

## Chapter CXXXIV.

### INSTRUCTION OF MANAGERS OF A CONFERENCE.

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1. General principles governing. Sections 6379–6383.<sup>1</sup>
  2. Limitations on the power of instruction. Sections 6384–6394.
  3. Reports in violation of instructions. Sections 6395, 6396.
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**6379. The House may instruct its managers of a conference, and the motion to instruct should be offered after the vote to ask for or agree to a conference and before the managers are appointed.**—On July 23, 1886,<sup>2</sup> Mr. Albert S. Willis, of Kentucky, from the managers on the part of & House of the conference on the disagreeing votes of the two Houses on the Senate's amendment to the river and harbor bill, reported that after a full and free conference they had been unable to agree.

Mr. Willis thereupon offered the following resolution:

*Resolved*, That it is the opinion of the House that its conferees on the river and harbor bill should insist on striking out of the Senate amendments the following item:

For the national harbor of refuge of the first class at Sandy Bay: Continuing improvement, \$75,000.

Mr. Eben F. Stone, of Massachusetts, made the point of order that the proposition was in effect an instruction to the committee of conference and that it could not be adopted by the House without destroying the freedom of the conference.

The Speaker<sup>3</sup> said that the conference was ended and the amendments of the Senate were not now in the hands of the conference committee, but were before the House.

Mr. Byron M. Cutcheon, of Michigan, and Mr. Thomas B. Reed, of Maine, having asked whether or not the resolution was privileged, and under what order of business it could be presented, the Speaker replied that such a resolution had frequently been held privileged. Then the Speaker continued:

The amendments are here for some action on the part of the House. The Chair thinks that the original parliamentary practice was not to instruct committees of conference, but to leave them entirely free. However, a practice has grown up in this House, and has prevailed for several years, under which

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<sup>1</sup>Motion to instruct may be amended unless the previous question prevents. (Sec. 6525 of this volume.)

Instance wherein the managers were instructed to consider a matter of prerogative. (Sec. 1491 of Vol. II.)

<sup>2</sup>First session Forty-ninth Congress, Record, pp. 7404, 7405; Journal, pp. 2319, 2320.

<sup>3</sup>John G. Carlisle, of Kentucky, Speaker.

the House has very frequently passed resolutions instructing its managers as to the sense of the House with respect to certain amendments. \* \* \* There have been frequent occasions when it has been done. It is so stated in the Digest, and the rulings upon which the statement is based are cited. The Chair remembers several such cases in the House during the last eight or ten years. If this were an original question, the Chair would be very much inclined to hold that the committee of conference must be free to decide in any way it chooses, subject, of course, to the action of the House afterwards.<sup>1</sup>

Mr. John D. Long, of Massachusetts, having proposed a motion that the House insist on its disagreement to the Senate amendments and ask a new conference, the Speaker said:

There are two motions, as the Chair has stated, which, under the practice, have preference over the motion made by the gentleman from Kentucky. One of these, which has precedence over all other motions, is that the House recede from its disagreement to the Senate amendment and agree to the same. The other is that the House insist upon its disagreement to the Senate amendment and ask a further conference. The gentleman from Massachusetts makes the motion which the Chair has last stated.

The motion of Mr. Long having been agreed to, the Speaker appointed Messrs. Willis, of Kentucky; Newton C. Blanchard, of Louisiana, and Thomas J. Henderson, of Illinois, managers on the part of the House. These had been managers of the former conference.

The appointment of managers having been made, Mr. Willis offered a resolution instructing the conferees, upon which Mr. Seth C. Moffatt, of Michigan, raised a point of order.

The Speaker ruled as follows:

The gentleman from Michigan has raised the point of order that the resolution can not be acted on, because the subject is not before the House. The House having disposed of it by further insisting upon its disagreement to the Senate amendment and requesting a conference and the managers of the conference having been appointed on the part of the House, theoretically of course the matter has gone to the Senate, and is not in the House.

Therefore the Speaker did not entertain the motion of instruction.

**6380.** Again, on July 27, 1886,<sup>2</sup> the question arose, and the Speaker<sup>3</sup> said:

The Chair will state the situation. The gentleman from Kentucky [Mr. Willis] moves that the House further insist upon its disagreement to the Senate amendments and request a further conference. The Chair ruled the other morning that that motion had priority over the resolution to instruct; and the Chair also ruled at the same time that a resolution to instruct the conferees was not in order after the Chair had actually appointed the managers, as was the case when the gentleman from Kentucky moved an instruction at that time. But the Chair thinks even if the present motion of the gentleman from Kentucky prevails, at any time before the Chair actually appoints the conferees, which takes the matter away from the House, resolutions of instruction are in order, and the Chair will entertain them after this motion is disposed of.

There has been one instance in the House where a resolution of instruction was offered and entertained while the motion to insist and for the appointment of conferees was pending; but the question of order was not then made. At any rate there is an interim after the motion of the gentleman from Kentucky [Mr. Willis] has been disposed of when instructions are in order under the practice of the House. The question is on the motion of the gentleman from Kentucky.

**6381.** On March 1, 1864,<sup>4</sup> the conferees on the bill (H. R. 122) to increase the internal revenue reported that they had been unable to agree.

<sup>1</sup> First session Thirty-eighth Congress, March 1, 1864, *Globe*, p. 892; 1 *Journal*, p. 327.

<sup>2</sup> First session Forty-ninth Congress, *Record*, p. 7598; *Journal*, pp. 2352–2354.

<sup>3</sup> John G. Carlisle, of Kentucky, Speaker.

<sup>4</sup> First session Thirty-eighth Congress, *Globe*, p. 892.

Thereupon Mr. Elihu B. Washburne, of Illinois, offered the following:

*Resolved*, That the House insist upon its disagreement to the Senate amendments to House bill No. 122, and that the House request of the Senate another committee of conference on the said bill; and it is hereby declared to be the judgment of this House that in an adjustment of the differences between the two Houses on the said bill there should be an additional duty of not less than 20 nor more than 40 cents per gallon imposed on spirits on hand for sale.

Mr. Thaddeus Stevens, of Pennsylvania, having raised a question as to the instructions, the Speaker<sup>1</sup> said:

The Chair holds that the House of Representatives have the power to instruct any committee which it authorizes to be appointed. It is a judicious check upon the power of the Speaker in appointing committees. They have a right to instruct a committee of conference, as they have a right to instruct a standing or a select committee.

**6382.** On June 15, 1878,<sup>2</sup> after two unsuccessful conferences on the legislative appropriation bill the House, by a vote of 116 yeas to 92 nays, agreed to the following instructions as to the main point of difference:

*Resolved*, That it is the opinion of this House that its conferees on the legislative, executive, and judicial appropriation bill should under the circumstances yield to the conferees on the part of the Senate in said bill as to the compensation of its own officers and employees.

**6383. At a new conference the instructions of a former conference are not in force.**—On May 16, 1902,<sup>3</sup> the House conferees on the bill (H. R. 8587) 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, reported to the House an agreement as to one Senate amendment. On the disagreement as to the remaining Senate amendment they reported that they had not reached an agreement, since, because of the instructions of the House to its conferees, a free conference had been impossible.

Mr. Thaddeus M. Mahon, of Pennsylvania, then moved that the House further insist on its disagreement to the Senate amendment and ask a further conference.

Mr. Oscar W. Underwood, rising to a parliamentary inquiry, asked whether or not, after the agreement to these motions, the former instructions would still remain in force.

The Speaker<sup>4</sup> replied that the instructions would not remain in force at the new conference.

**6384. The House having asked for a free conference, it is not in order to instruct the managers.**—On March 2, 1891,<sup>5</sup> Mr. E. H. Funston, of Kansas, as a privileged question, from the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill of the House (H. R. 13552) making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1892, reported that they had been unable to agree.<sup>6</sup>

<sup>1</sup> Schuyler Colfax, of Indiana, Speaker.

<sup>2</sup> Second session Forty-fifth Congress, Journal, p. 1345; Record, p. 4689.

<sup>3</sup> First session Fifty-seventh Congress, Journal, p. 713; Record, p. 5567.

<sup>4</sup> David B. Henderson, of Iowa, Speaker.

<sup>5</sup> Second session Fifty-first Congress, Journal, p. 358; Record, pp. 3747, 3768, 3771.

<sup>6</sup> At this conference the House conferees had been under instructions to insist on nonconcurrence in Senate amendment No. 17.

The Speaker laid before the House the following resolution of the Senate:

*Resolved*, That the Senate insist upon its amendments to the bill (H. R. 13552) making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1892, disagreed to by the House of Representatives, including the amendment numbered 17, referred to in the message from the House, and agree to a free conference on the disagreeing votes of the two Houses thereon.

Then Mr. Funston submitted the following resolution:

*Resolved*, That the House ask for a free conference.

After debate, Mr. Robert M. La Follette, of Wisconsin, moved that the House recede from its disagreement to the amendments of the Senate and agree to the same. After further debate, Mr. La Follette withdrew the motion.

The question recurring on agreeing to the resolution of Mr. Funston, the previous question was ordered, and under the operation thereof the resolution was agreed to.

Mr. Cannon submitted the following resolution:

*Resolved*, That it is the sense of the House of Representatives that said conference shall not agree to the amendment of the Senate numbered 17.

Mr. Funston made the point of order that, being in direct conflict with the resolution just adopted, the resolution submitted by Mr. Cannon was not in order.

The Speaker<sup>1</sup> sustained the point of order, and the resolution was not received.

**6385. A special order requiring the Speaker to appoint conferees immediately after the vote of disagreement, a motion to instruct was not admitted.**—On March 22, 1906,<sup>2</sup> Mr. John Dalzell, of Pennsylvania, from the Committee on Rules, reported this resolution:

*Resolved*, That the bill (H. R. 12707) entitled "An act to enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of New Mexico and of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States," be, and hereby is, taken from the Speaker's table, with the Senate amendments thereto, to the end that the said amendments be, and hereby are disagreed to; and a conference be, and hereby is, asked with the Senate on the disagreeing votes on the said amendments, and the Speaker shall immediately appoint the conferees.

The resolution having been agreed to, the Speaker was proceeding to appoint the conferees, when Mr. John Sharp Williams, of Mississippi, demanded recognition.

The Speaker proceeded with the announcement of the conferees; and that being done, recognized Mr. Williams, who moved to instruct the conferees on the part of the House of Representatives to agree to the amendment of the Senate striking the provision admitting Arizona and New Mexico out of the bill as it passed the House. He insisted that he had sought recognition before the Chair appointed the conferees.

After debate the Speaker<sup>3</sup> held:

The resolution adopted by the House a short time ago is the rule of the House and binding on the House, and on the Speaker as the presiding officer of the House. It begins "Resolved," etc., and the conclusion of the rule is "And the Speaker shall immediately appoint the conferees." That binds the House;

<sup>1</sup>Thomas B. Reed, of Maine, Speaker.

<sup>2</sup>First session Fifty-ninth Congress, Record, pp. 4122, 4128.

<sup>3</sup>Joseph G. Cannon, of Illinois, Speaker.

that binds the Speaker; and under a rule adopted by the majority it binds the gentleman from Mississippi as well, whatever may have been his opinion or that of the minority of the House as to the propriety of the adoption of the rule. The Chair will not take much of time in referring to authorities, but will ask the Clerk to read a ruling made by Mr. Speaker Carlisle, when he was Speaker, that follows the ruling in such cases:

“The gentleman from Michigan has raised the point of order that the resolution can not be acted on because the subject is not before the House. The House having disposed of it by further insisting upon its disagreement to the Senate amendment and requesting a conference, and the managers of the conference having been appointed on the part of the House, theoretically, of course, the matter has gone to the Senate and is not in the House.

“Therefore the Speaker did not entertain the motion of instruction.”

That is under the ordinary rules of the House. In their operation the motion to instruct conferees always follows after the motion to disagree with the Senate and before the appointment of the conferees. In the case upon which Speaker Carlisle ruled, that was under the ordinary rules of the House. The House had disagreed to the Senate amendments and the conferees had been appointed. Immediately thereafter the Member from Michigan moved the instruction, and Speaker Carlisle, in the opinion which the Chair has had read to the House, held the motion out of order; but the Chair again calls the attention of the House to the fact that this is a proceeding under his rule, which not only by virtue of its adoption nonconcur in every one of the forty amendments to the bill and asks a conference, but in the language of the rule—

“And the Speaker shall immediately appoint the conferees”—binds the Speaker. The conferees were appointed, and, in the language of Speaker Carlisle, theoretically at least, the House has not the bill; it has gone to the Senate, and therefore, under the provisions of the special order, the Chair sustains the point of order.

**6386. Instructions to managers of a conference may not direct them to do that which they might not otherwise do.**—On March 3, 1881,<sup>1</sup> Mr. Speaker Randall ruled that the House might not by a resolution of instruction submit to a conference committee any matter not originally submitted to them.

**6387.** On July 25, 1882,<sup>2</sup> Mr. Speaker Keifer held that it was not in order to recommit a conference report to the conferees with instructions for them to do something which they might not have done in the first instance.

**6388. It is not in order to give such instructions to managers of a conference as would require changes in the text to which both Houses have agreed.**

**As to the propriety of instructing the managers at a first conference.**

On February 28, 1891,<sup>3</sup> the House was considering the bill (H.R. 10881) to amend the laws relating to copyrights, with amendments of the Senate thereto, and a request for a conference with the House on the bill and amendments.

Mr. William E. Simonds, of Connecticut, moved that the House nonconcur in the Senate amendments and agree to the conference asked by the Senate.

The House voted to nonconcur and agreed to the conference. Thereupon Mr. Lewis E. Payson, of Illinois, submitted the following resolution of instructions to the conferees:

*Resolved*, That the conference committee be instructed to insist on engrafting upon the bill in conference the principles involved in the following bill.

[Here followed the text of a new bill.]

Mr. Simonds made the point of order against the instructions proposed: First, that these instructions, if adopted, would do away with the sole text of the bill, to

<sup>1</sup>Third session Forty-sixth Congress, Journal., p. 600.

<sup>2</sup>First session Forty-seventh Congress, Journal, p. 1730; Record, p. 6487.

<sup>3</sup>Second session Fifty-first Congress, Journal, p. 333; Record, pp. 3610, 3611.

which both Houses had already agreed, and were not permissible under the practice and the precedents of the House. Again, that it was not permissible to instruct the conferees in the first instance and before they had met and disagreed.

The Speaker<sup>1</sup> sustained the point of order.<sup>2</sup>

**6389. Pending the question on agreeing to a conference report, motions relating to disposal of the individual amendments in disagreement, or for the instruction of conferees at a future conference, are not in order.**—On January 29, 1897,<sup>3</sup> the House was considering the conference report on the bill (S. 1832) to define the rights of purchasers under mortgages authorized by an act of Congress approved April 20, 1871, concerning the Atlantic and Pacific Railroad Company.

Pending the question of agreement to the report Mr. William E. Barrett, of Massachusetts, proposed to move certain instructions to the conferees.

The Speaker<sup>1</sup> ruled that the proper course of proceeding in such a case as this was for the House first to vote upon agreeing to the report of the conference committee. If the report be disagreed to, then the House may insist upon its amendments and ask for a new conference; and pending the appointment of the conferees a motion may be made that they be instructed.

The report of the conferees having been disagreed to, the House voted to insist upon its amendments and ask a new conference, after which Mr. Barrett proposed a resolution instructing the conferees to insist upon certain amendments. These instructions, having been amended on motion of Mr. William L. Terry, of Arkansas, were agreed to.

On the succeeding day, January 30, 1897, the Speaker appointed as conferees Messrs. H. Henry Powers, of Vermont; George P. Harrison, of Alabama, and Grove L. Johnson, of California. These gentlemen were also the managers on the part of the House at the previous conference.

**6390.** On February 17, 1897,<sup>4</sup> the House was considering the conference report on the bill (S. 1501) granting an increase of pension to Lucy Alexander Payne.

Mr. Richard W. Blue, of Kansas, moved that the House disagree to the report of the committee of conference and ask a further conference, and that the conferees be instructed to insist on the House amendment.

The Speaker said:

The regular course would be to pass first upon the question of agreeing to the conference report; that is the question now before the House. If the House refuses to agree to the report, then a motion to insist and to ask a further conference, and also a motion to instruct the House conferees would be in order.

<sup>1</sup> Thomas B. Reed, of Maine, Speaker.

<sup>2</sup> In ruling the Speaker did not give his grounds for so holding, but ample grounds are found in the first portion of the point of order. As to the second portion, the practice is against the instruction of conferees in the first instance, and this practice is undoubtedly founded on propriety and good sense. Yet the House has instructed conferees in the first instance, as in the case of the agricultural appropriation bill in the closing hours of the short session in 1891. (See Record, pp. 3728, 3747, 3749, second session Fifty-first Congress.) But in this case the House resorted afterwards to a free conference.

<sup>3</sup> Second session Fifty-fourth Congress, Record, pp. 1321, 1322, 1334.

<sup>4</sup> Second session Fifty-fourth Congress, Record, pp. 1940, 1945.

The House having refused to agree to the conference report, Mr. Blue moved that the House, insist on its disagreement, and ask for a further conference, with instructions that the conferees insist on the amendment of the House.

The Speaker<sup>1</sup> said:

The gentleman from Kansas moves that the House further insist upon its amendment and ask for a further conference. \* \* \* The Chair thinks the instructions should be put separately. The question is on the motion to insist and to ask for a further conference.

**6391. Instructions to managers may not relate to a part of the bill not in disagreement between the two Houses or to any subject not committed to the conferees.**—On July 25, 1882<sup>2</sup> Mr. Horace F. Page, of California, had presented the report of the committee of conference on the disagreeing votes of the two Houses on the river and harbor bill (H.R. 6242), and the previous question had been ordered thereon, when Mr. John A. Kasson, of Iowa, as a parliamentary inquiry, asked if it would be in order to move to recommit the report to the committee of conference with instructions to add the following proviso to the bill:

That the Secretary of War, with the approval of the President, may limit any expenditure provided by this act to any less sum than that authorized therefor during the current fiscal year, in any case where in their opinion the public interest does not require the entire expenditure.

The Speaker<sup>3</sup> said:

The Chair thinks it would not be in order to recommit the report to the conference committee. It is never in order to instruct the conference committee to do that which it could not do under the reference made of the matter to the committee in the first instance.

**6392.** On July 15, 1882<sup>4</sup> Mr. Joseph G. Cannon, of Illinois, for the committee of conference on the disagreeing votes of the two Houses on the legislative, etc., appropriation bill (H.R. 6244) reported that the committee were unable to agree.

The House having further insisted on its disagreement to the Senate amendments and asked a further conference, Mr. Moses A. McCoid, of Iowa, offered this resolution:

*Resolved,* That the committee on the part of the House is instructed to agree to such modification of the bill as will equalize the salaries of the Senate and House by an increase of the pay of House employees if necessary.

Mr. George D. Robinson, of Massachusetts, made a point of order that the resolution proposed to instruct the conferees on the part of the House on a subject not submitted to them or in disagreement between the two Houses.

The Speaker<sup>3</sup> said:

The Chair can only say if this resolution is meant to cover all the House employees there is no such question pending before the conference committee in virtue of the fact of there being a disagreement between the two Houses on that question. The resolution, therefore, would not be in order. \* \* \* The Chair is not at present prepared to hold that the House might not instruct the com-

<sup>1</sup>Thomas B. Reed, of Maine, Speaker.

<sup>2</sup>First session Forty-seventh Congress, Journal, p. 1730; Record, p. 6487.

<sup>3</sup>J. Warren Keifer, of Ohio, Speaker.

<sup>4</sup>First session Forty-seventh Congress, Journal, pp. 1643, 1644; Record, p. 6101.

mittee to recede or to insist upon some matter which was particularly before it. But this resolution, the Chair thinks, goes further and proposes to instruct the conference committee to take up a new matter not referred to it; and therefore it is not in order.

**6393.** On March 3, 1881,<sup>1</sup> the House had further insisted on its disagreement to the Senate amendments to the sundry civil appropriation bill (H. R. 7203) and had asked a further conference.

Mr. John H. Baker, of Indiana, submitted the following resolution:

*Resolved*, That it is the opinion of the House that their conferees yield to the Senate conferees touching the subject of the pay and salaries of the Senate employees.

Mr. Benton McMillin, of Tennessee, made the point of order that the subject referred to in the resolution was not in conference, and that it was not competent to submit to a conference committee any subject not originally submitted to them.

The Speaker<sup>2</sup> sustained the point of order, saying:

That which is in the bill by a vote of the two Houses, being a substantive proposition, can not be changed in the conference.

**6394.** On June 1, 1880,<sup>3</sup> the House had further insisted on its disagreement to Senate amendments to the legislative, etc., appropriation bill (H.R. 6185) and agreed to the conference, when Mr. Roger Q. Mills, of Texas, offered this resolution:

*Resolved*, That the conferees on the part of the House on the legislative, etc., appropriation bill be, and are hereby, instructed to fix the salaries of the employees of the House so that the employees of the Senate and the House of the same grade shall receive the same salary.

Mr. William M. Springer, of Illinois, raised a question of order, one branch of which was that the resolution proposed to open to the consideration of the conference committee a portion of the bill which had been agreed to by the two Houses.

The Speaker<sup>2</sup> sustained the point of order, saying that the very words of the message between the two Houses by which a conference was agreed to were that a conference was asked on "the disagreeing votes of the two Houses." Therefore nothing that the two Houses had agreed to could come under the jurisdiction of the conference committee.

Again, on June 9,<sup>4</sup> the conference report on the same bill being under consideration, Mr. Richard W. Townshend, of Illinois, offered a concurrent resolution authorizing, the conferees to take into consideration the question of equalization of salaries of employees of House and Senate.

Mr. George D. Robinson, of Massachusetts, made the point of order that the resolution was not in order, for the reason that it proposed to instruct the conference committee to consider a subject to which both Houses had agreed.

The Speaker sustained the point of order, saying:

The Chair has heretofore ruled upon this proposition, and his ruling is one of the precedents. The Chair has reflected very carefully over his ruling in this respect and adheres to his judgment. \* \* \* To give a committee of conference between two Houses power to rip up a bill where there was no disagreement between the two Houses would be to give a power to a conference committee greater than either of the Houses possesses.

<sup>1</sup>Third session Forty-sixth Congress, Journal, p. 600; Record, p. 2454.

<sup>2</sup>Samuel J. Randall, of Pennsylvania, Speaker.

<sup>3</sup>Second session Forty-sixth Congress, Journal, p. 1361, Record, p. 4047.

<sup>4</sup>Journal, p. 1435; Record, p. 4337.



The Speaker referred to the Manual and citations of former rulings.

**6395. Although a conference report may be in disregard of the instructions given the managers, yet it may not be ruled out on a point of order.—**

On July 31, 1886,<sup>1</sup> the House proceeded to the consideration of the conference report on the river and harbor appropriation bill. The report having been read, Mr. William H. Hatch, of Missouri, had read a series of instructions to the conferees which had been voted by the House, and then made the point of order that the report was in direct violation of every single resolution of the instructions.

After debate, the Speaker<sup>2</sup> I ruled:

The proceedings when there has been a disagreement between the two branches of a legislative body are different in many respects from the proceedings in other cases. The paramount object of all such proceedings is to bring the two branches to an agreement. Therefore either may, without reconsidering previous votes, take action in a directly opposite direction. For instance, the House may refuse to concur in an amendment and may afterwards insist again and again upon its disagreement to the amendment, and yet it may ultimately, without reconsidering any of these votes, recede absolutely from its disagreement or recede from it with an amendment, as its judgment may dictate. And while it is competent under the recent practice of the House to instruct conference committees, still the House in that case, as in the other, may ultimately recede from its disagreement to the very amendment in regard to which it had instructed its conferees to insist on a disagreement; and that may be done with or without a conference report upon the subject.

The whole effect of the conference report in such a case is to bring the matter again directly before the body for its consideration and action. That is the whole effect of this conference report. It does not bind the House at all. The House may refuse to Wee to it, in which case the whole subject is again open; and the House may absolutely recede from its disagreement to the Senate amendment, or recede with an amendment, which is the course recommended by the present managers of the conference on the part of the House. So the Chair thinks the point of order is not well taken.

In a case where the House instructs one of its ordinary committees to report back a proposition with an amendment, it would be a very serious question whether it could report back without that amendment or with that amendment and others. But that is not in this case.

In the case supposed the House instructs its committee what it shall report to the House. In this case the House has not instructed its conferees what they shall report, but has expressed its judgment on the question and directed them to insist upon striking out certain clauses. They have now brought it back to the House in order that it may have an opportunity to recede from that action if it desires to do so, or further to insist upon it if it desires to do so.

**6396. Conferees having made a report which was disagreed to by the House as being in violation of their instructions, and a new conference having been requested, the Speaker appointed new conferees.**

**A conference report having been disagreed to, one of the opponents of the report was recognized to make the motion in relation to the pending amendments.**

On the legislative day of June-5, 1900,<sup>3</sup> but the calendar day of June 6, the managers on the part of the House on the disagreeing votes of the two Houses on the amendments of the Senate to the naval appropriation bill, submitted a report on all the amendments in disagreement. The report was signed by all the House conferees—Messrs. George E. Foss, of Illinois, Alston G. Dayton, of West

<sup>1</sup> First session Forty-ninth Congress, Record, p. 7826; Journal, p. 2459.

<sup>2</sup> John G. Carlisle, of Kentucky, Speaker.

<sup>3</sup> First session Fifty-sixth Congress, Record, pp. 6848, 6856.

Virginia, and Amos J. Cummings, of New York, all of the Committee on Naval Affairs.

Mr. Joseph G. Cannon, of Illinois, made the point that in relation to the amendment relating to ocean surveys the House conferees had brought in a report in violation of express instructions adopted by the House as follows:

*Resolved*, That the managers on the part of the House at the conference on the disagreeing votes of the two Houses on certain amendments of the Senate to the naval bill are hereby instructed to insist on the disagreement of the House to the amendment numbered nine, and to agree to no settlement of said disagreement which shall involve the survey of any of the ocean and lake coasts of the United States or of coasts under the jurisdiction of the United States.

After debate, Mr. Foss moved the previous question on the motion to agree to the conference report.

The House negatived the motion for the previous question, ayes 80, noes 149.

Debate having continued the previous question was again moved by Mr. John F. Shafroth, of Colorado, one of the opponents of the report, and was ordered by the House.

The motion to agree to the conference report was then decided in the negative, ayes 83, noes 131.

The Speaker<sup>1</sup> then said:

The gentleman from Illinois [Mr. Cannon] under all parliamentary practice is recognized, the other gentleman from Illinois (Mr. Foss) surrendering charge of this bill.

Then, on motion of Mr. Cannon, of Illinois, the House further insisted on its disagreement with the Senate on the amendment numbered nine, and also on other amendments in difference.

Then, the House having asked for a further conference, the Speaker appointed the following conferees: Messrs. Joseph G. Cannon, of Illinois, William H. Moody, of Massachusetts, and John F. Shafroth, of Colorado, all representing the opinion expressed by the House by its votes, and none being on the Committee on Naval Affairs.

**6397. The Senate, after full consideration, have decided that conferees may not be instructed.**—On March 3, 1873<sup>2</sup> the Senate was considering the conference report on the legislative, etc., appropriation bill, when Mr. George G. Wright, of Iowa, moved that the report be committed to the committee of conference with instructions to strike out all that portion relating to the salaries of Senators and Representatives.

Mr. Lyman Trumbull, of Illinois, raised the point of order that it was not competent for the Senate to instruct the committee of conference.

The Presiding Officer<sup>3</sup> overruled the point of order, quoting from Barclay's Digest:

A committee of conference may be instructed like any other committee, but the instructions can not be moved when the papers are not before the House.

An appeal was taken and debated at length and learnedly—the nature, history, and objects of conference committees being explored—notably by Messrs. Sherman,

<sup>1</sup> David B. Henderson, of Iowa, Speaker.

<sup>2</sup> Third session Forty-second Congress, Globe, pp. 2173–2184.

<sup>3</sup> Mr. George F. Edmunds, of Vermont, Presiding Officer.

Bayard, Conlking, and Hamlin. The Senate, by a vote of yeas 11, nays 46, overruled the decision of the Chair.

Mr. Wright then moved to recommit the report without instructions. No point of order was made against this motion, which was negatived, yeas 24, nays 40.

**6398. Only in rare instances has the Senate instructed managers of a conference.**—On June 6, 1906,<sup>1</sup> in the Senate, a discussion arose as to the propriety of instructing conferees, and Mr. Henry Cabot Lodge, of Massachusetts, said:

I do not desire to press this to a vote of instruction if the conferees will consent to the removal of these lines without bringing it back again to the Senate. But if they desire it, I shall be very glad to take the sense of the Senate on the striking out of those vital words. It is quite within the power of the Senate to instruct conferees. I send to the desk, and ask that there may be printed in the Record two instances which I have marked, where in previous conferences, once on the motion of Senator Sherman, the conferees were instructed; and later, if it seems desirable, I will offer a resolution of instruction.

The matter referred to is as follows:

“Mr. Clark, from the committee of conference on the disagreeing votes of the two Houses on the bill (H. R. 649) making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June 30, 1866, reported that the committee having met, after full and free conference, had been unable to disagree.

“The Senate resumed the consideration of the bill (H. R. 649) last mentioned, with the amendments thereto in disagreement between the two Houses; and

“On motion by Mr. Nesmith to recommit the bill, with the amendments thereto in disagreement between the two Houses, to the committee of conference, with instructions to agree to an amendment in the following words:132“And the sum of \$43,000 is hereby appropriated, to be added to the contingent fund of the House of Representatives, for the purpose of paying such contingent expenses as may be directed by resolution of the House.’

“On motion by Mr. Buckalew to amend the motion of Mr. Nesmith by striking out the part making an appropriation of \$43,000 and in lieu thereof inserting ‘That the committee be authorized to agree to a provision for the payment of 20 per cent additional compensation to the officers of both Houses for the present session,’

“It was determined in the negative.

“On the question to agree to the motion of Mr. Nesmith,

“It was determined in the affirmative, yeas 21, nays 18.

“On motion by Mr. Trumbull,

“The yeas and nays being desired by one-fifth of the Senators present,

“Those who voted in the affirmative are: Messrs. Anthony, Brown, Carlile, Cowan, Dixon, Doolittle, Foster, Harris, Henderson, Hendricks, Johnson, McDougall, Morrill, Nesmith, Powell, Ramsey, Riddle, Sumner, Van Winkle, Willey, Wright.

“Those who voted in the negative are: Messrs. Buckalew, Clark, Collamer, Conness, Farwell, Hale, Harlan, Howe, Lane of Indiana, Morgan, Nye, Pomeroy, Sherman, Sprague, Ten Eyck, Trumbull, Wilson.

“So it was—

“Resolved, That the bill, with the amendments thereto in disagreement between the two Houses, be recommitted to the committee of conference, with instructions to agree upon an amendment in the following words: ‘And the sum of \$43,000 is hereby appropriated, to be added to the contingent fund of the House of Representatives, for the purpose of paying such contingent expenses as may be directed by resolution of the House.’

“Ordered, That the Secretary notify the House of Representatives thereof.”

[Senate Journal, March 1, 1865, pp. 268, 269.]

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<sup>1</sup> First session Fifty-ninth Congress, Record, pp. 7932, 7933.

"Mr. Sherman submitted the following resolution for consideration:

"*Resolved*, That the Senate agree to the further conference asked by the House of Representatives on the disagreeing votes of the two Houses on the bill H. R. 207, and that the conferees on the part of the Senate be instructed to recede from the amendments of the Senate to the said bill, except so much of said amendments as relates to imported cotton.

"On motion by Mr. Morton, to amend the resolution by striking out the words 'except so much of said amendments as relates to imported cotton,' and inserting in lieu thereof the words 'and agree to a proposition to suspend the entire tax on cotton during the year 1868, and that the tax on cotton thereafter shall be 1 cent per pound.'

"It was determined in the negative, yeas 18, nays 23.

"On motion by Mr. Morton,

"The yeas and nays being desired by one-fifth of the Senators present,

"Those who voted in the affirmative are: Messrs. Cole, Conkling, Cragin, Drake, Edmunds, Ferry, Fessenden, Harlan, Howard, Howe, Morrill of Maine, Morrill of Vermont, Morton, Ramsey, Sumner, Thayer, Tipton, Wade.

"Those who voted in the negative are: Messrs. Anthony, Bayard, Buckalew, Cattell, Conness, Davis, Dixon, Doolittle, Frelinghuysen, Grimes, Hendricks, Johnson, Morgan, Norton, Patterson of Tennessee, Pomeroy, Sherman, Sprague, Trumbull, Van Winkle, Willey, Williams, Wilson.

"So the amendment was not agreed to; and

"On the question to agree to the resolution, as submitted by Mr. Sherman,

"It was determined in the affirmative, yeas 25, nays 18."

[Senate Journal, January 22, 1868, pp. 119, 120.]

On June 7,<sup>1</sup> the conference report on this subject (relating to the bill H. R. 12987, the railway rate bill) was disagreed to by the Senate.

Messrs. Eugene Hale, of Maine, and Henry Cabot Lodge, of Massachusetts, proposed resolutions of instructions, but withdrew them after debate.

**6399. According to the later practice the House does not, when it instructs conferees, inform the Senate of the instructions.**—On February 23, 1903,<sup>2</sup> the House voted to insist on its amendments to the bill (S. 3560) to amend an act entitled "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes," and to ask a conference.

Thereupon a resolution instructing the conferees was agreed to, this being the first conference.

The same day the bill was delivered to the Senate by message, but out of deference to the objections of the Senate in a previous case,<sup>3</sup> no mention of the instructions was made in the message.

**6400. The House having instructed its conferees at a second conference, and having by message informed the Senate of the instructions, that body agreed to the conference, although there was protest at the message.**—On May 13, 1902,<sup>4</sup> the Speaker had ruled out, on a point of order, the conference report on the bill (H. R. 8587) for the allowance of certain claims for stores and supplies, etc., and the House had voted to further insist on its disagreement to the Senate, and to ask a further conference.

<sup>1</sup> Record, pp. 7984, 7987, 7988.

<sup>2</sup> Second session Fifty-seventh Congress, Journal, p. 278; Record, pp. 2506, 2519–2522.

<sup>3</sup> See Sec. 6401 of this chapter.

<sup>4</sup> First session Fifty-seventh Congress, Journal, p. 701; Record, p. 5371.

Thereupon Mr. Oscar W. Underwood, of Alabama, moved the following instructions, which were agreed to by the House:

That the conferees be instructed not to agree to what is known as the Selfridge board findings in the Senate amendment.

On the same day<sup>1</sup> these proceedings were brought to the Senate by a message.

A question being raised as to the effect of these instructions, the President pro tempore said:

Of course the Senate is not bound at all by the instructions given by the House of Representatives to its conferees. It may, to a certain extent, deprive it of its character of a full and free conference, but the Senate can insist upon its amendments and go into conference again if it desires to do so. If it does not go into conference, of course the bill is ended.

The subject then went over to another day.

On May 14<sup>2</sup> the subject was again considered in the Senate, when Mr. Eugene Hale, of Maine, apparently with the acquiescence of the Senate, stated:

The House, I should presume inadvertently, incorporated with its message its instructions to its own conferees. That undoubtedly should not be done. It is not customary, I think; but it was an inadvertence, and I presume the other body will take notice of it and will not fall into this error again. I do not think it is important enough now to make a report to send it back in order that the House may correct it. I think it is proper to call the attention of the Senate, and in this way it will come to the knowledge of the House, that we do not deem it a proper thing where instructions are given to the House conferees to make it a part of the message of the House which asks for a free conference; but, as I have said, I do not ask, and I do not think it would be advisable, to raise the question with the other body by sending back the report from the House to be so corrected.<sup>3</sup>

Thereupon the Senate agreed to the conference and appointed conferees.

On May 16<sup>4</sup> the conferees reported in the House (the report having previously been agreed on in the Senate). The report presented an agreement as to an amendment of the Senate relating to the title, but as to the other amendment stated that the conferees had been unable to agree. As to this failure to agree the House conferees said in their statement:

That there is a practical agreement to everything except to the Selfridge Board claims. Upon this part of amendment Senate refused to recede, and House conferees, obeying instructions of House, no free conference could be had in relation to same in order to bring the two Houses together.

Thereupon, after debate, the House voted to further insist on its disagreement to the Senate amendment and to ask a further conference.

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<sup>1</sup> Record, pp. 5363, 5364.

<sup>2</sup> Record, pp. 5404–5407.

<sup>3</sup> It is true as stated that in some instances the House has not messaged instructions. Thus, instructions adopted by the House on the following dates were not messaged: June 15, 1878 (second session Forty-fifth Congress, Record, pp. 4663, 4689; Senate Journal, p. 715); January 29, 1897 (second session Fifty-fourth Congress, Record, pp. 1321, 1322, 1334, 1375; Senate Journal, p. 85), and February 17, 1897 (second session Fifty-fourth Congress, Record, pp. 1940, 1945; Senate Journal, p. 132).

<sup>4</sup> But the more general rule seems to have been the other way, as in the following instances where instructions were communicated: On March 2, 1864 (first session Thirty-eighth Congress, Globe, pp. 900, 908; Senate Journal, p. 207); April 15, 1864 (first session Thirty-eighth Congress, Globe, pp. 1639, 1697, 1698; Senate Journal, p. 331); on July 31, 1886, on river and harbor bill (first session Forty-ninth Congress, Record, pp. 7581, 7596, 7601); also in two instances in 1891, on the agricultural and diplomatic appropriation bills (second session Fifty-first Congress, Record, pp. 3747, 3768, 3771, 3855; Senate Journal, p. 218).

<sup>4</sup> Journal, p. 713; Record, pp. 5567–5574.

Then the House voted to instruct its conferees not to agree to that portion of the Senate amendment affecting the so-called Selfridge Board claims.

Then the Speaker reappointed the former conferees.

On the same day the message from the House announced this action in the Senate, the message conveying the instructions to the conferees.<sup>1</sup>

On May 19,<sup>2</sup> the message of the House was taken up in the Senate, and, in the language of the Senator in charge of the matter, "waiving the question of instructions which the House has sent," a motion was made and carried that the Senate agree to the conference asked by the House.

On the same day a report of the conference was submitted in the Senate.

**6401. The House having instructed its conferees in the first instance, and having informed the Senate by message of the instructions, the latter body objected to the instructions and to the transmittal of them by message.**

**A difference arising between House and Senate as to the instruction of conferees, a distinct conference was asked and granted on the subject of difference.**

**The House having requested a conference and instructed its conferees, the Senate ignored the request of the House, insisted on its amendments, and asked "a full and free conference."**

**The Senate having asked "a full and free conference" on the differences as to all of its amendments to a bill, the House, ignoring this request, adhered as to two amendments, agreed to a third, and further insisted and asked a conference as to the remainder, which conference was granted.**

**The House having adhered to its disagreement to a Senate amendment, and the Senate having insisted, the House receded from its adherence and agreed to the amendment with an amendment.**

**A conference may be had on only a portion of the amendments in disagreement, leaving the differences as to the remainder to be settled by the action of the two Houses themselves.**

On May 20, 1902,<sup>3</sup> Mr. John A. T. Hull, of Iowa, from the Committee on Military Affairs, reported the bill (H. R. 12804) making appropriations for the Army, with Senate amendments thereto, with the recommendation that the House disagree to the amendments and ask a conference with the Senate.

By unanimous consent consideration of the Senate amendments in Committee of the Whole House on the state of the Union was waived, and the House voted to disagree to the amendments and to ask a conference.

Thereupon Mr. Joseph G. Cannon, of Illinois, moved the following instructions:

Whereas Senate amendments numbered 13, 14, and 15 to the bill (H.R. 12806) making appropriations for the support of the Army for the fiscal year 1903 make the proposed appropriation of \$4,000,000

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<sup>1</sup> Record, p. 5562.

<sup>2</sup> Record, p. 5619.

<sup>3</sup> First session Fifty-seventh Congress, Record, pp. 5689-5696; Journal, p. 725.

for barracks and quarters available for the construction of such permanent buildings at established military posts as the Secretary of War may deem necessary, and reappropriate from unexpended balances of former appropriations for barracks and quarters \$350,000 for construction of necessary garrison buildings, notwithstanding appropriations for said objects are made, in accordance with the rules and practice of the House, in the sundry civil appropriation bill for said year; and

Whereas said amendments are subversive of the rules of the House, duplicate appropriations, and tend to confusion in the methods of making appropriations for the support of the Government, and will, if agreed to, give rise to a practice that will inevitably result in extravagant and wasteful expenditures: Therefore,

*Resolved*, That the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 12804) are instructed not to recommend an agreement to said amendments numbered 13, 14, and 15, or to any modification thereof, that will, under authority of said Army appropriation act, permit the expenditure of any sum for construction of permanent buildings at established military posts, except as authorized by section 1136 of the Revised Statutes.

After debate, which dwelt particularly on the propriety of instructing conferees in the first instance, the House by a vote of ayes 107, noes 50, agreed to the instructions.

Thereupon the Speaker appointed the conferees.

The same day<sup>1</sup> the bill and instructions were received in the Senate by message, and after some debate as to the propriety of the instructions, the subject went over.

On May 23<sup>2</sup> the subject was discussed in the Senate, but without result. Finally, on May 27,<sup>3</sup> the Senate agreed to the following:

*Resolved by the Senate (the House of Representatives concurring)*, That a committee, consisting of three Senators, be appointed by the Presiding Officer of the Senate to meet with a committee of like number, to be appointed by the House of Representatives, to confer upon the matter of the Message of the House of Representatives on the disagreeing votes of the two Houses on the amendments of the Senate to the bill H. R. 12804, entitled "An act making appropriations for the support of the Army for the fiscal year ending June 30, 1903."

The debate showed an objection particularly to the language of the House instructions, and also to the fact that the instructions had been transmitted by message.

On May 29<sup>4</sup> the House agreed to the resolution of the Senate, and the Speaker appointed as conferees Messrs. John Dalzell, of Pennsylvania; Joseph G. Cannon, of Illinois; and James D. Richardson, of Tennessee. The Senate had previously appointed as their conferees Messrs. John C. Spooner, of Wisconsin; Redfield Proctor, of Vermont; and Edmund W. Pettus, of Alabama. Later, on June 3, Mr. Henry M. Teller, of Colorado, was substituted in place of Mr. Pettus.

On June 16<sup>5</sup> a proposition in the Senate to take up the Army appropriation bill led to a discussion of the question.

On June 19<sup>6</sup> the Senate, ignoring the request of the House for a conference, insisted on its amendments and asked a "full and free conference" with the House.

On June 20<sup>7</sup> the message of the Senate was considered in the House, and Mr. John A. T. Hull, of Iowa, offered the following resolution, which ignored the

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<sup>1</sup> Record, pp. 5686, 5687.

<sup>2</sup> Record, pp. 5844–5850.

<sup>3</sup> Record, pp. 5956–5958.

<sup>4</sup> Journal, p. 759; Record, pp. 6118, 6119.

<sup>5</sup> Record, p. 6859.

<sup>6</sup> Record, pp. 7075, 7076.

<sup>7</sup> Journal, p. 833; Record, p. 7113.

request of the Senate for a conference and asked a conference on a portion only of the amendments, leaving out of conference those to which the instructions had related:

*Resolved*, That the House insist upon its disagreement to the amendments of the Senate to the bill H R. 12804 numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25, and request a conference thereon.

That the House adhere to its disagreement to the amendments of the Senate numbered 13 and 14.

That the House recede from its disagreement to the amendment of the Senate numbered 15, and agree to the same with an amendment as follows: In lieu of the matter inserted by said amendment, insert the following:

“And whenever in the opinion of the President the lands and improvements, or any portion of them, of the military posts or reservations at Indianapolis, Ind., Columbus, Ohio, and Buffalo, N. Y., have become undesirable for military purposes, he may, in his discretion, cause the same to be appraised and sold at public sale at not less than the appraised value, either as a whole or in subdivisions, under such regulations as to public notice and terms and conditions of sale as he may prescribe, and the proceeds to be deposited in the Treasury. And a sum of money not exceeding the proceeds of such sale or sales at each of such places respectively is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the purchase of such lands at or in the vicinity of Indianapolis, Ind., Columbus, Ohio, and Buffalo, N. Y., respectively, as may be required for military purposes, and for building barracks or quarters on such lands to be devoted to military purposes; and the Secretary of War is hereby authorized to make such purchases of lands for the establishment of military posts at or in the vicinity of such places, respectively.”

Thereupon the Speaker appointed as conferees Messrs. Hull, Capron, and Hay, who had been appointed when the House first asked a conference.

On June 23<sup>1</sup> the message of the House was considered in the Senate, and on motion of Mr. Redfield Proctor, of Vermont, the Senate voted to recede from its amendment numbered 13.

A question then arose as to the disposition of the remainder of the amendments, especially amendment No. 14. Mr. Henry M. Teller, of Colorado, having expressed an opinion that the amendment would not be within the scope of the conference I asked by the House, the President pro tempore<sup>3</sup> said:

The Chair is of opinion that the Senator from Colorado is entirely right; that the amendment referred to will not be in conference. [Of course the same reasoning would apply to amendment No. 15.]

After some further discussion Mr. Proctor moved that the Senate disagree to the House amendment to Senate amendment No. 15; that the Senate insist upon its amendments disagreed to by the House, and that it agree to the conference asked by the House.

On motion of Mr. Joseph B. Foraker, the words “including No. 14” were inserted after the word “amendments,” so as to include that amendment among those insisted on. Then, as amended, the motion was agreed to.

On June 25<sup>4</sup> Mr. Hull presented in the House the report of the conference committee, which consisted of a settlement of all the matters committed to them.

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<sup>1</sup> Record, pp. 7195–7197.

<sup>2</sup> William P. Frye, of Maine, President pro tempore.

<sup>3</sup> The House has insisted on disagreement to Senate amendments 4 and 5, receded and agreed to another with an amendment, and asked a conference on a series of other amendments to the same bill, without including the first two in the conference. (June 24, 1789, first session First Congress, Journal, pp. 65, 66.) The next day the Senate, in agreeing to the conference charged their conferees to confer also on the amendments numbered 4 and 5.

<sup>4</sup> Record, p. 7387; Journal, p. 848.



This report, which had already been agreed to by the Senate, was agreed to by the House.

There remained then Senate amendments Nos. 14 and 15 to be disposed of. Mr. Hull moved to recede from the House's adherence to its disagreement to amendment No. 14 and agree to the same with an amendment, and to insist on the House's amendment to the Senate amendment numbered 15. After debate these motions were agreed to.

On the same day<sup>1</sup> the bill came up in the Senate, when the Senate voted to agree to the House's amendment to Senate amendment No. 14, and to recede from its disagreement to the House's amendment to Senate amendment No. 15, and agree to the same.

And so the bill was finally passed.

**6402. The House having instructed its managers at a first conference, the Senate declined to participate and asked a free conference, which was granted.**—On March 2, 1891,<sup>2</sup> the House considered the Senate amendments to the agricultural appropriation bill, and having disagreed to them and voted to agree to the conference asked by the Senate, adopted instructions to the conferees that they should not agree to a certain amendment of the Senate numbered 17.

On March 3<sup>3</sup> the message announcing this action of the House was received in the Senate, and was at once made the subject of debate; and finally, in executive session, the Senate agreed to the following:

*Resolved*, That the Senate insist upon its amendments to the bill (H. R. 13552) making appropriations for the Department of Agriculture, etc., disagreed to by the House of Representatives, including the amendment numbered 17, referred to in the message from the House, and agree to a free and full conference on the disagreeing votes of the two Houses thereon.

Thereafter, in the House,<sup>4</sup> the chairman of the managers on the part of the House reported that they had met the conferees of the Senate and that the latter had declined to confer, since the managers on the part of the House had come to the conference with their hands tied. So the House managers reported that the conferees had been unable to agree.

Thereupon the House,

*Resolved*, That the House ask for a free conference.

**6403. The House having instructed its managers for a second conference, the Senate declined the conference and asked a free conference.**—On March 1, 1864,<sup>5</sup> the conferees of the House on the bill (H. R. 122) to increase the internal revenue, reported that the conferees of the two Houses had been unable to agree. Thereupon, on motion of Mr. Elihu. B. Washburne, of Illinois, the House

*Resolved*, That the House insist on its disagreement to the Senate amendments to House bill No. 122, and that the House request of the Senate another conference between the committees of conference on the said bill; and it is hereby declared to be the judgment of this House that, in the adjustment of differences between the two Houses on the said bill, there should be an additional duty of not less than 20 nor more than 40 cents per gallon imposed on spirits on hand for sale.

<sup>1</sup> Record, pp. 7365, 7366.

<sup>2</sup> Second session Fifty-first Congress, Record, pp. 3745–3749.

<sup>3</sup> Record, pp. 3860–3863.

<sup>4</sup> Record, pp. 3768–3771.

<sup>5</sup> First session Thirty-eighth Congress, Journal, pp. 327, 334, 335; Globe, pp. 892, 900–908.

The message of the House conveying notice of this action came up in the Senate on March 2 and led to a debate touching on the nature of conferences, in the course of which the Vice-President<sup>1</sup> said:

Conferences are of two characters, free and simple. A free conference is that which leaves the committee of conference entirely free to pass upon any subject where the two branches have disagreed in their votes, not, however, including any action upon any subject where there has been a concurrent vote of both branches. A simple conference—perhaps it should more properly be termed a strict or a specific conference, though the parliamentary term is “simple”—is that which confines the committee of conference to the specific instructions of the body appointing it.

The Senate finally decided not to instruct their conferees, but adopted the following:

*Resolved*, That the Senate disagree to the resolution of the House of Representatives of yesterday's date proposing instructions to the conferees, and ask another free conference on the disagreeing votes of the two Houses on the bill, etc.

The Senate also appointed conferees. The House, when the message was received, agreed to the conference asked and appointed conferees.

**6404.** On April 15, 1864,<sup>2</sup> the House rejected the report of the committee of conference on the disagreeing votes of the two Houses on the bill (H. R. 15) to provide a temporary government for the Territory of Montana.

Then it was ordered that the House further insist on its disagreement to the amendments of the Senate to the said bill, and ask a further conference with the Senate on the disagreeing votes of the two Houses thereon, and that said committee be instructed to agree to no report which authorize any others than free white male citizens and those who had declared their intentions to become such to vote.

In the Senate, on the same day, the message from the House was taken up. The fact developed in the debate that the point on which the House had instructed its conferees was the only point in issue, and the Senate considered the procedure of the House only another way of adhering.

Finally it was voted to decline to agree to the further conference on the terms proposed by the resolution of the House.

On April 18 the message of the Senate was taken up in the House, and the House voted to further insist on its disagreement to the amendments of the Senate, and ask a further conference.

**6405. The unusual conference over the revenue bill of 1883.**

**Instance wherein a House bill returned from the Senate with amendments was taken from the Speaker's table and sent to conference on one motion, through the medium of a special order.**

**Instance wherein the House referred to the managers of a conference the examination of the question whether or not the Senate amendments in disagreement invaded the House's prerogative of originating revenue bills.**

**In the absence of joint rules each House may appoint whatever number of managers of a conference it may see fit.**

<sup>1</sup>Hannibal Hamlin, of Maine, Vice-President.

<sup>2</sup>First session Thirty-eighth Congress, Journal, pp. 529, 532, 546; Globe, pp. 1639, 16911, 1698.

**While usual, it is not essential that one House, in asking a conference, transmit the names of its managers at the same time.**

On February 27, 1883,<sup>1</sup> the House agreed to a special order which made in order a motion to take the bill (H. R. 5538) “to reduce internal-revenue taxation,” with a Senate amendment, from the Speaker’s table, “declare a disagreement with the Senate amendment to the same, and ask for a committee of conference thereon, to be composed of five members on the part of the House.”

After the adoption of this rule a question was raised as to whether or not the amendment invaded the constitutional prerogative of the House in the origination of revenue bills, and the House agreed<sup>2</sup> to a preamble reciting the opinion of the House that there had been an invasion of its prerogative, with a resolution as follows:

*Resolved*, That if this bill shall be referred to a committee of conference, it shall be the duty of the conferees on the part of the House on said committee to consider fully the constitutional objections to said bill as amended by the Senate and herein referred to, and to bring the same, together with the opinion of the House in regard thereto, before said conference, and, if necessary, in their opinion, after having conferred with the Senate conferees, said conferees on said committee may make report<sup>3</sup> to the House in regard to the objections to said bill herein referred to.

After the adoption of this resolution the House then voted<sup>4</sup> affirmatively on the motion authorized by the rule; but the Speaker did not immediately appoint the managers of the conference.

On the same day the action of the House was communicated to the Senate by message,<sup>5</sup> and at once a question was raised by Mr. Isham G. Harris, of Tennessee, as to the unusual number of conferees, but it was agreed generally that in the absence of joint rules each House might appoint whatever number of conferees it should think fit.

Mr. M. C. Butler, of South Carolina, raised the question that the House had not informed the Senate that conferees had been named; and Mr. Daniel W. Voorhees, of Indiana, insisted that the message should be returned to the House. But after debate neither of these objections were heeded, and the Senate voted<sup>6</sup> to insist on its amendment and agree to the conference asked. The President pro tempore being empowered to appoint the conferees by vote of the Senate,<sup>7</sup> named Messrs. Justin S. Morrill, of Vermont; John Sherman, of Ohio; Nelson W. Aldrich, of Rhode Island; William B. Allison, of Iowa; Thomas F. Bayard, of Delaware, and James B. Beck, of Kentucky.

On February 27<sup>8</sup> the Speaker appointed Messrs. William D. Kelley, of Pennsylvania; William McKinley, of Ohio; Dudley C. Haskell, of Kansas; Samuel J. Randall, of Pennsylvania, and John-G. Carlisle, of Kentucky.

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<sup>1</sup> Second session Forty-seventh Congress, Record, pp. 3305, 3335.

<sup>2</sup> Record, pp. 3349, 3350.

<sup>3</sup> The managers did not report on this subject.

<sup>4</sup> Record, p. 3350.

<sup>5</sup> Record, p. 3328.

<sup>6</sup> Record, pp. 3332, 3334.

<sup>7</sup> Record, p. 3334.

<sup>8</sup> Record, p. 3356.

**6406. The unusual conference over the revenue bill of 1883, continued.**

In 1883 the House did not inform the Senate of the fact that it had instructed its managers of a conference to consider an alleged invasion of the House's prerogatives by the Senate amendments in disagreement.

The Senate, having learned indirectly that the House had instructed its conferees, declared that the conference should be full and free, and instructed its own conferees to withdraw if they should find the freedom of the conference impaired.

The minority portion of the managers of a conference have no authority to make either a written or verbal report concerning the conference.

**Instance wherein the Senate declined to have read the record of the proceedings of the House, even as the basis of a question of order relating to the rights of the Senate.**

On February 28<sup>1</sup> the names of these conferees were transmitted to the Senate by message, but neither this message nor the preceding one on this bill had made any mention of the fact that the question as to the prerogatives of the House had been referred to the managers on the part of the House.

As soon as the message announcing the names of the House managers had been laid before the Senate, Mr. Augustus H. Garland, of Arkansas, sent to the Clerk's desk to be read<sup>2</sup> a portion of the Congressional Record containing a record of the action of the House on the subject of prerogative.

Mr. John J. Ingalls, of Kansas, made the point of order that the record might not be read.

The President pro tempore<sup>3</sup> held the point of order well taken, founding his decision on the paragraph in Jefferson's Manual, declaring it a "breach of order to notice what has been said on the same subject in the other House, or the particular votes or majorities on it there," etc.

Mr. Garland having appealed on the ground that the extract from Jefferson's Manual did not apply to the situation, and the Senate by a vote of yeas 24, nays 26, having declined to lay the appeal on the table, debate proceeded<sup>4</sup> especially with reference to the propriety of instructing conferees, the precedents of the Senate in relation thereto, and the propriety of one House asking the other to a conference without informing it of a condition that would deprive the conference of a full and free character.

The appeal was withdrawn at the conclusion of the debate and the Senate agreed<sup>5</sup> to this resolution:

*Resolved*, That it is the opinion of the Senate that the conference on House bill No. 5538 should be full and free, and that if the Senate conferees become advised that any limitation has been placed by the House upon the action of their conferees, the Senate conferees shall retire and report to the Senate for its consideration.

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<sup>1</sup> Record, p. 3367.

<sup>2</sup> Record, pp. 3368-3370.

<sup>3</sup> David Davis, of Illinois, President pro tempore.

<sup>4</sup> Record, pp. 3371-3374.

<sup>5</sup> Record, p. 3376.

On March 1<sup>1</sup> Mr. Bayard, rising to a question of privilege, was proceeding to state that he himself, with Mr. Beek, had retired from the conference, because from the instructions to the House conferees, which they had inspected in conference, it appeared that the conference was not full and fair.

Mr. John Sherman, of Ohio, raised the question of order that Mr. Bayard had no right to present this matter unless he acted in behalf of a majority of the Senate conferees, since a minority might not make a report.

Mr. Bayard disclaimed any intention of making a report, and said he was only proposing to make a personal explanation; but proceeded to describe the instructions of the House managers, etc., when Mr. Sherman again raised the question of order, saying:

The Senator is endeavoring to explain a matter which he cannot properly \* \* \* He should wait until the committee, of which he is in a minority, present their report, and then he can submit his views.

The President pro tempore held that the point was well taken.

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<sup>1</sup>Record, p. 3454.