Next the report takes up certain citations of laws, fourteen in all, which had originated in the Senate, and which the Senate conferees had claimed were precedents, saying:

They seem to be, generally, bills intended to carry out, in good faith, treaty stipulations and commercial regulations arising under treaties with foreign countries. It is true that two of the acts cited reduced existing rates of duty, which reduction was acquiesced in by the House without raising the question of power. But it seems to your committee that one or two instances of waiver can not be considered as a surrender, on the part of the House, of a great constitutional privilege.

The committee also cite the loan bill in the Twenty-seventh Congress, saying:

The House does not deny the power of the Senate to amend any particular bill relating to revenue whether a loan bill, a tax bill, or an appropriation bill, which is all that was decided in this case.

After citing the action of the House of Commons in 1860 in asserting its paramount authority, both for the imposition and repeal of taxes, the report says:

It is assumed that, because the bill under consideration is for the purpose of absolutely repealing a tax, the Senate has jurisdiction. But it seems to your committee clear that if the Senate can repeal one tax they can repeal another, and thus originate measures affecting the entire system of taxation. If, instead of repealing the income tax, the Senate had originated and passed a measure repealing all laws imposing duties on imports, it would at once become necessary for the House to originate another measure imposing taxes to make up for the deficiency created by this great loss of revenue. It seems to us plain that this would be an interference with the present system of taxation, and virtually the surrender of the power to originate tax measures according to the will of the House. * * *

It seems clear to your committee, therefore, that the only way to preserve, in its fullness, the power to originate bills for raising revenue is to insist upon the right of the House to originate all bills relating directly to the revenue, whether imposing or remitting taxes; that the House should, in the first instance, be the judge of the manner, the measure, and the time of such impositions or remissions.

On March 3, 1871, the resolution recommended by the committee was agreed to by the House, without division, but after debate.[1]

The Senate conferees made to the Senate a report in which they adduced arguments in support of their position that the bill was properly passed by the Senate.[2]

1489. In 1872 the House and Senate, after discussion, disagreed as to limitations of Senate amendments to a revenue bill of the House.—On April 11, 1871,[3] Mr. John Sherman, of Ohio, had reported in the Senate with the unanimous indorsement of the Committee on Finance, the following, which was agreed to without division, on April 12:

Resolved, That the Committee on Finance is hereby instructed, during the recess of Congress, to carefully examine the existing system of taxation by the United States, with a view to propose such amendments to the bills of the House of Representatives repealing certain taxes now pending in the Senate as will simplify, revise, and reduce both the internal taxes and the duties on imported goods now in force, and in such manner that the aggregate of such taxes shall not exceed the sums required to execute the laws relating to the public debt and the current expenditures of the Government, administered with the strictest economy, and so that such taxes may also be distributed so as to impose the least possible burden upon the people.

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[1] Third session Forty-first Congress, Journal, p. 497; Globe, pp. 1928–1930. See also Globe Appendix, pp. 264–268, for speech of James A. Garfield.

[2] Senate Report No. 376.

[3] First session Fifty-second Congress, Globe, pp. 565, 598.

There was little discussion, and apparently none on the question of the privileges of the two Houses.

On April 19, 1871,[1] on motion of Mr. George F. Hoar, of Massachusetts, the House agreed to the following:

Resolved, That the Committee on Rules be directed to consider and report to the House at its next session how far the existing practice of amending, in the Senate, bills for raising revenue, by the addition of enactments not germane to the original bill, is in conformity with the Constitution, and whether any further rules or proceedings are needed to preserve the privileges of the House in the matter.

It does not appear that the committee reported.

On April 2, 1872,[2] Mr. Henry L. Dawes, of Massachusetts, from the Committee on Ways and Means, reported the following resolution:

Resolved, That the substitution by the Senate, under the form of an amendment, for the bill of the House (H. R. 1537) entitled "An act to repeal existing duties on tea and coffee," of a bill entitled "An act to reduce existing taxes," containing a general revision, reduction, and repeal of laws imposing import duties and internal taxes, is in conflict with the true intent and purpose of that clause of the Constitution which requires that "all bills for raising revenue shall originate in the House of Representatives;" and that therefore said substitute for House bill No. 1537 do lie upon the table.

And be it further resolved, That the Clerk of the House be, and is hereby, directed to notify the Senate of the passage of the foregoing resolution.

The resolution was debated at length, with reference to the principle of government involved in the compromise which resulted in the adoption of the provision of the Constitution,, and with reference to past precedents and to the proper construction of the terms of the constitutional provision. Mr. James Brooks, of New York, contributed as unwritten history the fact of which he was personally cognizant, that Mr. Clay, when he introduced the revenue reduction bill in the Senate in 1832, did not intend or expect it to pass, but did so solely for the purpose of causing a debate which should so instruct and influence the House of Representatives that they would take action. This was what happened, and as soon as the House, on the motion of his personal friend, Mr. Letcher, had passed the bill, Mr. Clay abandoned his Senate bill. In discussing the construction of the language of the Constitution, Mr. James A. Garfield, of Ohio, said:

What then, is the reasonable limit to this right of amendment? It is clear to my mind that the Senate's power to amend is limited to the subject-matter of the bill. That limit is natural, is definite, and can be clearly shown. If there had been no precedent in the case, I should say that a House bill relating solely to revenue on salt could not be amended by adding to it clauses raising revenue on textile fabrics, but that all the amendments of the Senate should relate to the duty on salt. To admit that the Senate can take a House bill consisting of two lines, relating specifically and solely to a single article, and can graft upon them in the name of an amendment a whole system of tariff and internal taxation, is to say that they may exploit all the meaning out of the clause of the Constitution which we are now, considering, and may rob the House of the last vestige of its rights under that clause. * * * Now I will not say, for I believe it can not be held, the mere length of an amendment shall be any proof of invasion of privileges of the House. True we sent to the Senate a bill of three or four lines, and they have sent back a bill of twenty printed pages. I do not deny their right to send back a bill of a thousand

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[1] First session Forty-second Congress, Journal, p. 194; Globe, p. 802.

[2] Second session Forty-second Congress, Journal, p. 620; Globe, pp. 2105, 2248, 2318, 2716.

pages as an amendment to our two lines. But I do insist that their thousand pages must be on the subject-matter of our bill.[1]

The resolution reported by Mr. Dawes was agreed to by a vote of yeas 153, nays 9.

On April 8 the resolution of the House came up in the Senate, and was referred to the Committee on Finance. On April 10 that committee reported it back, Mr. John Sherman, of Ohio, saying that it was the first time in the history of the country that the power of the Senate to propose amendments to revenue bills had been questioned. The Committee on Finance desired that the matter be referred for further examination to the Committee on Privileges and Elections. This action was taken, and on April 24 that committee made an elaborate report.

This report,[2] which was submitted on behalf of the committee by Mr. Matt. H. Carpenter, of Wisconsin, began with a review of the circumstances attending the controversy, and proceeded:

Assuming that a bill to abolish a certain duty or tax is a bill for raising revenue within the meaning of the Constitution, as the House of Representatives determined in regard to the bill abolishing the tax upon incomes, the power of the Senate in regard to it is regulated by the provision of the Constitution.

The Senate may propose or concur with amendments as on other bills, and the right of the Senate to put upon it the amendments with which it was returned to the House is, in the opinion of your committee, clearly conferred by this provision.

Without the provision of the Constitution under consideration, it will be conceded that such a bill might have originated in either House of Congress, and originating, as in this case, in the House of Representatives, the Senate might amend it in any particular and to any extent. But this provision of the Constitution is a limitation upon the power of the Senate which must be obeyed by the Senate to its full extent, but should not be extended beyond the fair scope and plain import of the phraseology employed. What, then, is the restriction laid upon the Senate? Simply and only this: The Senate shall not "originate" a bill for raising revenue, that being the exclusive prerogative of the House of Representatives. But, excepting only the origination of the bill, the Senate possesses the same power in regard to bills for raising revenue as in regard to any other bills; or, to quote the language of the Constitution, it may amend a bill for raising revenue as it may amend "any other bill."

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[1] In the preceding Congress (third session Forty-first Congress, Appendix of Globe, p. 265) Mr. Garfield went into this subject very elaborately. In that speech Mr. Garfield reviewed the English usage, the circumstances attending the adoption of the clause in the Constitution of the United States, and the following precedents of Congress: In the House on January 25, 1789 (First Congress, Annals, Vol. I, pp. 592, 593, 597, 603, 605, 607), where Madison, Livermore, Gerry, Lawrence, and Tucker, contended that the sole right of originating money bills belonged to the House; in the Senate in 1833 (Twenty-second Congress, Debates, Vol. IX, Pt. 1, pp. 462, 473, 477, 478, 722), where the tariff bill introduced by Mr. Clay was discussed and tabled, Messrs. Webster, Clay, Dickerson, and Forsyth denied the right of the Senate to originate a revenue bill; in the House in 1837 (Twenty-fifth Congress, Debates, Vol. XlV, Pt. 1, pp. 1152–1153, 522), when a Senate bill authorizing the issue of Treasury notes was, on September 30, discussed in Committee of the Whole and considered an invasion of the prerogatives of the House. As a result of the discussion the Senate bill was laid aside and a House bill on the same subject passed. This latter bill passed the Senate; in the Senate in 1842–43 (Twenty-eighth Congress), when, from January 19 to May 31, 1843, Mr. McDuffie's bill to revive the compromise tariff of 1833 was debated and by a vote of yeas 33, nays 4, was decided to be such a bill as could not originate in the Senate; and in the Senate in 1855 (Thirty-fourth Congress, Globe, January, 1856, pp. 160, 161, 162, 375, 376), where the Senate, in opposition to the influence of Messrs. Seward and Sumner, originated two general appropriation bills which were afterwards tabled by the House.

[2] Second session Forty-second Congress, Senate Report No. 146.

The report goes on to examine this contention in the light of English parliamentary history, which the framers of the Constitution had in mind when they gave to the Senate the power, not allowed to the House of Lords, of amending a money bill. The Constitution, in giving the power to amend, gave it in the fullest sense of the term, so as to include any amendment which might be in order under the rules of the Senate. A bill raising revenue might be amended like any other bill. The report then continues:

In opposition to this conclusion it has been urged that to permit the Senate to ingraft, by way of amendment, a general tariff bill upon a bill of the House laying a duty on peanuts, is entirely to disregard the spirit of the clause of the Constitution before quoted. In reply it may be said, however, that any other construction of this constitutional provision would deny to the Senate the power to amend a House bill laying a duty on peanuts so as to lay a duty upon English walnuts; that is, would deny to the Senate the power of making to the bill anything more than mere formal amendments.

The report then goes on to advance the theory that the framers of the Constitution expected that the Senate would sit in practically continuous session, and that the provision relating to revenue bills was to prevent them taking up that subject while the other House was absent by giving to the other House the origination of such bills.

It is conceded in the report that the Senate can not propose an amendment raising revenue to any bill coming from the House, but only to a bill raising revenue. This brings forward the phrase "raising revenue." The report discusses that phrase as follows:

Suppose the existing law lays a duty of 50 per cent upon iron. A bill repealing such law, and providing that after a certain day the duty upon iron shall be only 40 per cent, is still a bill for raising revenue, because that is the end in contemplation. Less revenue will be raised than under the former law, still it is intended to raise revenue, and such a bill could not constitutionally originate in the Senate, nor could such provisions be ingrafted, by way of amendment, in the Senate upon any House bill which did not provide for raising—that is, collecting—revenue. This bill did not provide that the duty on tea and coffee should be laid at a less rate than formerly, but it provided simply that hereafter no revenue should be raised or collected upon tea or coffee. To say that a bill which provides that no revenue shall be raised is a bill "for raising revenue" is simply a contradiction of terms. * * * To say that a bill which does not provide for raising any revenue must originate in the House because its operation may affect the revenue is not only to say what the Constitution does not say, but is to strip the Senate of jurisdiction it is conceded to possess and which it has exercised at every session of Congress since the Constitution was adopted. A bill creating an office and fixing the salary of the officer affects the Treasury to the extent of such salary, but is not a bill for raising revenue.

After observing that the Constitution intended to restrict the Senate as to bills raising revenue, but not as to bills appropriating money, the report concludes:

Your committee are therefore of opinion that the House bill under consideration was not a bill for raising revenue within the meaning of the Constitution; and therefore, while the Senate might have amended it so as to abolish duties altogether upon other articles, the Senate had no right to ingraft upon it, as it did in substance, an amendment providing that revenue should be collected upon other articles, though at a less rate than previously fixed by law. That amendment would have become a provision in the act for raising revenue, because revenue at a certain rate would have been collected by the operation of the act.

It is due, however, to the Senate to say that its departure from the true principle in this case was owing to a desire to conform to the views of the House of Representatives, as expressed by the House, in relation to the Senate bill abolishing the tax upon incomes, and thus to preserve harmony between the two Houses. But since the House of Representatives, exalting its prerogative, asserts upon one occasion what it denies upon another, it has become necessary to review the question in the light of principle and

seek for a solution of the difficulty in conformity with the Constitution, to which, it is hoped, the House will assent, and to which it is the duty of the Senate to adhere whether the House shall assent or dissent.

The report concludes with no recommendation for action. except that the report be transmitted to the House of Representatives.

1490. In 1874 the House declined to take issue with the Senate over an amendment of that body authorizing certain Government obligations.

It is for the House and not the Speaker to pass on a question relating to the constitutional prerogatives of the House.

On April 14, 1874,[1] the House proceeded to the consideration of the bill of the Senate (S. 617) to fix the amount of United States notes and the circulation of national banks, and for other purposes.

The bill in its first section provided "that the maximum amount of United States notes is hereby fixed at $400,000,000." The second section provided for the issue of forty-six millions in circulation in addition to the circulation already allowed the national banks, etc.

Mr. James A. Garfield, of Ohio, made the point of order that the bill was a charge upon the people, as it provided for issuing a class of obligations, to pay every one of which obligations was by its very terms a charge upon the people. Therefore it was a bill which should not originate in the Senate.

The Speaker[2] said:

> The point, the gentleman from Ohio will observe, is one which the Chair has never ruled upon, because it is not for the Chair to say what the Senate of the United States may or may not properly do. On all points where the House has disagreed from the Senate on matters affecting its privilege and prerogative it has been by vote of the House.

Mr. Garfield thereupon moved that the Clerk be instructed to return the bill to the Senate with the message that the bill did not properly originate in the Senate. And on this question the yeas were 57 and the nays 179. So the House declined to agree to the motion.

1491. In 1883 the House raised, but did not press, a question as to certain Senate amendments relating to the revenue.

A question being raised as to certain revenue amendments of the Senate, it was held in order to refer the constitutional question to the House conferees, in case there should be a conference.

It being alleged that the constitutional prerogatives of the House were invaded by certain Senate amendments to a bill, the question of privilege was raised before the bill came up for consideration.

It is for the House and not the Speaker to decide whether or not the constitutional prerogatives of the House have been invaded.

On February 27, 1883,[3] Mr. Nathaniel J. Hammond, of Georgia, as a question of privilege, submitted this resolution:

> *Resolved,* That the substitute of the Senate to bill (H. R. 5538) entitled "An act to reduce internal-revenue taxation, and for other purposes," under the form of an amendment to the bill of the House

[1] First session Forty-third Congress, Journal, p. 800; Record, pp. 3075, 3076.

[2] James G. Blaine, of Maine, Speaker.

[3] Second session Forty-seventh Congress, Journal, p. 512; Record, pp. 3336, 3337.