,550,628.

Mr. James S. Sherman, of New York, made a point of order:

Mr. Chairman, I raise the point of order against lines 9, 10, and 11, and the last three words of line 8. I think the language itself shows that it is new. It says:

"And the following additional enlisted men."

The attempt is made to provide for many hundred additional men not provided for by any other law than is here attempted to be enacted.

After debate, the Chairman² said:

The Chair thinks that the decision of the point of order depends entirely upon the existence or nonexistence of the law. * * * The Chair finds that the personnel act of March 3, 1899, does fix the number of enlisted men in the Marine Corps, and therefore the point of order is well taken.

3586. The simple increase of an appropriation over the amount carried for the same purpose in a former bill does not constitute a change of law.—On February 16, 1901,³ the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and Mr. Marlin E. Olmsted, of Pennsylvania, made a point of order that the appropriation of the former law was increased in this paragraph:

Propagation of food fishes: For maintenance, equipment, and operations of the fish-cultural stations of the Commission, the general propagation of food fishes and their distribution, including the movement, maintenance, and repairs of cars, purchase of equipment and apparatus, contingent expenses, and temporary labor, \$175,000.

¹ Third session Fifty-eighth Congress, Record, pp. 2927, 2928.

² John Dalzell, of Pennsylvania, Chairman.

³ Second session Fifty-sixth Congress, Record, p. 2539.

The Chairman¹ held:

The Chair desires to say to the gentleman from Pennsylvania that unless he can cite to the Chair some law limiting the appropriation, the mere fact that it is a few thousand dollars over the amount of the appropriation bill of last year would not serve as a precedent to sustain his point, in the opinion of the Chair. If there is no law which the gentleman can cite to the Chair limiting the appropriation, the Chair will be constrained to overrule the point of order.

3587. A treaty having been ratified by one only of the contracting parties, it was held not to have become law to the extent of sanctioning an appropriation on an appropriation bill.—On February 16, 1899,² the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and this paragraph had been reached:

For the purpose of carrying out the obligations of the treaty between the United States and Spain concluded at Paris on the 10th day of December, A. D. 1898, to become immediately available upon the exchange of the ratifications of said treaty, \$20,000,000.

Mr. Charles K. Wheeler, of Kentucky, made the point of order that the appropriation was not authorized by existing law, since the treaty had not been ratified by both parties to it, as required by its terms, and therefore was not existing law.

After debate the Chairman¹ held:

The objection raised to the pending paragraph invokes that part of Rule XXI which provides that “no appropriation shall be reported in any general appropriation bill or be in order as an amendment thereto for any expenditure not previously authorized by law,” etc. The question is as to whether there is any law that authorizes this proposed appropriation. Under the Constitution all treaties made under the authority of the United States shall be the supreme law of the land. A treaty is a compact or agreement between two sovereign, independent states. The treaty does not become binding and effective until it has been executed by both the contracting sovereign states.

The appropriation in the pending bill against which the point of order is made is to carry out and make effective the treaty of peace negotiated and executed by the commissioners on the part of the United States and those representing the Spanish Monarchy at Paris on the 10th day of December last. The question arises, then, whether this treaty has reached that stage of completion, or rather ratification, where it can be treated as the supreme law of the land. Article XVII of the treaty reads as follows:

“The present treaty shall be ratified by the President of the United States by and with the advice and consent of the Senate thereof and by Her Majesty the Queen Regent of Spain, and the ratification shall be exchanged at Washington within six months from the date hereof, or earlier if possible. * * *

“Done in duplicate at Paris the 10th day of December, A. D. 1898.”

While it is true that the Senate of the United States has approved this treaty and it has been signed by the President, it has not as yet been ratified by Her Majesty the Queen Regent of Spain and there has been no exchange of ratifications at Washington, as provided for in the article of the treaty which the Chair has just read. That part of Article III of the treaty which contains the \$20,000,000 clause reads as follows:

“The United States will pay to Spain the sum of \$20,000,000 within three months after the exchange of the ratifications of the present treaty.”

This clearly shows that the Government of the United States does not become liable for the payment of the \$20,000,000 until the exchange of the ratifications of the treaty at Washington. At the present time, then, there is no existing legal liability for the payment of which it is proposed to make the twenty million appropriation. The treaty itself does not become the supreme law of the land until it is ratified by Spain, as provided in the treaty, and the ratifications of the two Governments are exchanged at Washington. Hence the proposed appropriation is “not previously authorized by law.” So the Chair feels constrained to sustain the point of order.

¹ Albert J. Hopkins, of Illinois, Chairman.

² Third session Fifty-fifth Congress, Record, pp. 1944, 1948, 1956, 1958, 1959.

Mr. John S. Williams, of Mississippi, having appealed, after debate, the decision of the Chair was sustained, yeas 149; nays 56.

Thereupon Mr. E. D. Crumpacker, of Indiana, offered this amendment:

That for the purpose of concluding peace with the Government of Spain there is hereby appropriated and made immediately available, out of any money in the Treasury not otherwise appropriated, the sum of \$20,000,000, or so much thereof as may be necessary, to be expended by the President in his discretion.

Mr. Wheeler, of Kentucky, having made a point of order, the Chairman, after debate, held:

The Chair is no more responsible for Rule XXI than any other member of the committee. The Chair is called upon to interpret the rule, and it is his duty to interpret it as he thinks is right. From the examination given of the amendment sent to the desk by the gentleman from Indiana [Mr. Crumpacker] and read by the Clerk the Chair thinks it is practically the same amendment that has been ruled out by the Chair and sustained by the committee. There is no existing law for the President of the United States to pay out \$20,000,000 at his discretion, and the Chair will sustain the point of order.

Thereupon Mr. Page Morris, of Minnesota, offered this amendment:

For the purpose of carrying out the obligations of such treaty of peace as may be concluded between the United States and Spain, to become immediately available upon the exchange of the ratifications of said treaty, \$20,000,000.

Mr. Wheeler, of Kentucky, having made a point of order, after debate, the Chairman held:

It does not appear to the Chair that the amendment offered by the gentleman from Minnesota [Mr. Morris] differs in principle from the amendment offered by the gentleman from Indiana [Mr. Crumpacker] or from the clause which was stricken from the bill on the point of order made by the gentleman from Kentucky. The Chair therefore sustains the point of order.

3588. An appropriation for an object in an annual appropriation bill makes law only for that year, and does not become "existing law" to justify a continuance of the appropriation.—On December 13, 1898,¹ the House was considering the District of Columbia appropriation bill in Committee of the Whole House on the state of the Union. Mr. David B. Henderson, of Iowa, offered an amendment providing an appropriation for St. Joseph's Asylum.

Mr. William W. Grout, of Vermont, made the point of order that the amendment would change existing law.

After debate, the Chairman² held:

The gentleman from Iowa proposes an amendment to the bill by adding an appropriation for the St. Joseph's Asylum. The point of order is made thereto that the proposed amendment will change existing law. The law, as the Chair understands it, is in these words;

"And it is hereby enacted that from and after the 30th of June, 1898, no money appropriated for charitable purposes in the District of Columbia shall be paid to any church or religious denomination, or to any institution or society, which is under sectarian or ecclesiastical control."

The Chair understands it to be conceded that St. Joseph's Asylum is under sectarian control and it comes, therefore, within the very language of the law: "An institution or society which is under sectarian or ecclesiastical control." Now, the reply made to that by the gentleman from Iowa is that there is a provision in last year's appropriation bill like his proposed amendment, but in the opinion of the Chair that does not make existing law. A question similar in principle was raised on the 17th of

¹Third Session Fifty-fifth Congress, Record, pp. 163, 164.

²John Dalzell, of Pennsylvania, Chairman.

January, 1896, in the Fifty-fourth Congress, when the House was in Committee of the Whole House on the state of the Union, and the gentleman from Maine [Mr. Dingley] was in the chair. With respect to that question he said:

“The Chair desires to say that the fact that this legislation is limited in operation to one year does not change its character at all. It is still new legislation for one year, a change of existing law for one year, or if you please to style it an act suspending existing legislation for one year, the fact still remains that it is, pro tanto, a change of existing law upon principle and following the precedents.”

Under the circumstances, the Chair is obliged to sustain the point of order.

3589. On March 31, 1904,¹ the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a question arose as to the existence of law authorizing appropriation for supplying meals and lodgings for jurors in United States cases.

Mr. James R. Mann, of Illinois, having risen to a parliamentary inquiry, the Chairman² said:

The Chair would state to the gentleman from Illinois that the ruling has been sustained in all cases, as the Chair understands it, that the mere insertion of a provision for a branch of the public service in an appropriation bill is effective only for that year, and unless in language showing that the intention is to change or establish a permanent law, it does not afford a precedent for any succeeding year. The Chair will read the paragraph in the Digest pertaining to that rule, which is on page 348:

“An appropriation for an object in an annual appropriation bill makes law only for that year, and does not become ‘existing law’ to justify a continuance of the appropriation.”

3590. The mere appropriation for a salary does not thereby create an office, so as to justify appropriations in succeeding years.—On February 7, 1902,³ the Committee of the Whole House on the state of the Union were considering the legislative appropriation bill, when the Clerk read the following paragraph:

For rural free-delivery service: Superintendent, \$3,000; supervisor, \$2,750; chief of board of examiners of rural carriers, \$2,250; 3 clerks of class 4; 6 clerks of class 3; 25 clerks of class 2; 40 clerks of class 1; 50 clerks, at \$1,000 each; 115 clerks, at \$900 each; 3 messengers; 10 assistant messengers; 5 laborers; 1 female laborer, \$540; 3 female laborers, at \$500 each; two charwomen; in all, \$275,040.

Mr. Thetus W. Sims, of Tennessee, made the point of order that these offices were not authorized by law.

Mr. James A. Hemenway, of Indiana, quoted section 169 of the Revised Statutes:

Each head of a Department is authorized to employ in his Department such number of clerks of the several classes recognized by law, and such messengers, assistant messengers, copyists, watchmen, laborers, and other employees, and at such rate of compensation, respectively, as may be appropriated for by Congress from year to year.

It was argued that the words “and other employees” sanctioned the creation of such offices outside the classified service as were provided for in the paragraph of the bill before the committee. It was also urged that the offices had been appropriated for in the last appropriation act, and therefore were established by law.

The Chairman⁴ said:

The Chair will ask the gentleman if he were drawing this statute if he would lay as much stress on the words “and other employees” coming, as they do, after “watchmen” and “laborers,” as the gentle-

¹ Second session Fifty-eighth Congress, Record, p. 4060.

² Theodore E. Burton, of Ohio, Chairman.

³ First session Fifty-seventh Congress, Record, pp. 1466, 1467.

⁴ Eugene F. Loud, of California, Chairman.

man seems to? Was that intended to include three and four thousand dollar employees? If the gentleman had been drawing the statute, would he have not placed that first? * * * The Chair would hold that an appropriation bill may contain anything in relation to employees enumerated in these several sections; that is, clerks of classes one, two, three, and four may be employed, as well as messengers, assistant messengers, watchmen, and laborers, to such number as the Appropriations Committee may see fit to provide for. * * * The Chair has no difficulty whatever in disposing of the strongest contention of the gentleman from Indiana—that these offices are authorized by law. They are authorized by law for the year; that is, for the life of the appropriation bill. As has been decided time and again by the courts, nothing contained in an appropriation bill can live beyond the life of the bill. * * * Now, the Chair recognizes the danger of overruling a point of order of this kind. Considerable stress might be laid upon the argument of the gentleman from Illinois in relation to the words “and other employees;” and that is all that could possibly influence the mind of the Chairman to overrule the point of order. But the Chair does not believe that it was the intent of the framers of the law, using, as they did, the words “and other employees, watchmen, and laborers,” to empower the Appropriations Committee to create a new division in an Executive Department, with salaries beyond those provided for in sections 167 and 168. The Chair feels constrained to sustain the point of order.

The point of order involves the superintendent, at \$3,500, and the supervisor, at \$2,750. If there be no objection, the Clerk will correct the totals of the paragraph.

3591. The reappropriation of an unexpended balance for an object authorized by law may be made on an appropriation bill.—On February 12, 1897,¹ the post-office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

The Postmaster-General is authorized to apply to the payment of the salaries of letter carriers for the fiscal year 1897 the sum of \$23,000, being an unexpended balance of \$13,500 of the appropriation for the current fiscal year for street letter boxes, posts, and pedestals, and an unexpended balance of \$9,500 of the appropriation for the current fiscal year for package boxes.

Mr. Orrin L. Miller, of Kansas, having made the point of order, the Chairman² ruled:

The Chair is of opinion that this is simply in the nature of an additional appropriation for letter carriers. There can be no question as to the authority of the Committee on the Post-Office and Post-Roads to report an appropriation giving an additional amount to letter carriers. The provision in this bill has simply the effect of a new appropriation. It proposes merely to use for this particular purpose an unexpended appropriation in the bill of last year. This appropriation is applied to an object already provided for by law, the payment of letter carriers. The Chair overrules the point of order on the ground that the provision is simply the application of a previous unexpended appropriation to a purpose contemplated by law.

“On January 29, 1898,³ the District of Columbia appropriation bill being under consideration, this paragraph was read:

Bathing beach: For the care and repair of the public bathing beach on the Potomac River, in the District of Columbia, \$1,000. That any balance remaining of the appropriation “toward adapting the inner basin on the Potomac Flats for a public bathing pool,” contained in “An act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1887, and for other purposes,” approved June 11, 1896, which remains unexpended, may be applied by the Commissioners of said District for the examination, improvement, repair, and care of the public bathing beach on the tidal reservoir.

Mr. James A Richardson, of Tennessee, reserved a point of order.

¹ Second session Fifty-fourth Congress, Record, p. 1777.

² John A. T. Hull, of Iowa, Chairman.

³ Second session Fifty-fifth Congress, Record, pp. 1213, 1214.

After debate, during which it was developed that the bathing beach had already been appropriated for, and therefore was a public work or object in progress, the Chairman¹ ruled:

The Chair finds this precedent established on the 12th of February last: In the post-office bill was a paragraph devoting an unexpended balance for street letter boxes, etc., to the payment of the salaries of letter carriers. A point of order being made, the Chairman ruled that inasmuch as the carriers were authorized by law, the appropriation might be made. Regarding that as a precedent, it would be decisive of this case. So the point of order will be overruled.

3592. On February 14, 1907,² the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

Page 51, line 16, insert after the word "articles:"

"And provided further, That the unexpended balances under appropriations 'Provisions, Navy, for the fiscal years ending June 30, 1905, and 1906,' are hereby reapportioned for 'Provisions, Navy, for fiscal year ending June 30, 1908.'"

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

After debate the Chairman³ held:

The Chair is of opinion that the question that has been raised has been covered by previous decisions of those occupying the chair, and in a moment the Chair will call the attention of the gentleman from New York to two decisions which he finds. In one of these decisions it was held:

"That a reappropriation of an unexpended balance for an object authorized by law may be made on an appropriation bill."

Now, in answer to the position stated by the gentleman from New York a moment ago, a second decision held—

"That a reappropriation of a sum required by law to be covered into the Treasury was not a change of law."

It seems to the Chair that these two decisions precisely cover the questions presented. Money has been appropriated for an object authorized by law and is now reappropriated for a similar object. That is the decision made by predecessors in the chair, and it has been held not to be a change of law and a thing that could properly be done upon an appropriation bill, and the Chair therefore overrules the point of order.

3593. The reappropriation of a sum required by law to be covered into the Treasury was held not to be a change of law.—On January 12, 1899,⁴ the consular and diplomatic appropriation bill was under consideration in Committee of the Whole House on the state of the Union. The following paragraph was read:

Commercial Bureau of American Republics, \$36,000: *Provided*, That any moneys received from the other American republics for the support of the Bureau, or from the sale of the Bureau publications, from rents, or other sources, shall be paid into the Treasury as a credit in addition to the appropriation, and may be drawn therefrom upon requisitions of the Secretary of State for the purpose of meeting the expenses of the Bureau.

Mr. Alexander M. Dockery, of Missouri, made the point of order that the proviso would involve a change of existing law, since the law of the first session of the Fifty-second Congress provided as follows:

Commercial Bureau of the American Republics, for the prompt collection and distribution of commercial information, as recommended by the International American Conference, \$30,000. The sums contributed by the other American republics for this purpose, when collected, shall be covered into the Treasury.

¹ William P. Hepburn, of Iowa, Chairman.

² Second session Fifty-ninth Congress, Record, pp. 2985, 2986.

³ James B. Perkins, of New York, Chairman.

⁴ Third session Fifty-fifth Congress, Record, pp. 624–627.

After debate the Chairman² held:

The gentleman from Missouri has pointed out the permanent law regulating the disposition of the money received from the American republics, and prescribing that when collected it shall be covered into the Treasury.

The Chair is unable to perceive what different disposition of that money—not speaking for the moment of this appropriation—is made in the paragraph before the committee, which provides that the money received from other American republics shall be paid into the Treasury. There seems to be no difference whatever between the disposition of the money received from the republics, prescribed by the section of the law to which the gentleman from Missouri has called the attention of the committee, and that prescribed by the provisions of the section under consideration. By the existing law the money is to be “covered into the Treasury.” By this section the money is to be “paid into the Treasury.” So far there is no change in the law.

Now, that being so, the question is whether it is within the power, under the rules of the House, for the House in a general appropriation bill to appropriate that money after it has been “paid into the Treasury,” in the language of this provision, or “covered into the Treasury,” in the language of the former law.

It seems to have been assumed by all persons taking part in the discussion that this undertaking, this support and maintenance of the Commercial Bureau of the American Republics, is either an “expenditure previously authorized by law” or a “public work and object already in progress.” It follows that appropriations for the support of the undertaking may be made in the discretion of Congress, unless the form of the appropriation is such as to change existing law. The Chair is unable to see in what respect this part of the paragraph is obnoxious to any of the rules of the House which have been called to his attention and is constrained to overrule the point of order on that particular part of the paragraph.

The section prescribes that when paid into the Treasury it shall be “a credit in addition to the appropriation and may be drawn, etc., for the purpose of meeting the expenses of the Bureau.” This is in effect the appropriation of the money paid into the Treasury from the American republics during the next fiscal year, construing the language to be merely the appropriation of the revenue from the source named for one fiscal year. There is no change in existing law. The Chair therefore overrules the point of order.

3594. A provision returning an unexpended balance to the Treasury was held to be in order on an appropriation bill.—On February 17, 1905,² the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. John F. Rixey, of Virginia, offered this amendment:

After line 20, page 33, insert:

“Naval station, Guantanamo, Cuba: The unexpected balance on July 1, 1905, of the \$200,000 heretofore appropriated for a dry dock is hereby directed to be covered into the Treasury.”

Mr. George E. Foss, of Illinois, made a point of order, saying:

It was an appropriation that was made without any condition or qualification, and the gentleman from Virginia [Mr. Rixey] can not now at this late day change or divert the purposes of the appropriation as originally made without change of existing law.

It appeared from the debate that no part of the money had been expended, and that no contracts had been made.

The Chairman³ ruled:

It does not seem to the Chair that the provision in the last appropriation bill upon this subject is existing law in the sense that the amendment would come within the provision of Rule XXI. The

¹ William H. Moody, of Massachusetts, Chairman.

² Third session Fifty-eighth Congress, Record, pp. 2798, 2799.

³ John Dalzell, of Pennsylvania, Chairman.

Chair can see no reason why an unexpended balance can not be reappropriated, as, in point of fact, is proposed in this case. Instead of appropriating the money to the dock at Guantanamo, it is proposed to cover it into the Treasury of the United States. If it is competent to divert an appropriation already made for one purpose to another purpose, it is equally competent to divert an appropriation made for a certain purpose back again into the United States Treasury. The Chair therefore overrules the point of order. The question is on agreeing to the amendment offered by the gentleman from Virginia.

3595. The omission to appropriate during a series of years for an object authorized by law does not repeal that law; and consequently an appropriation when proposed is not subject to the point of order.—On May 3, 1878,¹ the legislative, executive, and judicial appropriation bill was reported from the Committee of the Whole House on the state of the Union, and Mr. Randall L. Gibson, of Louisiana, offered an amendment providing several items of appropriation, such as salaries for superintendent and employees, wages of workmen, cost of repairs, etc., for the mint at New Orleans.

Mr. John H. Baker, of Indiana, made the point of order against this amendment.

The Speaker² ruled on May 4:

The third paragraph of section 3495 of the Revised Statutes makes in distinct terms this provision: "Third. The mint of the United States at New Orleans."

The Chair supposes that the revisers in inserting this clause did so in pursuance of the sixty-fifth section of what is known as the coinage act of February 12, 1873, wherein a superintendent of the mint at New Orleans is recognized and the performance of additional duties is assigned to him.

It seems to the Chair that the act of 1874 also provides for the reopening of the mint at New Orleans, proceeding upon the same assumption as the amendment offered by the gentleman from Louisiana [Mr. Gibson], that there is a mint already authorized by law at New Orleans.

Allusion has been made to Senate bill No. 1058 as an indication that additional legislation is necessary to establish a mint at New Orleans. A careful reading of that bill, which is now in the hands of the Committee on Coinage, Weights, and Measures, will show that it proceeds upon the same assumption—that there is by law a mint authorized at New Orleans.

Thus the general law, particularly section 3495 of the Revised Statutes, provides for a mint at New Orleans, and subsequent sections authorize and direct the appointment of officers to keep the mints in operation. In accordance with this state of the law the Chairman of the Committee of the Whole on last Tuesday made this decision:

"As the law recognizes the existence of a mint at New Orleans, the Chair is inclined to hold that the necessary legislation to operate that mint is not new legislation in the sense of the rule, and that consequently such a provision is in order as an amendment to this bill. The Chair therefore overrules the point of order."

The gentleman from Michigan [Mr. Conger], during the debate that then took place upon the point of order, said:

"Now, if there be a mint at New Orleans and if the usual officers for a mint at New Orleans are not provided for in this bill, I do not claim that it is new legislation to provide for them, whether they have been left out by inadvertence or by design. But if there be no mint there organized; if this is the establishment of a mint instead of an assay office, as this bill provides for, then it will be new legislation. It was because I did not know what the law was upon that subject that I suggested to the Chair that it was new legislation.

"Now, I understand the gentleman from Louisiana [Mr. Gibson] to read from the law, which is unrepealed, as I understand him, to claim the establishment of a mint at New Orleans and to claim that the officers provided for in this amendment are the proper legal officers of this institution. If that be so, I can not insist upon the point of order that it is new legislation."

¹ Second session Forty-fifth Congress, Journal, p. 1005; Record, pp. 3164–3177.

² Samuel J. Randall, of Pennsylvania, Speaker.

The gentleman from Ohio [Mr. Garfield], in the course of the same debate, said:

“During the several years while I was chairman of the Committee on Appropriations, when there was not enough coinage being done to require the rehabilitation of any mint, and even when we were providing for the sale of mints at Charlotte and Dahlonga and other points, we still kept the New Orleans mint alive by keeping up the form of appropriation, giving a small sum of money, because if we had not done so under the terms of the grant it would revert to its former owners. We are bound while we own it to keep it a mint.”

This latter statement of the gentleman from Ohio referring to the period when he was chairman of the Committee on Appropriations agrees entirely with the recollection of the present occupant of the chair as to the action of the committee during the time he was its chairman. The committee at that time provided for keeping an officer at the New Orleans mint in order that the Government might retain the mint property under its contract with the city of New Orleans. This was avowedly the object.

The Chair, in view of the provision of section 3495 of the Revised Statutes, in consideration also of the act of 1874 and all the subsequent cumulative legislation recognizing a mint at New Orleans as established by law, is unwilling to reverse the decision of the chairman of the Committee of the Whole upon this amendment. The Chair thinks proper to go further and say that he believes the mint at New Orleans to be a mint authorized by the statutes, and that consequently this amendment providing appropriations for keeping that mint in operation is not at variance with existing law, and overrules the point of order. * * * The Chair desires to state in that connection that the mere omission on the part of Congress to appropriate money does not necessarily repeal distinct law authorizing a certain thing to be done, especially in the absence of a repealing provision. If Congress chooses to omit to appropriate when the law authorizes the thing to be done, the responsibility of course would be with Congress.

3596. If a motion to strike out certain words in a paragraph of appropriation in a general appropriation bill would change the object from one authorized by existing law to one not so authorized, the motion is not in order.—On February 21, 1907,¹ the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. James R. Mann, of Illinois, proposed this amendment:

Insert at the end of line 18:

“To enable the Interstate Commerce Commission to investigate in regard to the use and necessity for block-signal system and appliances for the automatic control of railway trains, including experimental tests, at the discretion of the Commission, of said signal system and appliances only as may be furnished in connection with such investigation free of cost to the Government, in accordance with the provisions of the joint resolution approved June 30, 1906, \$500,000.”

Mr. Edgar D. Crumpacker, of Indiana, moved to strike out the word “automatic.”

Mr. James R. Mann, of Illinois, made a point of order, saying:

Mr. Chairman, if it were a new proposition I might be willing to consent to what the gentleman suggests; but the amendment which I have offered is in accordance with the joint resolution already enacted into the law, is not subject to a point of order, and I have presented the amendment to the members of the Committee on Appropriations, who have made no objection to it. Therefore I would not feel that I had the right under the circumstances, having called the attention of the Committee on Appropriations to this subject, to widen the scope of this amendment. Hence I would be compelled to make a point of order on any change in the provision.

The Chairman² said:

I would like to ask the gentleman from Indiana [Mr. Crumpacker] whether or not his description, by striking out the word “automatic” here, would not let in a great many things? That is, would not the scope of the investigation be much wider and more extended than if the term “automatic” is included?

¹Second session Fifty-ninth Congress, Record, pp. 3569, 3570.

²George P. Lawrence, of Massachusetts, Chairman.

The response of Mr. Crumpacker and the ensuing debate having indicated that the effect of the amendment to the amendment might be to extend the scope of the investigation beyond the authorization of existing law, the Chairman held:

The Chair thinks the matter is not entirely free from doubt, but is inclined to sustain the point of order.

3597. Those upholding an item in an appropriation should have the burden of showing the law authorizing it.—On June 14, 1906,¹ the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Defense of suits before Spanish Treaty Claims Commission: For salaries and expenses in defense of claims before the Spanish Treaty Claims Commission, including salaries of assistant attorney-general in charge as fixed by law, and of assistant attorneys and necessary employees in Washington, D.C., or elsewhere, \$92,000.

Mr. James B. Perkins, of New York, made the point of order that there was no statutory authority for the appropriation.

After some debate, Mr. James A. Tawney, of Minnesota, said:

The gentleman from New York makes the point of order on the ground that there is no statutory authority, and then he calls upon the committee to cite the authority. I submit, Mr. Chairman, that the presumption is in favor of there being authority for the act, and the gentleman who makes the point of order has the burden of proof that there is no statutory authority.

The Chairman² overruled this contention of Mr. Tawney, saying:

The Chair is of the opinion that the gentleman making the proposition should show affirmatively that there is authority of law.

3598. An appropriation for carrying on a service beyond the limits assigned by an executive officer exercising a lawful discretion was held not to be authorized by existing law.

Keeping the Congressional Library open additional hours was held not to be a continuing public work of such tangible nature as to justify provision on an appropriation bill.

On December 16, 1897,³ the legislative, executive, and judicial appropriation bill being under consideration in Committee of the Whole House on the state of the Union, a point of order was pending on this amendment, relating to the Congressional Library, which had been offered by Mr. Levin I. Handy, of Delaware—

For additional expense involved in keeping the Library open daily from 9 a. m. to 10 p. m., \$15,000

The Chairman⁴ ruled:

The amendment as offered yesterday is, in the judgment of the Chair, new legislation in this, that under existing law the Librarian of Congress has the power to regulate the hours when the Library shall be kept open, and if the amendment of the gentleman from Delaware is adopted it will operate as a restriction upon the discretion which the Librarian of Congress now possesses under existing law. Hence it would be new legislation and subject to the point of order. The Chair adheres to his ruling

¹First session Fifty-ninth Congress, Record, p. 8513.

²James E. Watson, of Indiana, Chairman.

³Second session Fifty-fifth Congress, Record, p. 232.

⁴Albert J. Hopkins, of Illinois, Chairman.

upon that point. The gentleman from Delaware to-day presents the further proposition that it is competent to offer this amendment under a clause of the second paragraph of Rule XXI, which I will read:

"2. No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress."

That clause of the rule has been construed again and again by the Committee of the Whole, and its language has been held to relate only to public works of a tangible nature. The question was considered in the Fifty-fourth Congress on the agricultural appropriation bill. The same point that is now made by the gentleman from Delaware was made then, and it was held that the amendment was not in order. An appeal was taken from the ruling and the Chair was sustained by the committee. The present occupant of the chair holds that the Librarian is an executive officer of the Government, and that this clause of the rule does not apply to him. The Chair adheres to his ruling made yesterday that the amendment of the gentleman from Delaware is not in order.

3599. The law having specified the details of the Government exhibit at an exposition, an appropriation for a new object was held not in order in a general appropriation bill.—On May 25, 1892,¹ the House was in Committee of the Whole House on the state of the Union considering the sundry civil appropriation bill.

The paragraph providing for the Government exhibit at the World's Columbian Exposition having been reached, Mr. George W. Houk, of Ohio, proposed an amendment to provide for the expenditure of \$100,000 out of the money hereinbefore appropriated, to be expended under the supervision of the board of control and management, for collecting and publishing statistics pertaining to the progress of the inhabitants of the United States of African descent from 1863 to 1893, the publication when completed to constitute a part of the Government exhibit at the exposition.

Mr. William S. Holman, of Indiana, having made a point of order that this was not authorized by law, on this ground the Chairman² sustained the point.

On the same day Mr. Christopher A. Bergen, of New Jersey, offered the same proposition in a different form, and Mr. Walt H. Butler, of Iowa, having made a point of order, the Chair ruled:

The amendment, * * * like the other one upon which the Chair ruled—the amendment of the gentleman from Ohio, Mr. Houk—appropriates this money for a specific object; that is to say, to make an exhibition of arts, industries, manufactures, etc., by the colored people of African descent residing in the United States, January 1, 1863, etc. That appropriation for that purpose is not authorized by the law of 1890 which established the exposition. The only provision by which the Government can make an exhibit under that law is that contained in section 16 of the act, which provides:

"That there shall be exhibited at said exposition by the Government of the United States, from its Executive Departments, the Smithsonian Institution, the United States Fish Commission, and the National Museum, such articles and materials as illustrate the function and administrative faculty of the Government in time of peace and its resources as a war power, tending to demonstrate the nature of our institutions and their adaptation to the wants of the people; and to secure a complete and harmonious arrangement of such a Government exhibit, a board shall be created to be charged with the selection, preparation, arrangement, safe-keeping, and exhibition of such articles and materials as the heads of the several Departments and the Directors of the Smithsonian Institution and National Museum may respectively decide shall be embraced in said Government exhibit."

That is all that is provided for, and it is specifically provided for. This is for another and different purpose altogether, and therefore would require legislation before it could be the subject of appropriation on a general appropriation bill. The Chair sustains the point of order.

On an appeal by Mr. Bergen, the decision of the Chair was sustained.

¹ First session Fifty-second Congress, Record, pp. 4669–4671, 4675, 4684.

² Rufus E. Lester, of Georgia, Chairman.

3600. An appropriation of the surplus of the water fund of the District of Columbia for the extension of the water system was held to be authorized by law and in order on an appropriation bill.—On February 2, 1898,¹ the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was reached:

For continuing the extension of the high-service system of water distribution, to include all necessary land, machinery, buildings, mains, and appurtenances, and for the purchase, erection, maintenance, and inspection of water meters for the gradual extension of the meter system to all classes of consumers, so much as may be available in the water fund during the fiscal year 1899, after providing for the expenditures hereinbefore authorized, is hereby appropriated.

Mr. James D. Richardson, of Tennessee, reserved a point of order.

After debate, during which the law of the District on the subject was quoted, the Chairman² held:

The Chair thinks that the law quoted gives very full authority to the Commissioners on this subject, and the water rates by section 7 seem to be dedicated “for the maintenance, management, and repair of the system of water distribution.”

3601. A provision on an appropriation bill appropriating the receipts of a Government telegraph system to extensions of the same was held out of order.—On February 27, 1906,³ the Army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

OFFICE OF THE CHIEF SIGNAL OFFICER.

Signal Service of the Army: For expenses of the Signal Service of the Army, as follows: Purchase, equipment, and repair of field electric telegraphs, signal equipments and stores, binocular glasses, telescopes, heliostats, and other necessary instruments, including necessary meteorological instruments for use on target ranges; war balloons; telephone apparatus (exclusive of exchange service) and maintenance of the same; electrical installations and maintenance at military posts; fire control and direction apparatus and material for field artillery; maintenance and repair of military telegraph lines and cables, including salaries of civilian employees, supplies, and general repairs, and other expenses connected with the duty of collecting and transmitting information for the Army, by telegraph or otherwise, \$200,000: Provided, That until June 30, 1907, the line receipts of the Alaskan military cable and telegraph system may be utilized in making such extensions to the system as may be approved by the President as a military necessity, such extensions to be reported to Congress by the Secretary of War.

Mr. Lucius N. Littauer, of New York, made a point of order against the proviso of the paragraph.

Mr. John A. T. Hull, of Iowa, admitted that the point of order was well taken, and the Chairman⁴ ruled it out.

3602. Propositions to appropriate for the beginning of “necessary and special facilities” for railroad transportation of mail have been ruled out as not authorized by existing law.

An instance of the method of admitting legislation to an appropriation bill under the old rule permitting retrenchment legislation.

¹ Second session Fifty-fifth Congress, Record, pp. 1352–1354.

² Sereno E. Payne, of New York, Chairman.

³ First session Fifty-ninth Congress, Record, p. 3080.

⁴ Henry, S. Boutell, of Illinois, Chairman.

On May 5, 1880,¹ the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this amendment was offered by Mr. George D. Robinson, of Massachusetts:

For transportation on railroad routes, \$9,490,000, of which sum \$150,000 may be used by the Postmaster-General to maintain and secure from railroads necessary and special facilities for the postal service for the fiscal year ending June 30, 1881.

Mr. James H. Blount, of Georgia, having made the point of order, the Chairman² ruled:

Although the meaning of the words "necessary and special facilities for postal service" is not very clear, yet the Chair held yesterday,³ after giving the subject some consideration, that the effect of such an amendment would be to change existing law. The Chair still adheres to that opinion. But under the third clause of Rule XXI⁴ an individual Member upon the floor may offer an amendment changing existing law provided it retrenches expenditures in one of three modes: First, by reducing the number and salaries of the officers of the United States; or, secondly, by reducing the compensation of persons paid out of the Treasury of the United States; or, thirdly, by reducing the amount covered by the bill. The amendment offered by the gentleman from Massachusetts does not propose to add an appropriation of \$150,000 to the bill; but it provides that of the amount appropriated by the bill the sum of \$150,000 may be used for certain purposes, and it diminishes the amount covered by the bill by striking out "\$9,500,000" and inserting "\$9,490,000." So the Chair is bound to hold that the amendment conforms strictly to the language of the rule. Whether the language actually used in this rule accomplishes the exact purpose which the House had in view in adopting it is not a question for the Chair to decide; but taking the language of the rule as it stands and putting upon it the construction which ordinarily would be put upon such language in a statute or in a rule of the House the Chair is compelled to hold that the amendment comes within the rule and is in order.

3603. On February 12, 1897,⁵ the House was considering the post-office appropriation bill in Committee of the Whole House on the state of the Union, when this paragraph was read:

In the discretion of the Postmaster-General, any unexpended balance of the appropriation for the fiscal year ending June 30, 1897, for necessary and special facilities on trunk lines, may be used for other fast-mail facilities.

Mr. Jacob H. Bromwell, of Ohio, made the point of order against the paragraph.

After debate the Chairman⁶ ruled:

If the gentleman from Missouri [Mr. Hall] can point the Chair to any law providing fast-mail facilities on other trunk lines in the United States, then the Chair will hold quite differently, but the Chair does not understand the gentleman to point out anything except as provided in the appropriation bill, where a specific line is named and none other.

Now, this amendment gives the power to the Postmaster-General to extend fast-mail facilities on any other trunk line in the country where he may desire to do so, and it would be clearly a change of existing law to do something in that way which the gentleman from Missouri [Mr. Hall] himself would say could not be done by the Committee of the Whole House on the state of the Union, the naming of other trunk lines and starting additional facilities by an appropriation bill, under the present rules of the House. It certainly is not in order to give authority for an officer of the Government to do what the House itself can not do.

¹ Second session Forty-sixth Congress, Record, pp. 3023, 3024.

² John G. Carlisle, of Kentucky, Chairman.

³ See Congressional Record, pp. 2993-2995.

⁴ This ruling was made when the rule (see section 3578 of this work) admitted such legislative provisions as would retrench expenditures.

⁵ Second session Fifty-fourth Congress, Record, pp. 1782, 1783.

⁶ John A. T. Hull, of Iowa, Chairman.

The Chair is of opinion that this amendment clearly and unequivocally changes existing law. It is not a question of simply making an appropriation of unexpended balances for purposes now authorized by law, but it is an appropriation of unexpended balances for purposes not authorized by law. In so far as it undertakes to expend unexpended balances for purposes not now authorized by law, or in so far as it undertakes the creation of new obligations upon the Government, the Chair thinks it is clearly out of order. The Chair sustains the point of order raised by the gentleman from Ohio [Mr. Bromwell]. The provision will be stricken from the bill.

3604. A deficiency appropriation to complete a transportation of silver coin authorized for the current year was held in order, although the original appropriation may have been without authority of law.—On January 20, 1906,¹ the urgent deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

Transportation of silver coin: To pay amounts found due by the accounting officers of the Treasury on account of the appropriation "Transportation of silver coin" for the fiscal year 1905, \$3,426.65.

To this Mr. J. Warren Keifer, of Ohio, proposed an amendment as follows:

For transportation of silver coin, including fractional silver coin, by registered mail or otherwise, \$10,000; and in expending this sum the Secretary of the Treasury is authorized and directed to transport from the Treasury or subtreasuries, free of charge, silver coin when requested to do so: *Provided*, That an equal amount in coin or currency shall have been deposited in the Treasury or such subtreasuries by the applicant or applicants. And the Secretary of the Treasury shall report to Congress the cost arising under this appropriation.

Mr. Ebenezer J. Hill, of Connecticut, made the point of order that the expenditure was not authorized by existing law.

In support of his amendment Mr. Keifer said:

On the 3d of March, 1905, the sundry civil appropriation bill was passed, providing an appropriation relating to the transportation of silver coin for the fiscal year ending June 30, 1906. * * * Now, the Secretary of the Treasury sent an estimate to Congress and the Committee on Appropriations, saying that for the purpose of carrying out that particular law he had to have \$10,000 more money; and my amendment just sent up is to give that \$10,000 to carry on the law of March 3, 1905. Perhaps I had better read the statute. I will say that the provision put in the appropriation act would read precisely, save as to the amount, in the words contained in the amendment, without a change in the law, without a change of punctuation. I better read. The Chair has the amendment.

"For the transportation of silver coin, including fractional silver coin, by registered mail or otherwise, \$120,000—"

Now, the amendment adds \$10,000; that is all—

"and in expending this sum the Secretary of the Treasury is authorized and directed to transport from the Treasury or subtreasuries, free of charge, silver coin when requested to do so: *Provided*, That an equal amount in coin or currency shall have been deposited in the Treasury or such subtreasuries by the applicant or applicants, and the Secretary of the Treasury shall report to Congress the cost arising under this appropriation."

Now, Mr. Chairman, the amendment that was sent up was to complete the transportation of silver coin for the fiscal year ending June 30, 1906.

After further debate, the Chairman² held:

The question presented is somewhat new, and has been argued, it seems to the Chair, with considerable in geniusness and force by the gentleman from Ohio [Mr. Keifer] and stated with very great clearness a moment ago by the gentleman from Georgia [Mr. Livingston]. Whether the provision in

¹First session Fifty-ninth Congress, Record, pp. 1325–1327.

²James S. Sherman, of New York, Chairman.

the sundry civil act of March 3, 1905, would have been obnoxious to the rule had the rule been invoked at the time it is not necessary now to say. So far as anything which has been presented to the Chair is concerned, it would seem that that would have been ruled out had the point been made, but the point was not made, and the provision in the sundry civil act is the law until the 1st of July, 1906. The amendment offered by the gentleman from Ohio [Mr. Keifer] is to a bill which provides for making appropriations to supply urgent deficiencies for the fiscal year ending June 30, 1906, so that it does seem to the Chair that that is an appropriation asked for to carry out the provisions of the law which will be in effect until June 30, 1906. Of course, had the provision been made on the sundry civil bill to apply to the fiscal year ending June 30, 1907, there would be no question about its being out of order, so far as appears from anything here presented; but presented as an amendment to the deficiency bill for the year ending June 30, 1906, it seems to the Chair that the amendment is in order, and the Chair overrules the point of order.

3605. A provision for establishing a plant for the manufacture of powder was held not in order on an appropriation bill.—On March 1, 1906,¹ the Army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when, to the paragraph making appropriation for the purchase of powder, Mr. Oscar W. Gillespie, of Texas, offered this amendment:

Add the following: "One hundred and fifty thousand of which shall be expended in the establishment of a plant for the purpose of manufacturing gunpowder."

Mr. John A. T. Hull, of Iowa, having made a point of order, the Chairman² held:

This amendment seems to be for the establishment of a new factory for the manufacture of gunpowder. The Chair is of the opinion that it is new legislation, and the point of order is sustained.

3606. Propositions for acquisition of sites and buildings for embassies in foreign countries are not in order on the consular and diplomatic appropriation bill.

While it is in order on an appropriation bill to provide for the repair of a building, it is not in order to provide for a new building in place of one destroyed.

On May 29, 1906,³ the consular and diplomatic appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Nicholas Longworth, of Ohio, offered this amendment:

Insert a new section after line 16, page 9:

"For the acquisition in foreign capitals of proper sites and buildings for the embassies and legations of the United States and for the residences of the ambassadors and envoys extraordinary and ministers plenipotentiary of the United States to foreign countries, \$1,000,000."

Mr. Robert Adams, jr., of Pennsylvania, made a point of order against the amendment.

The Chairman⁴ sustained it.

Soon thereafter the Clerk read:

REERECTION OF CONSULAR BUILDING AT TAHITI, SOCIETY ISLANDS.

For the reerection of the American consular building at Tahiti, Society Islands, \$5,071.45.

Mr. James R. Mann, of Illinois, made a point of order.

¹First session Fifty-ninth Congress, Record, p. 3235.

²Henry S. Boutelle, of Illinois, Chairman.

³First session Fifty-ninth Congress, Record, pp. 7637–7640.

⁴Charles Curtis, of Kansas, Chairman.

After debate, the Chairman said:

Was this building completely destroyed, and is this appropriation to rebuild the building, or was it simply damaged, and is this item to repair it?

In reply it was stated that the foundation remained, but the superstructure was rendered uninhabitable. On the other hand, it was urged that the language of the paragraph specified "reerection" and not repair.

The Chairman sustained the point of order.

Mr. Edwin Denby, of Michigan, then proposed this amendment:

For the repair of the American consular building at Tahiti, Society Islands, \$5,071.45.

Mr. Mann made the point of order against the amendment.

The Chairman said:

The Chair will have to take the language of the amendment, and unless the gentleman from Illinois desires to be heard, the Chair is ready to rule. * * * The Chair would like to state to the gentleman that when the Chair ruled upon the point of order before he ruled according to the language, although the gentleman from New York said that the appropriation was "for repairs" and not "rebuilding" the building. * * * The Chair overrules the point of order.

3607. On June 27, 1907,¹ the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Daniel L. D. Granger, of Rhode Island, proposed this amendment:

On page 43, after line 18, insert the following paragraph:

"To replace detention buildings at the training station, Newport, R. I., destroyed by fire on January 28, 1906, to be utilized in segregating recruits, including mess hall, mess and galley outfits, laundry, wash rooms, latrines, and other necessaries to make the same habitable and sanitary; in all, \$94,321."

Mr. Lucius N. Littauer, of New York, made the point of order that there was no authority of law for the appropriation.

The Chairman² held:

The identical question was decided by the Chairman of the Committee of the Whole House, when the diplomatic and consular appropriation bill was under consideration, on an item for the rebuilding of a public structure in one of the Pacific islands. The Chair then sustained the point of order to the provision. Following that precedent, the Chair sustains the point of order.

3608. On January 22, 1907,³ the diplomatic and consular appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. James L. Slayden, of Texas, proposed this amendment:

After the word "necessary," in line 8, page 9, amend by adding:

"For the purchase of ground and the erection of an embassy building in the City of Mexico, \$60,000."

Mr. Robert G. Cousins, of Iowa, made the point of order that there was no law authorizing the appropriation.

The Chairman⁴ sustained the point of order.

¹ First session Fifty-ninth Congress, Record, pp. 9398, 9399.

² Edgar D. Crumpacker, of Indiana, Chairman.

³ Second session Fifty-ninth Congress, Record, pp. 1523, 1524.

⁴ John A. Sterling, of Illinois, Chairman.

Later on the same day Mr. Nicholas Longworth, of Ohio, offered this amendment:

On page 22, at the end of line 5, insert:

“For the acquisition in foreign capitals of proper sites and buildings, which shall be used by the embassies and legations of the United States and for the residences of the ambassadors and envoys extraordinary and ministers plenipotentiary of the United States to foreign countries, to be expended by the Secretary of State, \$500,000.”

Mr. James R. Mann, of Illinois, having made the point of order, the Chairman² sustained it.

3609. Question as to appropriations for incidental and contingent expenses in the consular and diplomatic service.—On May 29, 1906,¹ the consular and diplomatic appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

To enable the President to provide, at the public expense, all such stationery, blanks, records, and other books, seals, presses, flags, and signs as he shall think necessary for the several embassies and legations in the transaction of their business, and also for rent, postage, telegrams, furniture, messenger service, compensation of kavasses, guards, dragomans, and porters, including compensation of interpreter, guards, and Arabic clerk at the consulate at Tangiers, and the compensation of dispatch agents at London, New York, and San Francisco, and for traveling and miscellaneous expenses of embassies and legations, and for printing in the Department of State, and for loss on bills of exchange to and from embassies and legations, \$225,000.

Mr. John S. Williams, of Mississippi, made a point of order that the amount of the appropriation had been increased.

After debate, the Chairman² said:

If the point made by the gentleman from Mississippi wholly applies to the increase in the amount the Chair will overrule the point of order.

Mr. Williams replied:

The point of order necessarily is applied to all of it that is not specifically set forth. The point is made to all the paragraph, because the increase makes it new legislation.

The Chairman said:

The Chair overrules the point of order.

The Clerk then read:

STEAM LAUNCH FOR LEGATION AT CONSTANTINOPLE.

Hiring of steam launch for use of the legation at Constantinople, \$1,800.

Mr. William Sulzer, of New York, made the point of order that there was no law authorizing this expenditure.

The Chairman overruled the point of order.

Soon thereafter the Clerk read:

EMERGENCIES ARISING IN THE DIPLOMATIC AND CONSULAR SERVICE.

To enable the President to meet unforeseen emergencies arising in the diplomatic and consular service, and to extend the commercial and other interests of the United States, to be expended pursuant to the requirement of section 291 of the Revised Statutes, \$90,000, or so much thereof as may be

¹First session Fifty-ninth Congress, Record, pp. 7636, 7637, 7641.

²Charles Curtis, of Kansas, Chairman.

necessary. The Secretary of State is authorized to apply in his discretion such portions of the appropriation for "Contingent expenses, foreign missions," for the fiscal year ending June 30, 1907, to the maintenance, driving, and operating such carriages or vehicles as may be necessary for the use of the Assistant Secretaries of the Department of State in the duties officially devolving upon them, and further to apply upon the order of the President such proportion of any fund which may properly be applied to the entertainment of visiting functionaries of foreign governments to such temporary hire of carriages as may be required for the use of such Assistant Secretaries in emergencies arising in connection with the necessary entertainment of such functionaries of foreign governments in the United States, or in such other emergencies as may require such expenditures to be made.

Mr. James R. Mann, of Illinois, raised the question of order to all of the paragraph after the first sentence.

The Chairman sustained the point of order.

3610. A proposition to pay the traveling expenses of the President of the United States by a paragraph in an appropriation bill was held to be unauthorized by law.—On June 9, 1906,¹ the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

For the traveling expenses of the President of the United States, his attendants and invited guests traveling with him, to be disbursed at the discretion of the President, \$25,000.

Mr. John S. Williams, of Mississippi, made the point of order that there was no law authorizing this expenditure.

Mr. Williams argued not only that there was no law authorizing the expenditure, but also said:

Now, Mr. Chairman, in this connection I want to read a part of the language of section 1, Article II, of the Constitution of the United States:

"The President shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected."

Now, if it stopped there there might be some reasonable room for constructive doubt about the meaning, but it goes on:

"And he shall not receive, within that period, any other emolument from the United States or any of them."

* * * * *

This provision would not only change existing statute law, but the fundamental law—the Constitution itself.

Now, in connection with the meaning of the word "emolument" used in the Constitution, my friend from New York did not read quite far enough. The Constitution says, not that an emolument is compensation, but as if to show that it means more than compensation it says, in the first part of this clause, that the "compensation" shall not be increased or decreased during the President's term, and then later on it says, nor shall any "emolument" be given to the President during the same time. Now, the gentleman did not read quite far enough in Worcester's definition of the word "emolument." If he had, he would have found this next definition:

"Advantage, good, or gain, in a general sense."

And it is illustrated by a quotation from that master of good English, the author of the Tattler, old Samuel Johnson, who says:

"Nothing gives greater satisfaction than the sense of having dispatched a great deal of business to the public emolument."

Emolument means advantage. It is just a longer word; that is all; a little different, because it leans toward pecuniary advantage.

¹First session Fifty-ninth Congress, Record, pp. 8198–8205.

Mr. Walter I. Smith, of Iowa, said:

Now, then, is this an "emolument?"

The word "emolument," as defined by Webster's International Dictionary, is:

"Profit arising from office, employment, or labor; gain, compensation, advantage, perquisites, fees, or salary."

If this money is not wholly expended in traveling expenses it is covered back into the Treasury. This is an extraordinary sum, covering a certain contemplated trip of the Presidents over the country visiting numerous colleges and other institutions of learning. It is probable that in ordinary years it would not exceed \$5,000. He is not to receive a dime of it; and if this be "emolument," then it was an increase of emolument when we put \$680,000 in repairs upon the White House during this Administration, and gave him the right to occupy a much better house than he had theretofore occupied, or any of his predecessors.

As to whether or not there was any law authorizing the expenditure, Mr. Smith said:

The Government of the United States has for many years borne in part the traveling expenses of the President of the United States. We annually carry a \$20,000 appropriation to provide, among other things, carriages and horses to him as Commander in Chief of the Army, and we constantly furnish the *Mayflower* or some other vessel for water transportation to him as Commander in Chief of the Navy.

We have for many years borne a portion of the traveling expenses of the President of the United States. This is simply a proposition to increase the expenditures for the traveling expenses of the President of the United States, a large portion of which expenses are already borne. I can not think that it is new legislation so as to make it subject to the point of order.

The Chairman¹ had read the rule of the House forbidding on an appropriation bill any provision for "any expenditure not previously authorized by law," and said:

The Chair desires to ask the chairman of the Committee on Appropriations, or the gentleman having this item in charge, whether he can furnish the Chair with any statute authorizing this appropriation?

The response being that there was no specific statute, the Chairman ruled—

The Chair is clearly of the opinion that this item is not authorized by existing law, and therefore the Chair sustains the point of order.

As to the constitutional provision, the Chairman did not find it necessary to rule.

3611. While the fortifications appropriation bill carries general appropriations for a plan of work in progress, specific appropriations for individual works not authorized by law and not in progress are not in order thereon.—On January 15, 1907,² the fortifications appropriation bill was under consideration in Committee of the Whole House on the state of the Union when Mr. Harry L. Maynard, of Virginia, proposed an amendment, as follows:

On page 2, in line 8, after the word "dollars," insert the following:

"To make all necessary surveys, borings, and other investigations necessary for and the preparation of an accurate detailed estimate of what it would cost to construct proposed artificial island for fortifications between Capes Charles and Henry, Chesapeake Bay, and to ascertain whether the title to the site of said proposed artificial island can be obtained without expense to the United States, \$3,000.

¹James E. Watson, of Indiana, Chairman.

²Second session Fifty-ninth Congress, Record, pp. 1175, 1176.

Mr. Walter I. Smith, of Iowa, made the point of order that it was not included in the plans of the Endicott Board, was not authorized by law to be executed, and therefore was not authorized by existing law.

Furthermore, in response to an inquiry of the Chair, Mr. Smith said:

I will say, Mr. Chairman, that I understand that Congress in 1885, shortly after the report of the Gun Foundry Board, passed a law creating a board to report a plan of fortifications, and that board reported in 1886. There has been no express act of Congress adopting the plans proposed by that board. They were prepared, however, by direct authority of Congress, and Congress has from time to time appropriated money for carrying out the plans of the Endicott Board. Last year the President, without any authority from the legislative branch of the Government, appointed a board to revise these plans. This project here referred to originates in the report of this executive board.

After debate, the Chairman¹ held:

The Chair does not understand that in the act of Congress authorizing the appointment of the Endicott Board Congress by law provided that that report should be adopted or that any act of Congress has been enacted since that time specifically adopting the report of the Endicott Board. On the other hand, Congress has provided in annual appropriation bills for the expenditure of money for fortification purposes, usually in general language making appropriations for purposes general in their nature, to be expended by the War Department. In a few cases appropriations have been made for specific purposes, but as a rule in general language.

In the opinion of the Chair, expressed with some doubt, under the practice of the House at least, the items in the appropriation bill in general language are probably in order, though the Chair does not undertake to rule upon the question at this time; but the Chair thinks that the introduction of a new item for a work not in progress is not in order, and the Chair therefore sustains the point of order.

Very soon thereafter Mr. Maynard proposed another amendment:

On page 2, in line 8, after the word "dollars," insert the following: "to make all necessary surveys, borings, and other investigations necessary for and the preparation of an accurate detailed estimate of what it would cost to construct proposed artificial island for fortifications between Capes Charles and Henry, Chesapeake Bay, and to ascertain whether the title of the site of said proposed artificial island can be obtained without expense to the United States, \$3,000, out of any money in the Treasury which may now be available for this purpose."

Mr. Smith having made the point of order, the Chairman held:

In the opinion of the Chair, while, as the Chair stated before, the matter is in doubt and it may be to a certain extent an arbitrary ruling, the general appropriation under the practice of the House might probably be used by the War Department for the purpose of making the survey proposed by the amendment, but, in the opinion of the Chair, it is not within the province of the House, contrary to the rules, on this appropriation bill to provide for a work not in progress. This work is not in progress, and the Chair therefore sustains the point of order.

3612. On February 23, 1907,² the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. George E. Waldo, of New York, offered this amendment:

Page 137, after line 25, insert: "For the purchase of a site for the increase of the fortifications and for the enlargement of seacoast defense at New York Harbor, \$1,000,000."

Mr. James A. Tawney, of Minnesota, made a point of order against the amendment.

The Chairman³ sustained the point of order.

¹ James R. Mann, of Illinois, Chairman.

² Second session Fifty-ninth Congress, Record, pp. 3776, 3777.

³ James E. Watson, of Indiana, Chairman.

3613. The law authorizing the Geological Survey to examine the mineral resources and products of the national domain was held to justify an appropriation for investigating structural materials.—On February 23, 1907,¹ the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when paragraphs relating to the Geological Survey were read.

Mr. George W. Norris, of Nebraska, offered an amendment:

After line 10, page 104, insert:

“For the continuation of the investigation of structural materials belonging to the United States, such as stone, clay, cement, etc., under the supervision of the Director of the United States Geological Survey, to be immediately available, \$100,000.”

Mr. James A. Tawney, of Minnesota, made the point of order that the appropriation was not authorized by law, and said:

I should like to know if the amendment is the same amendment that was offered a year ago after the Chair had ruled that the original proposition was not in order.

The Chairman² said:

Yes; because it has reference to materials of that character belonging to the United States, which the Chair held must be those materials belonging to the United States on the national domain, and limiting the scope of the appropriation. The Chair thinks it is clearly in order.

3614. An appropriation for the construction from Government surveys of maps of a foreign coast was held not to be in order on an appropriation bill.—On January 7, 1899,³ the legislative, executive, and judicial appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

For the construction from Government surveys of a series of engraved nautical charts of the coasts and harbors of the Philippine Islands, \$12,000.

Mr. Alexander M. Dockery, of Missouri, made the point of order that this appropriation was not authorized by law.

After debate the Chairman⁴ sustained the point of order, saying:

The Chair is not able to ascertain whether this is a public work already commenced and which might be completed under the law. The Chair does not think, however, that an appropriation to publish maps and charts of a foreign country—which the Philippine Islands are now—should be a part of the general appropriation bill. The Chair therefore sustains the point of order.

3615. A department being created for the declared purpose of investigation, an appropriation for the instrumentalities of such investigation was held to be within the rule.⁵—On February 14, 1901,⁶ the sundry civil appropriation bill was under consideration in Committee of the Whole House on the

¹ Second session Fifty-ninth Congress, Record, pp. 3785, 3786.

² James E. Watson, of Indiana, Chairman.

³ Third session Fifty-fifth Congress, Record, pp. 487, 488.

⁴ Sereno E. Payne, of New York, Chairman.

⁵ See, however, section 3651 of this volume for a ruling not in harmony with this.

⁶ Second session Fifty-sixth Congress, Record, pp. 2437, 2538.

state of the Union, and the Clerk had read the following paragraph relating to the work of the Fish Commission:

Employees at large: Two field-station superintendents, at \$1,800 each; 2 fish culturists, at \$960 each; 2 fish culturists, at \$900 each; 5 machinists, at \$960 each; 2 coxswains, at \$720 each; in all, \$13,560.

Mr. Martin E. Olmsted, of Pennsylvania, made a point of order against this paragraph, that the appropriations proposed were not authorized by law.

After debate, during which reference was made to sections 4395–4398, Revised Statutes, to the fact that the law of 1871 created the department for the prosecution of investigations, and to the decision of Chairman Payne, on January 30, 1897,¹ the Chairman,² on February 16, held:

The Chair is of the opinion that there is no limitation upon this section as to time, and that it has the same force and effect to-day that it had at the time it became a law on the 9th of February, 1871. This section in the bill which is objected to is clearly within the spirit and letter of that statute, and the Chair holds, therefore, that the point of the gentleman from Pennsylvania [Mr. Olmsted] is not well taken, and overrules the point of order.

3616. A proposition to appropriate for furnishing a Territorial capitol was held to be out of order on an appropriation bill.—On February 13, 1901,³ the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. J. F. Wilson, of Arizona, offered this amendment:

For furnishing the State house at Phoenix, in the Territory of Arizona, now completed but not furnished, the sum of \$20,000.

Mr. Joseph G. Cannon, of Illinois, made the point of order that there was no law authorizing such expenditure.

The Chairman² sustained the point of order.

3617. An appropriation for relief of the native inhabitants of Alaska was held to be unauthorized by law.—On February 16, 1901,⁴ the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. William S. Cowherd, of Missouri, offered this amendment:

To enable the Secretary of the Treasury to furnish good fuel and clothing to the native inhabitants of Alaska, \$50,000.

Mr. Joseph G. Cannon, of Illinois, made the point of order that there was no law authorizing the expenditure.

After debate the Chairman² said, on February 18:

In the opinion of the Chair this point of order should be sustained. There is no authority of law for the same.

¹ See section 3719 of this volume.

² Albert J. Hopkins, of Illinois, Chairman.

³ Second session Fifty-sixth Congress, Record, p. 2377.

⁴ Second session Fifty-sixth Congress, Record, pp. 2551, 2605.

3618. An amendment authorizing the purchase of a special device for transporting the mails was held not to be in order on the Post-Office appropriation bill.—On March 14, 1902,¹ while the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, Mr. John J. Fitzgerald, of New York, offered the following amendment:

After line 18, page 19, as a new subdivision, insert:

“For transportation of mail by pneumatic tube or similar device, by purchase or otherwise, \$500,000.

Mr. Eugene F. Loud, of California, made a point of order against the amendment.

The Chairman² said, after debate:

The gentleman from New York concedes that the amendment is subject to a point of order. Therefore the Chair rules it out of order.

3619. Propositions to pay private claims against the Government (except judgments of the courts or audited claims) are not in order on general appropriation bills.—On August 21, 1850,³ the House was in Committee of the Whole House on the state of the Union considering the civil and diplomatic appropriation bill. Mr. John A. McClernand, of Illinois, offered the following amendment, to come in at the end of the clause providing salaries for secretaries of legation abroad:

For compensation to Theodore S. Fay, secretary of legation to Prussia, for his services as acting chargé d'affaires to that Government, \$1,701.40, which shall be in full for his claim for all such services.

The point of order being made, the Chairman⁴ ruled:

This is a bill making appropriations for the fiscal year commencing on the 1st day of July last. The eighty-first rule⁵ authorizes amendments to be offered to provide for contingencies in any one of the Departments. In the opinion of the Chair these contingencies must be for the future. This amendment is a provision to pay an individual claim of a private nature for services past, and, in the opinion of the Chair, is not in order.

On appeal the Chair was sustained, 67 yeas to 54 nays.

Again, on August 24, on the same bill, and Mr. Burt being again in the chair, a similar ruling was made on an amendment proposing to pay a claim of the State of New Hampshire for money expended in suppressing an insurrection at Indian Stream, in that State.

3620. On February 19, 1853,⁶ during the consideration of the civil and diplomatic appropriation bill in Committee of the Whole House on the state of the Union, Mr. James F. Strother, of Virginia, offered an amendment for the payment of \$123,000 to the Orange and Alexandria Railroad Company on account of an old claim.

¹ First session Fifty-seventh Congress, Record, pp. 2797.

² Charles E. Littlefield, of Maine, Chairman.

³ First session Thirty-first Congress, Globe, pp. 1617, 1651.

⁴ Armistead Burt, of South Carolina, Chairman.

⁵ This is now section 2 of Rule XXI. See section 3578 of this chapter.

⁶ Second session Thirty-second Congress, Globe, p. 736.

Mr. George W. Jones, of Tennessee, made the point of order that the amendment was not in order, as it was a private claim, and a private bill was pending.

The Chairman¹ sustained the question of order. On an appeal the Chair was sustained.

3621. On February 8, 1854,² the House was in Committee of the Whole House on the state of the Union, considering House bill No. 49, to supply deficiencies in the appropriations for the service of the fiscal year ending the 30th of June, 1854.

An amendment was offered for the payment of William Irving \$625 for services as acting superintendent of the Seventh Census for five months, from May 30, 1851.

The debate developed the fact that the superintendent also claimed the compensation for this period, and that the Department had not allowed it.

Mr. Fayette McMullin, of Virginia, having raised the point that the amendment was a private claim, and therefore not in order on an appropriation bill, the Chairman³ decided the amendment in order, whereupon Mr. McMullin appealed, and the committee reversed the decision of the Chair.

So the amendment was decided not to be in order.

3622. On June 22, 1854,⁴ the House was in Committee of the Whole House on the state of the Union considering the civil and diplomatic appropriation bill, when Mr. Thomas H. Bayly, of Virginia, offered an amendment for the compensation of Francis Daines for the discharge of the United States consular duties at Constantinople from the 16th of May, 1849, to the 20th of December, 1852, in conformity to the act of Congress approved the 11th of August, 1848, \$3,794.50.

The point of order being made by Mr. John Letcher, of Virginia, the Chairman¹ said:

In deciding the question of order raised by the gentleman from Virginia, the Chair adheres to the decision which he made, and which has been twice affirmed by the committee, that the bill which is now under consideration is a bill making appropriations for the civil and diplomatic expenses of the Government for the year ending 30th June, 1855, and that these amendments are not in order to it.

3623. On May 25, 1892,⁵ the House was in Committee of the Whole House on the state of the Union considering the sundry civil appropriation bill.

The paragraph providing for the Government exhibit at the World's Columbian Exposition having been reached, Mr. William Cogswell, of Massachusetts, offered this amendment to it:

Authority is hereby granted for the payment of \$750 to St. Julian B. Dapray, for special and legal services rendered the board of control and management Government exhibit, World's Columbian Exposition, to be held at Chicago, Ill., 1892—93, from moneys hereby appropriated.

Mr. Benton McMillin, of Tennessee, made a point of order that there was no authority of law for such an appropriation.

The Chairman⁶ ruled:

The Chair is satisfied that there is no law authorizing this specific appropriation, and the point of order is therefore sustained.

¹James L. Orr, of South Carolina, Chairman.

²First session Thirty-third Congress, Globe, p. 385.

³Origen S. Seymour, of Connecticut, Chairman.

⁴First session Thirty-third Congress, Globe, p. 1483.

⁵First session Fifty-second Congress, Record, p. 4668.

⁶Rufus E. Lester, of Georgia, Chairman.

3624. On February 2, 1897,¹ the consular and diplomatic appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Andrew R. Kiefer, of Minnesota, offered this amendment:

That the Secretary of the Treasury be, and he is hereby, directed to pay to Mrs. Harriet D. Newson, widow of Thomas M. Newson, late United States consul at Malaga, a sum of money equal to one year's salary of said consul, together with the sum of \$197, which was collected from the estate of the said Thomas Newson by the Government of the United States after his death.

Mr. Robert R. Hitt of Illinois, made a point of order against the amendment.

The Chairman² sustained the point of order.

3625. The payment of an unadjudicated claim, even though the amount be ascertained and transmitted by the head of an Executive Department, is not in order on the deficiency bill.—On February 20, 1901,³ the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. George A. Pearre, of Maryland, offered this amendment:

To pay the employees of the War Department for services rendered in excess of the regular day's labor of seven hours each from April 21, 1898, to January 31, 1899, as they shall respectively appear to be entitled to the same from the rolls of the War Department, to be distributed by the Secretary of War, \$85,394.92.

Mr. Joseph G. Cannon, of Illinois, made the point of order that such an appropriation had not been authorized by law.

It was urged that this amount had been ascertained by the Secretary of War and communicated to the House in a letter from the Secretary.

The Chairman⁴ sustained the point of order.

3626. On February 20, 1901⁵ the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

Credit in account of Maj. T. E. True: That the proper accounting officers in the Treasury are hereby authorized and directed to credit and allow to Maj. T. E. True, quartermaster, United States Army, depot quartermaster, Washington, D. C., the voucher for \$1,300 for payment made by him to Sheldon Jackson under the approval of the War Department of March 18, 1899, said payment being in the nature of extra compensation to Sheldon Jackson for services rendered by him in connection with the relief of people in the mining regions of Alaska, and to charge the same to the credit of the appropriation made for that purpose by the act approved December 18, 1897.

Mr. D. E. Finley, of South Carolina, made the point of order that this was a claim, and that there was no law authorizing its payment on an appropriation bill.

The Chairman⁴ sustained the point of order.

3627. On February 20, 1901,⁶ the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Henry S. Boutell, of Illinois, offered this amendment:

¹ Second session Fifty-fourth Congress, Record, p. 1445.

² Sereno E. Payne, of New York, Chairman.

³ Second session Fifty-sixth Congress, Record, pp. 2713–2716.

⁴ George P. Lawrence, of Massachusetts, Chairman.

⁵ Second session Fifty-sixth Congress, Record, p. 2711.

⁶ Second session Fifty-sixth Congress, Record, pp. 2709, 2710.

To pay John C. White the sum of \$2,030.63, the same to be taken and receipted for in full satisfaction of his claim for services as charge d'affaires ad interim at Rio de Janeiro, Brazil, from December 23, 1878, to March 27, 1879, and from April 11, 1880, to June 30, 1880.

Mr. Joseph G. Cannon, of Illinois, made the point of order that there was no law authorizing the expenditure.

The Chairman¹ sustained the point of order.

3628. It is not in order to appropriate on the deficiency bill for an unadjudicated claim, even though it be transmitted to the House by an Executive message.—On February 20, 1901,² the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk read this paragraph:

To reimburse the master and owners of the Russian bark *Hans* for all losses and damages incurred by reason of the wrongful and illegal arrest and detention of Gustav Isak Dahlberg, the master and principal owner of said bark, by officers of the United States district court for the southern district of Mississippi in 1896, \$5,000.

Mr. Thaddeus M. Mahon, of Pennsylvania, made the point of order that this paragraph related to a private claim, and was not in order on an appropriation bill.

It was explained by Mr. Joseph G. Cannon, of Illinois, who was in charge of the bill, that this claim had been sent to Congress by a message of the President of the United States and referred to the Committee on Appropriations. It seemed proper to make the appropriation in this way, but it must be admitted that the paragraph was subject to the point of order.

The Chairman¹ sustained the point of order, and the paragraph was stricken from the bill.

3629. Appropriations for payment of claims, even such as have been investigated and reported on by officers of the Government, are not in order on a general appropriation bill.—On August 7, 1890,³ the House was in Committee of the Whole House on the state of the Union considering the general deficiency appropriation bill, when the Clerk read a list of appropriations to pay judgments of the Court of Claims.

At the conclusion of the reading Mr. William J. Stone, of Kentucky, offered an amendment to pay a certain sum to “the legal representatives of H. Cothes, deceased,” admitting at the same time that this was “not strictly a judgment of the Court of Claims,” but had been investigated and found to be due by the Quartermaster-General.

Mr. David B. Henderson, of Iowa, made a point of order against the amendment.

The Chairman⁴ sustained the point of order.

3630. On August 7, 1890,⁵ the House was in Committee of the Whole House on the state of the Union considering the general deficiency appropriation bill, when Mr. William D. Bynum, of Indiana, proposed an amendment to pay a certain sum

¹ George P. Lawrence, of Massachusetts, Chairman.

² Second session Fifty-sixth Congress, Record, p. 2709.

³ First session Fifty-first Congress, Record, p. 8301.

⁴ Lewis E. Payson, of Illinois, Chairman.

⁵ First session Fifty-first Congress, Record, p. 8304.

to the heirs of Noah Noble, who had been receiver of the land office at Indianapolis prior to 1831, and to whom there was due this sum when he closed his accounts with the Government.

Mr. David B. Henderson, of Iowa, made a point of order against the amendment.

The Chairman¹ sustained the point of order.

3631. August 7, 1890,² the House was in Committee of the Whole House on the state of the Union considering the general deficiency bill, and an amendment submitted by Mr. Samuel P. Snider, of Minnesota, was under consideration, a point of order being pending.

The Chairman² held:

The Chair desires to state with reference to the amendment submitted by the gentleman from Minnesota [Mr. Snider], covering an appropriation in behalf of the postmaster at Minneapolis, Minn., for funds lost or stolen from that office, and which amendment was held under advisement on the point of order, that upon reference to the statute it will be seen that this amendment covers a claim provided for in the act of March 17, 1882, which provides that no losses of this character exceeding the sum of \$2,000 shall be paid or credited until after all of the facts in relation to the same have been ascertained, on an investigation by the Postmaster-General, and submitted to Congress with his recommendations, and the appropriation is made therefor.

Under the general law each postmaster is an insurer of all Government funds and property that come into his hands by virtue of his office; and the Government is not liable, except by virtue of the statute referred to, for any loss that may occur. If the claim does not exceed the sum of \$2,000, provision is made that the Postmaster-General, after the facts shall have been ascertained, may, in his discretion, allow for and credit to the postmaster such sum in his ordinary settlement. Where the amount therefore exceeds the sum of \$2,000, it seems to the Chair that it is in the same position as any other claim which necessitates an appropriation by Congress and where the facts in relation to the same have been ascertained and reported to Congress and acted upon by a committee, as provided by law.

The language of the statute would seem to imply, and necessarily, that such a claim must be proceeded with in the order provided for such legislation in the treatment of any other claim; that is to say, that it must be certified to Congress and a bill introduced, referred to the Committee on Claims of the House and Senate, and reported with favorable recommendation, and adopted by each body.

This, in the judgment of the Chair, is not a claim of that character which would entitle it to consideration on an appropriation bill, either on a deficiency bill or any other general appropriation bill; and hence the Chair must sustain the point of order and rule the amendment out.

3632. The fact that a Department officer has reported on a claim in accordance with a direction of law does not thereby make an audited claim for which provision may be made in an appropriation bill.—On June 26, 1906,³ the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

Payment to Texas: To reimburse to the State of Texas, in full settlement of all claims of any nature whatever on account of moneys actually expended by that State during the period of time between February 28, 1855, and June 21, 1860, in payment of State volunteers or rangers called into service by authority of the governor of Texas in defense of the frontier of that State against Mexican

¹ Lewis E. Payson, of Illinois, Chairman.

² First session Fifty-first Congress, Record, p. 8304.

³ First session Fifty-ninth Congress, Record, p. 9305.

marauders and Indian depredations, for which reimbursement has not been made out of the Treasury of the United States, as ascertained under the act of Congress approved March 3, 1905, and certified in Senate Document No. 169 of this session, \$375,418.94.

Mr. John Dalzell, of Pennsylvania, made the point of order that there was no law authorizing the appropriation.

After debate on this day the committee rose.

On June 27¹ the Chairman² held:

When the committee rose on yesterday there was pending a point of order to the paragraph in the bill on page 23 beginning on line 10 and extending to and including line 24. The paragraph carries an appropriation to reimburse the State of Texas for moneys expended by that State in defending its frontier against Mexican marauders and Indian depredations prior to June 20, 1860. The point of order was made by the gentleman from Pennsylvania [Mr. Dalzell] that there is no law authorizing an appropriation for the payment of the claim. Under the rules of the House no provision can be carried in a general appropriation bill for the payment of a claim against the Government of the United States unless the payment of the claim is clearly authorized by existing law. In the case now under consideration the State of Texas a number of years ago expended a considerable sum of money in defending its borders against invasion, primarily for the protection of its own citizens, but in doing that the State performed a duty that under the Federal Constitution belonged to the United States Government. There was no law then, and there is no law now, authorizing the reimbursement of States that expend funds in the execution of a service of the character mentioned.

In 1859 and in 1860 Congress made appropriations covering portions of the claim of the State of Texas included in the paragraph under consideration. In 1859 the appropriation was for the expense of six companies of State militia for a period of three months. In 1860 Congress extended the provisions of the law of 1859 so as to cover all the troops of the State of Texas that were engaged in defending the frontier, the State militia and the rangers, limiting the amount, however, to about \$123,000. Those are the only acts of legislation that Congress ever made upon the subject. The appropriations were not drawn by the State, and under the operation of a general statute lapsed and were covered into the Treasury. In the general deficiency bill for 1905 a provision was incorporated directing the Secretary of War to inquire into and report to Congress for its consideration what sum of money were actually expended by the State of Texas during the period between February 28, 1855, and June 21, 1860, in payment of State volunteers or rangers called into service by authority of the government of Texas in defense of the frontier of that State against Mexican marauders and Indian depredations, for which reimbursement has not been made out of the Treasury of the United States.

The original acts of Congress appropriating money for the reimbursement of the State did not cover the entire claim that is contained in the paragraph under consideration, and therefore it is not necessary for the Chair to determine whether those appropriation acts—the appropriations having lapsed and been covered into the Treasury—constitute a continuing liability on the part of the Government for the payment of the claim or whether they were coupled with the appropriations and ceased to operate after the appropriations lapsed. If there is any law for the payment of this claim it is contained in the provision the Chair just quoted in the general deficiency act for the fiscal year 1905. The question is whether by that provision Congress created a legal liability upon the United States for the payment of this claim. The Chair is of the opinion that the provision did not create such liability. The Secretary of War was directed to inquire into the claim and report “for the consideration of Congress”—not for payment, but “for the consideration of Congress.” The language fairly implies that Congress intended to further consider the question in the light of any new facts that might be developed by the investigation of the Secretary of War. The Chair is of the opinion that when Congress creates a commission to make an investigation of a particular subject or authorizes a Department to make such investigation for the consideration of Congress, that act does not commit the Federal Government to the project. The investigation is for information to enable Congress to intelligently determine what the position of the Government shall be in reference to the matter.

¹ Record, p. 9397.

² Edgar D. Crumpacker, of Indiana, Chairman.

The investigation made by the Secretary of War was for the information of Congress. Congress, in the light of the investigation, was supposed to act upon the question of liability and decide whether the Government should assume the payment of the claim. Merely ordering the investigation did not amount to an assumption of the claim by the Government. Congress has the right to assume and pay the claim, but under the rules of the House a general appropriation bill can not carry a provision for its payment until Congress, by suitable action, has legally committed the Government to its payment. The Chair is clearly of the opinion that Congress did not create a legal liability on the part of the Government to pay the claim by the provision in the act of 1905, and therefore the Committee on Appropriations had no right to incorporate in this bill a provision for its payment.

It may have put the whole question before the Congress on its merits, but in distributing the business of the House under the rules appropriate committees investigate questions on their merits and report measures for action by the House; but the Committee on Appropriations, in making up general bills, is not supposed to investigate questions upon their merits, but to appropriate for objects authorized by law, the merits of which have been investigated by other committees and by Congress. A few years ago a provision similar to the one under consideration was incorporated in the naval appropriation bill, a provision authorizing the appointment of a commission to select a site for a naval training station on the Great Lakes and to ascertain the cost of the site and report to Congress. That commission was appointed and made a report, selecting a site and reporting the cost of the site to Congress. In the following naval appropriation bill a proposition was embodied providing an appropriation for the establishment of the naval training station, and a point of order was made against the provision and sustained on the ground that the creation of the commission for the purpose of investigating the question did not commit the Government to the project at all, but that it was only for the enlightenment of Congress. The Chair regards that decision directly in point, so far as the principle is concerned. The point of order is sustained. The Clerk will read.

3633. A proposition to pay a claim reported on favorably by a board of officers is not in order on the deficiency bill unless the expenditure for the object has been authorized by law.—On March 1, 1905,¹ the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. David H. Smith, of Kentucky, proposed an amendment:

After line 8, on page 29, insert:

“To pay amount found due by the board of appraisers appointed by the War Department on account of army maneuvers held at West Point, Ky., in September and October, 1903, \$2,832.24.”

Mr. James A. Hemenway, of Indiana, made a point of order against the amendment.

Mr. Smith explained that this amount had been awarded by a board of officers appointed by the War Department to appraise damages.

Mr. Fred C. Stevens, of Minnesota, explained:

The law as to the payment of these expenses is about as follows:

The Dick militia bill, I think by section 15, provided that all expenses for army maneuvers for the National Guard should be paid out of the appropriate items of the regular appropriation for the support of the Army, so that the item for the pay for the Army could be drawn upon to pay for the salaries of the officers and men and the items for commissary supplies and quartermaster supplies in the army bill could be used for paying for commissary and quartermaster supplies in these maneuvers. That was the law until last year. It was the law at the time these maneuvers were held. Last year the army appropriation bill made a change, which is contained in the present bill this year, * * * providing that specific estimates should be made for such purposes now. But at the time these maneuvers were held at West Point and Fort Riley the law was in force that the payment of all expenses of

¹Third session Fifty-eighth Congress, Record, pp. 3794–3796.

these maneuvers should be paid out of the appropriate items of the regular appropriations of the Army for these purposes, and the provision can be found, I think, in section 15 of what is known as "the militia bill," or the Dick bill.

After debate the Chairman¹ said:

The Chair is ready to rule. Referring to the Digest, page 358, the Chair finds that it has been held:

"The fact that a Department officer has reported on a claim in accordance with a direction of law does not thereby make an audited claim, for which provision may be made in an appropriation bill."

Also:

"It is not in order to appropriate on the deficiency bill for an unadjudicated claim, even though it be transmitted to the House by an Executive message."

Also:

"The payment of an unadjudicated claim, even though the amount be ascertained and transmitted by the head of an Executive Department, is not in order on the deficiency bill."

* * * As the Chair understands, the rule is that when a bill is incurred by authority of law the bill is presented to the Department of the Government authorizing it; it is there considered and audited, and if there be no appropriation to meet the bill as audited it is an item that can properly go on the deficiency bill. If there is such a law authorizing it, then the law should be presented, so that the Department can determine whether it is authorized by law or not.

The House can not assume that it is authorized by the law until it is passed upon by the proper officer, unless the law is presented showing clearly that it is authorized by law. * * * The gentleman from Kentucky may be correct, probably is correct about the equities of the case, but it happens with bills presented against the Government where the equities are concerned, where the bills are sent to be audited, and where the law does not clearly allow the particular claim. It seems to the Chair that this is not that sort of a claim, and the Chair sustains the point of order.

3634. It is in order to provide, on an appropriation bill as a deficiency, for the payment of a claim audited under authority of law.—On January 22, 1906,² the urgent deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

Payment to Indiana State board of agriculture: To pay the Indiana State board of agriculture the actual value of the use, occupation, and damage to their property by the United States military authorities for Government purposes during the war with Spain, as ascertained under the act approved April 7, 1904, and reported to Congress in House Document No. 48 of this session, \$7,431.98.

Mr. Swagar Sherley, of Kentucky, made a point of order against the paragraph.

Mr. Lucius N. Littauer, of New York, explained:

This is simply an amount sent to us in accordance with the law requiring that this claim should be adjudicated. It has been adjudicated under the act passed April 7, 1904, entitled "An act for the relief of the Indiana State board of agriculture." The Assistant Secretary of War, under the terms of the law passed in April, 1904, investigated and reported to the Secretary of the Treasury that this amount was equitably and justly due to the State board of agriculture for the use of, occupation, and damage to this property in accordance with the law.

The Chairman³ held:

The Chair overrules the point of order. It is the character of claim or item that it is customary to put into deficiency bills. It has over and over again been held that such an item is in order on a deficiency bill.

¹James R. Mann, of Illinois, Chairman.

²First session Fifty-eighth Congress, Record, pp. 1383, 1384.

³James S. Sherman, of New York, Chairman.

3635. On August 5, 1890,¹ the House was in Committee of the Whole House on the state of the Union considering the general deficiency appropriation bill, when Mr. M. M. Boothman, of Ohio, offered this amendment:

For payment of the claims of the Mississippi Central Railroad Company, being the amount of Post-Office Department drafts in favor of W. Goodman, president of said road, in payment of mail transportation from April 1, 1861, to May 31, 1861, which were returned unpaid and canceled in April and May, 1866, the sum of \$4,636.01, the said sum being a deficiency.

Mr. David B. Henderson, of Iowa, reserved a point of order on the amendment.

After debate, during which the fact was developed that this claim had been audited by the Treasury Department and had been referred first to the Committee on Claims, and subsequently rereferred, on recommendation of that committee, to the Committee on Appropriations, the Chairman² held:

Understanding that to be the state of facts applied to the amendment proposed by the gentleman from Ohio, the Chair will be compelled to hold that the amendment is in order. Of course that does not affect the merits of the claim or whether an appropriation shall be made for the payment of the claim. That is a matter for the committee to consider when it shall come to discuss the merits of the amendment. As at present advised, the Chair would overrule the point of order.

3636. It is in order to provide, on an appropriation bill as a deficiency, for the payment of an account audited under authority of law; but not to provide for such auditing.—On June 18, 1902,³ the Committee of the Whole House on the state of the Union was considering the general deficiency appropriation bill when the clerk read the following:

Refunding to States expenses incurred in raising volunteers as follows: To the State of Indiana, \$635,859.20; to the State of Iowa, \$456,417.89; to the State of Michigan, \$382,167.62; to the State of Ohio, \$458,559.35; to the State of Illinois, \$1,005,129.29.

Mr. Thetus W. Sims, of Tennessee, made the point of order that these appropriations, being in satisfaction of claims, were not in order on the bill.

Mr. Joseph G. Cannon, of Illinois, in debate, maintained that these were audited accounts for the payment of certain moneys that are due to certain States under the legislation of 1861 and 1862, and under additional legislation approved February 14, 1902:

And claims of like character arising under the act of Congress of July 27, 1861 (12 Stat., p. 276), and joint resolution of March 8, 1862 (12 Stat., p. 615), as interpreted and applied by the Supreme Court of the United States in the case of the State of New York against the United States, decided January 6, 1896 (160 U. S. Reports, p. 598), not heretofore allowed or heretofore disallowed by the accounting officers of the Treasury, shall be reopened, examined, and allowed, and if deemed necessary shall be transmitted to the Court of Claims for findings of fact or determination of disputed questions of law to aid in the settlement of the claims by the accounting officers.

It appeared further in the debate that these examinations and allowances had been by the Auditor, and that the claims had not been sent to the Court of Claims.

At the conclusion of debate the Chairman⁴ held:

The statute which has been read in full plainly refers these several claims to the Auditor for reexamination and reauditing, with a view to allowance or disallowance. That has been done, as the gentleman from Illinois states, and the certificate of the Auditor is produced here.

¹First session Fifty-first Congress, Record, p. 8177.

²Lewis E. Payson, of Illinois, Chairman.

³First session Fifty-seventh Congress, Record, pp. 7028–7030, 7035–7037.

⁴James S. Sherman, of New York, Chairman.

Now, it has been repeatedly held that any audited account—not necessarily the judgment of a court, but any account audited by direction of Congress—is in order on a deficiency appropriation bill. That is this case. The Chair overrules the point of order.

Later, during consideration of the same subject, Mr. Henry H. Bingham, of Pennsylvania, offered the following as an amendment:

Provided, That the like claims of the States of Pennsylvania, Maine, New Hampshire, Rhode Island, or other States for expenses incurred in raising volunteers for the war of the rebellion shall be reopened and reaudited and allowed by the Auditor of the War Department in accordance with the methods of interest calculations adopted by the Comptroller of the Treasury in the settlement of the claims of the States of Indiana, Illinois, Ohio, Iowa, and Michigan, and the said Auditor is directed to reopen the claims of all States not so audited and allow the same according to the method adopted by the Comptroller of the Treasury in the settlements heretofore referred to, notwithstanding the fact that any such State or States have accepted payments on items heretofore allowed them by any Auditor.

Mr. Oscar W. Underwood, of Alabama, made the point of order that the proposed amendment involved new legislation.

After debate the Chairman said:

This provision is clearly a legislative provision, and the Chair sustains the point of order.

3637. On April 2, 1902,¹ while the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, Mr. George A. Pearre, of Maryland, offered this amendment:

To enable the Secretary of War to reimburse George W. Dant for such expenses incurred by him in legal proceedings growing out of the Ford's Theater disaster on the 9th day of June, 1893, as the Secretary of War may decide to have been necessary, proper, and reasonable, \$3,000, or so much thereof as may be necessary.

Mr. Joseph G. Cannon, of Illinois, having made a point of order, the Chairman² said:

The Chair will rule on the point of order. At the second session of the Fifty-sixth Congress it was held that it is not in order to appropriate on an appropriation bill for an unadjudicated claim, even though it be transmitted to the House by an Executive message.

There are several rulings which hold that propositions to pay private claims against the Government are not in order on general appropriation bills. There seems to be a long line of decisions covering the point, and the Chair sustains the point of order.

3638. The Comptroller having ascertained the amount of a claim on appeal, an appropriation bill may not carry a larger amount found by the Auditor who has been overruled.—On April 18, 1904,³ the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

To the State of Massachusetts, \$1,611,740.85.

To this Mr. John A. Sullivan, of Massachusetts, proposed this amendment:

Strike out all after the word "Massachusetts," in line 18, page 66, and insert in lieu thereof the words "two million four hundred and ninety-seven thousand four hundred and thirty dollars and seventy-three cents."

¹ First session Fifty-seventh Congress, Record, pp. 3574, 3575.

² George P. Lawrence, of Massachusetts, Chairman.

³ Second session Fifty-eighth Congress, Record, pp. 5025—5030.

Mr. James A. Hemenway, of Indiana, made the point of order that the amendment was not authorized by law, reading the following statute which gave jurisdiction to the committee to report the item in the bill:

That the Secretary of the Treasury shall, at the commencement of each session of Congress, report the amount due to each claimant whose claim has been allowed in whole or in part to the Speaker of the House of Representatives and the Presiding Officer of the Senate, who shall lay the same before their respective Houses for consideration.

Also the following statute governing the auditing of claims:

SEC. 8. The balances which may from time to time be certified by the Auditors to the division of bookkeeping and warrants, or to the Postmaster-General, upon the settlements of public accounts, shall be final and conclusive upon the executive branch of the Government, except that any person whose accounts may have been settled, the head of the Executive Department, or of the board, commission, or establishment not under the jurisdiction of an Executive Department, to which the account pertains, or the Comptroller of the Treasury, may, within a year, obtain a revision of the said account by the Comptroller of the Treasury, whose decision upon such revision shall be final and conclusive upon the executive branch of the Government.

It appeared that the Auditor had found originally the amount proposed in the amendment, but on review the Comptroller had cut the amount down to that carried in the bill.

After debate the Chairman¹ held:

The second section of Rule XXI provides that no appropriation shall be reported in any general appropriation bill or be in order as an amendment thereto for any expenditure not previously authorized by law. The question is not one of power on the part of the House, but is one of procedure under the rule at this time. The rule relates to appropriations for expenditures and not for the discharge of unascertained obligations or the payment of unliquidated liabilities against the Government. It relates to appropriations for expenditures in the payment of claims that have been ascertained and are ready to be paid. Now, it is admitted that the law requires claims of this general class to be audited in the various Departments, and the result certified to the Congress before appropriations can be made for their payment.

The philosophy of the law and the rule under consideration is that the various Departments of the Government, through their administrative and accounting boards and officers, have better facilities to ascertain the amount of a claim than this body can have. The work of auditing is not legislative; it is administrative. Therefore an expenditure is not authorized upon a demand against the Federal Government until it has been audited and the amount of the liability ascertained. The mere auditing is not the thing that gives the Committee on Appropriations jurisdiction under the rule. The purpose of auditing is to ascertain how much there is due from the Federal Government. As part of the accounting system of the Federal Government, the office of Comptroller of the Treasury is established. That office is part of the auditing mechanism, and it is invested with power to examine and decide questions of law and fact.

At this point Mr. John S. Williams, of Mississippi, asked if it would be in order for the Committee of the Whole to reduce instead of increasing the amount.

Continuing the Chairman said:

That would be entirely in order, because a less amount than that awarded by the auditing officer would be clearly authorized, and the House always has a right to appropriate a less amount than the law authorizes, but it does not follow that an appropriation bill may carry a larger amount than the law authorizes. When the appropriation goes beyond that which the law permits, it manifestly does that which is not authorized by law.

The object of auditing, as the Chair said a moment ago, is to ascertain the extent of the liability. When a claim is audited, an appeal may be taken from the award of the Auditor to the Comptroller of the

¹Edgar D. Crumpacker, of Indiana, Chairman.

Treasury, and the decision of the Auditor may be reviewed, reversed, or modified. The decision of the Comptroller then stands in the place of the findings of the Auditor, and it is binding and conclusive until it is set aside by some superior officer or tribunal. The finding and the judgment of the Comptroller of the Treasury are the only finding and judgment that the disbursing officers of the Government can regard in the expenditure of money.

Now, the rule above quoted, in the judgment of the Chair, was made to apply to appropriations of money for the payment of claims where the amount has been properly ascertained. The award of the auditing officer is sufficient authority for an appropriation when it has not been appealed from or set aside, but when it has been appealed from and the Comptroller has revised or modified the award of the Auditor it is fully superseded by the decision on appeal, and the judgment and award of the Comptroller then constitute the only authority for an appropriation under the rule.

In this case it seems that the claim of the State of Massachusetts was duly audited, and the amount stated in the amendment offered by the gentleman from Massachusetts was found to be due. An appeal was taken from the award of the Auditor to the Comptroller of the Treasury, and that officer modified the award of the Auditor and reduced it in amount. The paragraph in the bill carries the amount found due from the Federal Government by the Comptroller. The Comptroller's decision has never been reversed or set aside. It seems clear that the award of the Auditor was entirely set aside and superseded by the decision of the Comptroller and in no sense fixes the liability of the Government. The finding and judgment of the Comptroller constitute the only legal authority for the payment of the claim. The amendment being predicated upon the Auditor's award, which was set aside and superseded by the appeal, is not authorized by law, and the point of order is sustained.

Mr. John S. Williams, of Mississippi, having appealed, the decision of the Chair was sustained, ayes 104, noes 89.

3639. The fact that a Department officer has reported on a claim in accordance with a direction of law does not thereby make an audited claim for which provision may be made on an appropriation bill.—On April 16, 1904,¹ the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. John Stephens, of Texas, proposed this amendment:

Insert after line 19, page 9, the following: "To refund to the State of Texas the sum of \$50,875.53, the same being the amount due the State of Texas in the adjustment of claims relating to the transfer of Greer County, Okla., from the State of Texas to the United States."

Mr. James A. Hemenway, of Indiana, made the point of order that the proposed amendment was out of order, being a claim.

Mr. Stephens argued that the act of 1901² authorized the Secretary of the Interior to audit this account. The law actually provided that the Secretary of the Interior should examine the claims of Greer County against Texas and of Texas against Greer County and report to Congress. The law provided that the Secretary, having made the examination, should report in detail to Congress. But the law made no provision directing the payment of any balances due.

The Chairman³ held:

The Chair is of the opinion, upon the statement of the gentleman from Texas, that the amendment is not in order. The appropriation is not authorized by existing law, and therefore the Chair sustains the point of order.

¹ Second session Fifty-eighth Congress, Record, p. 4944.

² 31 Stat. L., p. 732.

³ Edgar D. Crumpacker, of Indiana, Chairman.

3640. On April 18, 1904,¹ the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Francis W. Cushman, of Washington, proposed this amendment:

On page 18, at the end of line 21, insert the following:

“Reimbursement to John and David West, of Cathlamet, Wash.: That the Secretary of the Treasury is hereby authorized and directed to pay to John and David West, of Cathlamet, Wash., out of any money in the Treasury not otherwise appropriated, the sum of \$88.50, as a reimbursement in full for all damages to their dock in the Columbia River at Cathlamet, Wash., accidentally inflicted by the United States dredge *W. S. Ladd*.”

Mr. Cushman stated that the engineering division of the War Department had ascertained the amount due.

Mr. James A. Hemenway, of Indiana, having made a point of order, the Chairman² held:

It is not the function of the Committee on Appropriations to examine and allow claims. The Committee on Appropriations has only authority to pay claims that have already been allowed, the amount having been ascertained by the proper officer, and the understanding of the Chair is that the claim covered by the appropriation has not been audited and allowed as the law required. The Chair therefore sustains the point of order.

3641. It is in order on the deficiency bill to appropriate for the payment of judgments of the courts certified to Congress in accordance with the law.

It is in order to provide on a general appropriation that no part of a certain appropriation shall be expended in payment of an adjudicated claim until the said claim shall have been certified as finally adjudicated.

On February 21, 1901,³ the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

For payment of judgments rendered by the Court of Claims in Indian depredation cases, certified to Congress at its present session in House Document No. 65, \$82,211; said judgments to be paid after the deductions required to be made under the provisions of section 6 of the act approved March 3, 1891, entitled “An act to provide for the adjustment and payment of claims arising from Indian depredations,” shall have been ascertained and duly certified by the Secretary of the Interior to the Secretary of the Treasury, which certification shall be made as soon as practicable after the passage of this act, and such deductions shall be made according to the discretion of the Secretary of the Interior, having due regard to the educational and other necessary requirements of the tribe or tribes affected; and the amounts paid shall be reimbursed to the United States at such times and in such proportions as the Secretary of the Interior may decide to be for the interest of the Indian Service: *Provided*, That no one of said judgments provided in this paragraph shall be paid until the Attorney-General shall have certified to the Secretary of the Treasury that there exists no grounds sufficient, in his opinion, to support a motion for a new trial or an appeal of said cause.

Mr. Charles H. Grosvenor, of Ohio, made the point of order against the entire paragraph on the ground that there was no law authorizing the payment of judgment of the courts in Indian depredation claims, and on the ground that the proviso proposed new legislation.

¹ Second session Fifty-eighth Congress, Record, p. 5037.

² Edgar D. Crumpacker, of Indiana, Chairman.

³ Second session Fifty-sixth Congress, Record, pp. 2791, 2792.

In the debate Mr. Joseph G. Cannon, of Illinois, who was in charge of the bill, cited the law of 1891 authorizing the Court of Claims to try the cases, render judgment, and certify the judgments to Congress. Those judgments were final against the Government. As to the proviso, he urged that it was a limitation.

The Chairman¹ held:

In a similar case² it has been held that—

“The House in Committee of the Whole has the right to refuse to appropriate for any object which it may deem improper, although that object maybe authorized by law; and it has been contended, and on various occasions sustained by the Committee of the Whole, that if the committee has the right to refuse to appropriate anything for a particular purpose authorized by law, it can appropriate for only a part of that purpose and prohibit the use of the money for the rest of the purpose authorized by law. That principle of limitation has been sustained so repeatedly that it may be regarded as a part of the parliamentary law of the Committee of the Whole.”

It seems to the Chair that the appropriation is authorized by existing law, and that the proviso should be construed to be a limitation. The Chair therefore overrules the point of order.

The Chairman also, for the same reasons, overruled a similar point of order made by Mr. D. E. Finley, of South Carolina, against this paragraph of the bill:

For the payment of the judgments rendered by the Court of Claims, reported to Congress at its present session in House Document No. 354, \$449,574.79: *Provided*, That none of the judgments herein provided for shall be paid until the right of appeal shall have expired: *Provided further*, That the payment, to officers and enlisted men severally entitled, of the judgments of the Court of Claims for bounty for destruction of enemy's vessels, under section 4635 of the Revised Statutes, be made on settlements by the Auditor for the Navy Department in the manner prescribed by law and Treasury regulation for the payment of prize money, the distribution of such individual share to be in accordance with the orders, rules, and findings of the Court of Claims.

3642. On January 29, 1904,³ the urgent deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union when this paragraph was read:

Payment to the Pacific Coast Steamship Company: To pay the account of the Pacific Coast Steamship Company for damages to their steamer Ramona, caused by collision with the U. S. revenue steamer McCulloch off Martinez, Cal., April 28, 1903, \$50.13.

Mr. Marlin E. Olmsted, of Pennsylvania, raised the question of order that this was a claim the payment of which was not authorized by law.

In the course of debate, Mr. James A. Hemenway, of Indiana, stated that the law authorized the adjudication of this claim.

The Chairman⁴ overruled the point of order, saying:

And it has been held repeatedly that the adjudication authorizes an appropriation for the payment of the amount adjudicated or found to be due parties in those special cases.

3643. Findings filed by the court under the Bowman Act do not constitute such adjudications of claims as justify appropriation in the general deficiency appropriation bill.—On February 20, 1897,⁵ the general deficiency appropriation bill was under consideration in Committee of the Whole House on

¹ George P. Lawrence, of Massachusetts, Chairman.

² See section 3936 of this volume.

³ Second session Fifty-eighth Congress, Record, pp. 1386, 1387.

⁴ James A. Tawney, of Minnesota, Chairman.

⁵ Second session Fifty-fourth Congress, Record, p. 2065.

the state of the Union, and the portion of the bill making appropriations to pay judgments of the Court of Claims had been reached.

Mr. James D. Richardson, of Tennessee, proposed an amendment "for the allowance of certain claims for stores and supplies reported by the Court of Claims under the provisions of the act approved March 3, 1883, and commonly known as the Bowman Act."¹

Mr. Joseph G. Cannon, of Illinois, made the point of order against the amendment.

After debate the Chairman² sustained the point of order.

3644. A claim having been adjudicated under authority of a treaty, an appropriation for its payment was admitted on the deficiency bill.—On June 26, 1906,² the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Payment to Germany: To pay to Germany the moiety of the United States of \$40,000, in full settlement of the German claims for losses incurred in connection with the disturbances in Samoa in 1899, under the convention between the United States, Germany, and Great Britain of November 7, 1899, as set forth in Senate Document No. 85 of the present session, \$20,000.

Mr. Edwin Y. Webb, of North Carolina, made the point of order that there was no law authorizing this expenditure.

After debate the Chairman⁴ held:

Under the rules of the House, a general appropriation bill may carry an appropriation for any object that is authorized by law. In this case the claim was submitted by a treaty of arbitration to the King of Sweden for adjudication. A treaty when ratified is the law of the land. The King of Sweden, acting as a court, decided the question of liability and found that the Government of the United States was liable. The only thing left to ascertain was the amount, and like a court selecting, for instance, a master in chancery, the arbitrator with the consent of the parties appointed agents to ascertain how much was due. Those agents, duly appointed, accredited, and authorized, in their investigation found the sum due, and this appropriation carries that sum. It seems to the Chair that the paragraph is clearly in order, that it is an adjudicated claim, and the amount has been ascertained so as to come within the rule; and the Chair overrules the point of order.

3645. It is in order on a deficiency appropriation bill to appropriate in payment of a contract lawfully made.—On June 26, 1906,⁵ the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

New York, N. Y., rent of old custom-house: For rental of temporary quarters for the accommodation of certain Government officials, \$130,600.

Mr. William Sulzer, of New York, made a point of order that the expenditure was not authorized by law.

After debate the Chairman⁴ held:

This provision is to appropriate money to pay an amount which the Government, under a contract, is to pay for the current fiscal year. The point of order is overruled.

¹These are not "judgments" of the Court of Claims, but are simply findings of fact. (See secs. 3298–3303 of this volume.)

²Sereno E. Payne, of New York, Chairman.

³First session Fifty-ninth Congress, Record, pp. 9297–9299.

⁴Edgar D. Crumpacker, of Indiana, Chairman.

⁵First session Fifty-ninth Congress, Record, p. 9300.

3646. On June 27, 1906¹ the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

To pay the Adrian Brick and Tile Machine Company of Adrian, Mich., for street letter boxes manufactured by that company, as subcontractors, and furnished to the Post-Office Department by the contractor, Eugene D. Scheble, of Toledo, Ohio, trading as the Michigan Steel Box Company, under his contract covering the period from July 1, 1901, to June 30, 1905, \$18,227.40.

Mr. John J. Fitzgerald, of New York, made the point of order that there was no law to authorize the expenditure.

After debate the Chairman² held:

In the opinion of the Chair the contractor has a valid claim against the Government. The effect of the document read by the gentleman from Michigan is an assignment in equity, if not in law, of that claim to the beneficiary of this provision, and therefore he holds now a valid, legal claim against the Government, which may be paid by an appropriation in a general appropriation bill. * * * Appropriation bills may carry appropriations for the payment of claims against the Government authorized by law, and this is clearly authorized by law. It is under a contract authorized to be made, and the Chair is clear upon the question. The point of order is overruled.

3647. The investigation of foods in their relation to commerce and consumption was held not authorized by law in such a way as to permit appropriation on the agricultural appropriation bill.—On May 1, 1906,³ the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the clerk read:

Laboratory, Department of Agriculture: General expenses Bureau of Chemistry: Chemical apparatus, chemicals, * * * for the employment of additional assistants and chemists, when necessary, and for the rent of buildings, occupied by the Bureau of Chemistry; to investigate the adulteration, [false labeling or branding, and laws, regulations, and decisions relative thereto,] of foods, condiments, beverages, and drugs, when deemed by the Secretary of Agriculture advisable, and to publish the results of such investigations when thought advisable: *Provided*, That before any adverse publication is made notice shall be given to the owner or manufacturer of the articles in question. * * * To investigate the chemical composition of sugar and starch producing plants in the United States and its possessions, and, in collaboration with the Weather Bureau, the Bureau of Plant Industry, and agricultural experiment stations, to study the effects of environment upon the chemical composition of sugar and starch producing plants. [And the Secretary of Agriculture, whenever he has reason to believe that any articles are being imported from foreign countries which are dangerous to the health of the people of the United States, or which shall be falsely labeled or branded either as to their contents or as to the place of their manufacture or production, [or which are kinds of products excluded from any foreign country for any cause whatever when coming from this country], shall make a request upon the Secretary of the Treasury for samples from original packages of such articles for inspection and analysis, and the Secretary of the Treasury is hereby authorized to open such original packages and deliver specimens to the Secretary of Agriculture for the purpose mentioned, giving notice to the owner or consignee of the sampling of such articles, who may, after notification, be present and have the right to introduce testimony before the Secretary of Agriculture or his representative, either in person or by agent, concerning the suitability of such articles for entry; and the Secretary of the Treasury shall refuse delivery to the consignee of any such goods which the Secretary of Agriculture reports to him have been inspected and analyzed and found to be dangerous to health or falsely labeled or branded, either as to their contents or as to the place of their manufacture or production, or which are forbidden entry or to be sold, or are restricted in sale in the countries in which they are made or from which they are exported, [or which are kinds of products excluded from any foreign country for any cause whatever when coming from this country.] Employing such assistants, clerks, and other persons as the Secretary of Agriculture may consider necessary for the

¹ First session Fifty-ninth Congress, Record, pp. 9399, 9400.

² Edgar D. Crumpacker, of Indiana, chairman.

³ First session Fifty-ninth Congress, Record, pp. 6227–6230.

purpose named, \$130,920: [*Provided*, That no payment for storage, cartage, or damage incident to the inspection of food products which are found unsuitable for entry shall be made nor payment for similar expenses incident to the entry of other food products except accruing from an order of the Secretary of Agriculture, and then for no longer period than that terminated by notification by the Secretary of Agriculture that the articles are entitled to entry.]

Total for Bureau of Chemistry, \$158,500.

Mr. Edgar D. Crumpacker, of Indiana, made a point of order on the words "false labeling or branding, and laws, regulations, and decisions relative thereto," on the ground that there was no law authorizing an appropriation for that service.

The Chairman¹ sustained the point of order.

Thereupon Mr. Crumpacker made a further point of order on all the latter portion of the paragraph beginning with the words "And the Secretary of Agriculture whenever he has reason to believe," etc; but later modified this point so as to cover only the words—

or which are kinds of products excluded from any foreign country for any cause whatever when coming from this country.

Mr. Crumpacker stated that these words had not been in the bill last year.

The Chairman sustained the point of order.

Mr. Wadsworth further specified the same words when they were repeated further along in the paragraph, and the concluding proviso.

The Chairman sustained the point of order.

Thereupon, Mr. Charles L. Bartlett, of Georgia, made a point of order against that portion of the paragraph in which occurred the lines stricken out on the point of order made by Mr. Crumpacker:

To investigate the adulteration, [false labeling or branding, and laws, regulations, and decisions relative thereto,] of foods, condiments, beverages, and drugs, when deemed by the Secretary of Agriculture advisable, and to publish the results of such investigations when thought advisable: *Provided*, That before any adverse publication is made notice shall be given to the owner or manufacturer of the articles in question, who shall have the right to be heard and to introduce testimony before the Secretary of Agriculture or his representative, either in person or by agent, concerning the suitability of such articles for food, or as to false labeling or branding.

It was urged in debate that this was permanent law, having been carried in the appropriation bill of the preceding year.

The Chairman ruled:

It seems to the Chair that if this language included in the lines upon which the point of order is made by the gentleman from Georgia is permanent law, as is claimed by the gentleman from New Jersey, then it should not be here. If it is not permanent law, then it seems to the Chair that it is new legislation and is clearly subject to the point of order.

Then the Chairman sustained the point of order.

Mr. James R. Mann, of Illinois, having made a point of order against the whole of the remainder of the paragraph, a discussion arose, in the course of which the Chairman said:

The organic law provides for practical and scientific experiments, but it does not provide, so far as the Chair is able to ascertain, for any of the investigations referred to in the matter that has been ruled out. * * * But the organic law provides (sec. 526):

"That the Commissioner of Agriculture shall procure and preserve all information concerning agriculture which he can obtain by means of books and correspondence, and by practical and scientific

¹ David J. Foster, of Vermont, Chairman.

experiments, accurate records of which experiments shall be kept in his office by the collection of statistics, and by any other appropriate means within his power.”

The information must relate to agriculture.

Mr. Richard Wayne Parker, of New Jersey, contended that subjects relating to food were properly included, since the law establishing the Department (sec. 520 R. S.) made it the duty of the Department

to acquire and diffuse among the people of the United States useful information on subjects connected with agriculture in the most general and comprehensive sense of that word.

3648. On May 2, 1906,¹ the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the following paragraph was read:

Nutrition investigations: To enable the Secretary of Agriculture to investigate and report upon the nutritive value of the various articles and commodities used for human food, with special suggestions of full, wholesome, and edible rations less wasteful and more economical than those in common use, including special investigations on the nutritive value and economy of the diet in public institutions, and the agricultural experiment stations are hereby authorized and directed to cooperate with the Secretary of Agriculture in carrying out said investigations in such manner and to such extent as may be warranted by a due regard to the varying conditions and needs of the respective States and Territories, and as may be mutually agreed upon; and the Secretary of Agriculture is hereby authorized to require said stations to report to him the results of any such investigations which they may carry out, whether in cooperation with the said Secretary of Agriculture or otherwise, \$20,000.

Mr. James B. Perkins, of New York, made the point of order that the appropriation was not authorized by existing law.

Mir. Franklin E. Brooks, of Colorado, in debate, quoted the following passages of the law of March 3, 1887:²

That it shall be the object and duty of said experiment stations to conduct original researches or verify experiments on the physiology of plants and animals. * * *

The chemical composition of manures, natural or artificial, with experiments designed to test their comparative effects on crops of different kinds; the adaptation and value of grasses and forage plants; the composition and digestibility of the different kinds of food for domestic animals, the scientific and economic questions involved in the production of butter and cheese; and such other researches or experiments bearing directly on the agricultural industry of the United States as may, in each case, be deemed advisable, having due regard for the varying conditions and needs of our respective States or Territories.

* * * * *

And the agricultural experiment stations are hereby authorized and directed to cooperate with the Secretary of Agriculture in carrying on such investigations.

* * * * *

That in order to secure, as far as practicable, uniformity of methods and results in the work of said stations it shall be the duty of the United States Commissioner of Agriculture to furnish forms, as far as practicable, for the tabulation of results of investigation or experiments; to indicate, from time to time, such lines of inquiry as to him shall seem most important; and, in general, to furnish such advice and assistance as will best promote the purposes of this act.

* * * * *

Mr. Brooks also referred as a precedent to a ruling in a preceding Congress,³ where a similar provision had been held in order under the general authority conferred by the law establishing the Department of Agriculture.⁴

¹First session Fifty-ninth Congress, Record, pp. 6274–6277.

²24 Stat. L., p. 440.

³First session Fifty-seventh Congress, Record, pp. 4847.

⁴Title XII of Revised Statutes. See concluding portion of preceding section for text of this provision.

At the conclusion of the debate the Chairman¹ held:

The Chair may be permitted to say that it seems to the Chair a matter of regret that general legislation of this importance should be included year after year in these appropriation bills and that the question of continuing the work under them should finally be determined on a point of order. But, as the Chair indicated yesterday, when these points of order were raised, the Chair has no choice, but must follow the rules of the House.

In the judgment of the Chair there is no authority for this paragraph except that found under Title XII of the Revised Statutes. The Chair does not think that the law relating to experiment stations, to which the gentleman from Colorado [Mr. Brooks] called the attention of the Chair, has any force here. Now, section 520 of the Revised Statutes does give the Secretary of Agriculture authority to acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture, in the most general and comprehensive sense of that word. That is a very broad and general authority. And yet it seems to the Chair that it can not be said that authority "to investigate and report upon the nutritive value of the various articles and commodities used for human food, with special suggestions of full, wholesome, and edible rations less wasteful and more economical than those in common use, including special investigations on the nutritive value and economy of the diet in public institutions," can be said to be useful information on subjects connected with agriculture, even in the most general and comprehensive sense of that word.

The Chair held yesterday that certain work provided for in this bill, namely, among other things, authority "to investigate the adulteration, false labeling or branding, and laws, regulations, and decisions relative thereto, of foods, condiments, beverages, and drugs, when deemed by the Secretary of Agriculture advisable," was subject to a point of order, and it seems to the Chair that portions of this paragraph are equally subject to the point of order. The Chair therefore sustains the point of order.

The Chair will say in this connection that the precedent which arose in the Fifty-seventh Congress, to which the gentleman from Colorado [Mr. Brooks] called the attention of the Chair, does not seem to be in point. While the case may be an analogous one it is not a similar case. The Chair sustains the point of order.

3649. Because of the requirements of law, appropriations for investigations on subjects connected with agriculture are generally in order on the agricultural appropriation bill.—On April 29, 1902,² while the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, Mr. Joseph G. Cannon, of Illinois, raised a question of order as to the following paragraph:

To enable the Secretary of Agriculture to investigate the character of proposed food preservatives and coloring matters, to determine their relation to digestion and to health, and to establish the principles which should guide their use; to enable the Secretary of Agriculture to investigate the character of the chemical and physical tests which are applied to American food products in foreign countries, and to inspect before shipment, when desired by the shippers or owners of these food products, American food products intended for countries where chemical and physical tests are required before said food products are allowed to be sold in the countries mentioned, and for all necessary expenses connected with such inspection and studies of methods of analysis in foreign countries; to enable the Secretary of Agriculture in collaboration with the Association of Official Agricultural Chemists, and such other experts as he may deem necessary, to establish standards of purity for food products and to determine what are regarded as adulterations therein, for the guidance of the officials of the various States and of the courts of justice; for the preparation of reports, the purchase of apparatus, chemicals, samples, and supplies required in conducting such investigations, the employment of local and special agents, clerks, assistants, and other labor required in conducting such experiments in the city of Washington and elsewhere, and in collating, digesting, and reporting the results of such experiments; for freight and express charges, and for traveling and other necessary expenses, and for the rent of building occupied by the Bureau of Chemistry.

¹ David J. Foster, of Vermont, Chairman.

² First session Fifty-seventh Congress, Record, pp. 4847, 4848.

After debate, the Chairman¹ said:

The Chair regards food products as connected with agriculture. The act creating the Department of Agriculture reads, in the first section, as follows:

"There shall be at the seat of government a Department of Agriculture, the general design and duties of which shall be to acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture in the most general and comprehensive sense of that word, and to procure, propagate, and distribute among the people new and valuable seeds and plants."

Now, while this may not be free from some doubt, yet as food products are closely connected with agriculture "in the most comprehensive use of the word, "and as this provision in the bill simply permits the Secretary of Agriculture to carry out a regulation having this end in view, the Chair is inclined to believe, and will so rule, that it is not subject to the point of order made by the gentleman from Illinois.

Also Mr. Cannon made the point of order against the following paragraph, and the Chairman, for the same reason, overruled the point:

To investigate the chemical composition of sugar-producing plants in the United States and its possessions, and, in collaboration with the Weather Bureau and agricultural experiment stations, to study the effects of environment upon the chemical composition of sugar-producing plants, especially with reference to their content of available sugar, \$60,500, \$20,000 of which sum, or so much thereof as is necessary, shall be used in investigating, determining, and reporting the proper treatment and process in order to secure uniform grade and quality of first-class marketable table cane sirup.

3650. While an appropriation to enable the Secretary of Agriculture to make certain investigations is authorized in the agricultural appropriation bill, it is not in order to require cooperation of State experiment stations therein.—On January 30, 1907,² the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Irrigation and drainage investigations: To enable the Secretary of Agriculture to investigate and report upon the laws of the States and Territories as affecting irrigation and the rights of appropriators and of riparian proprietors and institutions relating to irrigation and upon the use of irrigation waters, at home and abroad, with especial suggestions of the best methods for the utilization of irrigation waters in agriculture, and upon plans for the removal of seepage and surplus waters by drainage and upon the use of different kinds of power and appliances for irrigation and drainage, and for the preparation, printing, and illustration of reports and bulletins on irrigation and drainage, including employment of labor in the city of Washington or elsewhere; and the agricultural experiment stations are hereby authorized and directed to cooperate with the Secretary of Agriculture in carrying out said investigations in such manner and to such extent as may be warranted by a due regard to the varying conditions and needs and laws of the respective States and Territories as may be mutually agreed upon, and all necessary expenses, \$150,000.

Mr. Gilbert N. Haugen, of Iowa, made a point of order against the paragraph.

After debate, the Chairman³ said:

The Chair has no difficulty down to line 7, beginning with the words "and the agricultural experiment stations," etc. Beginning at that point we have a provision which authorizes and directs the experiment stations to cooperate with the Secretary of Agriculture in carrying out certain investigations, It would seem to the Chair that the real question involved is whether that is new legislation or a change in existing law. * * * Now, if the law provides now for such cooperation, then there is no need of it here; if the law does not provide for such cooperation, it would seem to the Chair that this would be a change in existing law. * * * It seems to the Chair there can be no question as to the fact

¹ Llewellyn Powers, of Maine, Chairman.

² Second session Fifty-ninth Congress, Record, pp. 1980, 1981.

³ David J. Foster, of Vermont, Chairman.

that the language "the agricultural experiment stations are hereby authorized and directed to Cooperate with the Secretary of Agriculture," and so on, is new legislation. The point of order is sustained and covers the whole paragraph.

Thereupon Mr. Franklin E. Brooks, of Colorado, offered as a new section the paragraph with the portion relating to the experiment stations eliminated.

Mr. Haugen made a point of order, but the Chairman overruled it.

3651. While an appropriation for an investigation on a subject relating to agriculture is in order on the agricultural appropriation bill, it is not in order to appropriate for the organization of a bureau to make such investigations.—On January 30, 1907,¹ the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. John F. Lacey, of Iowa, offered this amendment:

Insert at the end of line 23, page 50, the following:

"BUREAU OF BIOLOGICAL SURVEY: Salaries, Bureau of Biological Survey: One biologist, who shall be chief of Bureau, \$3,000; one clerk, class 1, \$1,200; two clerks, at \$1,000 each, \$2,000; one clerk, \$900; one messenger or laborer, \$480; in all, \$7,580.

"Biological investigations: General expenses, biological investigations: For biological investigations, including the geographic distribution and migrations of animals, birds, and plants, and for the promotion of economic ornithology and mammalogy for an investigation of the food habits of North American birds and mammals in relation to agriculture, horticulture, and forestry; for the employment of local and special agents, clerks, assistants, and other labor required in conducting experiments in the city of Washington and elsewhere, and in collating, digesting, reporting, and illustrating the results of such experiments; for freight and express charges; for office fixtures and supplies, gas and electric current, telegraph and telephone service; for preparation and publication of reports, and for illustrations, field work, and traveling and other expenses in the practical work of the Bureau, and to enable the Secretary of Agriculture to carry into effect the provisions of an act approved May 25, 1900, entitled 'An act to enlarge the powers of the Department of Agriculture, prohibiting the transportation by interstate commerce of game killed in violation of local laws, and for other purposes,' \$44,420.

"Total for Bureau of Biological Survey, \$52,000."

Mr. Edgar D. Crumpacker, of Indiana, made the point of order that there was no authorization of law for the appropriation, and that legislation was involved.

After debate, the Chairman² held:

The Chair finds that the act of May 25, 1900,³ is quite broad in its provisions. It declares:

"That the duties and powers of the Department of Agriculture are hereby enlarged so as to include the preservation, distribution, introduction, and restoration of game birds and other wild animals. The Secretary of Agriculture is hereby authorized to adopt such measures as may be necessary to carry out the purposes of this act and to purchase such game birds and other wild birds as may be required therefor, subject, however, to the laws of the various States and Territories. The object and purpose of this act is to aid in the restoration of such birds in those parts of the United States adapted thereto where the same have become scarce or extinct, and also to regulate the introduction of American or foreign birds or animals in localities where they have not heretofore existed."

Then it requires the Secretary to collect and publish information as to their propagation, uses, and preservation; and it distinctly authorizes him to make and publish all needful rules and regulations for carrying out the purposes of the act.

Now, this proposed amendment has two divisions, the first establishes a Bureau of Biological Survey, provides a biologist who shall be the chief of the bureau, with a salary of \$3,000, and provides certain clerks. It establishes a bureau fully officered. The second division, entitled "Biological

¹ Second session Fifty-ninth Congress, Record, pp. 1976, 1977.

² Martin E. Olmsted, of Pennsylvania, Chairman.

³ 31 Stat. L., pp. 187, 188.

investigations,” appropriates in a lump sum for biological investigations of the character therein set forth in some detail. The Chair finds that “biology,” as defined by Webster, has to do with the “origin, structure, development, function, and distribution of animals and plants,” and is inclined to think, and would hold, that the second portion of the amendment is supported by authority found in the act of 1900, and therefore in order. But the first division of the amendment, establishing the Bureau of Biological Survey, seems to hamper the discretion which the act of 1900 confers upon the Department of Agriculture. Whether that act confers upon the Secretary of Agriculture authority to establish such a bureau need not be discussed. The proposed amendment does not contemplate its establishment by him, but by Congress. It is the attempted establishment of a new bureau in an appropriation bill without any previous authority of law. The Chair therefore holds that the first division of the amendment is subject to the point of order, and, part of the amendment being so subject, the Chair is compelled to sustain the point of order against the entire amendment.¹

3652. While the statute authorizing the Secretary of Agriculture to make investigation of subjects relating to agriculture is held to justify a broad line of appropriation, yet it does not justify appropriations for general investigations.

The point of order against unauthorized appropriations or legislation in general appropriation bills may be made against a portion of a paragraph, even though it be not more than two words.

On January 30, 1907,² the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Entomological investigations: General expenses, Bureau of Entomology: Promotion of economic entomology; investigating the history and habits of insects injurious and beneficial to agriculture, horticulture, and arboriculture; ascertaining the best means of destroying those found to be injurious, including an investigation into the ravages of insects affecting field crops; investigations of the insects affecting small fruit, shade trees, and truck crops, forests and forest products, and stored products; investigation of insects in relation to diseases of men and domestic animals, and as animal parasites.

Mr. Edgar D. Crumpacker, of Indiana, made a point of order against the words “men and,” on the ground that there was no authority of law for the Secretary of Agriculture to investigate this subject.

The Chairman,³ in response to an inquiry of Mr. Crumpacker, stated that a point of order might be confined to the two words indicated, and then ruled:

When this bill was under consideration a year ago, the Chair indicated how unsatisfactory a condition existed with reference to many matters involved in this appropriation bill. The Agricultural Department has grown up very largely without any general legislation. Many of the provisions in the appropriation bill have been there year after year, but nothing in the general law can be found justifying them, and therefore if a Member sees fit at any time to object to them, there is nothing for the Chair to do, in his judgment, but to sustain the point of order. * * * The Chair finds no law for this appropriation. * * * The Chair sustains the point of order.

3653. A provision to appropriate for compiling tests of dairy cows at an exposition was held not to be authorized as an expenditure by the general law giving to the Secretary of Agriculture authority to acquire and diffuse information pertaining to agriculture.—On February 18, 1896,⁴

¹ See, however, section 3615 of this volume for a ruling not in harmony with this.

² Second session Fifty-ninth Congress, Record, pp. 1964, 1965.

³ David J. Foster, of Vermont, Chairman.

⁴ First session Fifty-fourth Congress, Record, pp. 1896–1899.

in Committee of the Whole House on the state of the Union, Mr. Sereno E. Payne of New York, raised the point of order against this paragraph of the agricultural appropriation bill.

To compile the records of the tests of dairy cows at the Columbian Exposition and prepare the same for permanent preservation.

After debate, during which section 520 of the Revised Statutes was cited:

There shall be at the seat of Government a Department of Agriculture, the general design and duties of which shall be to acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture, in the most general and comprehensive sense of that word, and to procure, propagate, and distribute among the people new and valuable seeds and plants.

The Chairman¹ ruled:

This is not simply a question of the Agricultural Department being authorized to acquire useful information, but it is an instruction to the Department to accept tests which have been made without authority of law, not made by any officer appointed by the Government to make the test. It seems to the Chair that there would be no question as to the right of the Agricultural Committee to insert a clause requiring the Department of Agriculture to make dairy tests and publish the results, but this is a different thing, because this language goes further than that and instructs the Department to accept a certain specific test which was made without any authority of law; and it seems to the Chair that in order to do that it would be necessary, first, under the rules of this Congress, for the House and Senate to pass a resolution or bill authorizing and directing the Secretary to accept this as a Government test. The Chair believes the point of order to be well taken.

3654. It is not in order to provide on an appropriation bill for payments to employees of the House unless the House by prior action has authorized the same.—On February 20, 1897² the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and this paragraph was reached:

To pay Robert A. Stickney for services rendered in the office of the Clerk of the House of Representatives from January 9, 1896, to March 4, 1897, inclusive, \$1,383.34.

Mr. Joseph G. Cannon, of Illinois, made the point of order.

During the debate it was stated that this and similar matters in the bill had been considered by the Committee on Accounts and reported on adversely, and that the House had acquiesced in the report.

Upon this statement the Chairman³ ruled the paragraph out of order as not authorized.

Mr. Cannon also made a point of order against this paragraph:

To pay, under resolutions of the House, Isaac R. Hill at the rate of \$1,500 per annum; Thomas A. Coakley, George L. Browning, and George Jenison at the rate of \$1,200 per annum each; C. W. Coombs at the rate of \$1,800 per annum, and James F. English at the rate of \$900 per annum, from March 4 to December 1, 1897, inclusive, \$5,799.50.

During the debate it was developed that these employees were authorized during the time of the Congress by resolution of the House, but that this paragraph was to provide for compensation from the period between the expiration of this Congress and the organization of the next.

¹ John A. T. Hull, of Iowa, Chairman.

² Second session Fifty-fourth Congress, Record, pp. 2058, 2061.

³ Sereno E. Payne, of New York, Chairman.

The Chairman ruled:

It seems these employees were employed under the present rules of the House to perform specific duties, and to be paid out of the contingent fund of the House. Now, the very fact that these resolutions can not carry it after the end of the present Congress—while the present occupant of the chair is aware that from time and long-honored custom of the House such employees have always been accorded to the minority, and is in full sympathy with that idea—if the point of order is insisted on, as it is, the Chair thinks that their employment after the 4th of March by appropriation is not sustained by any law, and is therefore subject to the point of order; and the Chair sustains the point of order.

3655. On February 20, 1897,¹ the general deficiency appropriation bill being under consideration in Committee of the Whole House on the state of the Union, Mr. Joseph E. Washington, of Tennessee, offered an amendment to enable the payment of one month's pay for extra services to the employees of the House and Senate.

Mr. Joseph D. Sayers, of Texas, made the point of order.

After debate, during which precedents were cited for a series of years, the Chairman² ruled:

The Chair is aware of the line of precedents that the gentleman from Ohio has mentioned, which grew out of the practice of the occupants of the chair in submitting this question to the Committee of the Whole, instead of deciding it for themselves under the rules. The question is not new to the present occupant of the chair. The same point of order was presented during the last session of Congress upon a similar amendment, and the ruling was then made by the present occupant of the chair that the amendment was not in order. That decision was founded upon the reading of the rule of the House, which is very plain. These officers are employees of the House at certain fixed annual salaries. To give them a month's pay in addition to the annual salary is to change the salary fixed by law or resolution of the House. It is in effect adding so much to the salary. If it is not an addition to the regular salary it is a gratuity. In either case it is not in conformity with existing law.

If this question did not appear entirely clear upon its merits to the present occupant of the chair, he would have had much more hesitancy in deciding the case when first brought to his attention; but he can see no excuse for submitting it to the House unless it be so submitted in the form of an appeal. The rule seems plain, and, although the precedents have been examined, the Chair has been unable to find any reason given for holding that this proposition is not in violation of the rules, except that it has been entertained by the votes of Committees of the Whole.

The Chair does not recollect whether the decision made by the present occupant of the chair at the last session was appealed from or not, but the House, by its acquiescence in the decision, sustained the ruling then made, and certainly made it the rule for the Chair during the present Congress, that an amendment of this kind is obnoxious to the rules and subject to a point of order. Therefore, while feeling for the opinions of the eminent gentlemen whose names have been cited—Mr. Kasson, of Iowa, Judge Payson, of Illinois, and Mr. Carlisle, the former Speaker of the House (especially the latter)—upon questions of law or parliamentary law the highest respect, the Chair sustains the point of order.³

Mr. Washington having appealed, the decision of the Chair was sustained.⁴

3656. The House having passed a resolution from the Committee on Accounts authorizing the employment of a person, a provision for the salary is in order on an appropriation bill.—On December 8, 1904,⁵ the legis-

¹ Second session Fifty-fourth Congress, Record, p. 2063.

² Sereno E. Payne, of New York, Chairman.

³ In the Fifty-fifth Congress a similar decision was overruled by the committee. (Second session Fifty-fifth Congress, Record, pp. 2289, 2290.)

⁴ On May 14, 1900 (first session Fifty-sixth Congress, Record, p. 5513), an amendment providing an extra month's pay for employees was ruled out of order on the general deficiency bill by Chairman Hopkins, and on appeal the decision was sustained, ayes 58 to noes 24.

⁵ Third session Fifty-eighth Congress, Record, pp. 75, 76.

lative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Washington Gardner, of Michigan, proposed an amendment providing an appropriation for salary of a docket clerk.

A question of order was raised by Mr. Charles L. Bartlett, of Georgia, which brought out the fact that the position of docket clerk was authorized by a resolution of the House, and therefore that the salary might be provided on an appropriation bill.

The Chairman¹ said:

The Chair would say that it has been uniformly held that a resolution regarding an officer of the House is existing law.

3657. The House having passed a resolution from the Committee on Accounts directing the Committee on Appropriations to provide for paying a certain sum to a certain employee, an amendment to effect this purpose was held in order on an appropriation bill.—On July 30, 1888,² in Committee of the Whole House on the state of the Union, Mr. Timothy E. Tarsney, of Michigan, offered this amendment to the deficiency appropriation bill:

To pay Samuel D. Craig for extra services connected with the preparation of the Calendar and indexing the same for the first session of the Fiftieth Congress, \$600.

Mr. James N. Burnes, of Missouri, made a point of order against the amendment.

During the debate Mr. Tarsney presented, as the authorization for his amendment, this resolution, which the Committee on Accounts had offered and the House had adopted on a previous day:

Resolved, That there be paid to Samuel D. Craig the sum of \$600 for extra services in connection with the preparation of the Calendars and indexing the same for the first session of the Fiftieth Congress, and that the Committee on Appropriations be directed to provide for the payment of said sum in the bill (H. R. 10896) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1888, and prior years, and for other purposes.

The Chairman³ ruled:

The Chair is of the opinion that the rule which would otherwise prevent the consideration of this amendment has been suspended by the operation of the resolution passed by the House, and that the resolution is now in order.

3658. On June 27, 1906,⁴ the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Lucius N. Littauer, of New York, offered the following amendments, explaining that they were to carry out the provisions of resolutions adopted by the House already:

On page 60, after line 22, insert:

“For annual clerks to the Committee on Immigration and Naturalization and Irrigation of Arid Lands, during the fiscal year 1907, at \$2,000 each; in all, \$4,000.”

“For additional compensation of the superintendent of the House document room during the fiscal year 1907, \$500.”

¹ John Dalzell, of Pennsylvania, Chairman.

² First session Fiftieth Congress, Record, p. 7057.

³ William M. Springer, of Illinois, Chairman.

⁴ First session Fifty-ninth Congress, Record, p. 9401.

Mr. John J. Fitzgerald, of New York, made a point of order that there was no authority for the appropriation.

The Chairman¹ held:

In the opinion of the Chair the resolution adopted by the House providing for the payment of its employees is a law within the sense of the rule, and therefore the Chair overrules the point of order.

3659. The House in appropriating for an employee may not go beyond the terms of the resolution creating the office.—On March 20, 1906,² the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. James S. Sherman, of New York, offered an amendment, as follows:

On page 15, line 4, after the word “dollars,” insert “assistant clerk to the Committee on Interstate and Foreign Commerce in lieu of session clerks authorized by resolution, \$1,600.”

On page 16, lines 1 and 2, strike out “two thousand six hundred and forty” and insert in lieu thereof “four thousand two hundred and forty.”

Mr. Thomas W. Hardwick, of Georgia, made the point of order that this office had not been authorized.

In the debate Mr. Sherman said:

Mr. Chairman, I desire to be heard on the point of order. This proposition is not to create a new office. There is now an assistant clerk of the Committee on Interstate and Foreign Commerce, and what we desire to do by this amendment is to provide for the continuance of that clerk during the entire fiscal year. We are not attempting to create a new office. The amendment in terms so states. The amendment as presented there simply places a limitation upon the time that the person now in office, now appointed, a sworn officer of the Government, shall serve. That is all there is of it, and I think, Mr. Chairman, along the line of the ruling that the Chair made this morning—somewhat of a pioneer in its line, but a ruling which in my judgment was most essential to make in the line of good order in this House—that it is possible for the distinguished occupant of the chair to overrule this point of order; not only possible, but that it is proper and regular and right that he should do it.

The Chairman³ said:

The Chair appreciates the force of the argument made by the gentleman from New York, but nevertheless if the Chair understands the matter the present resolution of the House, which is treated as law for this purpose, authorizes a clerk for the session, one whose term expires with each session of Congress, designated in the amendment as a session clerk. The amendment provides for an assistant clerk. Practically it extends the term of the session clerk or creates an office beyond the time authorized by the resolution of the House, and the Chair thinks the point of order should be sustained.

3660. A resolution by a preceding House authorizing an employee of the House was held to justify an appropriation for the salary.—On March 20, 1906,⁴ the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

Under Superintendent of the Capitol Building and Grounds: For chief engineer, \$1,720; three assistant engineers, at \$1,200 each; six conductors of elevators, at \$1,200 each, who shall be under the supervision and direction of the Superintendent of the Capitol Building and Grounds; two laborers, at \$820 each; six firemen, at \$900 each; electrician, \$1,200; laborer, \$1,000; three laborers, at \$720 each; and for the following for service in old library portion of the Capitol: Two attendants, at \$1,500 each; watchman, \$900; in all, \$27,800.

¹ Edgar D. Crumpacker, of Indiana, Chairman.

² First session Fifty-ninth Congress, Record, p. 4048.

³ Marlin E. Olmsted, of Pennsylvania, Chairman.

⁴ First session Fifty-ninth Congress, Record, p. 4043.

Mr. Thomas W. Hardwick, of Georgia, made the point of order that the pay of the elevator conductors had been increased from \$1,100 to \$1,200 each, and that this was not authorized by existing law.

Mr. Lucius N. Littauer, of New York, said:

Mr. Chairman, I would state for the information of the gentleman that the salaries of elevator conductors by resolution of this House in 1888 were placed at \$1,200. The Committee on Appropriations uniformly, beginning two years thereafter, included in this bill their salaries at \$1,100, but each successive Congress from that time down has increased that salary by \$100. Our attention was called to this matter by the Committee on Accounts, who recommended that the salary be placed at \$1,200 instead of \$1,100, as carried in the legislative bill for years, in order that what has been indirectly done for many years may be directly done in the future.

After debate the Chairman¹ said:

Does the Chair understand that, by the resolution of the House under which this position was originally created, the compensation or salary was fixed at \$1,200 a year?

Mr. Littauer replied:

That is correct.

The Chairman then ruled:

The Chair will assume that to be sufficient authority for the creation and continuance of that position, and the fact that Congress may in subsequent years have appropriated a less amount than \$1,200 does not seem to the Chair to be a change of that law. It has often been ruled that Congress may, without changing existing law, either withhold an appropriation entirely or appropriate a less amount than is authorized. It may be a close question, but the Chair thinks that a previous resolution adopted some years ago and not modified by any subsequent action is sufficient authority for the salary of \$1,200, within the spirit and intent of Rule XXI. The fact that the last Congress did not appropriate the full amount does not change the situation nor the law.

"An appropriation of a less sum than the amount fixed by law for the salary of an officer is not a change of law." (Parliamentary Precedents, House of Representatives, sec. 546.)

The Chair therefore holds that there is authority for the appropriation of \$1,200, and overrules the point of order.²

3661. The recommendation of a committee of the House is not authorization sufficient to justify appropriations for House employees on the deficiency bill.—On February 21, 1901,³ the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

To pay George F. Thompson for compiling, under the direction of the Committee on Coinage, Weights, and Measures, the legislative history of the coinage act of 1873, \$500.

Mr. Thaddeus M. Mahon, of Pennsylvania, made a point of order.

Mr. Joseph G. Cannon, of Illinois, who was in charge of the bill, explained that the item had been inserted in the bill on the written request of the Committee on Coinage, Weights, and Measures.

The Chairman⁴ sustained the point of order.

¹ Marlin E. Olmsted, of Pennsylvania, Chairman.

² It afterwards appeared that the resolution of 1888 authorized but one elevator conductor.

³ Second session Fifty-sixth Congress, Record, pp. 2780, 2781.

⁴ George P. Lawrence, of Massachusetts, Chairman.

3662. On February 21, 1901,¹ the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and a portion of the bill had been reached for appropriating for certain employees of the House certain sums, the same having been audited and recommended by the Committee on Accounts. Among these was the following:

To James A. Gibson, \$480.

Mr. Irving P. Wanger, of Pennsylvania, made the point of order against this paragraph.

The Chairman² sustained the point of order.

Then Mr. William H. Fleming, of Georgia, made the point of order on this paragraph:

To John Hollingsworth, \$900.

The Chairman said:

The Chair is ready to rule. He has no doubt that this is an expenditure not previously authorized by law, and that it is subject to the point of order. The Chair has made similar rulings already in the consideration of this bill, and sees no reason why such rulings should be changed. The point of order is sustained.

3663. On February 21, 1901,³ the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the following paragraph was read:

To pay William A. Watson, special messenger, authorized in the resolution adopted by the House of Representatives February 7, 1900, at the rate of \$1,200 per annum, from March 4, 1901, to June 30, 1902, inclusive, \$1,593.30.

Mr. William H. Fleming, of Georgia, made a point of order.

In the debate it was stated by Mr. Joseph G. Cannon, of Illinois, who was in charge of the bill, that the employee in question held his place under a resolution reported from the Committee on Accounts and agreed to by the House, authorizing his payment out of the contingent fund. But the House could not by law authorize such payments beyond the approaching expiration of Congress.

The Chairman² held:

On February 20, 1897,⁴ a proposition to appropriate for certain employees for the period between the expiration of the Fifty-fourth Congress and the organization of the Fifty-fifth Congress was held out of order, although a resolution of the House had authorized their employment. * * * The Chair will follow the ruling then made and sustain the point of order.

3664. Propositions to increase salaries fixed by law or appropriate for offices not established by law are subject to a point of order.—On March 27, 1906,⁵ the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Office of assistant treasurer at New Orleans: For assistant treasurer, \$4,500; chief clerk and cashier, \$2,250; receiving teller, and paying teller, at \$2,000 each; vault clerk, \$1,800; two bookkeepers, at

¹ Second session Fifty-sixth Congress, Record, pp. 2784, 2787, 2788.

² George P. Lawrence, of Massachusetts, Chairman.

³ Second session Fifty-sixth Congress, Record, pp. 2788, 2789.

⁴ See section 3654 of this chapter.

⁵ First session Fifty-ninth Congress, Record, pp. 4365, 4366.

\$1,500 each; coin clerk, \$1,200; six clerks, at \$1,200 each; two clerks, at \$1,000 each; porter and messenger, \$500; day watchman, \$720; night watchman, \$720; typewriter and stenographer, \$1,000; in all, \$28,890.

Mr. Thomas W. Hardwick, of Georgia, said:

I rise to make a point of order against the entire paragraph. It has one additional teller, at \$2,000, in line 22, on page 63, not authorized by existing law. Then there is a vault clerk, at \$1,800, not authorized by law; a coin clerk, at \$1,200, not authorized by law; six clerks, at \$1,000 each, none of whom are authorized by law.

Mr. Hardwick declared that these were increases over the force permitted by section 3609 of the Revised Statutes.

After debate the Chairman¹ held that the items were not specified in the statute, and therefore were not in order.

On March 27, 1906,² the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read the paragraph appropriating for employees in the office of the assistant treasurer at Philadelphia.

Mr. Thomas W. Hardwick, of Georgia, made a point of order that the paragraph contained appropriation for certain employees not authorized by section 3605 of the Revised Statutes, establishing the office; also that there was a salary larger than the amount fixed by the said statute.

Mr. James A. Tawney, of Minnesota, urged that by the act of 1846 this office was made a part of the Treasury, and therefore that section 169 of the Revised Statutes would apply.

The Chairman¹ did not find it necessary to decide as to whether or not section 169 would apply, saying:

The difficulty is that whether we treat it as a Department or not, an act of Congress itself specifically fixes the salary of this particular employee at \$1,300, and the paragraph in question appropriates \$1,700, or \$400 apparently without authority of law; whereas the second clause of Rule XXI expressly declares that no appropriation shall be in order "for any expenditure not previously authorized by law." The Chair is, therefore, compelled to sustain the point of order.

3665. On March 27, 1906,³ the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Office of assistant treasurer at San Francisco: For assistant treasurer, \$4,500; cashier, \$2,500; bookkeeper, \$1,800; chief clerk, \$2,000; assistant cashier, \$2,000; first teller, \$2,250; assistant bookkeeper, \$1,600; coin teller, and one clerk, at \$1,800 each; clerk, \$1,500; clerk, \$1,400; messenger, \$840; four watchmen, at \$720 each; and two coin counters, at \$900 each; in all, \$28,670.

Mr. George W. Prince, of Illinois, made a point of order that the paragraph would appropriate for several employees not authorized by section 3610 of the Revised Statutes, which establishes the office.

¹ Marlin E. Olmsted, of Pennsylvania, Chairman.

² First session Fifty-ninth Congress, Record, p. 4366.

³ First session Fifty-ninth Congress, Record, p. 4367.

After debate the Chairman¹ held:

The Chair finds that there is a provision here in this paragraph for a clerk at a salary of \$2,000 apparently not authorized by the statute. Now, even if this office of assistant treasurer at San Francisco can be construed a department, within the meaning of section 169 of the Revised Statutes, nevertheless, as that section has been construed by former occupants of the Chair strictly it does not authorize an appropriation for an employee above the class of clerk provided for in that statute, which was a clerk of the fourth class at \$1,800. The Chair is therefore compelled to sustain the point of order against the paragraph.

3666. On March 27, 1906,² the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Mint at Denver, Colo.: For superintendent, \$4,500; assayer, melter and refiner, and coiner, at \$3,000 each; chief clerk, \$2,500; weigh clerk, \$2,000; cashier, \$2,250; assistant assayer, assistant melter and refiner, and assistant coiner, at \$2,000 each; bookkeeper, \$1,800; abstract clerk, warrant clerk, assistant weigh clerk, and calculating clerk, at \$1,600 each; calculating clerk, \$1,400; and two clerks, at \$1,200 each; in all, \$38,250.

Mr. Thomas W. Hardwick, of Georgia, having made a point of order, after debate the Chairman¹ held:

The Chair is of opinion that the officers, clerks, etc., in the mint at Denver, are fixed in the act of March 18, 1904; that was an appropriation bill, but nevertheless did more than appropriate for that year. It contained matters of permanent legislation and made continuing provision for this mint—appropriations would be in order upon this pending bill for any salary for any position authorized by the said act of 1904. It provides for a weigh clerk at \$1,600. It provides for the position and fixes the salary. But in the paragraph to which objection is made the weigh clerk is allowed \$2,000 or \$400 more than the act of 1904 authorized. The attention of the Chair has been called to a ruling first made in the first session of the Fiftieth Congress, reported on page 355 of the Manual, thus:

“In the absence of a general law fixing a salary, the amount appropriated in the last appropriation bill has been held to be the legal salary, although in violation of the general rule that an appropriation bill makes law only for the year.”

But the difficulty in applying that rule here is that the general law does fix the salary at \$1,600, and as the paragraph appropriates more than that amount without authority of law, the Chair is compelled to sustain the point of order.

3667. On March 27, 1906,³ the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the paragraph appropriating for the office of the assistant treasurer at New York was read.

Mr. George W. Prince, of Illinois, made the point of order that certain employees were appropriated for which were not specified in section 3603 of the Revised Statutes establishing the office.

The Chairman¹ overruled the point of order on the ground that section 3604 of the Revised Statutes provided that the assistant treasurer might appoint from time to time other employees than those specified in section 3603 of the Revised Statutes.

3668. A general law authorizing certain employees when specifically provided for in an appropriation bill, a provision making the appropriation for them was held in order.—On February 16, 1901,⁴ the sundry civil

¹ Marlin E. Olmsted, of Pennsylvania, Chairman.

² First session Fifty-ninth Congress, Record, pp. 4367, 4368.

³ First session Fifty-ninth Congress, Record, p. 4366.

⁴ Second session Fifty-sixth Congress, Record, pp. 2538, 2539.

appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk read this paragraph:

Expenses of administration: For contingent expenses of the office of the Commissioner, including stationery, purchase of special reports, books for library, telegraph and telephone service, furniture, repairs to and heating, lighting, and equipment of buildings, and compensation of temporary employees, \$12,500.

Mr. Marlin E. Olmsted, of Pennsylvania, made a point of order against the appropriation for temporary employees, as unauthorized by law.

Debate arising, Mr. Joseph G. Cannon, of Illinois, quoted the following law, passed in 1882, in justification of the proposed appropriation:

No civilian officer, clerk, draftsman, copyist, messenger, assistant messenger, mechanic, watchman, laborer, or other employee shall hereafter be employed at the seat of government in any Executive Department or subordinate bureau or office thereof, or be paid from any appropriation made for contingent expenses or for any specific or general purpose, unless such employment is authorized and payment therefor specifically provided in the law granting the appropriation, and then only for services actually rendered in connection with and for the purposes of the appropriation from which payment is made.

The Chairman ¹ said:

The Chair is of the opinion that under the law of 1882 this is not obnoxious as objected to by the gentleman from Pennsylvania, and the Chair therefore overrules the point of order.

3669. Construction of the law authorizing the employment of “watchmen, laborers, and other employees” in the Executive Departments.—On March 23, 1906² the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Thomas W. Hardwick, of Georgia, made a point of order that there was no law to authorize a proposed appropriation for “one telephone-switchboard operator” in the Department of State.

After debate the Chairman ³ held:

This is an appropriation for a telephone-switchboard operator in the Department of State, which is an Executive Department. Section 169 of the Revised Statutes provides that—

“Each head of a Department is authorized to employ in his Department such number of clerks of the several classes recognized by law, and such messengers, assistant messengers, copyists, watchmen, laborers, and other employees, and at such rates of compensation, respectively, as may be appropriated for by Congress from year to year.”

A telephone-switchboard operator may fairly be classed as a sort of laborer-skilled laborer within the spirit and intentment of the statute.

The Chair is of opinion that this case is covered and the appropriation authorized by section 169, and overrules the point of order.

Very soon thereafter Mr. George W. Prince, of Illinois, made a similar point of order against a “wireman” appropriated for in the Treasury Department.

The Chairman held:

The Chair is of opinion that under section 169 of the Revised Statutes, which allows each head of a Department to employ “such clerks, messengers, assistant messengers, copyists, watchmen, laborers, and other employees as may be appropriated for by Congress from year to year,” this wireman may

¹ Albert J. Hopkins, of Illinois, Chairman.

² First session Fifty-ninth Congress, Record, pp. 4193, 4195.

³ Marlin E. Olmsted, of Pennsylvania, Chairman.

properly be classed as a laborer or other employee within the designation there given. A "wireman" is understood to be a laborer who looks after telegraph, telephone, or other wires. And he is an employee in the office of the Treasury Department, which is one of the Executive Departments clearly covered by that statute. Now, as to the compensation, section 169 specifically provides that the employment may be "at such rates of compensation, respectively, as may be appropriated for by Congress from year to year." It seems, therefore, that the Department is authorized to employ at such compensation as the House in each successive year shall provide. The House is not bound by the appropriation for any previous year, but has authority under the statute to fix in this bill the compensation for the year it covers. The Chair, therefore, overrules the point of order.¹

3670. The law authorizing the heads of Departments to employ such clerks as may be appropriated for does not apply to officers not allotted to Departments or to officers not at the seat of government.

The mere appropriation for a salary does not thereby create an office so as to justify appropriations in succeeding years.

On February 27, 1906,² the army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when certain paragraphs were read providing for certain clerks, watchmen, etc., at the headquarters of divisions and departments of the Army.

Mr. James A. Tawney, of Minnesota, made the point of order that these expenditures were not authorized by law.

On February 28,³ after debate, the Chairman⁴ ruled:

The gentleman from Minnesota [Mr. Tawney] makes the point of order that the items upon pages 9 and 10 providing for an increase in the number of clerks, messengers, and laborers at headquarters of divisions and departments and the Office of the Chief of Staff are obnoxious to clause 2 of Rule XXI. So much of that clause as applies to this case is as follows:

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

The first question is, What law authorizes this appropriation? The only law referred to is that contained in section 169 of the Revised Statutes, which is as follows:

"Each head of a Department is authorized to employ in his Department such number of clerks of the several classes recognized by law, and such messengers, assistant messengers, copyists, watchmen, laborers, and other employees, and at such rates of compensation, respectively, as may be appropriated for by Congress from year to year."

The next question, of course, is whether these clerks referred to in the items to which objection has been made are to be employed by the head of a Department and in his Department. The gentleman from Iowa [Mr. Hull] is quite correct in his statement of the ruling made by the occupant of the chair [Mr. Hopkins], as referred to on page 2404 of the Record, third session Fifty-fifth Congress,⁵ but it appears that at that time the Chairman of the Committee of the Whole was not familiar with the ruling of the Attorney-General, which has been submitted to. In that ruling, which was referred to in the following year in the decision made by the occupant of the chair at that time [Mr. Sherman, of New York], overruling the decision of Mr. Hopkins,⁶ are found these words, defining a Department:

"The Department, with its bureaus or branches, is in contemplation of the law an establishment distinct from the branches of the public service and the officers thereof which are under its supervision."

This will be found in volume 15 of the opinions of the Attorney-General, on page 267. It seems, therefore, that in arriving at a conclusion on this question the present occupant of the Chair must hold

¹ For another decision on this point see section 3590 of this chapter.

² First session Fifty-ninth Congress, Record, p. 3092.

³ Record, pp. 3161-3163.

⁴ Henry S. Boutell, of Illinois, Chairman.

⁵ See section 3674.

⁶ See section 3673.

that a Department, as referred to in section 169 of the Revised Statutes, refers to that branch of the Government technically known as an Executive Department, and presided over by a member of the Cabinet, and located in the city of Washington.

Now, then, are the clerks provided for in these items so employed? On page 10 of this bill, in line 18, will be found the proviso:

“Provided, That no clerk, messenger, or laborer at headquarters of divisions, departments, or Office of the Chief of Staff shall be assigned to duty with any bureau of the War Department.”

So that, aside from what has been developed in the debate, it would appear to the Chair that these clerks, messengers, and laborers are to be employed outside of the Department, technically so called, and are to be employed in various parts of the country at headquarters of the Army, headquarters of the division, and at other points. It will be seen that the decision rendered by Mr. Sherman directly overruled the decision rendered by Mr. Hopkins a year earlier, but this same question came up even later, on December 9, 1904, when the legislative appropriation bill was before the Committee of the Whole House, and an item in the bill provided for the increase in the number of clerks in the Civil Service Commission. A point of order was made for the same reason that has been assigned in the case under consideration, and the opinion was rendered by Mr. Dalzell, then Chairman of the Committee of the Whole. In rendering his decision he referred specifically to the point made by the gentleman from Iowa [Mr. Hull], that if the ruling of the Attorney-General were correct, there was perhaps no law providing for any of these different clerks outside of the Department proper, except the appropriation bills of previous years, and the Chairman then said:

“The enactment of an appropriation bill is not a provision of law any more than for the current year, and it gains no force by having been repeated for two, three, or any number of succeeding years.”

It would appear, therefore, from the ruling of the Attorney-General and from these decisions that the clerks of the Government outside of the Departments in Washington must be provided for by specific law, and that items in an appropriation bill providing for such clerks or increasing their number beyond that previously provided by law would not be in order. The Chair, therefore, is constrained to sustain the point of order.

3671. On March 23, 1906,¹ the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

For three Commissioners, at \$3,500 each; chief examiner, \$3,000; secretary, \$2,500; assistant chief examiner, \$2,250; two chiefs of division, at \$2,000 each; three examiners, at \$2,000 each; six clerks of class 4; thirteen clerks of class 3; twenty-two clerks of class 2; twenty-six clerks of class 1; twenty clerks, at \$1,000 each; ten clerks, at \$900 each; five clerks, at \$840 each; one messenger; engineer, \$840; two firemen; two watchmen; one elevator conductor, \$720; three laborers; and three messenger boys, at \$360 each; in all, \$163,390.

Mr. George W. Prince, of Illinois, made a point of order that there was no law for the “three examiners, at \$2,000 each,” and “twenty-two clerks of class 2.”

After debate the Chairman² held:

The rule which has been invoked against the specified items in this paragraph is found in the second paragraph of Rule XXI, which provides that—

“No appropriation shall be reported in any general appropriation bill or be in order as an amendment thereto for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress, nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto.”

Now, it is urged that there is no authority of law for the appointment of so many clerks of certain classes as are specified in the paragraph. On the other hand, it has been suggested that authority may be found in section 169 of the Revised Statutes, which provides that—

“Each head of a Department is authorized to employ in his Department such number of clerks of the several classes recognized by law and such messengers, assistant messengers, copyists, watchmen,

¹ First session Fifty-ninth Congress, Record, pp. 4182, 4183.

² Marlin E. Olmsted, of Pennsylvania, Chairman.

laborers, and other employees, and at such rates of compensation, respectively, as may be appropriated for by Congress from year to year.”

There is no doubt that as to any branch of the Government which is properly a “Department” within the meaning of that act, Congress may, from year to year, appropriate for an increasing number of clerks, but the question arises, Is the Civil Service Commission a “Department” within the meaning of the statute? It may be that there is very good reason why, as the gentleman from Indiana [Mr. Crumpacker] suggests, it ought to be treated as a Department, but has it been? Is it one within the terms of the statute?

By reference to section 158 we find that the Departments to which the act was applied are specifically enumerated; they are those governmental branches or executive divisions at the head of each of which there is a Cabinet officer. They are distinctly specified and set forth by name in section 158. Section 159 expressly declares that when the word “department” is used in that statute, it shall be held to mean “one of the Executive Departments enumerated in the preceding section.” The Civil Service Commission is not one of the Executive Departments specified in section 158, and it can not therefore be construed as a Department, nor any member of it as the “head of a Department” within the meaning of section 169. Whether the Civil Service Commission is a governmental agency of such value and importance that it ought to be treated as a Department is not a matter for the Chair to decide. As it is not one within the terms and intendment of section 169 of the Revised Statutes, the Chair must rule that that section is not authority for the appropriation so as to relieve it from the operation of Rule XXI. Now, whether the second clause of Rule XXI is restrictive upon the Committee on Appropriations, or upon the House itself, is not for the Chair to determine. The Chair must construe the rule as it finds it. In fact, the same question appears to have been decided in the last session of the Fifty-eighth Congress by the gentleman from Pennsylvania, Mr. Dalzell, who sustained a similar point of order. For the reasons stated, the Chair sustains the point, or rather the two points of order which have been submitted for its decision.

3672. On December 9, 1904,¹ the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a paragraph was read providing for certain new employees under the Civil Service Commission, as follows:

Field force: For three examiners, at \$2,200 each; four examiners, at \$2,000 each; two examiners, at \$1,800 each; one clerk, \$1,800; one clerk, \$1,700; one clerk, \$1,200; six clerks, at \$1,000 each; seven clerks, at \$900 each; three clerks, at \$840 each; two clerks, at \$800 each; two clerks, at \$600 each; one messenger boy, \$480; in all, \$41,000.

Mr. Marlin E. Olmsted, of Pennsylvania, made the point of order that these positions were not authorized by law.

After debate, the Chairman² held:

A paragraph on page 34 of the bill provides for a “field force,” designating a certain number of employees and fixing their salaries. The gentleman from Pennsylvania [Mr. Olmsted] makes a point of order against this paragraph and invokes in support of it clause 2 of Rule XXI, as follows:

“No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress; nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto.”

The first question to determine, therefore, is whether or not the expenditures included in this paragraph have been previously authorized by law. It seems very clear to the Chair, without undertaking to read at length the provisions of the act creating the Civil Service Commission, that there is no provision in that act which would authorize this expenditure. The only other authority cited to authorize it is a provision in the Revised Statutes, section 169, Title IV, which provides:

“Each head of a Department is authorized to employ in his Department such number of clerks of the several classes recognized by law and such messengers, assistant messengers, copyists, watchmen,

¹Third session Fifty-eighth Congress, Record, pp. 97, 98.

²John Dalzell, of Pennsylvania, Chairman.

laborers, and other employees and at such rates of compensation, respectively, as may be appropriated for by Congress from year to year.”

If the Civil Service Commission were an Executive Department under the law, the point of order would have to be overruled. But is it such Department? Section 158 of this same title provides as follows:

“The provisions of this title shall apply to the following Executive Departments:

“First. The Department of State.

“Second. The Department of War.

“Third. The Department of the Treasury.

“Fourth. The Department of Justice.

“Fifth. The Post-Office Department.

“Sixth. The Department of the Navy.

“Seventh. The Department of the Interior.”

And section 159 provides:

“The word ‘Department’ when used alone in this title and Titles V, VI, VII, VIII, IX, X, and XI means one of the Executive Departments enumerated in the preceding section.”

So it seems very clear to the Chair that this paragraph of the bill can not be justified under the provisions of those three sections of the Revised Statutes. The only other suggestion made to justify the appropriation, if the Chair rightly understood the gentleman from New York [Mr. Littauer], was that such a force as is mentioned in the paragraph is already in existence, having been provided for from time to time by appropriation bills; but over against the provisions of the appropriation bills stand the provisions of the statute which do not authorize such a force and the provisions of Rule XXI, section 2, which requires for the creation of such a force a provision of law. The enactment of an appropriation bill is not a provision of law any more than for the current year, and it gains no force by having been repeated for two or three or any number of succeeding years. Therefore, without discussing at length the second proposition, the Chair is very clearly of the opinion that the point of order is well taken. The Chair sustains the point of order.

3673. On March 28, 1900,¹ the Army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read as follows:

Pay to clerks and messengers at department headquarters and at Headquarters of the Army: Nine clerks, at \$1,800 each per annum, etc.

Mr. Thomas C. McRae, of Arkansas, made the point of order against the paragraph.

It appeared from the debate that an increase was made in the salaries of the clerks and a change of numbers of clerks in certain classes. Reference was made to a decision of the previous year on the same point.

The Chairman² said:

The Chair, in looking up the record, discovers that the basis of the decision made by the gentleman from Illinois while occupying the chair last year was a statute³ which provides as follows:

“Each head of a Department is authorized to employ in his Department such number of clerks of the several classes recognized by law and such messengers, assistant messengers, copyists, watchmen, laborers, and other employees, and at such rates of compensation, respectively, as maybe appropriated for by Congress from year to year.”

So that the decision of the gentleman from Illinois last year was based upon a provision of law for whatever number of clerks Congress chose to appropriate in any particular Department—which is a proposition differing distinctly from that suggested by the gentleman from Arkansas.

¹ First session Fifty-sixth Congress, Record, pp. 3441, 3442, 3497.

² James S. Sherman, of New York, Chairman.

³ Section 169, Revised Statutes.

The Chair having taken the matter under further consideration, on the succeeding day held:

When the matter was passed over temporarily yesterday the Chair had sent for the volume of Opinions of the Attorneys-General of the United States, in order to look at an opinion that was given by the Attorney-General some years since in reference to what was covered by the expression "Executive Departments." The Chair is informed that this opinion was not presented to the gentleman from Illinois last year when he made the ruling to which reference was made by the gentleman from Iowa and by the Chair yesterday. That opinion,¹ in part, reads as follows:

"The several Executive Departments are by law established at the seat of government; they have no existence elsewhere. Only those bureaus and offices can be deemed bureaus or offices in any of these Departments which are constituted such by the law of its organization. The Department, with its bureaus or offices, is in contemplation of the law an establishment distinct from the branches of the public service and the offices thereof which are under its supervision. Thus, the office of postmaster or of collector of internal revenue or of pension agents or of consuls is not properly a departmental office not an office in the Department having supervision over the branch of the public service to which it belongs. True, an official relation exists here between the office and the Department, one, moreover, of subordination of the former to the latter; but this does not make the office a part of the Department."

In view of that opinion of the Attorney-General, which, as the Chair before stated, he understands was not called to the attention of the gentleman from Illinois when he made the ruling last year, it seems perfectly clear to the Chair that this provision, so far as it changes last year's appropriation bill, is susceptible to the point of order, and therefore the Chair sustains the point of order.

3674. On February 25, 1899,² the Army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and certain paragraphs were read, as follows:

PAY TO CLERKS AND MESSENGERS AT HEADQUARTERS OF THE ARMY.

Fifteen clerks, at one thousand eight hundred dollars each per annum, twenty-seven thousand dollars;

Fifteen clerks, at one thousand six hundred dollars each per annum, twenty-four thousand dollars;

Twenty clerks, at one thousand four hundred dollars each per annum, twenty-eight thousand dollars; etc.

To one of these paragraphs Mr. O. W. Underwood, of Alabama, made the point of order that there was no authorization in existing law.

After debate the Chairman³ held:

The Chair will rule. Title IV, section 158, reads as follows:

"The provisions of this title shall apply to the following Executive Departments: First, the Department of State; second, the Department of War."

Section 169 reads as follows:

"Each head of a Department is authorized to employ in his Department such number of clerks of these several classes recognized by law, and such messengers, assistant messengers, copyists, watchmen, laborers, and other employees, and at such rate of compensation, respectively, as may be appropriated for by Congress from year to year."

Under this statute it seems clear to the Chair that this is simply following what is authorized by law, and in this Department of War, and is not in violation of section 2 of Rule XXI, as contended for by the gentleman from Alabama. The Chair therefore overrules the point of order.⁴

¹ Opinions of the Attorney-General, Volume 15, p. 267.

² Third session Fifty-fifth Congress, Record, p. 2404.

³ Albert J. Hopkins, of Illinois, Chairman.

⁴ It has been decided, however, that the term "Executive Departments" applies only to the service in bureaus constituted such by the laws of the organization of the Department—i. e., generally to the Departments in Washington. (See Opinions of the Attorneys-General, vol. 15, p. 267.)

3675. The general law authorizing the employment in the Executive Departments of such clerks as may be appropriated for is held to authorize appropriations for clerkships not otherwise authorized.—On December 9, 1904,¹ the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union when this paragraph was read:

Office of the purchasing agent: For purchasing agent, \$4,000; chief clerk, \$2,000; one clerk of class 4; one clerk of class 3; one clerk of class 2; two clerks of class 1; two clerks, at \$1,000 each; one assistant messenger; actual and necessary expenses of the purchasing agent while traveling on business of the Post-Office Department, \$500; in all, \$16,420.

Mr. Charles L. Bartlett, of Georgia, made the point of order that, while the purchasing agent had been authorized by law, there was no law authorizing the clerks.

After debate the Chairman² said:

The post-office appropriation bill for 1904 created the office of purchasing agent for the Post-Office Department. It did not, however, provide for any office force for the performance of the duty of that Department, but it prescribed that the purchasing agent should report direct to the Postmaster-General, and that under such regulations, not inconsistent with the existing law, as the Postmaster-General should prescribe, and subject to his direction and control, he should have supervision over the purchase of all supplies of the post-office service. It then goes on and prescribes the purchasing agent's duties, and they are such that he can not perform by himself without assistance of a clerical force. It is not to be assumed for a moment that such an anomaly was intended by the authors of that law, and, indeed, we find that no such anomaly exists, because, under section 169 of the Revised Statutes, Title IV, the head of the Post-Office Department and the heads of all other Executive Departments named in the title are authorized to employ such a number of clerks of the several classes recognized by law, such messengers, assistant messengers, copyists, and other employees at such rate of compensation, respectively, as may be appropriated for by Congress from year to year. So it seems to the Chair that the point of order is not well taken and must be overruled.

3676. Where the law fixes the amount of a salary a proposition to increase the amount is not in order on an appropriation bill.—On February 2, 1897,³ the consular and diplomatic appropriation bill being under consideration in Committee of the Whole House on the state of the Union, Mr. Richmond Pearson, of North Carolina, moved to strike out "\$2,500 per annum" and insert "\$2,933 per annum" in the salaries of a certain class of consular officers.

Mr. James B. McCreary, of Kentucky, having made a point of order, the Chairman⁴ decided:

As the Chair understands, these salaries are fixed by law at \$2,500. The amendment proposes to increase them to \$2,900 in round numbers. That would be a change of the existing law for the year; and the Chair sustains the point of order.

3677. On April 26, 1890,⁵ the House being in Committee of the Whole House on the state of the Union, considering the legislative, executive, and judicial appropriation bill, the paragraph appropriating "For the Commissioner of Education \$3,000" was reached.

¹Third session Fifty-eighth Congress, Record, pp. 106–108.

²John Dalzell, of Pennsylvania, Chairman.

³Second session Fifty-fourth Congress, Record, pp. 1441–1443.

⁴Sereno E. Payne, of New York, Chairman.

⁵First session Fifty-first Congress, Record, p. 3893.

Mr. Mark H. Dunnell, of Minnesota, moved to strike out “\$3,000” and insert “\$4,000.”

Mr. William S. Holman, of Indiana, made the point of order against the amendment.

The Chairman,¹ having called attention to the fact that the Revised Statutes provided that the salary should be \$3,000 a year, sustained the point of order.

3678. On April 16, 1890,² the Military Academy appropriation bill was under consideration in Committee of the Whole House on the state of the Union. In the paragraph providing for the pay of an assistant engineer, Mr. Moses D. Stivers, of New York, moved to strike out “\$1,000” and insert “\$1,200.”

Mr. Henry J. Spooner, of Rhode Island, made the point of order, stating that the salary was fixed by law.

The Chairman¹ sustained the point of order.

3679. On April 26, 1890,³ the legislative, executive, and judicial appropriation bill was under consideration in Committee of the Whole House on the state of the Union. To the paragraph providing for the pay of watchmen at \$720 per annum each Mr. Louis E. Atkinson, of Pennsylvania, offered an amendment making the pay of watchmen \$840 per annum.

Mr. Daniel Kerr, of Iowa, having made a point of order, the Chairman¹ sustained it, on the ground that the Revised Statutes fixed the salary at \$720.

3680. The law having established an office and fixed the salary it is not in order on an appropriation bill to provide for an unauthorized office and salary in lieu of it.—On February 17, 1896,⁴ the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union. The paragraph relating to the salaries in the Bureau of Animal Industry having been reached, Mr. Leonidas F. Livingston, of Georgia, made the point of order that the appropriation of salary for the chief clerk had been omitted, although the statute organizing the Department specified that there should be such clerk and fixed his salary, and that an assistant chief of division not authorized by law, was appropriated for.

The Chairman⁵ ruled that the point of order was well taken.

3681. The appropriation of a less sum than the amount fixed by law for a salary is not a change of law, even though a legislative provision in another portion of the bill may give it the practical effect of a reduction of the salary.—On February 21, 1896,⁶ the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union. On a previous day, in the first section of the bill, a clause had been agreed to which provided that the amounts provided in the bill for salaries should be “in full compensation for the service.”

This paragraph having been reached:

For pay of five Indian inspectors, at \$3,000 per annum each, \$16,000.

¹ Lewis E. Payson, of Illinois, Chairman.

² First session Fifty-first Congress, Record, p. 3444.

³ First session Fifty-first Congress, Record, p. 3902.

⁴ First session Fifty-fourth Congress, Record, pp. 1808, 1809.

⁵ John A. T. Hull, of Iowa, Chairman.

⁶ First session Fifty-fourth Congress, Record, pp. 2009–2019.

Mr. Galusha A. Grow, of Pennsylvania, moved to strike out the words "three thousand" and insert "two thousand."

Mr. Charles F. Crisp, of Georgia, made the point of order that, while it was competent for the House to appropriate a less amount than the salary fixed by law, it was not competent for the House on an appropriation bill to say that such sum should be accepted in full compensation for services, as that would be a change of law.

After debate the Chairman¹ held:

The law fixing these salaries seems to be that embraced in the Revised Statutes, and it fixes them at \$3,000 a year. Now, if this bill should pass with the amendment adopted yesterday, inserting the words "in full compensation for services for the fiscal year," and also with the amendment reducing the salary to \$2,000, and if these inspectors should go on and serve during the year and accept the \$2,000 there would result practically a reduction of the salary from \$3,000 to \$2,000.

But that is not the whole question presented here. This point of order arises on an amendment proposing to reduce the appropriation for salaries to \$2,000 a year. That proposition standing alone is clearly within the power of the Committee of the Whole under the rule. Without further provision it would not reduce the salary, because under decisions which have been cited here the courts have held that under such an appropriation as that the incumbent of the office may accept the \$2,000 and afterwards maintain his action in the Court of Claims for the balance of the salary. Hence this simple proposition does not change existing law.

But the Chair is referred to the amendment which was adopted by the Committee of the Whole yesterday inserting the words "in full compensation for services for the fiscal year." That amendment would clearly have been subject to a point of order if one had been taken at the time, unless another proposition, which the Chair will state later, would have relieved it from the point of order. It was an effort to provide that the salaries and payments made in this bill should be received in full compensation, accord, and satisfaction of the salaries provided by law. It was a notice to the Committee of the Whole of the propositions embraced in the bill to reduce salaries. Now, I think that under the practice of the Committee of the Whole it has been uniformly held that where an amendment subject to a point of order has been inserted in an appropriation bill, no point of order being made against it, and debate had followed, a proposition to amend that amendment, if germane to the matter in the amendment, would be in order, and a point of order that it was an amendment in the second degree would not lie. The question is whether the amendment now sought to be inserted, taken in connection with the previous amendment, would not fall under the rule applying in that class of cases. But further than that, if the proposition were the one on which a point of order was raised—the proposition of the gentleman from Oklahoma to strike out this provision—it is conceded that the amendment would not be subject to a point of order, because the House may refuse to appropriate a dollar for these inspectors during the fiscal year for which we are now providing.

Now, an appropriation of a less sum for the salary of these officers than that fixed by law would, if this less sum should be refused by these inspectors, still leave them without any reduction of salary, because if they should go on and serve for the year their salaries, in spite of this provision in the bill, would not be reduced, unless they should accept the \$2,000 under the conditions named. If they did not choose thus to accept, they could go into the Court of Claims and collect the \$3,000.

As already stated, Congress has a right to refuse to appropriate one dollar of this salary of \$3,000. The greater must include the less, and therefore Congress has a right to make a limitation upon this appropriation, to fix conditions; and under the rules of the House this is not a change of existing law, and, as just stated, it is not a reduction of the salaries unless these men should decide to accept the \$2,000 appropriated by the bill.

So the Chair holds that the point of order is not well taken. The amendment is in order.²

¹ Sereno E. Payne, of New York, Chairman.

² On June 10, 1886, a provision in the legislative appropriation bill that all sums hereinafter appropriated should "be in full compensation" for the service during the coming fiscal year, was ruled out of order, Chairman James H. Blount, of Georgia, holding that it changed existing law. (First session Forty-ninth Congress, Record, pp. 5524–5534.)

3682. On December 9, 1904,¹ the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. William A. Jones, of Virginia, proposed an amendment to reduce the salary of the disbursing clerk of the Department of Justice from \$2,750 to \$2,250.

Mr. Edgar D. Crumpacker, of Indiana, raised the question of order that this would effect a change of law in view of this paragraph in a preceding portion of the bill.

The appropriation to be in full compensation for the services of the fiscal year ending June 30, 1906, for the objects hereinafter expressed, namely.

Mr. Crumpacker further stated that the law fixed the salary at \$2,750, the amount carried in the bill.

After debate the Chairman² held:

The Chair has a great deal of sympathy with the gentleman from Indiana. The same point of order that has been raised by the gentleman from Indiana was raised by the present occupant of the chair in the Fifty-first Congress, and was overruled. If the gentleman from Indiana had made his point of order against the clause on the first page of the bill, which says "in full compensation for the service, etc.," the point of order would have been sustained. That was not objected to, and it is now a part of the bill. It has been ruled so many times that it would be an assumption on the part of the Chair to rule otherwise, that Congress has the right to appropriate less than the sum fixed by law; and certainly in the condition in which this bill is now, with the point of order pending, it can work no change of law. The party has his remedy to recover his salary, notwithstanding the bill. The Chair therefore overrules the point of order.

Thereupon Mr. Crumpacker proposed to make a point of order against the paragraph in the first part of the bill making the amounts appropriated full compensation.

Mr. Henry H. Bingham, of Pennsylvania, raised a question of order on Mr. Crumpacker's proposition.

The Chairman ruled:

The Chair is ready to rule. In the first place, it is too late to make the point of order. In the next place, the very language of the paragraph on page 1 was notice to Members of the House that the salaries, as fixed by law, were to be lowered, because the provision is that the amounts appropriated shall be "in full compensation," notwithstanding that they are not in full compensation. * * * Unless there was an intention to reduce the appropriations in the pages following page 1 below the amount fixed by law, there was no necessity for putting in any such clause, and it was therefore a notice to Members of Congress that such appropriations would be contained in the bill below the amounts fixed by law. The Chair is very clear that the point of order ought to be overruled. The question now is on the amendment.

3683. On January 14, 1904,³ the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. William S. Cowherd, of Missouri, proposed an amendment reducing the salary of the Director of the Census from \$6,000 to \$5,000.

Mr. Henry H. Bingham, of Pennsylvania, made the point of order that the law creating the Bureau of Census fixed the salary at \$6,000, and Mr. James A. Hemen-

¹Third session Fifty-eighth Congress, Record, pp. 109–110.

²John Dalzell, of Pennsylvania, Chairman.

³Second session Fifty-eighth Congress, Record, p. 770.

way, of Indiana, reenforced this suggestion by calling attention to the fact that a clause in the pending bill provided that the salaries therein contained should be "in full compensation for services."

After debate the Chairman¹ said:

The Chair finds that this precise point appears to have been ruled in the first session of the Fifty-fourth Congress. The case is reported in section 546 of Parliamentary Precedents, by Mr. Hinds, and the very elaborate ruling was made by the gentleman from New York [Mr. Payne], then occupying the chair. It covers this precise case. The bill contained the same phrase, "in full compensation for services for the fiscal year," and it was fully considered. That ruling was followed twice in the Fifty-seventh Congress (Manual, 349). The decision of this point can hardly be affected by the repealing clause at the end of the bill. It has not yet been reached, and may or may not remain in the bill. The Chair therefore feels constrained to overrule the point of order.

3684. On December 16, 1902,² the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union when the following paragraph was read:

Territory of Hawaii: For governor, \$5,000; secretary, \$3,000; chief justice, \$5,500; and two associate justices, at \$5,000 each; in all, \$23,500.

Mr. Champ Clark, of Missouri, having proposed an amendment reducing these amounts, Mr. Henry H. Bingham, of Pennsylvania, made the point of order that such a reduction would be a change of law. These salaries were fixed by law. A prior paragraph in the pending bill provided:

That the following sum be, and the same are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, in full compensation for the service of the fiscal year ending June 30, 1904, and for the object hereinafter expressed.

Therefore the proposed amendment would effect a practical change of law.

The Chairman³ said:

It has been held that the appropriation of a less sum than the amount fixed by law for the salary of an officer is not a change of law, even though it be accompanied by such a condition as practically effects a reduction of salary. * * * In conformity with former rulings on amendments of this character, the Chair is of opinion that the point of order is not well taken, and it is therefore overruled.

3685. On February 6, 1902,⁴ the Committee of the Whole House on the state of the Union were considering the legislative appropriation bill, when the Clerk read the following paragraph:

Mint at Carson, Nev.: For assayer in charge, who shall also perform the duties of melter, \$1,500; assistant assayer, at \$1,250; in all, \$2,750.

Mr. Francis G. Newlands, of Nevada, raised the question of order that the amounts proposed for the officers were less than the statutory salaries provided for those positions.

After debate the Chairman,⁵ said:

It has been the uniform custom of the House to appropriate less than the amount of the statutory salary. The House, of course, has a right in an appropriation bill to refuse to appropriate at all. There

¹ Marlin E. Olmsted, of Pennsylvania, Chairman.

² Second session Fifty-seventh Congress, Record, p. 379.

³ F. W. Mondell, of Wyoming, Chairman.

⁴ First session Fifty-seventh Congress, Record, pp. 1424–1426.

⁵ Eugene F. Loud, of California, Chairman.

is no doubt but that this committee would have the right, and not be subject to a point of order, to leave this appropriation out entirely. That is a power that is reserved to the appropriation committees in Congress. The Chair thinks that has been the uniform custom, that the House has the right to fix the amount less than the maximum salary. The Chair therefore overrules the point of order.

3686. The provision of the current law of an appropriation does not fix a salary as against a provision of general law. On February 17, 1900,¹ the legislative, etc., appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and this paragraph was read:

For surveyor-general of Nevada, \$1,800.

Mr. Francis G. Newlands, of Nevada, offered an amendment to increase this amount to \$2,000.

Mr. James A. Hemenway, of Indiana, made the point of order that this would involve a change of law, since the salary was carried at \$1,800 in the last appropriation bill.

After debate the Chairman² held:

The Chair has before him section 2210 of the Revised Statutes, which provides that “the surveyors-general of Colorado, New Mexico, California, Idaho, Nevada, Montana, Utah, Wyoming, and Arizona shall each receive a salary at the rate of \$3,000 a year.” That being so, the fact that in subsequent appropriation bills less than that sum was appropriated does not change the statute, and so far as it relates to Nevada the point of order is overruled.

3687. In the absence of a general law fixing a salary the amount appropriated in the last appropriation bill has been held to be the legal salary, although in violation of the general rule that the appropriation bill makes law only for the year.—On May 29, 1888,³ the legislative, etc., appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read the paragraph relating to the salaries of employees in the office of the superintendent of the State, War, and Navy Department.

Mr. Herman Lehlbach, of New Jersey, offered an amendment increasing the salaries named in the paragraph.

Mr. Samuel J. Randall, of Pennsylvania, made a point of order against the amendment.

After debate the Chairman⁴ said:

It will be remembered that in the Forty-fourth Congress a rule was adopted providing that no legislation should be in order on an appropriation bill except such as reduced expenditures. That provision obtained through the Forty-fourth and Forty-fifth Congresses. In the Forty-sixth Congress the House changed the rule so as to abrogate the provision allowing legislation on appropriation bills where it retrenched expenditures generally and limited it to specific objects;⁵ as, for instance where it reduced the amount of a salary or the amount to be appropriated by the bill. Many times during the Forty-fourth, Forty-fifth, and Forty-sixth Congresses, in cases where there was no general law regulating the salary of an office the question was raised whether the amount ascertained in the appropriation law was

¹ First session Fifty-sixth Congress, Record, p. 1902.

² James S. Sherman, of New York, Chairman.

³ First session Fiftieth Congress, Record, pp. 4717–4719.

⁴ James H. Blount, of Georgia, Chairman.

⁵ For changes in this rule see section 3578 of this volume.

contemplated as the legal salary, and throughout those years it was so held by the Chair, and that ruling was never appealed from, Congress after Congress acquiescing in that decision.

There is not an employee of the Senate or of the House carried in this bill whose employment rests on any other basis than an appropriation bill. There are very few of the officers in the employment of the Government whose employment rests on any other basis than an appropriation bill, and yet in the House of Representatives it has been held almost universally in Committee of the Whole that it was not competent for the Committee on Appropriations to change the salaries and amounts ascertained in the appropriation bills. Gentlemen seeking the purpose of the House in the adoption of the rule will find from its history that the object was to provide that a salary being once fixed, the amount so fixed should be the salary attached to that office, and should not be varied with the varying opinions of any committee. The Chair in making its ruling has but conformed to nearly all of the rulings that have been made upon this point.

An appeal having been taken, the decision of the Chair was sustained, ayes 85, noes 44.

3688. On March 30, 1898,¹ the House was in Committee of the Whole House on the state of the Union considering the naval appropriation bill. In the paragraph providing for the pay of professors and others at the Naval Academy, Mr. James A. Norton, of Ohio, proposed an amendment to fix the compensation for the assistant librarian at \$1,800, instead of \$1,400, as provided in the paragraph as read.

Mr. Joseph G. Cannon, of Illinois, made a point of order against the amendment, on the ground that if there was no statute providing for the salary of this officer, then the salary appropriated for from year to year in the appropriation bills was to be regarded as the legal salary.

The Chairman² sustained the point of order.

3689. On February 7, 1900,³ the consular and diplomatic appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Consul-general at Monterey, at \$2,500.

Mr. Jonathan P. Dolliver, of Iowa, moved to strike out \$2,500 and insert \$4,000.

Mr. Robert R. Hitt, of Illinois, made a point of order against the amendment, saying that the general law did not fix any salary for the place, but that the preceding consular and diplomatic appropriation bill, that approved February 9, 1899, had appropriated \$2,500 for the salary.

The Chairman² said:

The Chair thinks the gentleman from Illinois is in error in his statement that it has been held that where a prior statute has fixed the salary and an appropriation bill changes that law the item in the appropriation bill governs; but where there has been no statute fixing a salary it has been held that the appropriation bill is the law which establishes that salary. * * * Upon the statement of the gentleman from Illinois the amendment is not in order, and the Chair will sustain the point of order.

3690. On February 16, 1900,⁴ the legislative, etc., appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when a paragraph was read providing in the office of the Director of the Mint "one assistant in laboratory, \$1,000."

¹ Second session Fifty-fifth Congress, Record, p. 3397.

² James S. Sherman, of New York, Chairman.

³ First session Fifty-sixth Congress, Record, p. 1628.

⁴ First session Fifty-sixth Congress, Record, p. 1890.

To this Mr. John H. Stephens, of Texas, offered an amendment to strike out "1,000" and insert "\$1,500."

It was shown by the debate that there was no general law authorizing the salary. The last appropriation bill had carried it at \$1,000, and the Secretary of the Treasury had recommended that it be raised to \$1,500.

The Chairman ¹ held:

The recommendation of the Secretary would not make any difference as far as the point of order was concerned. The Chair understands that it was carried in the last appropriation bill at \$1,000; and there being no other statute on this subject, the Chair must sustain the point of order.

3691. On February 6, 1902,² the Committee of the Whole House on the state of the Union were considering the legislative appropriation bill, when an amendment was offered by Mr. Elmer J. Burkett, of Nebraska, the effect of which was to increase the salaries of the telephone pages of the House.

Mr. James A. Hemenway, of Indiana, made the point of order that the increase over the amount in the preceding appropriation law was a change of law.

After debate, and the citation of rulings to show that in the matter of salaries the law of the preceding appropriation act had, contrary to the usual practice, been construed as the law fixing the salary, the Chairman ³ held:

The Chair can not refrain from saying that if this question were presented for the first time he would have no hesitation in ruling the amendment to be in order; but to carry out in that way the conviction of the Chair might overturn the whole appropriation bill, or so large a portion of it as to render it inoperative. The Chair therefore takes the opportunity to shield himself behind the decisions which have been heretofore made, and sustains the point of order.

3692. January 14, 1903,⁴ the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. John R. Thayer, of Massachusetts, proposed an amendment increasing the salary of a certain skilled laborer in the Bureau of Census.

Mr. Henry H. Bingham, of Pennsylvania, raised the question of order that, although no statute fixed the salary, the last appropriation law had placed the salary at the amount carried in the present bill, and that therefore the amendment involved a change of law.

The Chairman ⁵ said:

The Chair understands the gentleman from Pennsylvania to say, and it is assumed, to be the fact that in the current appropriation law this position is provided for at a salary of \$840 per annum. Now, the gentleman from Massachusetts [Mr. Thayer] proposes to increase that amount to \$1,000. The point of order made by the gentleman from Pennsylvania appears to have been frequently ruled upon, and the Chair will call attention to the statement on page 349 of the Manual that—

"In the absence of a general law fixing a salary, the amount appropriated in the last appropriation bill has sometimes been held to be the legal salary, although in violation of the general rule that the appropriation bill makes the law only for the year."

¹ James S. Sherman, of New York, Chairman.

² First session Fifty-seventh Congress, Record, pp. 1420-1422.

³ Eugene F. Loud, of California, Chairman.

⁴ Second session Fifty-eighth Congress, Record, pp. 771, 772.

⁵ Marlin E. Olmsted, of Pennsylvania, Chairman.

That proposition has been frequently sustained. It was declared by Mr. Blount, Chairman of the Committee of the Whole, in the Fiftieth Congress, and upon an appeal from the ruling of the Chair was sustained (Record, pp. 4717–4719). It was followed twice in the Fifty-seventh Congress, once in the first session (Record, pp. 1420–1422) and again in the second session, Mr. Grosvenor in the chair (Record, p. 1010). If it were a new question, the present occupant of the chair might be inclined to hold otherwise, but in view of the repeated rulings feels constrained to sustain the point of order.

3693. On January 20, 1903,¹ the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when a paragraph was read as follows:

For major and superintendent, \$4,000; captain and assistant superintendent, \$1,800; 4 captains, at \$1,500 each; chief clerk, who shall also be property clerk, \$2,000; clerk, \$1,500.

Mr. John J. Fitzgerald, of New York, made the point of order that the appropriation heretofore fixed had been \$3,000. It also appeared that this sum had been fixed by the District Commissioners in accordance with a law empowering them to fix the police salaries.

The Chairman² ruled:

The practice of the chairmen of the Committee of the Whole House on the state of the Union has been against, I may say, the opinion quite often expressed by the present occupant of the chair, that when an appropriation bill of the preceding year fixed a salary that that was the salary provided by law and that an addition to that salary was a change of existing law.

It seems to the Chair that the citation by the gentleman from New York is pertinent. This was in 1898. The preceding appropriation bill had provided a salary of \$1,400 for the assistant professor at the Naval Academy, and the gentleman from Ohio [Mr. Norton] moved to increase that to \$1,800, and the chairman of the Committee on Appropriations [Mr. Cannon] made the point of order that if there was no statute providing for the salary of this office, then the salary appropriated for from year to year in appropriation bills was to be regarded as the legal salary, and the Chair sustained the point of order. Following the precedent, the Chair will sustain the point of order.

3694. On January 24, 1905,⁵ the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. W. Bourke Cockran, of New York, proposed this amendment:

On page 34, line 8, strike out the words “twenty-five hundred” and insert the words “three thousand;” so that the paragraph will read “for director of high schools, \$3,000.”

Mr. James T. McCleary, of Minnesota, made a point of order against the amendment.

After debate, the Chairman⁴ ruled:

The gentleman from New York [Mr. Cockran] offers an amendment changing the salary for the director of high schools. The gentleman from Minnesota [Mr. McCleary] raises a point of order. The amendment offered by the gentleman from New York would increase the salary. The only way in which the salary is now fixed, as the Chair understands, is by the current appropriation law. Logically it would be the opinion of the present occupant of the chair that the committee, if it have authority to appropriate for the salary at all, would have the authority to raise the salary for the ensuing year without regard to the current appropriation law, provided, of course, that no general law would prevent. But the precedents in the House and in the committee have been such as to construe the rule to the effect that the existing appropriation law fixing the salary of the official appropriated for is the law under

¹ Second session Fifty-seventh Congress, Record, pp. 1009, 1010.

² Charles H. Grosvenor, of Ohio, Chairman.

³ Third session Fifty-eighth Congress, Record, pp. 1306–1313.

⁴ James R. Mann, of Illinois, Chairman.

which the committee operates, and that to increase that salary would be to change existing law. That may not be a logical position, however—

* * * The Chair will say that as an open question the Chair would consider the amendment proposed is in order. Still, in view of the decisions which have been made and sustained in the Committee of the Whole and in the House, the Chair is constrained to rule that the amendment is subject to a point of order. The Chair sustains the point of order.

Mr. Cockran appealed from the decision of the Chair.

After debate, the Chairman submitted the appeal to the committee, saying:

The Chair will say to the committee that whatever impression the present occupant of the chair might have of the question as an original proposition, he has felt constrained to follow the plain direction of the precedents. It is not a new question, having been ruled on several times. The Chair will refer to only one decision, although there are many to the same effect. On January 14, 1903, the Chairman of the Committee of the Whole House, Mr. Olmsted, made this ruling:

“The Chair understands the gentleman from Pennsylvania to say, and it is assumed to be the fact, that in the current appropriation law this position is provided for at a salary of \$840 per annum. Now, the gentleman from Massachusetts [Mr. Thayer] proposes to increase that amount to \$1,000. The point of order made by the gentleman from Pennsylvania appears to have been frequently ruled upon, and the Chair will call attention to the statement on page 349 of the Manual, that in the absence of the general law fixing a salary the amount appropriated in the last appropriation bill has sometimes been held to be the legal salary, although in violation of the general rule that the appropriation bill makes the law only for the year.”

Then the Chair went on:

“That proposition has been frequently sustained. It was declared by Mr. Blount, Chairman of the Committee of the Whole in the Fiftieth Congress, and, upon appeal from the ruling of the Chair, was sustained. It was followed twice in the Fifty-seventh Congress, once in the first session and again in the second session, Mr. Grosvenor in the chair. If it were a new question the present occupant of the chair might be inclined to hold otherwise, but in view of the repeated rulings feels constrained to sustain the point of order.”

The present occupant of the chair can do no more than cite a precedent of this kind.

The question being submitted, “Shall the decision of the Chair stand as the judgment of the committee?” there appeared, on a vote by tellers, ayes 97, noes 82.

So the decision of the Chair was sustained.

Thereupon Mr. David J. Foster, of Vermont, offered an amendment to strike out all the portion of the bill specifying the salaries of teachers of various classes and inserting the words “For teachers, \$1,099,000,” it being the object of the amendment to appropriate a larger amount than the aggregate of the various salaries specified in the bill.

Mr. McCleary made a point of order against the amendment, saying:

The existing law specifies the salaries. The amendment offered by the gentleman from Vermont does not, but in place thereof proposes an aggregate which in itself is larger than the amount under existing law.

The Chairman said:

May the Chair ask the gentleman from Minnesota whether there be any existing law, except the appropriation law, providing specifically for the teachers, as described in the pending bill?

Mr. McCleary replied:

There is no other law than the appropriation bill.

The Chairman ruled:

It seems perfectly plain to the Chair that in the absence of specific legislation providing for a specific number of different classes of teachers it is entirely within the province of the committee

to make a lump-sum appropriation, instead of dividing it up into specific appropriations; and if the committee has authority to make appropriations for the director of the high school specifically, it has authority to appropriate the money without specifying what specific teachers shall have the money. The Chair therefore overrules the point of order.

On February 20,¹ during consideration of the naval appropriation bill, the following paragraph was read:

Pay of professors and others, Naval Academy: One professor as head of the department of physics, \$3,000.

Mr. John Lind, of Minnesota, proposed to amend by increasing the salary to \$4,000.

Mr. George E. Foss, of Illinois, made a point of order.

After debate, the Chairman² held:

If the gentleman's proposition is to increase a salary relating to a salary fixed by general law it is subject to the point of order. On the other hand, it is equally subject to the point of order if the amount of salary named in the bill is identical with that named in the last appropriation bill. * * * The Chair will call the gentleman's attention to a statement in the Digest:

"In the absence of a general law fixing a salary, the amount appropriated in the last appropriation bill has sometimes been held to be the legal salary, although in violation of the general rule that the appropriation bill makes law only for the year."

That proposition has been frequently sustained. It was so declared by Mr. Blount, Chairman of the Committee of the Whole, in the Fiftieth Congress, and upon an appeal from the ruling the Chair was sustained. It was followed in the Fifty-seventh Congress, once in the first session and the beginning of the second session, Mr. Grosvenor in the chair. It was held again at the last session of this Congress, where the point of order was made upon the legislative bill, Mr. Boutell, of Illinois, in the chair, and it has also been held at this session on the point of order made to increase the teachers' salaries, Mr. Mann, of Illinois, in the chair. The Chair therefore is compelled to follow precedents and sustain the point of order.

3695. On March 30, 1906,³ the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, under the terms of a special order which prevented the raising of points of order on any portion of the bill as reported, and the Clerk read:

Bureau of Manufactures: Chief of Bureau of Manufactures, \$4,000; assistant chief of Bureau, \$2,500; chief of division, \$2,100; two clerks of class 4; clerk of class 2; four clerks of class 1; two clerks, at \$1,000 each; clerk, at \$900; three assistant messengers; two laborers; in all, \$24,780.

Mr. John Dalzell, of Pennsylvania, moved to increase the salary of the assistant chief of the Bureau of Manufactures to \$3,000.

Mr. James R. Mann, of Illinois, made a point of order against the proposed amendment.

Mr. Lucius N. Littauer, of New York, said of this office:

It was created in the urgent deficiency bill of this year, wherein there was a paragraph reading as follows:

"Bureau of Manufactures: For assistant chief of Bureau, to be selected and appointed by the Secretary of the Department of Commerce and Labor, at the rate of \$2,500 per annum during the balance of the fiscal year 1906, \$1,142, or so much thereof as may be necessary."

That is the first recognition in legislation of this office. The organization of the Bureau simply calls for the Chief of Bureau, together with a general provision for clerical assistance.

¹ Record, pp. 2922, 2923.

² John Dalzell, of Pennsylvania, Chairman.

³ First session Fifty-ninth Congress, Record, pp. 4497-4499.

At the conclusion of the debate, the Chairman ¹ held:

It appears that section 5 of the act of Congress approved February 14, 1903, creating this Department, provides that there shall be in it a chief of said Bureau who shall be appointed by the President and who shall receive a salary of \$4,000 per annum, and that there shall also be in said Bureau such clerical assistants as may from time to time be provided by Congress. The Chair, without stopping to look up the urgent deficiency bill passed at this session, is advised and understands it to be conceded that it does provide for this officer—names him and appropriates \$2,500 as his compensation for the current year. The amendment offered by the gentlemen from Pennsylvania [Mr. Dalzell] proposes to appropriate \$3,000 for the year covered by the pending bill, and a point of order is made that the amendment changes existing law in violation of clause 2 of Rule XXI. It has been ruled repeatedly that where a paragraph which itself changes existing law is permitted to remain in a bill any germane amendment perfecting that paragraph is in order. If this were a new office, a new fixing of the salary without authority of law, or a change of law, the paragraph as it now stands would be in violation of that rule; but, as under the special rule adopted by the House yesterday it is permitted to remain in the bill, it would, in the opinion of the Chair, be subject to any germane amendment. But if this paragraph would not in any event have been subject to the point of order, if the salary is already fixed by law at \$2,500, so that the paragraph in its present form does not offend against Rule XXI, then the amendment would not be in order, because it would be a change of existing law. The question therefore arises, Does the urgent deficiency bill recently passed and which is for the current year ending June 30, 1906, constitute existing law so as to fix the salary for subsequent years? Does it permanently establish the salary of this officer at \$2,500? If so, this amendment is out of order. Now, it has been held repeatedly—so often that it is unnecessary for the Chair to refer to the decisions—that an appropriation bill for the current year does not afford an authority of law for a subsequent appropriation for a different period of time. Such an item in a general appropriation bill has over and over again been held to be law only for the year for which it appropriates. There has, however, been one exception made, as will appear by reference to the Manual, at page 355:

“In the absence of a general law fixing a salary, the amount appropriated in the last appropriation bill has been held to be the legal salary, although in violation of the general rule that the appropriation bill makes law only for the year.”

The Chair desires the committee distinctly to bear in mind that it has been ruled over and over and over again that an appropriation for the current year is not existing law so as to authorize an appropriation for the same object for another year. The only exception to it is found in this ruling, which was first made in the Fiftieth Congress, and has been on five or six occasions followed, with great reluctance, by those who have occupied the chair. The present occupant of the Chair, if the question were a new one, would be very much inclined to hold that the position taken in the ruling just cited was not the correct one. If an appropriation for the current year for an office not previously created by law does not constitute law beyond the year as to the office, it is difficult to understand upon what principle an appropriation for the current year of a compensation not previously fixed by law can be held to constitute permanent law as to the salary. If it expires with the appropriation year as to an office, why not as a salary? The Chair, however, does not feel at liberty to override a ruling which has been followed several times, but proposes to submit to the committee the question

At this point Mr. Mann withdrew the point of order.

3696. On May 26, 1906,² the consular and diplomatic appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Salaries of ambassadors and ministers: Ambassadors extraordinary and plenipotentiary to Austria-Hungary, Brazil, France, Germany, Great Britain, Italy, Japan, Mexico, and Russia, at \$17,500 each, \$157,500.

²First session Fifty-ninth Congress, Record, pp. 7505–7507.

Mr. John S. Williams, of Mississippi, raised the question of order that the salary of the ambassador for Brazil was in the last bill \$12,000 and that the salary here proposed was out of order.

The Chairman¹ sustained the point of order.

Soon thereafter Mr. Williams made a similar point of order against the salaries of the ministers to Belgium and the Netherlands.

The Chairman sustained the point of order, reading from the Manual:

In the absence of a general law fixing a salary the amount appropriated in the last appropriation bill has been held to be the legal salary, although in violation of the general rule that the appropriation bill makes law only for the year.

3697. The mere appropriation for a salary does not thereby create an office so as to justify appropriations in succeeding years.—On March 20, 1906,² the legislative, executive, and judicial appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Robert Adams, Jr., moved to insert among the employees of the office of the Clerk the following:

Insert on page 13, line 3, after the word “messenger,” the following: “Three cabinetmakers who shall be skilled in their trade, one at \$1,200 and two at \$900 each.”

Mr. Lucius N. Littauer, of New York, made a point of order against the amendment, that the positions had not been authorized.

The Chairman³ said:

The Chair will state that the gentleman from New York has made the point of order, and will be glad to hear from the gentleman from Pennsylvania whether there is any resolution of the House or other authority for the appointment of the employees named in the resolution.

Mr. Adams stated that the appropriation act passed in the preceding year had provided for these places, but it appeared that this was the only authorization.

The Chairman said:

It has been repeatedly held that the mere fact that a similar office was appropriated for in a previous appropriation bill is not to be considered as existing law so as to authorize another appropriation for another year. It is not a law authorizing an appropriation for a subsequent year. Unless there is some resolution or some authority outside of the mere appropriation for the pay in a former bill the Chair will be compelled to sustain the point of order. * * * The Chair will be compelled to so rule unless some authority of law shall be shown for the creation of the office and the appropriation of the money.

3698. On March 20, 1906,⁴ the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Thomas W. Hardwick, of Georgia, made a point of order against an item providing for “two laborers, at \$820 each.”

Mr. Lucius N. Littauer, of New York, made an argument as follows:

The laborers covered by this provision were carried in the appropriation bill for the current year—one of them at \$720 and the other at \$820. If the point of order will lie against this increase of salary to this one laborer, who, by the way, is a coal weigher, performing more intelligent work than laborers

¹ Charles Curtis, of Kansas, Chairman.

² First session Fifty-ninth Congress, Record, p. 4037.

³ Marlin E. Olmsted, of Pennsylvania, Chairman.

⁴ First session Fifty-ninth Congress, Record, pp. 4044–4046.

usually perform, and whom we believe should be compensated at a fair salary for his work, it would do so equally against practically every provision in connection with the service of the House. No reform can ever be made; we could have neither reduction nor advance in salary, and it seems to me that the position is wrong from the very foundation. The House has a right to choose its own officers, and that must include everyone in connection with the service about the House. Having a right to choose its own officers, it has a right to place their compensation at any rate the House may choose, and I do not believe this constitutional right can be limited by a previous Congress or by any rule that may be made in connection therewith. It seems to me to be a fundamental right pertaining to the House and all its officers. I therefore have concluded that the rule made applicable to current appropriation law, and which naturally applies throughout the Departments, can not properly apply to the official force connected with the House.

After extended debate the Chairman¹ elicited the following state of facts: That there was authority for the appointment of one laborer at \$820, but not two laborers at that figure.

The Chairman then ruled:

The facts being agreed upon, the Chair has a foundation upon which to rule. The question presented is one not heretofore directly passed upon and one of some importance. It is provided in the Constitution of the United States that "the House of Representatives shall choose their Speaker and other officers." The Chair thinks that under that constitutional provision it is not requisite that the consent of the Senate or of the Executive shall be obtained in order to provide, fix, or determine the officers of the House. The House itself is authorized to do that. The Constitution further provides that "each House may determine the rules of its proceedings." This House has determined its rules. In the twenty-first rule as now existing there appears this provision:

"RULE XXI, SEC. 2. No appropriation shall be reported in any general appropriation bill or be in order as an amendment thereto for any expenditure not previously authorized by law, etc."

In the ruling made a few moments ago the Chair went further, perhaps, than any previous ruling has gone in sustaining the proposition urged by the gentleman from Indiana, and held that a resolution of the House, even of a prior House, creating an office in the House was sufficient authority for the purpose of this rule to authorize an appropriation in the present Congress for the salaries of employees of the House there designated and provided for. But in the absence of any resolution or other authority whatever by the House for the creation of the office or the fixing of a salary, the Chair thinks the House is bound by its own rule in that regard, and that the provision for the second laborer at \$820, without previous resolution or authority of any kind, does transcend that rule. The House is empowered under the Constitution to choose its own officers. But it must have chosen them or provided for the office in some way before there be said to exist the previous authority required by Rule XXI as the basis of an appropriation. The Chair therefore sustains the point of order.

3699. A motion to strike from an appropriation bill a provision for a salary authorized and fixed by law is not subject to the objection that it proposes legislation.—On February 2, 1897,² the consular and diplomatic appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and a class of consuls was reached whose salaries were rated at \$1,000 each per annum.

Mr. Richmond Pearson, of North Carolina, moved to strike out all the salaries provided for in the class.

Mr. James B. McCreary, of Kentucky, made the point of order that these salaries were fixed by law, and that a refusal to appropriate for them would therefore be a change of law.

¹ Marlin E. Olmsted, of Pennsylvania, Chairman.

² Second session Fifty-fifth Congress, Record, p. 1443.

The Chairman¹ ruled:

The Chair will state to the gentleman from Kentucky that he does not think this proposition changes existing law. It is not a change of existing law simply to refuse to make an appropriation. It does not abolish the office, but only fails to provide a salary for it. It does not abolish the salary, although it makes no provision for the payment of it. The Chair thinks therefore that the point of order is not well taken and overrules it.

3700. The statute requiring specific authorization and appropriation for clerks and other employees in the Executive Departments.—On January 29, 1907,² the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when in a paragraph relating to the forest reserves the following appeared:

to employ fiscal and other agents, clerks, assistants, and other labor required in practical forestry, in the administration of national forests, and in conducting experiments and investigations in the city of Washington.

Mr. James A. Tawney, of Minnesota, made the point of order that the appropriation herein described was in violation of the act of 1882,³ which provided:

No civil officer, clerk, draftsman, copyist, messenger, assistant messenger, mechanic, watchman, laborer, or other employee authorized after October, 1892, to be employed in any of the Executive Departments or subordinate bureaus or offices thereof at the seat of Government, except only at such rates and in such numbers, respectively, as may be specifically appropriated for by Congress; and for such clerical and other personal services for each fiscal year no civil officer, clerk, draftsman, copyist, messenger, assistant messenger, watchman, mechanic, laborer, or other employee shall hereafter be employed at the seat of Government in an Executive Department or subordinate bureaus or offices thereof, or to be paid from any appropriation made for contingent expenses or for any specific or general purpose, unless such employment is authorized and payment therefor specifically provided in the law making the appropriation.

The Chairman⁴ sustained the point of order.

¹ Sereno E. Payne, of New York, Chairman.

² Second session Fifty-ninth Congress, Record, p. 1901.

³ 22 Stat. L., p. 255.

⁴ David J. Foster, of Vermont, Chairman.