42D CONGRESS, 2d Session. | SENATE. | REPORT No. 146.

IN THE SENATE OF THE UNITED STATES.

APRIL 24, 1872.—Ordered to be printed.

Mr. CARPENTER, from the Committee on Privileges and Elections, submitted the following

REPORT:

The Committee on Privileges and Elections, to whom were referred the resolutions of the House of Representatives of April 2, 1872, as follows:

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 he is hereby, directed to notify the Senate of the passage of the foregoing resolution.

respectfully report:

That they have maturely considered the unhappy difference between the Senate and House of Representatives, with a sincere desire to arrive at a conclusion which shall maintain the constitutional jurisdiction of the Senate and fully respect the exclusive prerogative of the House of Representatives to originate bills for raising revenue.

To consider this matter properly, it becomes necessary to advert to the attitude of the two Houses in relation to it.

At the last session of Congress the Senate passed a bill to repeal the tax upon incomes. The House of Representatives laid the bill upon the table, and sent a resolution to the Senate declaring that the Senate had no constitutional power to originate the bill, and that its attempt to do so was in violation of the first clause of the seventh section of the first article of the Constitution, which is as follows:

> All bills for *raising revenue* shall originate in the House of Representatives, but the Senate may propose or concur with amendments *as on other bills.*

This was a distinct declaration on the part of the House of Representatives that a bill to abolish a tax or duty was a bill for raising revenue within the meaning of this clause of the Constitution.

During the present session the House of Representatives passed, and sent to the Senate for its concurrence, a bill to abolish all duties upon tea and coffee. This bill was a bill for raising revenue, if the House of Representatives was right in deciding that the bill passed by the Senate to abolish the tax upon incomes was a bill for raising revenue. The Senate so treated this bill to abolish all duties upon tea and coffee, and concurred, with amendments, adding some articles to the free list, reducing the duties upon other articles, and abolishing other taxes altogether. The bill thus passed with amendments was returned to the House of Representatives; whereupon the House laid it upon the table,

and sent to the Senate the resolutions which have been referred to the committee, and form the subject of this report.

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 or 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.*"

To understand the full import of this provision of the Constitution, empowering the Senate "to propose or concur with amendments as on other bills," it is necessary to consider the parliamentary law of England, which was perfectly understood by the authors of our Constitution, and which must be presumed to have been in mind when they framed this provision.

By the parliamentary law of England, at the time our Constitution was adopted, it was well settled that the House of Lords could not change a bill for raising revenue. The House of Lords could propose only formal amendments. They might change expressions, but not substance. Anciently the House of Lords exercised the power of amending supply bills, "but in 1671 the Commons advanced their claim by resolving, *nem. con.*, 'That in all aids given to the King by the Commons, the rate or tax ought not to be altered;' and in 1678 their claim was urged so far as to exclude the Lords from all power of amending bills of supply." On the 3d of July in that year they resolved—

> That all aids and supplies, and aids to His Majesty in Parliament, are the *sole* gift of the Commons; and all bills for the granting of any such aids and supplies ought to *begin* with the Commons; and that it is the undoubted and *sole* right of the Commons to direct, limit, and appoint in such bills the ends, purposes, considerations, limitations, and qualifications of such grants; *which ought not to be changed or altered by the House of Lords.*

This resolution settled the principle upon which the English Parliament were proceeding when our Constitution was adopted; and it was well understood that the Lords could make only verbal amendments; "and even in regard to these, when the Commons had accepted them, they had made special entries in their journal, recording the character and object of the amendments, and their reasons for adhering to them."—*May's Parliamentary Practice, chap.* 21.

But the practice in Parliament went even beyond this.

> In bills not confined to matters of aid, or taxation, but in which pecuniary burdens

are imposed upon the people, the Lords may make any amendments, provided they do not alter the intention of the Commons with regard to the amount of the rate or charge, whether by *increase* or *reduction;* its duration, its mode of assessment, levy, collection, appropriation, or management; or the persons who shall pay, receive, manage, or control it; or the limits within which it is proposed to be levied. As illustrative of the strictness of this exclusion, it may be mentioned that the Lords have not been permitted to make provision for the payment of salaries or compensation to officers of the court of chancery, out of the suitors' fund; nor to amend a clause prescribing the order in which charges on the revenues of a colony should be paid. But all bills of this class must originate in the Commons; as that house will not agree to any provisions which impose a charge of any description upon the people, if sent down from the Lords, but will order the bills containing them to be laid aside.—*Ibid.*

With this strictness of parliamentary law, which denied to the Lords the right to propose other than mere verbal amendments, "not changing the sense," our fathers provided in the Constitution that the Senate might amend bills for raising revenue, not only as to matters of form, but that the Senate might amend the same *as they might amend other bills.* In other words, when a bill for raising revenue has originated in the House, no limitation is placed by the Constitution upon the power of the Senate to amend it on account of its being a bill for raising revenue. The exclusive prerogative of the House of Representatives in relation to such bills is simply to *originate* them.

Your committee are at a loss to know how this matter can be made plainer than the express words of the Constitution make it. The provision in relation to such bills that "the Senate may propose or concur with amendments as on other bills," declares this power of the Senate as clearly as language can declare it. The Constitution does not prescribe what amendments, or limit the extent of the amendments which the Senate may propose; and the House of Representatives cannot regulate or limit a power which the Constitution has, in express words, so broadly conferred upon the Senate.

What amendments, then, may be proposed by either House to bills received from the other, in the usual course of legislation?

The second clause of section five of Article I of the Constitution provides:

Each House may determine the rules of its proceedings.

This gives the Senate full power to establish such rules, including a regulation of the subject of amendments to bills, as it may deem proper; and so far as the other House is concerned, it is the province of either House to adopt rules authorizing an amendment of a bill in any respect or particular, except that the Senate could not, by amendment to a bill not raising revenue, add provisions which would raise revenue, because this would be a violation of the provision requiring bills for raising revenue to originate in the House of Representatives.

This latitude of amendment is in practice in all the State legislatures, has always been practiced in both Houses of Congress, and, with the exception of what are called "money bills," has always been practiced in Parliament.

Cushing's Parliamentary Law, section 1, chapter 5, part 6, speaking of amendments, says:

According to the etymology of the word, it might be supposed that nothing could be considered as an amendment which did not relate to and purport to improve the original proposition. But this would be far from conveying an adequate idea of what is meant by the term amendment. A proposition may be amended, in parliamentary phraseology, not only by an alteration which comes out and effects the purpose of the mover, but also by one which entirely destroys that purpose, or which even makes the proposition express a sense the very reverse of that intended by the mover; and, in like manner, a motion which proposes *one kind of proceeding* may be turned into a motion for another of a *wholly different kind*, by means of an amendment; so that, in point of

fact, an amendment is equally effectual, and is often used to defeat a proposition, as well as to promote the object which the mover of that proposition has in view.

Considering this general principle authorizing amendments, considering also the rigid strictness of parliamentary law in relation to amendments which, in England, could be proposed, to money bills by the House of Lords, there is no escape from the conclusion that the framers of the Constitution intended a rule different from the English rule in relation to amendment of bills for raising revenue, when they provided that "the Senate may propose, or concur with, amendments as on other bills." What other meaning can be assigned to this provision, in light of the then existing and well-known parliamentary law of England, than that it was intended to give the Senate a power to amend such bills not possessed by the House of Lords? The Lords could not amend revenue bills as they could other bills, but were confined to mere *formal amendments, not changing the sense;* but the Constitution prescribes a different rule, and subjects such bills to the same latitude of amendment to which other bills, in the ordinary course of legislation, are subjected; that is, to amendment as the Senate may deem expedient.

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 pea-nuts, 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 upon pea-nuts 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. What, then, was the object intended to be secured by this provision of the Constitution?

There is reason to believe that the authors of the Constitution anticipated a continuous session of the Senate. Colonel Mason, speaking of this provision of the Constitution, in the Virginia convention, said:

> If the Senate can originate, they will, in the recess of the legislative sessions, hatch their mischievous projects for their own purposes, and have their money bills cut and dried, (to use a common phrase,) for the meeting of the House of Representatives.—*Elliot's Debates*, vol. 5, p. 415.

That the continuous session of the Senate was anticipated may also be inferred from the absence of any provision of the Constitution to remove officers of the United States in the recess of the Senate. As it was expected that the Senate would generally be in session, removals could easily be effected by nomination of a sussessor. Consequently, the only provision in the Constitution relating to the exercise of the appointing power in the recess of the Senate is not that the President may remove from office during the recess, but that he may "fill up all vacancies that may happen during the recess of the Senate;" this being regarded as sufficient provision upon this subject for an occasional brief recess of the Senate.

The object, then, of this provision was to prevent the Senate from maturing plans for raising revenue in the recess of the legislative sessions, and to commit the power to originate such measures to the immediate representatives of the people. Unless the House of Representatives move in the matter of raising revenue the Senate is commanded to be silent on the subject. But when the House of Representatives, by sending us a bill for raising revenue, present the subject for our consideration, the power of the two Houses is commensurate. If the House propose to levy a tax upon tea, the Senate may amend the bill by adding coffee, or by striking out tea and substituting coffee, or any

other article or articles. In other words, a bill from the House is necessary to give the Senate any jurisdiction over the subject of raising revenue; but when such bill is received from the House, the Senate may amend it in any respect or to any extent; or, to quote the Constitution, to such a bill the Senate may "propose or concur with amendments, as on other bills."

But it is evident that the Senate cannot propose an amendment raising revenue to any bill coming from the House, except a bill for raising revenue. For instance, if the House should send us a bill granting lands in aid of a railroad company, the Senate could not put upon it an amendment for raising revenue, because in such case the bill, so far as it was a bill for raising revenue, would be originated in the Senate, which the Constitution forbids. This brings us to inquire whether the House bill, abolishing all duties upon tea and coffee, was a bill "*for raising revenue*" within the meaning of the Constitution.

In the British Parliament, as we have seen, the House of Lords is precluded from originating what are called money bills; and this is understood to include, not only bills for raising revenue, but all general appropriations supplying to the government the means of administration. The clause of the Constitution under consideration was carefully considered, and is expressed in plain and guarded language: "All bills *for raising* revenue shall originate in the House of Representatives." The whole subject having been fully considered, it must be assumed that when the provisions only forbade the Senate to originate bills for *raising* revenue, it was not intended to restrict the Senate in regard to appropriation bills, which are of a different character and have a different end in view. The language of the Constitution is not that all bills *affecting* revenue shall originate in the House, but that all bills "for *raising* revenue" shall so originate. What, then, is the meaning of the phrase, "all bills *for raising revenue?*" What is a bill *for raising revenue?*

The Constitution provides that Congress shall have power "*to raise* and support armies." In parliamentary language, it is common to say a committee *was raised* for a certain purpose. In these instances it is evident that "raising" is not used in the sense of *increasing*. Under the provision of the Constitution empowering Congress to raise armies, it may diminish as well as increase the Army. To raise an army is to establish or create an army; so a bill for raising revenue may be a bill to increase or diminish existing rates. 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 whatever should be raised or collected upon tea and 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. Had the bill merely reduced the rates of duty upon these articles, or had it abolished the duty on these articles and laid a duty upon other articles, at a rate higher or lower than that provided by existing laws, it would have been a bill "for raising revenue," because revenue would be raised, or

collected, under the provisions of the bill. But this bill proposed no such thing. It did not provide for raising *any* revenue; and it is therefore incorrect to call it a bill "for raising revenue."

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. A thousand illustrations will occur to every mind.

Two subjects were in the contemplation of the framers of the Constitution. One was how to raise revenue, and the other how to apply it to the uses of the Government. The power to do both was confided to Congress. The power to raise revenue was regulated, as between the two Houses, by the provision "all bills for raising revenue" shall originate in the House of Representatives. The power of applying the revenue to the uses of the Government is not regulated as between the two Houses, but is controlled only by the seventh clause of the ninth section of Article I of the Constitution, as follows:

> No money shall be drawn from the Treasury, but in consequence of appropriations *made by law*.

How the law making appropriations shall be passed, or in which House it shall originate, is not provided for by the Constitution.

The fact that the Constitution so carefully provides that "bills for raising revenue" shall originate in the House of Representatives, and made no such provision in regard to bills appropriating money, is conclusive that it was intended to restrict the Senate in one case and not in the other.

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.

Your committee recommend that the Senate adopt the following resolution:

Resolved, That the Secretary of the Senate be, and he hereby is, directed to deliver a copy of this report to the House of Representatives.