

## Chapter CCLXIV.<sup>1</sup>

### INSTRUCTION OF MANAGERS OF A CONFERENCE.

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1. General principles governing. Sections 3230-3240.
  2. Limitations on the power of instructions. Sections 3241-3245.
  3. Reports in violation of instructions. Sections 3246-3248.
  4. Senate practice on instruction. Sections 3249-3251.
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**3230. Conference having been agreed to, the motion to instruct conferees in preferential.**

While it is unusual to instruct conferees before conference is had, it is in order to move instructions for a first conference as for any subsequent conference.

Whether motions to instruct are inconsistent with action previously taken by the House, is a question for the House; and the Speaker declines to rule such motions out of order on that ground.

The fact that proposed instructions to House conferees can not be incorporated in the bill without cooperation on the part of Senate conferees does not subject motions imposing such instructions to a point of order.

Where a substitute has been proposed by one House for the entire bill passed by the other House, provisions in either the bill or the substitute are germane when offered in motion to instruct managers.

On June 3, 1924<sup>2</sup> Mr. W. W. Grist, of Pennsylvania, proposed to take from the Speaker's table the amendments of the Senate to the bill (S. 1898) reclassifying postal salaries; insist on the amendments of the House and agree to the conference asked by the Senate.

The motion was agreed to, and pending the appointment of conferees Mr. Finis J. Garrett, of Tennessee, offered, as preferential, a motion that the managers on the part of the House be instructed to agree in conference to a portion of the Senate bill to which the House had disagreed and on which disagreement it had just insisted.

Mr. Everett Sanders, of Indiana, submitted seriatim points of order: That it was not in order to instruct conferees for a first conference; that the proposed instruction to agree to a part of the Senate bill to which the House had disagreed was contradictory and inconsistent; that the action desired could not be secured by agreement of the House conferees alone but must be supplemented by agreement of the Senate conferees, over whom the House had no jurisdiction; and that the portion of the Senate bill proposed to be incorporated was not germane to the House bill.

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<sup>1</sup> Supplementary to Chapter CXXXIV.

<sup>2</sup> First session Sixty-eighth Congress, Record, p. 10327.

The Speaker<sup>1</sup> overruled the various points or order and held:

The first point made by the gentleman from Indiana, that it is very unusual to instruct before there has been any conference, is, of course, true. The House and the Senate generally allow their conferees liberty of action at the first conference. But the Chair is not aware, whatever the propriety may be, that it is not within the power of the House to instruct at the very outset, and the Chair can not sustain that point of order.

Then, secondly, as to the point that this House is doing something which is contradictory to what it has already done. The House has rejected the whole Senate bill, has substituted one of its own, and now instructs its conferees not to agree unless they put in a part of the Senate bill, which it has already stricken out, and that is, of course, contradictory. The action of the House in first striking it out and then instructing its conferees not to agree unless a part of it is put back is contradictory.

The point is also true, as made by the gentleman from Indiana, that the House having already decided to insist, this could not go in by the action of the House conferees alone. It requires action by the Senate conferees to put back this section. They must recede and concur with an amendment.

But the Chair does not see why—granting the extraordinary character of it—it is subject to a point of order. It seems to the Chair that, if the House wants to do it, no matter how contradictory or how unusual or how improper it may be, the House has the right to say to its conferees, “You must not agree until a certain contingency has arisen,” although when the House merely insists on its disagreement and sends the bill to conference it gives its conferees authority to depart from that insistence and to make an agreement.

So it seems to the Chair in the present instance, although very unusual and contradicting the provision action of the House, that if the House wishes to do it the House has the right to do so. As to the point of order that the instruction is not germane to the bill, the Chair thinks that as the matter was in the Senate bill in this exact form, and the House struck it out and inserted different provisions, the whole matter in both bills is in conference and consequently germane.

The Chair overrules the point of order.

**3231. After conference is ordered and before conferees are appointed the motion to instruct the House conferees is privileged.**

**The proponent of a motion is entitled to the floor against all save the Member in charge, who as prior right to recognition and may move the previous question at any time during the hour allotted him.**

**A motion to instruct conferees is subject to amendment unless the previous question is ordered.**

**Only one motion to instruct conferees is in order and, having been disposed of, may not be supplemented by motions to further instruct.**

On December 20, 1913,<sup>2</sup> the House had under consideration the Senate amendment to the bill (H. R. 7837), the currency bill.

A motion by Mr. Carter Glass, of Virginia, to concur in the Senate amendment having been rejected, Mr. James R. Mann, of Illinois inquired when it would be in order to offer a motion to instruct the managers on the part of the House.

The Speaker<sup>3</sup> replied that the motion to instruct would be in order after conference was agreed to and before conferees were named.

<sup>1</sup> Frederick H. Gillett, of Massachusetts, Speaker.

<sup>2</sup> Second session Sixty-third Congress, Record, p. 1308.

<sup>3</sup> Champ Clark, of Missouri, Speaker.

Mr. Glass moved that the House agree to the conference requested by the Senate. The motion was agreed to and Mr. Mann offered, as privileged, a motion to instruct the conferees.

The Speaker held the motion to be privileged and directed the Clerk to read it. Following the reading of the motion to instruct, Mr. Asbury F. Lever, of South Carolina, demanded the floor to propose a substitute.

The Speaker held that Mr. Mann was entitled to the floor against all save the Member in charge of the bill, Mr. Glass.

Whereupon, Mr. Glass demanded the floor and, being recognized by the Speaker, moved the previous question on the motion to instruct.

Pending the vote on ordering the previous question, Mr. John N. Garner, of Texas, inquired whether it would be in order to offer amendments to the pending motion, if the demand for the previous question was rejected.

The Speaker replied that if the previous question was not ordered the motion to instruct would be open to amendment.

The question being put and the yeas and nays being ordered, it was decided in the negative—yeas 83, nays 259.

Thereupon, Mr. Lever offered as a substitute a motion to instruct the conferees to agree to the provision in the Senate amendments extending the time of loans secured by agricultural products and farm lands.

The amendment was adopted and the motion to instruct as amended was agreed to, when Mr. William H. Murray, of Oklahoma, offered a motion to further instruct the conferees.

Mr. Thomas W. Hardwick, of Georgia, having raised a question of order, the Speaker ruled.

The point of order is sustained; you can not have two sets of instructions.

**3232. The motion to instruct conferees is in order only after the vote to ask for or agree to a conference and before the managers are appointed.**

**When a bill with Senate amendments is taken up for consideration, the amendments must be read before consideration begins.**

**The House having disagreed and ordered conferees on Senate amendments on which Senate has insisted and ordered conferees, the stage of disagreement has been reached.**

**The test of disagreement is the ordering of conferees; when both Houses have ordered conferees they are in disagreement.**

On May 10, 1917,<sup>1</sup> Mr. Carter Glass of Virginia, moved to take from the Speaker's table the bill (H. R. 3673) amending the Federal reserve act, with Senate amendments, disagree to the amendments and agree to the conference asked by the Senate.

The Speaker was proceeding to put the question, when Mr. James R. Mann, of Illinois, made the point of order that the Senate amendments must be read before consideration began.

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<sup>1</sup>First session Sixty-fifth Congress, Record, p. 2078.

The Speaker,<sup>1</sup> sustained the point of order and directed the clerk to read the Senate amendments.

The reading of the amendments being concluded, Mr. Louis T. McFadden, of Pennsylvania, moved that the managers on the part of the House be instructed to agree in substance to the proviso in the Senate amendments relative to charges by banks for collection of checks.

Mr. Glass raised a question of order and contended that conferees could not be instructed until appointed.

The Speaker overruled the point of order and held that the motion to instruct was not in order until agreement had been reached to send a bill to conference but must be offered before conferees were named.

Mr. John J. Fitzgerald, of New York, submitted the further point of order that the stage of disagreement had not yet been reached.

In controverting the point of order Mr. James R. Mann, of Illinois, said:

We have disagreed to the Senate amendment and the Senate has insisted. The stage of disagreement has been reached.

On the Phillippine bill, to which the gentleman from New York refers, I suggested to him to offer a motion to instruct the conferees before the stage of disagreement had been reached. There was a case where the House had amended a Senate bill and before the stage of disagreement had been reached the conferees were instructed by a motion, which was subject to a point of order; but that is not this case. This is a case where there is a House bill with a Senate amendment, upon which amendment the Senate had made an insistence, and the House has disagreed to the Senate amendment, and we have reached the stage of disagreement. It is not conferees who disagree; it is the Houses of Congress which disagree.

In the immigration bill some years ago, when the House struck out all of the Senate amendments and inserted the House bill, a motion was made to instruct the conferees, and I made the point of order that the motion was not in order, because the Houses were not in disagreement, and that the action of one House would not put the two Houses in disagreement. The Speaker sustained the point of order. But here both Houses have acted, and they are in disagreement.

When both Houses have ordered conferees, they are in disagreement. Otherwise they could not order a conference.

The Speaker concurred in the statement by Mr. Mann and overruled the point of order.

**3233. It is not in order to instruct conferees after their appointment.**

On August 17, 1912,<sup>2</sup> on motion of Mr. Lemuel P. Padgett, of Tennessee the House further insisted on its disagreement to Senate amendments to the naval appropriation bill and asked for a conference on the disagreeing votes of the two Houses.

The Speaker appointed as conferees Mr. Padgett, Mr. J. Fred C. Talbott, of Maryland, and Mr. George Edmund Foss, of Illinois.

Thereupon, Mr. John A. Thayer, of Massachusetts, moved to instruct the House conferees with reference to a provision for the construction of a cruiser.

Mr. Padgett made the point of order that the motion came too late after the appointment of the conferees, and was not in order.

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

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<sup>1</sup> Champ Clark, of Missouri, Speaker.

<sup>2</sup> Second session Sixty-second Congress, Record, p. 1051.

**3234.** On May 25, 1928,<sup>1</sup> the Senate had under consideration the conference report on the joint resolution (S. J. Res. 46), providing for the completion of the Muscle Shoals plant for the manufacture and distribution of fertilizer, when Mr. Kenneth McKeller of Tennessee, offered a motion to recommit the joint resolution to the conferees with instructions to the Senate conferees to insist on an amendment subjecting the corporation to the laws of the State in which operated.

Mr. George W. Norris, of Nebraska, having raised a question of order, the Vice President<sup>2</sup> said:

The Chair has had ample time during the night for reflection upon this question.

The Chair has caused an investigation to be made into the question of recommitment of conference reports with instructions to conferees, and has found that there is a practical unanimity of opinion, where a conference report is before the Senate for consideration, that a motion to recommit with instructions at that stage is not in order. The rule appears to be that instructions are only in order after a motion to ask or agree to a conference has been agreed to, and prior to the appointment of conferees. In the present cast the conferees have already been named, and following the rule established by the decisions extending over a period of several years, the Chair feels impelled to sustain the point of order.

**3235. The ruling out of a motion to instruct conferees does not preclude the offering of a proper motion to instruct.**

**Instructions to managers of a conference may not direct them to do that which they might not do otherwise.**

**A motion to instruct conferees may not include directions which would be inadmissible if offered as a motion in the House.**

**A motion to instruct conferees to concur in a Senate amendment with an amendment not germane thereto was ruled out of order.**

**To a proposition authorizing loans to farmers in certain areas, an amendment authorizing loans with geographical restrictions was held not germane.**

On January 13, 1931,<sup>3</sup> the House agreed to a resolution reported by the Committee on Rules sending to conference the joint resolution (H. J. Res. 447) making appropriation for the relief of farmers in drought and storm stricken areas.

The resolution having been agreed to, Mr. Fiorello H. LaGuardia, of New York, moved that the house conferees be instructed to concur in a Senate amendment providing for the distribution of food with an amendment eliminating geographical restrictions.

Mr. Bertrand H. Snell, of New York, raised the question of order that the amendment to the Senate amendment was not germane and the motion proposed by indirection what would not have been in order if offered as a motion when the subject was open to amendment.

The Speaker<sup>4</sup> held:

The Chair agrees with the gentleman from New York, Mr. Snell, that the motion of the gentleman from New York, Mr. LaGuardia, is very ingeniously drawn and in the opinion of the Chair has

<sup>1</sup>First session, Seventieth Congress, Record p. 9837

<sup>2</sup>Charles Curtis, of Kansas, Vice President.

<sup>3</sup>Third session Seventy-first Congress, Record, p. 2086.

<sup>4</sup>Nicholas Longworth, of Ohio, Speaker.

great merit, but that cannot be considered by the Chair in determining the point of order. The Chair must disagree with the gentleman from New York, Mr. LaGuardia, in his general proposition that conferees have broader powers than the House itself has; in other words, that the House may instruct conferees to do a thing which the House could not do itself. The Chair thinks that motions to instruct conferees stand on exactly the same basis and must be dealt with in the same way as motions to recommit to a committee with instructions, and that if the House can not authorize a committee to do that which the House itself can not do, it follows that it can not instruct conferees to do that which the House can not do.

The motion of the gentleman from New York is that the House conferees be instructed to concur in the Senate amendment providing for food distribution, and so forth. What is the Senate amendment?

"That the Secretary of Agriculture is hereby authorized for the crop of 1931 to make advances of loans to farmers in the drought and storm stricken areas where he shall find that an emergency for such assistance exists, for the purchase of food under such terms as may be prescribed by the Secretary of Agriculture"

The motion of the gentleman from New York is not directed against the bill as a whole, but only to that one amendment which the Chair has just read, which is specifically limited to farmers in the drought and storm stricken areas. The gentleman from New York desires to broaden that to the extent that it would prevail in cities where there are no drought or storm stricken areas and no farmers. The last decision on the general subject of whether a motion to broaden a specified area is germane was made by the present occupant of the Chair on April 2, 1930. A bill was under consideration which provided, among other things, that actions brought against a carrier should only be in a State through or into which the carrier operates a line of railway. An amendment was offered proposing in addition that such action might be brought in the district or State where the railroad maintained an agency and the Chair held that was not germane, because it broadened largely the area in which the proposition was supposed to operate.

The Chair thinks that the motion of the gentleman from New York seeks to do exactly the sort of thing which the present occupant of the chair has held to be illegal, and the Chair is constrained to sustain the point of order.

The Speaker having concluded his ruling Mr. James V. McClintic, of Oklahoma, inquired if a further motion to instruct conferees would be in order.

The Speaker replied that a proper motion to instruct conferees was in order at this stage of the proceedings and as none was pending he would recognize Mr. McClintic for that purpose.

**3236. One motion to instruct conferees having been considered and disposed of, further motions to instruct are not in order.**

On February 28, 1913,<sup>1</sup> on motion of Mr. John Lamb of Virginia, the rules were suspended and the agricultural appropriation bill with Senate amendments was taken from the Speaker's table; the Senate amendments were disagreed to and a conference was asked with the Senate.

Mr. Frank W. Mondell, of Wyoming, offered the following resolution:

*Resolved*, That it is the opinion of the House that the conferees on the part of the House should not agree to Senate Amendment numbered 142 in form or substance:

The question of the resolution being taken, on division, there were ayes 36, nays 117, and the resolution was not agreed to.

Whereupon Mr. John W. Weeks, of Massachusetts, proposed this resolution:

*Resolved*, That it is the opinion of the House that the conferees on the part of the House should agree to Senate amendment 142 in form or substance.

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<sup>1</sup>Third session Sixty-second Congress, Record, p. 4344.

Mr. John J. Fitzgerald, of New York, made the point of order that one motion to instruct having been considered and disposed of, a further motion to instruct was not admissible.

In debating the point of order, Mr. James R. Mann, of Illinois, said:

Mr. Speaker, it seems to me that the motion for instruction is itself open for amendment unless the previous question be had, but there can not be an indefinite number of motions offered in the way of instructions. The motion for instructions being made, any gentleman may offer an amendment by adding additional instructions, but only one main motion for instructions, I think, can be offered. Without a holding to that effect, unless the Speaker hastens the naming of the conferees in spite of Members demanding recognition, we would be in a position whereupon one of these bills in conference with a large number of Senate amendments it would be impossible to ever finish.

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

This is analogous to a motion to recommit, and there can be but one motion to recommit that is in order, and it is amendable; anybody could have amended it if he got the chance without the previous question being ordered; and it has been held by the Chair's predecessors, and also by the present occupant of the chair, that when a gentleman makes a motion to recommit with instructions and the Chair rules his instructions out of order, then another member can make another motion that will be in order; but if the first one is in order and disposed of, that ends it, because there must be an end to all things some time or other. The Chair sustains the point of order:

**3237. Adoption of a motion to disagree or to insist on disagreement to a Senate amendment does not preclude consideration of subsequent motions instructing conferees to take other action on such amendments or parts thereof.**

**A motion to instruct conferees when made at the proper time is admissible and it is not within the province of the Chair to rule on its consistency.**

On May 13, 1920,<sup>2</sup> the House had under consideration the Senate amendments to the agricultural appropriation bill, and had insisted on its disagreement to Senate amendment No. 93, and asked a further conference with the Senate. Pending the appointment of the conferees, Mr. Thomas L. Blanton, of Texas, submitted a motion to instruct the managers on the part of the House to concur in amendment No. 93.

Mr. Ezekiel S. Candler, Jr., of Mississippi, raised a question of order on the ground that the conferees had just been instructed to insist on the disagreement of the House to the amendment and the motion was therefore contradictory and inconsistent.

After debate, the Speaker <sup>3</sup> overruled the point of order and said:

The Chair is informed that there is no exact precedent on the point. The Chair thinks that the proper time to make a motion to instruct is after the conference has been asked for and before the conferees are appointed. The Chair recognizes that there is force in what the gentlemen say, that this motion is contradictory to the judgment of the House heretofore expressed, but at the same time, inasmuch as parliamentary law does allow a motion to instruct, the Chair does not see why the mere fact that it is contradictory to what the House has done at a former time should prevent it. That is a forcible argument against making it. But if the parliamentary rule allows the motion, the fact that the House has already expressed itself against it would not of itself make

<sup>1</sup> Champ Clark, of Missouri, Speaker.

<sup>2</sup> Second session Sixty-sixth Congress, Record, p. 7025.

<sup>3</sup> Frederick H. Gillett, of Massachusetts, Speaker.

it out of order. Of course, this question seldom arises, because the motion would generally be recognized as futile. The gentleman from Texas has fairly stated the facts in explanation of how it arises now—that there was confusion and that the issue was not fully understood in the House when the vote was taken. It is probable that only under similar circumstances would the question arise, although it might arise where a Member thought that the House has changed its mind after several hours had elapsed. At any rate, the parliamentary rule is that before the conferees are appointed a motion to instruct is in order, and there being no authority limiting that the Chair rules that the motion of the gentleman from Texas is in order.

**3238.** On May 19, 1920,<sup>1</sup> the House was considering the Senate amendment to the bill (H. R. 12775), the Army reorganization bill.

On motion of Mr. Julius Kahn, of California, the House further disagreed to the amendment of the Senate and asked further conference.

Subsequently Mr. Kahn moved that the managers on the part of the House be instructed to recede from their disagreement to the National Guard section of the Senate amendment and agree to the same with an amendment.

Mr. Louis C. Cranton, of Michigan, made the point of order that the House having just voted to disagree further to the amendment, a motion to instruct the conferees to recede was an attempt to reopen a matter already adjudicated and was not in order.

The Speaker<sup>2</sup> said:

The Chair had occasion to rule on this question the other day, and ruled that at this stage it was proper to instruct the conferees. Now, as to the point that the gentleman from Michigan makes that the House can not instruct the conferees as to a portion of the Senate amendment, because it would be inconsistent with its action of disagreement, the House can instruct its conferees in any way it pleases, and inasmuch as the House had disagreed to the Senate amendment, any instruction, except to insist upon that disagreement, would be in some measure inconsistent with its disagreement; but if the House can instruct—and the Chair believes there is no doubt about that—the Chair thinks the House can instruct as to part of the Senate amendment. That would leave the House and the Senate still in disagreement, and the conferees would still have jurisdiction to decide as they pleased about the rest. Of course, that ruling leaves full freedom to the House to instruct or not to instruct, and the Chair overrules the point of order.

**3239.** On June 22, 1926,<sup>3</sup> the Speaker sustained a point of order raised by Mr. Edward J. King, of Illinois, against the conference report on the bill (H. R. 2) providing for the consolidation of national banking associations.

Thereupon, Mr. Louis T. McFadden, of Pennsylvania, moved that the House insist on its disagreement to all Senate amendments save one and recede from its disagreement to that one with an amendment, and asked for further conference.

Mr. Martin B. Madden, of Illinois, as a parliamentary inquiry, asked whether, after the House had agreed to the pending motion, it would be in order to instruct conferees with respect to the Senate amendment to which an amendment was proposed.

The Speaker<sup>4</sup> held that under such circumstances a motion to instruct the House conferees would be in order.

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<sup>1</sup>Second session Sixty-sixth Congress, Record, p. 7300.

<sup>2</sup>Frederick H. Gillett, of Massachusetts, Speaker.

<sup>3</sup>First session Sixty-ninth Congress, Record, p. 11789.

<sup>4</sup>Nicholas Longworth, of Ohio, Speaker.

In response to a further inquiry by Mr. Clarence Cannon, of Missouri, the Speaker held that a motion for such instructions would be in order even though in contravention of action taken by the House in agreeing to the pending motion.

**3240. Instructions to conferees expire when their report is submitted to the House and if further conference is had such former instructions do not obtain and a motion for new instructions is in order.**

**Conferees reporting inability to agree are thereby discharged and if a new conference is ordered conferees must again be appointed and new instructions are in order.**

**A motion to instruct conferees is in order after conference is agreed to and before conferees are named.**

**The motion to instruct conferees is subject to amendment and is debatable under the hour rule unless the previous question is ordered.**

On February 25, 1919,<sup>1</sup> Mr. S. Hubert Dent, jr., of Alabama called up the conference report on the bill (H. R. 13274) validating informal war contracts.

The Clerk having read the conference report announcing that the conferees had been unable to agree, Mr. Dent moved that the House further insist on its disagreement to the Senate amendment and ask further conference.

Mr. Martin D. Foster, of Illinois, proposed a motion to instruct conferees.

Mr. William Gordon, of Ohio, submitted that the conferees had been instructed previous to the conference just reported.

The Speaker<sup>2</sup> held that the conferees had been discharged and their instruction invalidated when they presented their report, and if the pending motion for a new conference was agreed to, it would be necessary to appoint conferees again and a motion to instruct them would again be in order after the conference was agreed to and before the conferees were named.

Mr. William H. Stafford, of Wisconsin, submitted a parliamentary inquiry as to whether it would be in order to amend the motion to instruct.

The Speaker held that the motion to instruct was subject to amendment, and in response to a further inquiry from Mr. S. Hubert Dent, jr., of Alabama, held the motion to be debatable, and recognized Mr. Foster for one hour to debate it.

**3241. Where the purport of a motion to instruct was clear, the form in which submitted was held not to be subject to a point of order.**

**Action<sup>3</sup> on a conference report by either House discharges the committee of conference and precludes a motion to recommit, but until one House has acted on the report the motion to recommit to the conferees, with or without instructions, is in order.**

**The House may at the proper time instruct its own conferees, but having no jurisdiction over the managers on the part of the Senate may not instruct the committee of conference as a whole.**

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<sup>1</sup>Third session Sixty-fifth Congress, Record, p. 4257.

<sup>2</sup>Champ Clark, of Missouri, Speaker.

<sup>3</sup>Action on a conference report is limited to agreement, disagreement or recommitment (F. 6546.)

**The motion to recommit a conference report with instructions to the House conferees is subject to amendment unless the previous question is ordered.**

On May 9, 1924,<sup>1</sup> the House was considering the conference report on the bill (H. R. 7995), the immigration bill, reporting a new bill in lieu of the substitute for the House bill proposed by the Senate amendment.

Mr. Adolph J. Sabath, of Illinois, moved to recommit the conference report to the committee of conference.

Mr. Nicholas Longworth, of Ohio, having demanded the previous question on the motion, Mr. Finis J. Garrett, of Tennessee, as a parliamentary inquiry asked if it would be in order to offer an amendment in event the previous question was refused.

The Speaker<sup>2</sup> replied in the affirmative, and the pending motion for the previous question having been rejected, recognized Mr. John E. Raker, of California, to offer the following:

To recommit the bill to the committee of conference with instructions on the part of the House not to agree to the proviso reported in the bill submitted by the conference committee, reading as follows: "That this subdivision shall not take effect as to exclusion until March 1, 1925, before which time the President is requested to negotiate with the Japanese Government in relation to the abrogation of the present arrangement on this subject."

Mr. Everett Sanders, of Indiana, raised a question of order on the ground that the motion proposed to instruct the conferees against agreement to a mere proviso, whereas the Senate amendment incorporating an entire bill was pending, and the proper way to effect such purpose would be to instruct conferees to agree to the pending Senate amendment with an amendment.

During debate on the point of order, the Speaker, in response to inquiries from Mr. Charles R. Crisp, of Georgia, held that when either House acted on the conference report, such action discharged the committee of conference, and a motion to recommit was no longer in order; but that until action was taken on the report by one of the two Houses, it was in order to move to recommit to the managers on the part of the House with or without instructions.

The Speaker further held that while the House had no jurisdiction over Senate conferees and therefore could not instruct the committee of conference as a whole, it was in order at the proper time to move to instruct the House conferees.

The Speaker then passed on the question raised by Mr. Sanders as follows:

There is no doubt that the House has a perfect right to instruct the House conferees, but the technical point of order is made whether the gentleman from California has gone about it in the right way. This proviso is just one part of the general conference report, and why should they not be instructed, if in a further conference with the Senate conferees they agree at all, to agree to an amendment striking out that proviso? Something of that kind, in the Chair's opinion, would be a proper motion.

However, inasmuch as it is purely technical and easily reached, the Chair would take the chance that the conferees will be able to act in accordance with the will of the House, and overrules the point of order. The question is on agreeing to the amendment.

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<sup>1</sup>First session Sixth-eighth Congress, Record, p. 8248.

<sup>2</sup>Frederick H. Gillett, of Massachusetts, Speaker.

**3242. One House has no jurisdiction over conferees appointed by the other, and instructions to conferees may apply only to managers on the part of the House giving the instructions.**

On August 23, 1921,<sup>1</sup> the House had under consideration the conference report on the bill (H. R. 8117) to supplement the national prohibition act.

Mr. Meyer London, of New York, moved to recommit the conference report to the committee of conference with instructions to amend it to restrict the right to search dwellings and personal effects.

Mr. James R. Mann, of Illinois, made the point of order that it was beyond the province of the House to instruct a committee of conference including managers on the part of the Senate over whom the House had no jurisdiction.

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

**3243. The jurisdiction of conferees is limited to the differences between the two Houses and conferees may not be instructed to act on an amendment not in disagreement.**

On June 1, 1917,<sup>3</sup> the House ordered the previous question on the adoption of the conference report on the urgent deficiency appropriation bill.

Thereupon, Mr. William B. Bankhead, of Alabama, moved that the bill be recommitted to the committee of conference, with instructions to the managers on the part of the House to insist on an amendment which did not appear in the original bill or in the Senate amendments.

Mr. John J. Fitzgerald, of New York, made the point of order that the proposed amendment was not a matter in disagreement between the two Houses.

The Speaker<sup>4</sup> sustained the point of order.

**3244. Instructions to managers of a conference may not direct them to do that which they might not otherwise do.**

**Instructions may not require conferees to report back amendments outside the subjects in disagreement between the two Houses.**

On September 15, 1922,<sup>2</sup> in the House, during the consideration of the conference report on the tariff bill of 1922, Mr. John N. Garner, of Texas, moved that report be recommitted to the committee of conference with instructions to the House conferees to recede from their disagreement to Senate amendment No. 667 relating to the sugar schedule and agree to the same with an amendment reducing the duty to seventy-one one-hundredths of a cent.

Mr. Edward T. Taylor, of Colorado, made the point of order that the rate proposed was lower than the rate fixed by the House in the bill and lower than that fixed by the Senate in its amendment, and was therefore without the limits of the disagreement between the two Houses.

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

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<sup>1</sup> First session Sixty-seventh Congress, Record, p. 5568.

<sup>2</sup> Frederick H. Gillett, of Massachusetts, Speaker.

<sup>3</sup> First session Sixty-fifth Congress, Record, p. 3189.

<sup>4</sup> Champ Clark of Missouri, Speaker.

<sup>5</sup> Second session Sixty-seventh Congress, Record, p. 12716.

**3245. Instances wherein special provision was made for consideration of instructions in compliance with assurances that the House would be afforded opportunity to vote on a Senate amendment.**

**Form of a special order reported from the Committee on Rules providing for consideration of a resolution instructing conferees.**

On November 17, 1921,<sup>1</sup> Mr. Philip P. Campbell, of Kansas, by direction of the Committee on Rules, submitted as privileged the following:

*Resolved*, That immediately upon the adoption of this resolution it shall be in order to consider and to vote upon the following resolution without amendment. There shall be three hours of debate on such resolution, the time to be controlled, one-half by the gentleman from Michigan, Mr. Fordney, and one-half by the gentleman from Texas, Mr. Garner. At the conclusion of the debate the previous question shall be considered as ordered on the resolution.

*Resolved*, That the managers on the part of the House in the conference on the disagreeing votes of the two Houses on the bill (H. R. 8245) entitled "Act act to revise and equalize taxation, to amend and simplify the revenue of act of 1918, and for other purposes," now in conference, be, and they are hereby, instructed to recede from the disagreement of the House to the amendment of the Senate No. 122, and to agree to the same.

In presenting the resolution Mr. Campbell explained:

Mr. Speaker, this resolution does what was agreed would be done when this bill was sent to conference. At that time it was stated by the gentleman in charge of the bill that an opportunity would be given to vote upon the proposition as to whether or not the House would concur to the Senate amendment relating to the surtax. This resolution brings the question squarely before the House, and will enable the House to express its judgment upon this question.

After brief debate the resolution was agreed to.

**3246. Although managers may disregard instructions, their report may not for that reason be ruled out of order.**

On December 22, 1913,<sup>2</sup> Mr. Carter Glass, of Virginia, called up the conference report on the bill (H. R. 7837), the currency bill.

Mr. William H. Murray, of Oklahoma, made the point of order that the managers had violated their instructions and that their report was not in compliance with the direction imposed on them by the House at the time the bill was sent to conference.

The Speaker<sup>3</sup> declined to entertain the point of order on the ground that the question as to whether conferees had exceeded their powers was for the House, and, while it might affect the acceptance or rejection of the report, it was not competent for the Chair to rule on it.

**3247. A conference report is not subject to the point of order that it is in violation of instructions given the managers.**

On September 15, 1922,<sup>4</sup> the House resumed consideration of the conference report on the bill (H. R. 7456), the tariff bill.

After debate (Mr. John N. Garner, of Texas, moved that the conference report be recommitted to the committee of conference with instructions to the House conferees

<sup>1</sup> First session Sixty-seventh Congress, Record, p. 7860.

<sup>2</sup> Second session Sixty-third Congress, Record, p. 1430.

<sup>3</sup> Champ Clark, of Missouri, Speaker.

<sup>4</sup> Second session Sixty-seventh Congress, Record, p. 12531.

to agree to the Senate amendment putting fertilizer potash on the free list, and to strike out the provision containing the dye embargo.

The yeas and nays being demanded and the vote being taken, the motion was agreed to, yeas 177, nays 130, and the conference report was recommitted to the committee of conference.

On September 15,<sup>1</sup> Mr. Joseph W. Fordney, of Michigan, called up the second conference report on the bill, when Mr. Henry A. Cooper, of Wisconsin, made the point of order that the conferees had exceeded their authority in changing the rates in the chemical schedule. Mr. Cooper read the instructions imposed by the House on the conferees confining them to the provisions for the return of fertilizer potash to the free list and the elimination of the dye embargo, and contended that in reporting changes in other unrelated rates in the chemical schedule the conferees had gone beyond the powers delegated to them.

In support of his contention Mr. Cooper cited sections 4404 and 5526 of Hinds' Precedents relating to the recommitment of bills to committees of the House.

The Speaker<sup>2</sup> differentiated between the recommitment of a conference report to a committee of conference and the recommitment of a bill to a committee of the House, and said:

The Chair thinks that the argument of the gentleman from Wisconsin is based on a failure to distinguish the difference between the reference of a bill to a committee with instructions and the reference to the conferees with instructions. The case which the gentleman cited was the reference of a bill to a committee with instructions to report the bill back, and it is well established, as the gentleman states, that in that case the committee is bound and limited by the orders of the House, and immediately it reports the bill back without any meeting of the committee at all. It is really a technical performance. But if the House will consider for a moment, there is a great difference between sending a bill back to a committee of the House, which is under the control of the House, and sending a conference report back to conferees who are not subject to the will of the House, because the Senate conferees have equal power and are quite independent.

This case does not rest simply on the Chair's opinion, but there is a decision by a Speaker whose opinion carries as much authority, probably, as that of anybody who has ever been in the chair, Speaker Carlisle. In a decision cited in Hinds' Precedents, volume 5, section 6395, he went even further than it is necessary for the Chair to go now. He went so far as to say that if the House conferees disobeyed the instructions of the House, still the report is not on that account subject to a point of order. Of course, the House is not bound to agree to it and probably would not agree with its conferees if they so acted, but, as Speaker Carlisle said, the conferees are partly from the House and partly from the Senate. They are there to come to an agreement, and the House conferees, of course, are subject, and feel themselves subject to the orders of the House, but if they disobey the House and come back, with a report which disregards its instructions, the report is not subject to a point of order, but is subject to review by the House. In the present instance, of course, it is not necessary to go as far as that, because the conferees have strictly obeyed the orders of the House and have made the changes which the House commanded and have made other changes as to which they had no directions. When the House referred the bill back to the conferees, the whole bill went again to conference. Speaker Clark in the case of a bill which the Members who were then here will well remember, the great Army bill at the beginning of the war, answered a parliamentary inquiry on this very point, that when the bill went back to the conferees with instructions the whole bill was then before the conferees. Here there is no difference between the two Houses. The House has nothing at all on the question. it is

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<sup>1</sup> Record, p. 12710.

<sup>2</sup> Frederick H. Gillett, of Massachusetts, Speaker.

an entirely new provision put in by the Senate. The Chair thinks any provision which is germane is permissible. The Chair overrules the point of order.

**3248. The Speaker may not rule out of order a conference report as in contravention of instructions imposed on the managers.**

**Where one House has amended a bill of the other by striking out all after the enacting clause and substituting a new text, the conferees have the entire subject before them and may report any germane bill.**

On June 12, 1917,<sup>1</sup> the House was considering the conference report on the bill (H. R. 3673) amending the Federal reserve act, when Mr. Pat Harrison, of Mississippi, made the point of order that the conferees had violated instructions imposed on them on May 10, as follows:

“That the managers on the part of the House be instructed to agree in conference to the substance of the following provision in the Senate amendment:

“*Provided*, Such nonmember bank or trust company maintains with the Federal reserve bank of its district a balance sufficient to offset the items in transit held for its account by the Federal reserve bank; *Provided further*, That nothing in this or any other section of this act shall be construed as prohibiting a member or nonmember bank from making reasonable charges, in no case to exceed 10 cents per \$100 or fraction thereof based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or otherwise.”

Mr. Harrison charged that the conferees instead of reporting the two provisos in the form in which directed had substituted for them this provision—

That nothing in this or any other section of this act shall be construed as prohibiting a member or nonmember bank from making reasonable charges to be determined and regulated by the Federal Reserve Board. But no such charges shall be made against the Federal reserve bank—

thus changing the Federal Reserve Board from an agency of administrative capacity to one of judicial capacity and giving them power to determine the reasonableness of rates.

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

The situation is this: The Senate struck out everything after the enacting clause of the House bill. It has been decided so many times that it is hardly necessary to repeat it, that where that is done a very wide discretion is given to the conferees, even to the bringing in of an entirely new bill. Of course such new bill would have been to be on the same subject.

The transactions in regard to conference reports are divided into two parts—what the House can do and what the Speaker can do. On the 23d day of June, 1812, 105 years ago, Mr. Speaker Henry Clay laid down the limits of what conferees can do so clearly that his ruling has been followed ever since. The conferees can not go outside of what is submitted to them and lug in entirely new matter and new questions. They are always trying to do it. As the gentleman from Wyoming, Mr. Mondell, suggests, it is a very serious proposition for the Speaker to refuse to rule out a conference report in the last days of the session, and it is a very serious question for him to rule it out. The Chair did so twice in the last days of a session on very important bills, but both were clear cases. The Chair did it with a great deal of reluctance, but it had to be done under the universal practice.<sup>132</sup>The Speaker has not a thing to do in passing upon the question of whether the conferees did or did not comply with the instructions of the House. That question is for the House to decide. That has been decided. I do not know how many times, but several times, and the Chair decided

<sup>1</sup>First session Sixty-fifth Congress, Record, p. 3529.

<sup>2</sup>Champ Clark, of Missouri, Speaker.

it once himself. That was the reason my opinion in that case was so short. The Chair did not elaborate it, for the House was busy, and it had been decided that way several times, and he simply followed the old ruling.

The leading case is found in section 6395 of Hinds' Precedents. The opinion was written by Mr. Speaker Carlisle. He was a great man and a great Speaker. The headline of Mr. Speaker Carlisle's decision was written by Asher C. Hinds, construing Mr. Speaker Carlisle's opinion. It is not any secret with people who have been around here any considerable length of time that Mr. Hinds probably knew more about parliamentary law than any other man that ever lived. He knew more than Speakers whom he advised, and they were great Speakers. He had made it the study of his life. Here is what Mr. Hinds said, and then I will read what Mr. Speaker Carlisle said.

The Speaker then read section 6395 of Hinds' Precedents, and concluded:

It seems to the Chair that that opinion is as clear as crystal. This is a matter for the House to decide. The point of order is overruled, and the House has the conference report before it. If the House does not like the conference report, it can vote it down. That is its remedy.

**3249. The Senate practice admits the motion to instruct conferees.**

**A pending conference report must be disposed of before motions are in order for disposition of amendments in disagreement.**

On July 24, 1914,<sup>1</sup> the Senate had under consideration the conference report on the Indian appropriation bill.

Mr. Frank B. Brandegee, of Connecticut, submitted a parliamentary inquiry as to when it would be in order to move to instruct conferees on amendments remaining in disagreement.

The Vice President<sup>2</sup> ruled:

There is not any doubt at all about the parliamentary situation. Certain items in disagreement between the two Houses have been agreed to by the conferees. Certain items—six of them—are still in dispute. As to the items that have been agreed to, there is not any question that the uniform rulings of the occupants of this chair have been that is the first motion that comes up, and that it is the duty of the Senate either to concur in or to refuse to concur in the items which have been agreed upon, and that must be as a whole. If the Senate refuses to concur they go back, of course, for reconsideration and then it is possible for instructions to be given to the conferees by the Senate. After the question of agreeing to the conference report has been determined by the Senate, the motion of the Senator from Montana will be in order, to instruct the conferees with reference to the items that are yet in dispute between them.

**3250. On May 18, 1920,<sup>3</sup> the Senate was considering the conference report on the agricultural appropriation bill, when Mr. Pat Harrison, of Mississippi, inquired when it would be in order to move to instruct conferees.**

The Vice President<sup>2</sup> said:

The Chair took occasion in 1914 to investigate the question and then expressed the opinion that anything could be done that had been done in accordance with decisions of preceding presiding officers, but it was the opinion of the Chair at that time that the way to reach it was to point out what the objections were to the conference report, and if the objections met with the views of the Senate, and they wanted the conferees to stand by the Senate amendments, not to withdraw it, but reject the conference report and then instruct the conferees to insist on the amendments of the Senate and send the bill back to conference.

<sup>1</sup>Second session Sixty-third Congress, Record, p. 12609.

<sup>2</sup>Thomas R. Marshall, of Indiana, Vice President.

<sup>3</sup>Second session Sixty-sixth Congress, Record, p. 7211.

**3251. Instance in which it was held that while the Senate might not instruct conferees, it might request conferees to take designated action on propositions in disagreement between the two Houses.**

On May 27, 1920,<sup>1</sup> the Senate was considering amendments to the agricultural appropriation bill in disagreement between the two Houses.

Mr. George W. Norris, of Nebraska, proposed the following motion:

Mr. President, I move that the Senate further insist upon its amendment numbered 93, ask for a further conference with the House, and that the conferees on the part of the Senate be instructed in accordance with the language which I sent to the clerk's desk.

Mr. Pat Harrison, of Mississippi, having raised a question of order, the Vice President ruled:

The Chair thinks the Senate can amend its amendment if it chooses to do so, but the present occupant of the chair has never believed that you can instruct conferees. That is equivalent to saying to the House conferees "You have got to take the amendment." It does not leave it open to a full and free conference if you tell the conferees that they have got to take it.

It is the opinion of the Chair that whenever that is done the Senate conferees ought to withdraw immediately from the conference. The Senate conferees should immediately withdraw from a conference whenever the House of Representatives undertakes to tell the Senate that it has to accept an amendment.

The Chair is going to rule, and then an appeal can be taken, and the matter settled.

The Chair holds that it will be in order for the Senate, if it chooses, to adopt the amendment as presented by the Senator from Nebraska.

The Chair holds, secondly, that it is not in order to instruct the conferees to insist upon this amendment; that that is in violation of the principle of the rule with reference to a full and free conference between the two Houses. An appeal from either or both rulings can be taken.

The Chair thinks it would be proper, if the Senator wishes to adopt it, to say that the conferees be not instructed, but requested to agree upon a compromise with the House conferees upon the proposed basis. That can be done, but the Chair does not think the Senate can instruct the conferees.

Thereupon, Mr. Norris modified his motion to read that the conferees on the part of the Senate be requested in accordance with the language sent to the Clerk's desk.

The Vice President said:

The Chair thinks that can be done.

The question being taken, and the yeas and nays being ordered, the yeas were 39, nays 24, and the motion was agreed to.

The entry in the Journal is as follows:

Mr. Norris moves that the Senate request a further conference with the House of Representatives on the disagreeing votes of the two Houses on Senate amendment numbered 93, and that the conferees on the part of the Senate be appointed by the Chair, and that they be requested, if possible, to compromise the disagreement upon the said amendment upon substantially the following basis:

In lieu of the matter proposed to be stricken our insert:

"For the purchase, testing, and distribution of valuable seeds, bulbs, trees, shrubs, vines, cuttings, and plants, \$75,000. Said seeds, bulbs, trees, shrubs, vines, cuttings, and plants shall be sent only to such persons as shall make request therefor: *Provided*, That all such requests made of Senators, Representatives, and Delegates in Congress, if transmitted to the Department of Agriculture, shall be complied with by said department."

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<sup>1</sup> Second session Sixty-sixth Congress, Record, p. 7717.