

Chapter CXXXV.

MANAGERS TO CONSIDER ONLY MATTERS IN DISAGREEMENT.

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6407. The managers of a conference may not in their report include subjects not within the disagreements submitted to them by the two Houses.—On June 23, 1812,² Mr. Robert Wright, of Maryland, from the managers appointed on the part of the House to attend a conference with the managers on the part of the Senate upon the subject-matter of the disagreeing votes of the two Houses on the amendments of the Senate to the bill “for the more perfect organization of the infantry of the Army of the United States” made a report, which was read and declared by the Speaker³ to be out of order, inasmuch as the conferees had discussed and proposed amendments which had not been committed to them by either of the Houses.

6408. On March 3, 1893,⁴ Mr. Thomas C. McRae, of Arkansas, submitted the report of the committee of conference on the bill (H. R. 7028) “to protect settlement rights where two or more persons settle upon the same subdivision of agricultural public lands before survey thereof.”

The report having been read, Mr. Charles Tracey, of New York, made the point of order that the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate had exceeded their authority and jurisdiction in recommending the injection into the bill of new matter not in dispute between the two Houses and not germane to the bill or amendments thereto.

¹ Instance wherein managers originated a bill. (See. 1485 of Vol. II.)

² First session Twelfth Congress, Journal, p. 383.

³ Henry Clay, of Kentucky, Speaker.

⁴ Second session Fifty-second Congress, Journal, pp. 137–139; Record, pp. 2573–2578.

After debate, the Speaker¹ sustained the point of order, holding as follows:

The question for the Chair to determine is whether the amendment which has been agreed to and reported by the conference committee is germane to the amendment of the Senate or to the original bill. The amendment may not be germane to the original bill, yet if it is germane to the Senate amendment the conference committee might report it.

The Chair thinks that the practice of enlarging the powers of conference committees beyond the strict letter of the rule was wrong; that conferees ought to be held to the rule, and that amendments they propose in conference reports shall be germane either to the original text or to the amendment. The portion of the Senate amendment which the gentleman from Arkansas [Mr. McRae] claims justifies and authorizes the amendment which the conference committee have reported in this case is as follows:

“That the agents appointed by the Department of the Interior to investigate claims under the swamp-land act approved September 28, 1850, shall have the power to administer oaths and to compel the attendance of witnesses both on behalf of the State and of the United States, and witnesses swearing falsely before them shall be deemed guilty of perjury, and shall, on conviction, be punished as now prescribed by law.”

In the opinion of the Chair, conference committees should keep strictly within the rule, which is that any original amendment which they may recommend to the two Houses must be germane either to the original bill or to the amendments which are in dispute.

The Chair understands that the subject of this Senate amendment is the administration of oaths by special agents of the Interior Department in the investigation of frauds under the swamp-land act. The Chair understands that the amendment reported by the committee goes beyond any questions of the duties of such agents, and provides for the adjustment, under the swamp-land act, between the several States and the United States Government, of a large number of claims that are unadjusted. The Chair decides that this conference report goes beyond the power and jurisdiction of a conference committee and can not be received by the House.

Mr. McRae appealed from the decision of the Chair. On motion of Mr. James H. Blount, of Georgia, the appeal was laid on the table.

6409. In the later, but not the earlier practice, the Speaker rules a conference report out of order, on a question being raised.

Under the later practice, when a conference report is ruled out of order, the Senate is informed by message that the report has been rejected.

While the managers may perfect by germane amendments propositions committed to them, they may not, under the later practice, go beyond the differences of the two Houses in so doing.

On April 19, 1871,² Mr. Henry L. Dawes, of Massachusetts, 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 No. 19 (deficiency appropriations), submitted a report thereon in writing.

Mr. William S. Holman, of Indiana, made the point of order that the report contained matter not a subject of difference between the two Houses. Mr. Holman specified that there were incorporated in the report two propositions which were new, a provision making appropriation for the Sutro tunnel and another for the Agricultural Department. These matters, he submitted, were not referred to the committee of conference at all. He understood that the committee of conference was not authorized to consider matters which had been neither incorporated in Senate amendments nor brought before the House.

¹ Charles F. Crisp, of Georgia, Speaker.

² First session Forty-second Congress, Journal, pp. 190, 191; Globe, p. 796.

The Speaker¹ said:

The rule is as broad as the gentleman from Indiana states it, with this reservation: New propositions may be introduced, but there must be something in the bill to make them germane as amendments. The power of a conference committee, which, as gentlemen well know, the two Houses have been in the habit of considerably enlarging, fairly includes the power to incorporate germane amendments. If the gentleman from Indiana makes the point that the amendments he specifies are not germane, the Chair will examine the question; but the mere fact that the propositions embrace matters which were not originally before the House or Senate would not be sufficient to require them to be ruled out.

After further debate, during which it was shown that the Sutro-tunnel appropriation was not in the bill when it went to conference, but, as Mr. Dawes stated, was put in to reconcile the Senate conferees to the striking out of an appropriation for the Carson mint, the Speaker said:

The point of order lies against the conference report, but during the experience of the Chair on this floor he has never known a conference report ruled out on a point of order. The report of a conference committee is always received as embodying the conclusions of both Houses, or the representatives of both branches of Congress. The Chair will, therefore, submit the point of order to the House.

The point of order, being put to the House, was sustained by a vote of 82 ayes to 33 noes.

The report having been thus ruled out, the Speaker said that he was at a loss to know what message to send to the Senate. It was suggested that the report, having not been received, was still with the committee, and that the committee might, therefore, make a new report. Mr. Nathaniel P. Banks, of Massachusetts, moved to send a message to the Senate informing them that the report had been ruled out, but subsequently withdrew this motion. Finally, on motion of Mr. James A. Garfield, of Ohio, it was voted to recommit the report to the conference committee.

6410. On May 2, 1898,² Mr. John F. Lacey, of Iowa, called up the conference report on the bill (H. R. 5975) extending the homestead laws and providing for a right of way for railroads in the district of Alaska.

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

During the debate it was developed that among the Senate amendments was a provision relating to the fishery question between Canada and the United States. To this the conferees added a provision for a commission to consider the differences between Canada and the United States in regard to trade relations.

The Speaker³ ruled:

The Chair dislikes to pass upon such matters as this, but it is a well-established principle that no conference committee can introduce a new subject, one that was not in dispute between the two Houses; and it is evident that everybody in the House realizes that this amendment which has been presented is really beyond the power of the committee of conference. That being so, and the point being made, there is no other course but to sustain the point of order, which the Chair accordingly does.

On June 20, 1898,⁴ Mr. Joseph W. Babcock, of Wisconsin, submitted a conference report on the bill (H. R. 6148) to amend the charter of the Eckington and Soldiers' Home Railway Company and the Maryland and Washington Railway, etc.

¹James G. Blaine, of Maine, Speaker.

²Second session Fifty-fifth Congress, Record, p. 4.514.

³Thomas B. Reed, of Maine, Speaker.

⁴Second session Fifty-fifth Congress, Record, p. 6165.

Mr. William P. Hepburn, of Iowa, made the point of order that the committee of conference had inserted matter over which it had no jurisdiction. A Senate amendment had proposed to extend to other roads a privilege enjoyed by one. The conferees had added an amendment striking out this extension of privilege to others and also taking away the privilege enjoyed by the one.

During the debate it was urged on the one side that the conferees had jurisdiction only on the subject of the disagreeing votes, and that the repeal of this privilege was not in disagreement. On the other hand, it was argued that the Senate had introduced the subject-matter by their amendment and that it was proper for the conferees to amend it.

The Speaker¹ sustained the point of order, saying:

If we were to adopt the idea that when once the subject-matter was introduced that was to control, and not the differences between the two bodies, we should be likely to enlarge the powers of the committee of conference rather beyond what was intended by the House. To the Chair it seems the point of order is well taken, and therefore the Chair sustains it.

A question arising as to the effect of ruling out a conference report in this way, and as to whether or not a motion to recede and concur in the Senate amendment would be in order, the Speaker said:

The Chair thinks that according to the action of the House hitherto the sustaining of a point of order on a conference report has been regarded as equivalent to a rejection of the report. * * * The present view of the Chair, contrary to his first impression, is that in the present condition of things the motion would be in order. * * * The Chair so rules.

This motion having failed, and the House having voted to further insist and ask a further conference, a message² was sent to the Senate announcing that "the House had disagreed to the report of the committee of conference," had further insisted, had asked a further conference with the Senate, and had appointed certain conferees.

6411. On March 3, 1871,³ the House was considering the report of a committee of conference on the disagreeing votes of the two Houses on the bill (H. R. 2816) making appropriations for the support of the Army, when Mr. Fernando Wood, of New York, raised a question of order as to a provision relating to certain claims. One of the Senate amendments to which the House had disagreed was a provision to refer the matter of the claims in question to the Quartermaster-General and the Commissary-General. The conferees reported a provision to constitute a commission to deal with the subject.

The Speaker⁴ ruled:

The Senate inserted a provision in this appropriation bill on this subject, and the provision reported by the conference committee is a germane modification of that provision, and therefore it comes strictly within the purview and power of the committee of conference. If it were entirely new matter the Chair would have no hesitation in ruling it out.

6412. On May 26, 1870,⁵ the House was considering the report of the committee of conference on the disagreeing votes of the two Houses on the amendment

¹ Thomas B. Reed, of Maine, Speaker.

² See Record, p. 6140, Senate proceedings, June 20, 1898, second session Fifty-fifth Congress.

³ Third session Forty-first Congress, Globe, p. 1916.

⁴ James G. Blaine, of Maine, Speaker.

⁵ Second session Forty-first Congress, Journal, pp. 859, 860; Globe, pp. 3854, 3855.

of the Senate to the bill (H. R. 1293) to enforce the right of citizens of the United States to vote in the several States of this Union who have hitherto been denied that right on account of race, color, or previous condition of servitude.

Mr. Samuel S. Cox, of New York, made the point of order that the report contained new matter, two new sections having been added.

The Speaker¹ said:

It is not necessary that the matter reported by the committee of conference should have been considered in either branch if it be germane and in the nature of an amendment which may reconcile the difference between the two branches. It is just as much in order for a conference committee to report such matter as for a Member to move it on the floor of either House. It is only when they introduce absolutely new matter—which would not be germane to the matter under consideration, and could not be entertained in either branch in the form of an amendment—that the point of order raised by the gentleman from New York could be entertained. The Chair overrules the point of order.

6413. On the calendar day of March 3, 1901,² but the legislative day of March 1, the House was considering the following Senate amendment to the sundry civil appropriation bill:

Provided, That the Secretary of the Interior is hereby authorized and directed to exchange a tract of land containing 60 acres, more or less, east of Nichols avenue and south of Congress Heights, for 60 acres, more or less, adjoining the grounds of the Government Hospital for the Insane on the south, to be selected by said Secretary, the exchange to be made acre for acre: *And provided further*, That a roadway 90 feet wide be reserved out of and on the south side of the land so acquired as a public highway from Nichols avenue to the river.

On motion of Mr. James M. Robinson, of Indiana, the House concurred in the Senate amendment with the following amendment:

And the Secretary of the Interior is further authorized, if in his judgment advisable, to exchange such portion as he may deem equitable of the agricultural land now owned by the Government, or of the farm opposite Alexandria and known as Godding Croit, for 80 acres, more or less, lying immediately adjoining this said 59½ acres and south of the present building site of the hospital. In case such exchange is made, the Secretary is also authorized, in his discretion, to grant a roadway along the south side of said tract, from Nichols avenue to the river, 90 feet in width.

On the calendar day of March 4,³ same legislative day, the report of the conference committee was presented to the House, and included in the agreement as to the propositions above, the following:

Any of the buildings authorized in the sundry civil appropriation act approved June 6, 1900, for the Government Hospital for the Insane may be erected on land now owned or that may be acquired hereunder by the United States for the Government Hospital for the Insane.

Mr. Robinson made the point of order that this provision changed a law, and that such change was not within the jurisdiction of the conferees.

After debate the Speaker⁴ said:

The Chair will state that often conferees bring in entirely new provisions, and so long as within the theme discussed it is not subject to the point of order. The Chair thinks in this case the conferees have remained completely within their jurisdiction.

¹ James G. Blaine, of Maine, Speaker.

² Second session Fifty-sixth Congress, Record, p. 3573.

³ Record, pp. 3599, 3600.

⁴ David B. Henderson, of Iowa, Speaker.

6414. It is only in later years that the Speakers have assumed authority to determine whether or not the managers of a conference have transcended their powers.¹

Both House and Senate have always been adverse to receiving reports in cases where the managers have exceeded their powers.

On July 11, 1862,² Mr. Speaker Grow declined to rule out a conference report on the point that it contained matter not in difference between the two Houses and not committed to the conferees. He held that the presence of such matters might be reason for the rejection of the report by the House. At the same time, however, he ruled as to the propriety of the report in what it contained in another way.

6415. On May 26, 1870,³ the House was considering the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 1293) to enforce the right of citizens of the United States to vote, etc., when a point of order was made that the committee of conference had incorporated new matter in their report.

Mr. Horace Maynard, of Tennessee, rising to a parliamentary inquiry, asked if the Speaker might, under the rules, pass upon a conference report and determine if its provisions were in order.

The Speaker⁴ said:

It is quite within the province of the Chair to rule whether a conference committee have or have not transcended the powers of a conference committee.

6416. On January 17, 1834,⁵ the House had before it the bill (H. R. 36) "making appropriations, in part, for the support of the Government for the year 1834," and disagreed to the following amendment of the Senate:

Strike out the following words of the bill, viz: "And no part of this appropriation [for the payment of contingent expenses of the Senate and House of Representatives] shall be applied to any printing other than of such documents or papers as are connected with the ordinary proceedings of either of the said Houses ordered during the session and executed by the Public Printer agreeably to his contract, except such printing and books as may have been heretofore ordered by the House."

The differences over this amendment being committed to conference, on January 30⁶ the report of the conferees was presented to the House, the managers recommending the following:

Strike out all of the bill from the sixteenth line of the engrossed bill, viz, the following words: "The two sums last mentioned to be applied to the payment of the ordinary expenditures of the Senate and House of Representatives, severally, and to no other purpose. And no part of this appropriation shall be applied to any printing," etc. [following the language above exactly], and insert the following:

"And be it further enacted, That neither the Senate nor House of Representatives shall subscribe for or purchase any book unless an appropriation shall be made specially for that purpose. And the sum of \$5,000 is hereby appropriated, to be paid out of any money in the Treasury not otherwise

¹ See, however, Sec. 6407 of this chapter, and also Sec. 6409.

² Second session Thirty-seventh Congress, Globe, p. 3267.

³ Second session Forty-first Congress, Globe, p. 3854.

⁴ James G. Blaine, of Maine, Speaker.

⁵ First session Twenty-third Congress, Journal, p. 211.

⁶ Journal, pp. 263, 264; Debates, pp. 2557-2560.

appropriated, annually, for the purchase of books for the Library of Congress, in addition to the sum of \$5,000 heretofore annually appropriated for that purpose.

“And be it further enacted, That all books already purchased or ordered by either House shall be paid out of any money in the Treasury not otherwise appropriated.”

Objection was made¹ to this report on the ground that the conferees had exceeded their authority, striking out a portion of the text of the bill which was not in disagreement, and introducing new matter¹ not in the original bill or committed to the conferees. Mr. John Quincy Adams, of Massachusetts, who objected most strenuously, did not make a point of order,² but urged the House to defeat the conference report.³

The question was then put on agreeing to the report of the conferees, and decided in the negative. So the report was rejected.

On February 7,⁴ a motion to reconsider this vote failed, and the House then receded from its disagreement.

6417. The managers of a conference must confine themselves to the differences committed to them.

Managers of a conference may not change the text to which both Houses have agreed.⁵

On March 7, 1904,⁶ Mr. Henry H. Bingham, of Pennsylvania, called up the conference report on the legislative appropriation bill.

Thereupon Mr. James R. Mann, of Illinois, made the point of order that the managers of the conference had exceeded their authority in relation to a certain paragraph of the bill which, with the Senate amendments (which are italicized) appeared as follows in the printed copy:

No part of any money appropriated by this *or any other* Act shall be available for paying expenses of horses and carriages or drivers therefor for the personal use of any officer provided for [herein] by *this or any other Act* other than the President of the United States, the heads of Executive Departments, and the Secretary to the President.

The managers had inserted between the words “personal” and “use” the words “or official.” Mr. Mann insisted that this amendment of the text to which both houses had agreed was beyond the power of either House, and consequently beyond the power of the conferees, citing the precedent of April 23, 1902.⁷

After debate, the Speaker⁸ withheld his decision.

¹Mr. Polk, in presenting the conference report, said it contained a new matter of expenditure for the library, and would therefore have to be considered in Committee of the Whole. The report was then referred to Committee of the Whole. (Journal, p. 256; (Debates, p. 2543.) This is not the modern practice.

²On a previous day, January 27 (Debates, p. 2543), Mr. Adams had made the point of order, and the Speaker, while admitting that the introduction of new matter not in disagreement was out of order, had seemed disinclined to rule.

³Mr. Adams was precluded from making a point of order by the statement of Mr. Speaker Stevenson that he considered it for the House and not the Speaker to decide whether the report was in order or not. (Debates, p. 2543.) In recent cases the Speaker has decided.

⁴Journal, pp. 290, 291; Debates, pp. 2683–2685.

⁵See also Secs. 6420, 6433–6436 of this volume.

⁶Second session Fifty-eighth Congress, Record, pp. 2931, 2932.

⁷See section 6181 of this volume.

⁸Joseph G. Cannon, of Illinois, Speaker.

On March 8,¹ the Speaker ruled:

On yesterday, upon the conference report on the legislative, executive, and judicial appropriation bill, the gentleman from Illinois [Mr. Mann] made the point of order that the conferees had exceeded their jurisdiction in substance as follows: That Senate amendment numbered 235 inserted these words: "or any other;" and again by the amendment numbered 236 the Senate inserted these words: "by this or any other act." The House provision which the Senate amended is as follows:

No part of any money appropriated by this act shall be available for paying expenses of horses and carriages or drivers therefor for the personal use of any officer provided for herein other than the President of the United States, the heads of Executive Departments, and the Secretary to the President."

The conference report takes the matter in difference to which the Chair has referred, accepts the Senate amendments, and inserts "or official," so as to make it read "for the personal or official use of any officer provided for by this or any other act other than the President of the United States, etc." It is objected that the insertion of the words "or official" is aliunde to the matter that was in difference between the two Houses, and prevents, if enacted, the use of appropriations in this or any other appropriation bill for paying the expenses of horses and carriages, or drivers therefor, for the personal or official use of any officer, etc. It is evident from the reading of the amendments that the insertion of the words "or official" inserts that within the conference report that was not proposed by the House or the Senate.

It is true that if the whole paragraph in the bill as it passed the House had been stricken out and a substitute therefor proposed by the Senate, or if the Senate had stricken out the paragraph without proposing a substitute, and the House had disagreed to the amendments of the Senate, then the conferees might have had jurisdiction touching the whole matter and might have agreed upon any provision that would have been germane. But that is not this case. This provision in the conference report inserts legislation that never was before the House or before the Senate, and it was quite competent for the conferees, if they could do this, to have stricken out the whole paragraph and inserted anything that was germane. They could have stricken out these words, "other than the President of the United States, the heads of Executive Departments, and the Secretary to the President," and while there were but two words inserted, the provision, if enacted into law, would be far-reaching and would run along the line of the whole public service.

As to the wisdom of such a provision, the Chair is not called upon to intimate any opinion. It is for the House and the Senate to determine upon the wisdom of it, and, as the House and the Senate never have considered that proposition, the Chair is of opinion that the conferees exceeded their power, and therefore sustains the point of order.

6418. On April 1, 1904,² Mr. John A. T. Hull, of Iowa, presented a conference report on the disagreeing votes of the two Houses on the army appropriation bill.

The report having been read, Mr. James A. Hemenway, of Indiana, made the point of order that in two specific instances the managers had included in their report matters not in difference between the Houses. The first instance was as to amendment No. 43, wherein the Senate had stricken out the following House text:

All the money herein before appropriated for pay of officers and men on the active list shall be disbursed by the Pay Department as pay of the Army, and for that purpose shall constitute one fund, but shall be accounted for and reported in detail: *Provided*, That hereafter all payments to the militia under the provisions of section fifteen of the act of Congress approved January twenty-first, nineteen hundred and three, and all allowances for mileage and other items of expenditure for the support of the Army, except as above provided, shall be made solely from the sums herein appropriated for such purposes.

And had inserted the following:

All the money herein before appropriated for pay of the Army and miscellaneous shall be disbursed and accounted for by officers of the Pay Department as pay of the Army, and for that purpose shall

¹Journal, p. 404; Record, p. 2994.

²Second session Fifty-eighth Congress, Record, pp. 4110, 4111; Journal, pp. 523, 524.

constitute one fund: *Provided*, That hereafter all payments to the militia under the provisions of section fifteen of the act of Congress approved January twenty-first, nineteen hundred and three, and all allowances for mileage shall be made solely from the sums herein appropriated for such purposes: *And provided further*, That all the accounts of individual paymasters shall be analyzed under the several heads of the appropriation and recorded in detail by the Paymaster-General of the Army before said accounts are forwarded to the Treasury Department for final audit.

The managers in their report dealt with this amendment as follows:

That the House recede from its disagreement to the amendment of the Senate numbered 43, and agree to the same with an amendment as follows: After the word "audit," in line 14 of said amendment, insert the following: "and the Secretary of War may hereafter authorize the assignment to duty in the office of the Paymaster-General of such paymasters' clerks, now authorized by law, as may be necessary for that purpose; and the Senate agree to the same.

The second objection related to amendment No. 55, wherein the Senate had added to a paragraph appropriating generally for army hospitals, the following:

of which sum not to exceed fifty thousand dollars may be used to build a modern hospital at Fort Riley, Kansas; thirty thousand dollars to build a modern hospital at Fort Totten, New York; thirty thousand dollars to enlarge the hospital at Fort Leavenworth, Kansas; twenty-five thousand dollars to enlarge the hospital at Fort Snelling, Minnesota; twenty-five thousand dollars to enlarge the hospital at Fort Sheridan, Illinois, and thirty thousand dollars for the erection of a modern hospital at Fort Clark, Texas.

The managers of the conference dealt with this amendment as follows:

That the House recede from its disagreement to the amendment of the Senate numbered 55, and agree to the same with an amendment as follows: Strike out all the matter inserted by said amendment and insert in lieu thereof the following: "": *Provided*, That of the appropriation for construction and repair of hospitals not more than \$40,000 shall be used for the enlargement or construction of a hospital at any one post;" and the Senate agree to the same.

After debate the Speaker¹ said:

By the act of August 5, 1882, it is provided as follows:

"And thereafter"

The date of the act—

"all details of civil officers, clerks, or other subordinate employees from places outside of the District of Columbia for duty within the District of Columbia, except temporary details for duty connected with their respective offices, be, and are hereby, prohibited."

This provision of law is sweeping and covers the detail of civil officials in the service outside of the District of Columbia to the service in the Departments in the District of Columbia. The Senate amendment is as follows:

"All the money hereinbefore appropriated for the pay of the Army and miscellaneous shall be disbursed and accounted for by officers of the Pay Department as pay of the Army, and for that purpose shall constitute one fund: *Provided*, That hereafter all payments to the militia under the provisions of section 15 of the act of Congress approved January 21, 1903, and all allowances for mileage shall be made solely from the sums herein appropriated for such purposes: *And provided further*, That all the accounts of individual paymasters shall be analyzed under the several heads of the appropriation and recorded in detail by the Paymaster-General of the Army before said accounts are forwarded to the Treasury Department for final audit."

To that amendment the House disagreed, and also disagreed to the striking out of the House provision by the Senate amendment. On the disagreement between the two bodies a conference was had. The conferees of the House and Senate, in lieu of Senate amendments, agreed as follows:

"That the House recede from its disagreement to the amendment to the Senate numbered 43, and agree to the same with an amendment as follows: After the word 'audit,' in line 14 of said amendment, insert the following: 'and the Secretary of War may hereafter authorize the assignment to duty in the

¹ Joseph G. Cannon, of Illinois, Speaker.

office of the Paymaster-General of such paymasters' clerks, now authorized by law, as may be necessary for that purpose; and the Senate agree to the same."

Under the act first referred to, of 1882, which is existing law, such detail is prohibited. In the Senate amendment there is no legislative provision repealing the act of 1882 or covering the detail of paymasters' clerks for duty in the Paymaster-General's office, nor does anything of that kind appear in the House text which was stricken out by the Senate. It seems quite plain to the Chair that the subject matter of a repeal of the law of 1882 by an express provision or by implication, which contravenes the law of 1882, was not submitted to the conferees as a matter of difference between the House and the Senate. The Chair, therefore, will sustain the point of order as to that amendment.

The Chair thinks it proper, and, without objection, will also dispose of the other point of order.

Under the head of "Construction and repair of hospitals" the Senate amends the House provision by striking out \$475,000 and inserting in lieu thereof \$380,000, with the following addition: "of which sum not to exceed \$50,000 may be used to build a modern hospital at Fort Riley, Kans.; \$30,000 to build a modern hospital at Fort Totten, N.Y.; \$30,000 to enlarge the hospital at Fort Leavenworth, Kans.; \$25,000 to enlarge the hospital at Fort Snelling, Minn.; \$25,000 to enlarge the hospital at Port Sheridan, Ill., and \$30,000 for the erection of a modern hospital at Fort Clark, Tex."

Section 1136 of the Revised Statutes is as follows:

"Permanent barracks or quarters and buildings and structures of a permanent nature shall not be constructed unless detailed estimates shall have been previously submitted to Congress, and approved by a special appropriation for the same, except when constructed by the troops; and no such structures, the cost of which shall exceed \$20,000, shall be erected unless by special authority of Congress."

Under that provision there can not be expended, without special authority from Congress, a sum exceeding \$20,000 for the construction of a hospital at any post. The Senate amendment to the House provision does provide specially for the construction of hospitals at four or five different posts at a cost in excess of \$20,000. The following is the agreement of the conferees:

"That the House recede from its disagreement to the amendment of the Senate numbered 55, and agree to the same with an amendment as follows:

"Strike out all of the matter inserted by said amendment and insert in lieu thereof the following:

"*Provided*, That of the appropriation for construction and repairs of hospitals not more than \$40,000 shall be used for the enlargement or construction of a hospital at any one post;

"And the Senate agree to the same."

By necessary implication this provision, if enacted into law, would amend section 1136 and permit the expenditure of \$40,000 instead of \$20,000 for the erection of a hospital at any army post. So far as the Chair can discover, there is nothing in the House provision or in the Senate amendment to the House provision that placed in conference the repeal or amendment of section 1136. The only thing that was in conference touching the erection of hospitals at a cost exceeding \$20,000 was as to the four or five posts the designations of which have been read by the Chair.

The Chair has no difficulty in arriving at the conclusion that the point of order is well taken, both as to amendment 43 and as to amendment 55. The point is sustained.

6419. A conference committee may not include in its report new items, constituting in fact a new and distinct subject not in difference, even though germane to questions in issue.

When a conference report is ruled out on a point of order it is equivalent to a negative vote on the report.

On May 13, 1902,¹ Mr. Thaddeus M. Mahon, of Pennsylvania, presented the conference report on the disagreeing votes of the two Houses on the Senate amendment to 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.

Mr. Oscar W. Underwood, of Alabama, made the point of order that the conferees had included in their report matters not in issue between the two Houses.

¹ First session Fifty-seventh Congress, Journal, p. 701; Record, pp. 5365-5368.

The Senate had amended the House bill, which was a so-called "omnibus bill" covering a number of claims, by striking out all after the enacting clause and inserting a new text which was in the nature of a new "omnibus" bill. Mr. Underwood called attention to the fact that the conferees had inserted in their report items for the payment of claims not found in either the original House bill or the Senate amendment.

After debate and the citation of precedents, the Speaker¹ said:

The Chair is ready to rule on the question, and is impressed with the importance of it. There are but few countries, as the Chair now recalls, that have conference committees in their national legislative bodies; certainly none that have perfected them as we have in the United States. It is one of the vital instrumentalities in bringing the two Houses together and securing joint legislation. But there must be no abuse of that power. It will not do to allow matters not in contemplation of the two Houses, that are foreign to the questions being considered, to be inserted by the conference committee.

The decisions here are conflicting. The one just referred to by the gentleman from Tennessee [Mr. Gibson], in reference to the Freedmen's Bureau, is "the widest open," so to speak, of the decisions; and yet in that case the new bill treated of the subject-matter of the original propositions, which was how to handle the interests of the freedmen. and one can readily see that the Chair might allow that to come in without being a violation of the rule.

Now, what are the facts in this particular case? We have incorporated here, according to the statement of the gentleman from Pennsylvania, in charge of the bill, three entirely new items, not known to the action of the House, not considered in the action of the Senate. One is the Hancock item, which we find was known as Senate bill 52, and in the House as House bill 11208; another is the Horner item, known as H. R. 12590, and the other the Dashaell item, known as H. R. 13223, entirely separate and distinct bills, presenting different rights and different questions for the consideration of the Congress. Now, the gentleman from Pennsylvania, in his ingenious argument, seeks to avoid the force of the objection made by the gentleman from Alabama because they were claims. But there are different claims. The House might be well pleased to insert and allow one claim and wholly opposed to another claim, and for the conference committee to step into outside matters, not before it by the action of the two Houses, and bring in a new claim that had never been considered by either House on the ground of its being germane, it seems to the Chair would open a very dangerous pathway to unwise legislation.

Now, while the Chair believes that the conference committee is a great instrumentality to bring the two Houses together, still the Chair would be very loath to open the door to allow any conference committee to usurp the prerogatives of either House; and while he has examined with care the several decisions, the weight of authority is in the line of his own feelings on this question; and even when submitted to a vote of the House, as was done in one case, the House sustained the views of the objecting party, Judge Holman.

The Chair is strongly of the opinion that to secure wise legislation caution should be observed in not allowing abuse of the powers of the conference committee, and this view invites sustaining the point of order in this case. The functions of a conference committee are such that they must consider a matter laid before them by the Congress. If it involves an amount of money, they may increase it or cut it down; they may put limitations upon it. The functions of a conference committee are great and can be of infinite benefit to the House of Representatives. The feeling of the Chair is, then, that the door should not be opened beyond the scope and purpose of a conference committee. That is clear; and the Chair sustains the point of order made by the gentleman from Alabama. Therefore that brings us to the next thing for consideration.

Where does this leave this conference report? It has to be treated as a whole. The point of order defeats the conference report just exactly as if it were rejected by the House. That has already been held in one case—I think by Mr. Speaker Reed—that a point of order sustained against a conference report is equivalent to a rejection of the report by the House of Representatives on a vote. And it seems to the Chair that is where this conference report now stands.

¹David B. Henderson, of Iowa, Speaker.

6420. The managers of a conference may not in their report change the text to which both Houses have agreed.¹—On March 2, 1907² Mr. James W. Wadsworth, of New York, presented the conference report on the agricultural appropriation bill, whereupon Mr. John J. Fitzgerald, of New York, rising to a question of order, said:

Mr. Speaker, I wish to make the point of order against the conference report on the ground that the conferees have inserted on page 40 language in an item which was not in dispute between the two Houses. On page 40, line 24, the conferees have changed the text in the language agreed to by both Houses by inserting after the word "forest," the words "in the District of Columbia or elsewhere."

The Speaker³ held:

The gentleman from New York [Mr. Fitzgerald] makes the point of order that the conferees have exceeded their authority by changing the text to which both Houses have agreed by inserting, after the word "forest," the words "in the District of Columbia or elsewhere." And the report states that such is the case. * * * The Chair sustains the point of order.

6421. Where one House strikes out all of the bill of the other after the enacting clause and inserts a new text and the differences over this substitute are referred to conference, the managers have a wide discretion in incorporating germane matters and may even report a new bill on the subject.⁴—On March 3, 1865,⁵ Mr. Robert C. Schenck, of Ohio, from the committee of conference on the disagreeing votes of the two Houses on the bill (H. R. 51) entitled "An act to establish a bureau of freedmen's affairs," reported that the Senate had receded from their amendment, which was a substitute, and the committee had agreed upon, as a substitute, a new bill, entitled "An act to establish a bureau for the relief of freedmen and refugees."

As soon as the report had been read, Mr. William S. Holman, of Indiana, made the point that the report did not come within the scope of the conference committee. It did not report the proceedings of the Senate, or an agreement by the committee on an amendment to the Senate's amendment to the House bill, but it reported an entire substitute for both the original bill and the substitute adopted by the Senate, and it established a department unprovided for by either of the other bills.

The Speaker⁶ said:

The Chair understands that the Senate adopted a substitute for the House bill. If the two Houses had agreed upon any particular language, or any part of a section, the committee of conference could not change that; but the Senate having stricken out the bill of the House and inserted another one, the committee of conference have the right to strike out that and report a substitute in its stead. Two separate bills have been referred to the committee, and they can take either one of them, or a new bill entirely, or a bill embracing parts of either. They have a right to report any bill that is germane to the bills referred to them.

On an appeal the Chair was sustained, yeas 89, nays 35.

¹ See also secs. 6417, 6433–6436 of this volume.

² Second session Fifty-ninth Congress, Record, p. 4483.

³ Joseph G. Cannon, of Illinois, Speaker.

⁴ See also secs. 6426, 6463–6467 of this volume.

⁵ Second session Thirty-eighth Congress, Journal, p. 414; Globe, p. 1402.

⁶ Schuyler Colfax, of Indiana, Speaker.

6422. On August 3, 1886,¹ the House had under consideration the report of the committee of conference on the river and harbor bill.

Mr. William M. Springer, of Illinois, made the point of order that the conferees had included new matter in their report.

The Speaker² ruled:

The House passed a bill to provide for the improvement of rivers and harbors and making an appropriation for that purpose. That bill was sent to the Senate, where it was amended by striking out all after the enacting clause and inserting a different proposition in some respects, but a proposition having the same object in view. When that came back to the House it was treated, and properly so, as one single amendment and not as a series of amendments as was contended for by some gentlemen on the floor at the time.

It was nonconcurrent in by the House and a conference was appointed upon the disagreeing votes of the two Houses. That conference committee having met, reports back the Senate amendment as a single amendment with various amendments, and recommends that it be concurred in with the other amendments which the committee has incorporated in its report. The question, therefore, is not whether the provisions to which the gentleman from Illinois alludes are germane to the original bill as it passed the House, but whether they are germane to the Senate amendment which the House had under consideration and which was referred to the committee of conference. If germane to that amendment the point of order can not be sustained on the ground claimed by the gentleman from Illinois. The Chair thinks they are germane to the Senate amendment, for, though different from the provisions contained in the Senate amendment, they relate to the same subject; and therefore the Chair overrules the point of order.

6423. On February 25, 1901,³ Mr. Gilbert N. Haugen, of Iowa, presented the report of the committee of conference on the disagreeing votes of the two Houses on the bill (S. 2799) to carry into effect the stipulations of article 7 of the treaty between the United States and Spain, concluded on the 10th day of December, 1898.

The conferees recommended that the House recede from its amendment, which was in the nature of a substitute, striking out all after the enacting clause and inserting a new text; and they further recommended that the House agree to the Senate text with certain specified amendments.

Mr. Oscar W. Underwood, of Alabama, made a point of order that the conferees had exceeded their authority and incorporated in their report matters not in difference between the two Houses. The House text had substituted reference to the Court of Claims instead of to the commission proposed by the Senate text. The conferees not only recommended the adoption of the Senate text, but had enlarged the provisions of it, making the number of commissioners five instead of three, although, he asserted, there was no issue between the two Houses on this point; and also materially changing the Senate text in those portions relating to the right of appeal.

After debate the Speaker⁴ held:

The current of authorities in regard to the action of the conferees is that they must be held strictly to the consideration of such matters as are in issue between the two Houses. That is the general governing principle, and a most valuable one, and a necessary one. In this case, however, the Chair sees

¹ First session Forty-ninth Congress, Record, p. 7932; Journal, p. 2515.

² John G. Carlisle, of Kentucky, Speaker.

³ Second session Fifty-sixth Congress, Journal, p. 271; Record, pp. 3002-3004.

⁴ David B. Henderson, of Iowa, Speaker.

no difficulty. As stated by the gentleman from Pennsylvania [Mr. Mahon], the Senate presents a proposition for a commission; the House turns that down, so to speak, and adopts an amendment, by way of substitute, providing that these Spanish claims shall be referred for determination to the Court of Claims. In other words, the Senate contends for a commission, the House for the Court of Claims. The method of treating these Spanish claims is thus put in issue. The House, when it sent over to the Senate its amendment by way of substitute, said: "We will not entertain your method; we have a better one; we offer you a substitute, whereby these matters shall be referred to the Court of Claims instead of a commission." That puts in issue every question bearing upon this controversy between the two Houses. The able remarks of the gentleman from Alabama (Mr. Underwood) have not suggested a single question that is not brought in issue between the two Houses in the present position of this question. The conferees have not gone beyond the matters in issue. On this point the Chair will ask the Clerk to read from the Parliamentary Precedents of the House of Representatives, section 1420, a decision made by Mr. Speaker Colfax.

The section having been read, the Speaker concluded:

The House will readily see that the precedent just read bears strongly on this question, although in the present case the conferees have not gone so far as they did in that case. There is nothing here that is not germane to the main issue. In reference to no matter in controversy between the two Houses have the conferees attempted to trench upon or change a single expression that the two Houses had agreed upon. The Senate sends to this House a bill for which the House presents a substitute, and the report of the conferees seeks only to treat the matters in issue. The Chair feels clear that he is justified in overruling the point of order. The question is on agreeing to the report.

6424. Where the disagreement is as to an amendment in the nature of a substitute for the entire text of a bill the managers have the whole subject before them and may exercise a broad discretion as to details.

A point of order against a conference report should be made or reserved after the report is read and before the reading of the statement.

On February 18, 1907,¹ Mr. William S. Bennet, of New York, submitted the report of the managers of the conference on the bill (S. 4403) entitled "An act to amend an act entitled 'An act to regulate the immigration of aliens into the United States,' approved March 3, 1903."

Before the report was read, Mr. John L. B. Burnett, of Alabama, proposed to reserve a point of order.

The Speaker² said:

The Chair will state to the gentleman from Alabama, who desired to reserve points of order, that it is the impression of the Chair that the point of order, if any is made, is in time after the report is read; but if the gentleman desires, out of abundant caution, he may reserve at this time points of order. * * * All points of order are reserved. The proper time to reserve points of order, as the Chair is informed, on conference reports, is after the conference report is read and before the statement is read.

The report having been read, a point of order was made by Mr. Burnett, who insisted that the managers had exceeded their authority in inserting the following provisions:

Provided further, That whenever the President shall be satisfied that passports issued by any foreign government to its citizens to go to any country other than the United States or to any insular possession of the United States or to the Canal Zone are being used for the purpose of enabling the holders to come to the continental territory of the United States to the detriment of labor conditions therein, the Presi

¹ Second session Fifty-ninth Congress, Record, pp. 3210-3220.

² Joseph G. Cannon, of Illinois, Speaker.

dent may refuse to permit such citizens of the country issuing such passports to enter the continental territory of the United States from such other country or from such insular possessions or from the Canal Zone.

And in another portion of the report the following:

SEC. 42. It shall not be lawful for the master of a steamship or other vessel wherein immigrant passengers, or passengers other than cabin passengers, have been taken at any port or place in a foreign country or dominion (ports and places in foreign territory contiguous to the United States excepted) to bring such vessel and passengers to any port or place in the United States unless the compartments, spaces, and accommodations hereinafter mentioned have been provided, allotted, maintained, and used for and by such passengers during the entire voyage; that is to say, in a steamship, the compartments or spaces, unobstructed by cargo, stores, or goods, shall be of sufficient dimensions to allow for each and every passenger carried or brought therein 18 clear superficial feet of deck allotted to his or her use, if the compartment or space is located on the main deck, or on the first deck next below the main deck of the vessel, and 20 clear superficial feet of deck allotted to his or her use for each passenger carried or brought therein if the compartment or space is located on the second deck below the main deck of the vessel: *Provided*, That if the height between the lower passenger deck and the deck immediately above it is less than 7 feet, etc. [continuing in detail].

After debate, the Speaker held:

The Senate during the last session passed an act entitled "An act to amend an act entitled 'An act to regulate the immigration of aliens into the United States,'" etc.

This Senate bill was broad in its provisions and substantially amended the immigration laws then in force. It was very general in its nature, as will be found upon examination. The bill came to the Home. The House struck out all of the Senate bill after the enacting clause, by way of amendment, and passed a substitute therefor. So that the House entirely disagreed with every line, with every paragraph, with every section of the Senate bill—everything except the enacting clause—and proposed a substitute therefor, and this substitute on examination is found to be a complete codification and amendment of existing immigration laws, and incidentally the labor laws connected therewith, especially those dealing with contract labor, and with many other questions to which it is not necessary to refer. And in the final clause of the House substitute there is the provision:

"That the act of March 3, 1903, being an act to regulate the immigration of aliens into the United States, except section 34 thereof, and the act of March 22, 1904, being an act to extend the exemption from head tax to citizens of Newfoundland entering the United States, and all acts and parts of acts inconsistent with this act are hereby repealed.

"*Provided*, That this act shall not be construed to repeal, alter, or amend existing laws relating to the immigration or exclusion of Chinese persons," etc.

So that not only does the House by its substitute amend codify and amend all the laws touching immigration, but incidentally changes those relating to labor, especially contract labor. The House substitute is found to be abounding in section after section with the prohibition of contract labor in connection with immigration, and with various other provisions of a similar nature.

The House substitute, by way of amendment, went to the Senate. The Senate disagreed to every line, paragraph, and section of the House provision I and with that disagreement to the Senate provision, and with the House provision in effect a disagreement to the original Senate bill, the whole matter went to conference. That is, by this action there was committed to conference the whole subject of immigration, and, as connected therewith, the prohibition of immigration by way of contract labor in the fullest sense of the words. * * * The Chair has not had time to hunt up all the provisions of the immigration laws of the country, but the repealing clause, with the exception as proposed by the House and the disagreement of the Senate, sent this whole matter, in the opinion of the Chair, to the conferees.

Now, then, there is but one provision that is seriously contended for in the point of order that is made, and that is to be found on page 2 of the House conference report, No. 6607, and is as follows:

"That whenever the President shall be satisfied that passports issued by any foreign government to its citizens to go to any country other than the United States or to any insular possession of the United States or to the Canal Zone are being used for the purpose of enabling the holders to come to the continental territory of the United States to the detriment of labor conditions therein, the President may

refuse to permit such citizens of the country issuing such passports to enter the continental territory of the United States from such other country or from such insular possessions or from the Canal Zone.”

Now, then, one of the principal efforts in legislation heretofore has been to exclude labor that is brought in under contract or is promoted, so to speak; and the very reason of that legislation has been and is that the labor conditions in the United States should not be affected unfavorably. Three sections of the House substitute deal expressly with that question. It is not like unto the precedent cited by the gentleman from Mississippi, which was made by the ruling of Mr. Speaker Henderson. The only thing there was a disagreement between the House and the Senate as to certain specified claims, and between the Senate and House as to certain other specified claims. The conferees in that case, taking in the whole sea or ocean of claims, from the birth of Christ to the supposed death of the man with hoofs and horns, picked out a number of claims that the House or Senate never had heard of or dealt with and put them in the conference report, and Mr. Speaker Henderson properly sustained the point of order to the conference report. The Chair has no difficulty nor any hesitation in holding that this is germane first; and, second, that it comes within the scope of the disagreement between the House and Senate as affects immigration on the one hand and the interest of labor on the other, and therefore overrules the point of order.

Mr. Burnett having appealed, the appeal was laid on the table on motion of Mr. Sereno E. Payne, of New York, by a vote of yeas 198, nays 104.

6425. A Senate amendment having provided an appropriation to construct a road, and conferees having reported in lieu thereof a provision for, survey, it was held that the provision was within the differences.—On April 18, 1904,¹ Mr. John A. T. Hull, of Iowa, presented the report of the managers of the conference on the disagreeing votes of the two Houses on the Senate amendments to the army appropriation bill.

Mr. James Hay, of Virginia, made a point of order that the managers had exceeded their authority. It appeared that the Senate had added to the bill the following amendment:

For continuing the construction of a military wagon road from Valdez by the most practical route to Fort Egbert, or Eagle, on the Yukon River, in the district of Alaska, \$250,000; said wagon road to be surveyed, located, and constructed by and under the direction of the Secretary of War.

The managers in lieu thereof reported the following:

Strike out all of the matter inserted by said amendment and insert in lieu thereof the following: “For a survey and estimate of cost of a wagon road from Valdez to Fort Egbert, on the Yukon River, to be made under the direction of the Secretary of War, \$25,000, to be immediately available; said survey and estimate herein provided shall be submitted to Congress at the earliest practicable day.”

After debate the Speaker² said:

The Senate amendment, which, if it had been offered in the House, probably would have been subject to the point of order—it is unnecessary for the Chair to pass upon that, however—was “for continuing the construction of a military wagon road from Valdez by the most practical route to Fort Egbert, or Eagle, on the Yukon River, district of Alaska, \$25,000; said wagon road to be surveyed, located, and completed by and under the direction of the Secretary of War.”

To that amendment the House disagreed, and upon that amendment and disagreement thereto a conference was had. The conferees reported as follows:

“Strike out all of the matter inserted by said amendment and insert in lieu thereof the following: “For the survey and estimate of cost of a wagon road from Valdez to Fort Egbert, on the Yukon River, to be made under the direction of the Secretary of War, \$25,000, to be immediately available; said survey and estimate herein provided shall be submitted to Congress at the earliest practicable day.”

¹Second session Fifty-eighth Congress, Record, pp. 5022, 5023; Journal, p. 622.

²Joseph G. Cannon, of Illinois, Speaker.

Now, this is for something less than was contained in the Senate amendment, and provides for a survey of a road over and between the points of Valdez and Fort Egbert. It appropriates \$25,000 in lieu of \$250,000, and provides for a survey and report to Congress of the same. It does seem to the Chair that the greater includes the less, and that the whole matter of the construction of the road and the appropriation therefor was in difference between the House and the Senate. This provides for a survey for the road and estimates and a report to Congress. It seems to the Chair the point of order is not well taken, and the Chair therefore overrules the point of order.

6426. In the Senate a conference report is not ruled out on a point of order that it contains matter not within the differences, but the question must be taken on agreeing to it.

Form of conference report wherein an entirely new text is reported in place of an amendment in the nature of a substitute.

On February 13, 1907,¹ in the Senate, the following conference report was presented:

The committee of conference on the disagreeing votes of the two Houses to the bill (S. 4403) entitled "An act to amend an act entitled 'An act to regulate the immigration of aliens into the United States,' approved March third, nineteen hundred and three," having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows: Strike out all of said amendment and insert in lieu thereof the following:

An act entitled "An act to regulate the immigration of aliens into the United States."

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be levied, collected, and paid a tax of four dollars for every alien entering the United States, etc. * * **

* * * * *

SEC. 44. That this act shall take effect and be enforced from and after July first, nineteen hundred and seven: *Provided, however,* That section thirty-nine of this act and the last proviso of section one shall take effect upon the passage of this act and section forty-two on January first, nineteen hundred and nine.²

WILLIAM P. DILLINGHAM,

H. C. LODGE,

A. J. McLAURIN,

Managers on the part of the Senate.

BENJ. F. HOWELL,

WILLIAM S. BENNET,

Managers on the part of the House.

On February, 14,³ in the Senate, when this report came up for consideration, Mr. Benjamin R. Tillman, of South Carolina, called attention to the following provision in the new text reported by the managers:

Provided further, That whenever the President shall be satisfied that passports issued by any foreign government to its citizens to go to any country other than the United States or to any insular possession of the United States or to the Canal Zone are being used for the purpose of enabling the holders to come to the continental territory of the United States to the detriment of labor conditions therein, the President may refuse to permit such citizens of the country issuing such passports to enter the continental territory of the United States from such other country or from such insular possessions or from the Canal Zone.

¹Second session Fifty-ninth Congress, Record, pp. 2811-2817.

²This report is defective in that there should be added the words "And the House agree to the same," referring to the Senate amendment to the House amendment.

³Record, pp. 2939-2943.

Mr. Tillman then raised this question:

I make the point of order, Mr. President, that this is entirely new and extraneous matter; that it was never considered by either House; that it does not appear in either bill as it was passed by the Senate or by the House; that the conferees have exceeded their authority, and that they are entirely outside of their jurisdiction in having brought into this Senate a matter which has no business here.

Mr. Henry Cabot Lodge, of Massachusetts, said:

In this case the Senate bill was stricken out by the House and a single amendment was made in the nature of a substitute—a long act covering every section of the existing immigration law. Therefore both bills in their entirety were open to the conferees and were subject to any modification which they might choose to make. Technically there can be no doubt that in a situation like that the powers of the conferees are very large, if not unlimited.

In the second place, Mr. President, this amendment is not out of order in itself. It is a mere modification of a section which provides for certain exceptions in regard to admission to this country and for collection of a head tax. It is merely the application of the exceptions, such as are stated previously in the bill as to persons coming from Canada or from Mexico. It is a simple extension to meet another case in which entry to this country must necessarily be defined.

Mr. President, I do not desire to consume the time of the Chair or of the Senate on that point. It was held, formally decided by the Senate, no longer ago than last session that a point of order did not lie against a conference report. I contended for the House view and for the House position, which is that a point of order may be made against a conference report and the report, without a vote, be thrown out on the point of order. It was held by the Chair—correctly, as I now believe, in view of the precedents in the Senate—and sustained by the Senate that under the rules and practice of the Senate a point of order did not lie against a conference report, that the only vote possible was on the acceptance of the report—it could be either accepted or rejected—and that there was nothing else open to the Senate.

After further debate the Vice-President¹ held:

The Chair has heretofore had occasion to rule on a point of order raising precisely the same question in principle that is now raised by the point of order made by the Senator from South Carolina [Mr. Tillman]. The Chair, when the subject was first presented to his attention, examined with some considerable care the practice of the Senate in the premises. He came to the conclusion then that the practice of the Senate for some time past, at least, differed somewhat from the practice which obtained in the House. The Chair is of the opinion that the objections made to the report and challenged by the point of order are entirely proper for the Senate itself to consider when voting upon the question of agreeing to the report. On the 11th of last June the Chair ruled as follows:

“The Chair is of the opinion, as he has previously held, that under the usual practice of the Senate a point of order will not lie against a conference report. The matter in the report challenged by the point of order interposed by the Senator from Texas may be considered by the Senate itself when it comes to consider the question of agreeing to the report. The only question under the usual practice of the Senate, in the opinion of the Chair, is, Will the Senate agree to the conference report?”

The Chair holds that the point of order is not well taken, and therefore overrules the point of order.

On February 15, 1907,² the consideration of the report being continued, Mr. Charles A. Culberson, of Texas, said:

Mr. President, I ask the Chair to submit to the Senate the point of order made by the Senator from South Carolina [Mr. Tillman] to the provision of section 1 of the bill, which I will read:

“*Provided further*, That whenever the President shall be satisfied that passports issued by any foreign government to its citizens to go to any country other than the United States or to any insular possession of the United States or to the Canal Zone are being used for the purpose of enabling the holders to come to the continental territory of the United States to the detriment of labor conditions therein the President may refuse to permit such citizens of the country issuing such passports to enter the continental territory of the United States from such other country or from such insular possessions or from the Canal Zone.”

¹ Charles W. Fairbanks, of Indiana, Vice-President.

² Record, p. 3039.

The Senator from South Carolina has made the point of order that this provision is new matter, incorporated without authority, and in violation of the rules of the Senate, not having been considered or passed upon by either House of Congress, and that it is therefore subject to the point of order. I ask the Chair to submit that question to the Senate for its determination.

I will read the rule of the Senate as announced by the Senator from Massachusetts [Mr. Lodge], although it has been read once or twice. It will, however, bear repetition:

“The Presiding Officer (Mr. Lodge in the chair) referred with approval to the foregoing decision of Vice-President Hobart, and stated that when a point of order is made on a conference report on the ground that new matter has been inserted the Chair should submit the question to the Senate instead of deciding it himself, as has been the custom in the House.”

The Vice-President said:

The Chair has hitherto shown that a point of order will not lie against a conference report. If such point of order were to be sustained, it would have the effect of amending the report. This, under the well-settled practice of the Senate, can not be done. This is in entire harmony with the decision of Vice-President Hobart, to which reference is made. As the Chair has hitherto shown, he is clearly of the opinion that the objectionable matter, if such there is, may be considered by the Senate when it comes to vote upon the question of agreeing to the report. The Chair is clearly of the opinion that the request of the Senator from Texas is not sanctioned by either the rules or practice of the Senate, and can not be entertained by the Chair.

On February 16¹ Mr. Culberson proposed the following resolution, to which Mr. Lodge made a point of order:

Resolved, That the conferees on the part of the Senate on the bill S. 4403 be instructed to present to the conferees an amendment providing for the exclusion of Japanese laborers and coolies from the United States and their Territories and insular possessions and the District of Columbia, to be effective January 1, 1908.

The Vice-President held:

The Senator from Massachusetts [Mr. Lodge] made the point of order that nothing can take precedence of the question of concurrence in the conference report. The Chair sustains the point of order.

Mr. E. W. Carmack, of Tennessee, having appealed from the decision of the Chair, the appeal was laid on the table—yeas 45, nays 24.

The conference report was then agreed to.

6427. On March 20, 1906,² in the Senate, Mr. C. D. Clark, of Wyoming, submitted a conference report on the bill (H. R. 10129) relating to departmental information affecting markets, of which the following was a part:

That the House recede from its disagreement to the amendment of the Senate numbered 8 and agree to the same with an amendment, as follows: On page 2, line 14, after the word “thereof,” insert “and every Member of Congress;” and the Senate agree to the same.

The committee of conference is in some doubt as to its authority to insert this amendment, but, believing that the object and purpose of the bill will not be completely effected without it, recommends the insertion of the amendment, and asks the judgment of the two Houses thereon.

A question of order being suggested by Mr. Henry M. Teller, of Colorado, Mr. Clark said:

The bill as passed both Houses provides a punishment for the disclosure of knowledge and for speculation in matters affected by that knowledge which has been acquired in an official capacity. It was discovered by the conferees that Members of Congress in either House were not included. It was further ascertained that judicial decisions have held time and again that Members of Congress

¹ Record, P. 3099.

² First session Fifty-ninth Congress, Record, pp. 4023–4027.

are not officers of the United States, but are officers of the State governments. Therefore, while doubting their real power as a conference committee to insert this provision, they thought the objects and purposes of the bill clearly demanded such a provision, so they inserted "and Members of Congress," and ask the judgment of the two Houses upon that amendment.

After debate the Vice-President¹ said:

The Chair does not think that a point of order would lie against a conference report. * * * It is a matter for the acceptance or rejection of the Senate. If the Chair sustained or overruled the point of order, it would find itself in the position of determining matters entirely within the control of the Senate. In the opinion of the Chair the question is on agreeing to the report submitted.

The report then went over to the succeeding day.

On March 21,² in the Senate, the report was withdrawn for elimination of the objectionable clause.

6428. On March 28, 1906,³ in the Senate, Mr. Moses E. Clapp, of Minnesota, called up the report of the committee of conference on the disagreeing votes of the two Houses on the bill (H. R. 5976) to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes.

Mr. Thomas M. Patterson, of Colorado, made the point of order that the managers had changed a provision of the bill to which both Houses had agreed. He said:

This is the proviso as it left the House and was approved of by the Senate:

Provided further, That nothing herein shall be construed so as to hereafter permit any person to file an application for enrollment in any tribe where the date for filing application has been fixed by agreement between said tribe and the United States: *Provided further*, That nothing herein shall apply to the intermarried whites in the Cherokee Nation whose cases are now pending in the Supreme Court of the United States."

The conference committee struck that out bodily and substituted for it the following:

Provided, however, That the decision of the Commissioner to the Five Civilized Tribes on a question of fact shall be final."

During the debate the following occurred as to the actual question in issue as related to the matter which had been changed:

Mr. PATTERSON. I want to call the attention of the Senator from Maine [Mr. Hale] to what has been changed or for what the new matter has been substituted. This is the proviso, commencing on line 10:

Provided, That the rolls of the tribes affected by this act shall be fully completed on or before the 4th day of June—"

"June" was stricken out and "March" inserted—"nineteen hundred and six."

"Nineteen hundred and six" was stricken out and made "1907." So the amendment up to that point simply changes the time for the completion of the roll.

Mr. HALE. That is, they deal simply with the question of when the thing shall be done and take effect. That is all.

Mr. PATTERSON. Yes. Then they proceed to change the rule of evidence, striking out an entire proviso that had no reference whatever to the rule of evidence and that had received the approval of both bodies of Congress and substituting a new rule of evidence by which thousands of cases are to be governed.

Mr. HALE. That is precisely to what I was going to call the attention of the Senator from Minnesota [Mr. Clapp], who is a good lawyer and who will see the force of it. The only thing that was brought into controversy by the amendments were the dates. "March" was substituted for "June" and "seven"

¹ Charles W. Fairbanks, of Indiana, Vice-President.

² Record, p. 4076.

³ First session Fifty-ninth Congress, Record, pp. 4384, 4385, 4397.

for "six"—that is, the time when the provision should take effect. That is the only real question that was raised.

Mr. CLAPP. I submit, if the Senator will pardon me, that the second proviso was also involved in that change. That was the expression of the wish of the House if the time were limited to June, 1906. Of course, it ceased to be their wish if it was extended to 1907.

Mr. HALE. I see the force of that. How far does that go? Does it follow that because of a change of date the conditions are changed, and that the conferees had a right to put in, instead of the proviso which was left in the bill by both Houses, absolutely a new rule, which is—

"That the decision of the Commissioner to the Five Civilized Tribes on a question of fact shall be final?"

I think, Mr. President, the conference committee has exceeded its power in putting that in, though I see the force of what the Senator says, that the whole subject-matter may have been changed by the change of date. I should like the Senator to explain that; otherwise it should be very clear that introducing this new rule of evidence in place of the proviso that had been left untouched by both Houses is clearly transcending the power of the conferees.

After further debate the conference report went over to another day.

On April 3,¹ after debate, Mr. Clapp was permitted to withdraw the report.

On April 10, 1906,² Mr. Clapp presented a new conference report, from which the objectionable matter had been eliminated. In this case the House had asked the conference, and as the original report had been presented first in the Senate, it had been possible after its withdrawal to return to conference without action by the House of Representatives. When Mr. Clapp presented the second report, Mr. Benjamin R. Tillman, of South Carolina, objected that Mr. Clapp had not had authority to withdraw the original report.

After debate the Vice-President³ held:

The Chair understands that the Senator from Minnesota, as chairman of the conferees on the part of the Senate, has the right to withdraw the conference report in the absence of the yeas and nays having been ordered.⁴

This was a case in which the report was made first in the Senate.

6429. On June 6, 1906,⁵ in the Senate, Messrs. Thomas M. Patterson, of Colorado; Henry Cabot Lodge, of Massachusetts; and Eugene Hale, of Maine, discussed the Senate usage as to conference reports in which the managers are alleged to have exceeded their authority:

Mr. PATTERSON. Mr. President, we have been listening for nearly a day to a discussion on the subject of new matter introduced by the pending conference report. Is there anything to prohibit, or, in other words, is it not, after all, a matter for the Senate to pass upon? The Senator from Maine [Mr. Hale] shakes his head and the Senator from Massachusetts [Mr. Lodge] shakes his head. I desire to call the attention of the Chair and of the Senate to what I find in the Senate report upon the subject of conferences and conference reports. I have discovered upon reading it that the Senator from Massachusetts [Mr. Lodge] played a very important part in having the rule to which I call the attention of the Senate established. This matter is found on page 16 of that report in reference to conferences and conference reports:

"29. Conferees may not include in their report matters not committed to them by either House. (1414-1417.) (Fiftieth Congress, first session, Senate Journal, pp. 1064, 1065; Fifty-fourth Congress, second session, Senate Journal, pp. 90, 91, 96.)

¹ Record, p. 4656.

² Record, p. 4991.

³ Charles W. Fairbanks, of Indiana, Vice-President.

⁴ Later the Senate came to the conclusion that a conference report might not be withdrawn in this way. (See sec. 6459 of this volume.)

⁵ First session Fifty-ninth Congress, Record, pp. 7928, 7929.

That is Rule XXIX.

“In the House, in case such matter is included, the conference report may be ruled out on a point of order. (See Rule 50, below.)

“In the Senate, in case such matter is included, the custom is to submit the question of order to the Senate.”

Then there is the following note:

“NOTE.—In the Fifty-fifth Congress, first session, Vice-President Hobart, in overruling a point of order made on this ground against a conference report during its reading in the Senate, stated that the report having been adopted by one House and being now submitted for discussion and decision in the form of concurrence or disagreement, it is not in the province of the Chair during the progress of its presentation to decide that matter has been inserted which is new or not relevant, but that such questions should go before the Senate when it comes to vote on the adoption or rejection of the report. (Fifty-fifth Congress, first session, Senate Journal, pp. 171, 172; Congressional Record, pp. 2780–2787.) See also Congressional Record, p. 2827, Fifty-sixth Congress, second session, when the Presiding Officer (Mr. Lodge in the chair) referred with approval to the foregoing decision of Vice-President Hobart, and stated that when a point of order is made on a conference report on the ground that new matter has been inserted, the Chair should submit the question to the Senate instead of deciding it himself, as has been the custom in the House. No formal ruling was made in this case, however, as the conference report, after debate, was, by unanimous consent, rejected. (Fifty-sixth Congress, second session, Congressional Record, pp. 2826–2883.)”

As I read this, it can have no other meaning than that if the point is raised that something that is found in a conference report is new matter, when called to the attention of the Senate, the Senate itself acts upon it.

Mr. HALE. Undoubtedly.

Mr. PATTERSON. And if the Senate decides it is not, or whatever may be the reason or motive of the Senate, the Senate has it in its power to retain that matter in the bill.

Mr. HALE. Undoubtedly. That is only a matter of procedure; but the fundamental proposition which the Senator from Colorado has raised is that there shall be no new matter inserted. Our processes are different from those of the House. I think, in the prevailing tendency of conferees to usurp power, that we have got to adopt—and I hope we shall do so before this session ends—the House rule, that such insertions shall be subject to a point of order and ruled out; but we have not gone as far as that. We have said the conferees should not put in new matter and that the question shall be submitted to the Senate; but it does not change the underlying and absolutely necessary proposition that no new matter shall be incorporated by the conferees. * * *

Mr. LODGE. The general parliamentary law and also the practice of both Houses is, of course, that there shall be no new matter in a conference report—that is, no matter which has not been adopted by one of the two Houses.

In the House of Representatives the point of order lies, and the Chair decides. If the Chair decides that the matter is new matter, and therefore out of order, the conference report is rejected by that finding of the Chair. All that any parliamentary body can do with a conference report is to accept it or reject it. It can not amend it. It must be either accepted or rejected.

The point of order, when it lies in the House and is ruled on by the Speaker and sustained, carries with it the rejection of the report, just as when the Chairman of the Committee of the Whole in the House sustains a point of order against a clause in an appropriation bill it carries with it the rejection of that clause.

Here, if the point of order is made, it has been held by Vice-President Hobart, in a ruling which I sustained later when I happened to be in the chair, that the point of order must be submitted to the Senate. Therefore, it comes down to the Senate as a question whether they shall reject the conference report on the ground that there is new matter contained in it.

That is the state of the parliamentary law, as I understand it, in this body; but that does not change the fundamental parliamentary proposition that conference committees have no right to put into conference reports matter which has not been adopted by either House.

Mr. PATTERSON. Mr. President, to a certain extent, and to a very considerable extent, the Senator from Massachusetts is right; but, after all, the ruling by the Senate recognizes, if not the right, at least the power of conference committees to insert new matter in a measure.

Mr. LODGE. Not at all.

Mr. PATTERSON. I beg your pardon. It is simply reaching a conclusion by different processes. Even in the other House, Mr. President, I imagine, should the Speaker sustain the point of order that a proposition contained in a conference report is new matter, that decision might be appealed from.

Mr. LODGE. The House could accept new matter by unanimous consent undoubtedly, and we could accept new matter by a majority vote; but that does not make it in order.

Mr. PATTERSON. Very well, then, so far as the House is concerned. In other words, both the Senate and the House can accept, if they choose, new matter of legislation.

Mr. LODGE. Undoubtedly.

Mr. PATTERSON. While the rule is a good rule and should as a general proposition be enforced, I have no hesitation in maintaining in a case of this kind, and as to a bill of this character, that when the conferees meet for the purpose of discussing a matter and reaching an agreement, if they discover that there is something needed to make a measure effective as a whole, they have not only the power, but it is their duty to insert that, and then submit it both to the House and to the Senate.

Mr. HALE. But, Mr. President, does the Senator not see the far-reaching, dangerous, and disastrous results of his proposition? Legislation is matured here and in the House of Representatives. Conferees are not a legislative body. They are to confine themselves to disagreements between the two Houses and to report only as to those.

Mr. PATTERSON. I understand precisely.

Mr. HALE. But when the Senator says the conferees have a right, when they believe that in order to make a measure effective they may put in new propositions, he is transferring the legislative power, which ought to be confined to the two bodies, to a conference committee that is only appointed and constituted not to newly legislate but to consider differences between the two Houses.

The Senator is not a radical Senator; he is a conservative Senator, and he ought to see the wide and far-reaching and dangerous proposition which he has made, that the conferees can take upon themselves the power of legislation that only inheres in the two bodies.

Mr. PATTERSON. Mr. President, it is right there that I disagree with the Senator from Maine. It is not a case of a conference committee taking upon itself legislative power; it is simply a conference committee reviewing the measure as it is sent to them, discovering that there is a defect or something that ought to be in to make the bill effective, and then in their report suggesting it to the Senate and also to the House. It is utterly impossible for the conference committee to legislate. It can only in its report refer the matter back to the Senate, and then the matter that is suggested is before the Senate to be discussed, to be considered, to be voted upon, to be rejected, or to be adopted. That is all there is of it. It is not a usurpation in any sense of the word; and I sincerely hope that the conference committee, if the conference committee believes that there are omissions in the bill, and that some slight amendments will make the bill more effective, will stand by them, and let the Senate as a body, after full discussion, determine whether they shall be a part of the measure.

It is simply another method of legislation, a different method of initiation, and, after all, passed upon as solemnly and as deliberately by the Senate and by the House as though the proposition had been originally introduced and sent to a committee, or as though the amendment had been originally offered in open Senate while the bill was under discussion.

For that reason, Mr. President, leaving this standing, I could not comprehend why so much time was taken up in attempting to establish that this proposition or that proposition or another proposition was new matter. The conferees have brought subjects connected with this great legislation before the Senate and asked the view of the Senate upon them, and if the Senate stands by the conference committee, provided the House agrees, their recommendations will be incorporated into the body of the bill.

On June 7¹ the conference report on this subject (the bill H.R. 12987, the railway rate bill) was disagreed to by the Senate, no effort being made to have the Chair rule the report out of order.²

¹Record, p. 7998.

²For an instance wherein the rejection of a report under these circumstances caused great chagrin to an old and experienced Senator, see second session Thirty-seventh Congress, Globe, pp. 2862, 2863. A report was also rejected in the Senate for this reason on February 22, 1901.

On June 18¹ a proposition of Mr. Joseph W. Bailey, of Texas, that the question of conferees exceeding their authority be passed on by itself, was referred to the Committee on Rules.

6430. On June 11, 1906,² in the Senate, the conference report on the Indian appropriation bill was under consideration when Mr. Joseph W. Bailey, of Texas, made the point of order that as to a certain provision the managers had introduced a matter not a subject of difference between the two Houses.

The Vice-President³ said:

The Chair is of the opinion, as he has previously held, that under the usual practice of the Senate a point of order will not lie against a conference report. The matter in the report challenged by the point of order interposed by the Senator from Texas may be considered by the Senate itself when it comes to consider the question of agreeing to the report. The only question under the usual practice of the Senate, in the opinion of the Chair, is, Will the Senate agree to the conference report?

The report was agreed to, yeas 30, nays 16.

On June 12,⁴ Mr. Jacob H. Gallinger, of New Hampshire, referring to the decision of the day before, cited in confirmation of that decision one by Vice-President Garrett A. Hobart on July 21, 1897,⁵ as follows:

The VICE-PRESIDENT. The Chair has not the opportunity to look up any of the precedents that may exist on similar points of order made heretofore to the relevancy of items like the one in question contained in a conference report. The present occupant of the chair feels that it would be an unwelcome task if he is obliged to decide as to whether any or every amendment made in conference is germane to the original bill, or germane to the amendments made in either House or both Houses, or whether a conference report as submitted to the Senate contains new and improper or irrelevant matter.

The rules of the Senate certainly do not provide for such action, and the Chair calls the attention of the Senator from Arkansas and of the Senate to the fact that this conference report has been adopted by one House in this perfected shape, and that this report is now submitted here as a whole for parliamentary discussion and decision in the form of concurrence or disagreement.

All arbitrary ruling on a point of order like this after the bill has been fully passed by one House and approved by it can not be within the power of any Presiding Officer.

He can not decide while such a report is being discussed and during the progress of its presentation that matter has been inserted which is new or not relevant, and thus decide what should or should not have been agreed upon. It is not the province of the Chair.

All such questions are such as should go before the Senate when it votes upon the adoption or rejection of the report, which is the only competent and parliamentary action to be taken.

If the Senate itself can not amend this report, and it admittedly can not, the Chair can not do more in that respect than the Senate itself. The Senator from Arkansas asks the Chair by its decision to do that which the Senate itself can not do, to amend this conference report. It is not possible to amend by such a method. The Senate must decide for itself as to the competency of this report in all particulars and the relevancy of all amendments.

No rule or practice permits the Presiding Officer to annul the action of a conference committee, and thus indirectly to amend it. The Chair has not the power to thus negative the action of a free conference and send a passed bill back to a new conference without a vote. Only the action of the Senate upon the vote taken upon concurrence has that power.

The effect of such a decision, if made, can only be surmised. Where would the bill go if thus amended? Not to the conference committee, for that has been dissolved upon the making of its report

¹ Record, p. 8669.

² First session Fifty-ninth Congress, Record, p. 8263.

³ Charles W. Fairbanks, of Indiana, Vice-President.

⁴ Record, pp. 8307, 8308.

⁵ First session Fifty-fifth Congress, Record, pp. 2786, 2787.

to the other House and acceptance there. Not to the Senate conferees, for they have concluded their action also. Possibly to the Senate Finance Committee, where the bill started many months ago. Such a decision, therefore, that paragraph No. 396, contained in the conference report, contains new matter or new legislation, or is not germane or relevant, might be tantamount to indefinite postponement of the bill. Surely the Chair has no such power, and if exercised would be arbitrary in the highest degree.

The Chair decides that the point is not well taken.

6431. On June 5, 1906,¹ the Senate was considering the conference report on the bill (H. R. 12987) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission, when a question arose as to several particulars in which it was alleged that the managers of the conference had considered matters not within the differences committed to them.

Mr. Benjamin R. Tillman, of South Carolina, one of the managers, admitted that such was the case, saying:

In our desire to make the bill workable, and in order to make it clearly understood and to make it a matter that would not be subject to litigation, we did undertake to put in, in three or four places, words where we had no authority to put them in.

If Senators will kindly follow me, each Senator can learn what we have done and what we had no rightful power to do. On the top of page 12 of the last print—June 2—the words "transportation or facilities" were inserted after the word "traffic" at the end of the preceding line. It is not necessary to state the reason why those words were put in, but it seemed to us that it was necessary to clarify the matter with respect to contracts, agreements, or arrangements which are to be filed with the Commission. If the point of order is made against those words in the Senate, or whether or not it is, I think the conferees will take them out. I for one will vote to take them out. We had no right to put them in.

Page 21, line 9: The words "or transportation" are inserted where we had no authority or right to put them in. The reason why we put those words in will be found in line 17, where we inserted the words "rates or." This was all one sentence, and it related to a general and specific subject, and the word "rates" being in the first place and the word "transportation" being in the second place, the conferees thought it best to make it uniform, so that the two allusions should be to the same subject. As I said a while ago, knowing we had no right to put them in, but endeavoring to make the bill workable, we put them in, and we take the responsibility. There can be no pretense of any deception, and if the Senate wants to take them out, I shall be glad to have them taken out.

That makes three words that have gone in.

Mr. Augustus O. Bacon, of Georgia, inquired here as to the insertions on page 21, and elicited the reply that the matter on page 21 had been in no wise amended by the Senate, and therefore it followed that on this page the managers had changed the text to which both Houses had agreed.

Mr. Tillman then continued:

The next amendment, which we knew we had no authority to put in, or at least as to which we were doubtful of our authority, is on page 40. We there inserted the words:

"Said Commission shall appoint a secretary, who shall receive \$5,000 compensation annually, and an assistant secretary, who shall receive \$4,000 compensation annually."

I have consulted the clerk of the Appropriations Committee, who has had a good deal to do with making up conference reports and with the compilation of all the rules that we have got on that subject—in other words, the manual reported May 15, 1902, by Mr. Allison, from the Committee on Appropriations, and prepared by Mr. Cleaves. I asked Mr. Cleaves whether or not the amendment on page 40, the words I have just referred to, was amenable to the point of order. He said frankly, "I do not know." But the reason for putting those words in was this: Section 24, the whole section, relating to the composition

¹First session Fifth-ninth Congress, Record, pp. 7834–7836.

and salary of the Commission, was stricken out by the Senate. In it the number of the commissioners was seven and the salary was \$10,000, an increase of two commissioners over the number agreed to by the Senate and an increase in salary of \$2,500 each. * * * Taking into consideration the fact that the change involved in this law will vastly increase the work of the Commission and that the dignity and power of the commissioners are recognized by an increase of salary, the Senate conferees felt that the responsibility of this additional labor at least warranted an increase in salary in this direction. Appreciating the fact that the secretary would be the responsible officer necessarily charged with a great many duties that the commissioners would not be able to see after, we felt that if \$10,000 was a proper salary for a commissioner, it was almost necessary that there should be an increase in the salary of the secretary.

Here Mr. Eugene Hale, of Maine, interrupted:

I think there is where the conference committee has gone beyond its power. When you come to the commissioners, the matter was fairly in issue between the two Houses on the compensation of the commissioners and the additional number. The House put in two more commissioners and increased the salary. The Senate struck it out, and left only five commissioners at the old salary. But as to the secretary, neither House had increased the salary. The Senate declined to increase it. * * * Then the committee has created a new office absolutely. [Referring to the assistant secretary at \$4000.]

This conference report was temporarily laid aside, and later on the same day was considered further without decision as to the question of order.

On June 6,¹ the action of the managers was again discussed in the Senate between Messrs. John C. Spooner, of Wisconsin, Charles A. Culberson, of Texas, Henry M. Teller, of Colorado, and Benj. R. Tillman, of South Carolina:

Mr. CULBERSON. I should like to ask the Senator in this connection what is probably more a parliamentary question than otherwise, and that is this: The House bill containing no prohibition against the issuance of passes, and the bill as it passed the Senate containing a prohibition, are not the conferees bound to accept one or the other?

Mr. SPOONER. I think they are.

Mr. CULBERSON. The House bill or the bill as it passed the Senate?

Mr. SPOONER. I think so.

Mr. CULBERSON. They can not amend either?

Mr. SPOONER. No.

Mr. CULBERSON. Under the rules of the Senate it is possible to accept the amendment as brought in by the conferees in this case, because that is neither the House bill nor the bill as it passed the Senate, but it is an amendment of the bill as it passed the Senate in that respect. I say it is more a parliamentary question than otherwise. I should like to be informed about it.

Mr. TILLMAN. The inquiry of the Senator from Texas opens an entirely new phase. I was under the impression, based upon the little experience I have had on conference committees, that where disagreements have been had, the conferees are not limited to adopting one provision or the other, but they can arrange a compromise proposition. They are not estopped from changing the language.

Mr. SPOONER. I think that is true.

Mr. CULBERSON. I simply inquired for information in order to know what the rule was.

Mr. SPOONER. I think the matter was open.

Mr. CULBERSON. As a matter of fact, the conferees have brought in a recommendation that has not passed either House.

Mr. SPOONER. That often happens. I think the subject was open to the conferees. The Senate had passed an antipass provision; the House disagreed to it, and in that status the conferees were appointed. The conference committee could have recommended that the House recede. It could modify the proposition passed by the Senate and recommend that the Senate concur. They have done that. I do not think their hands are tied as to the precise provision upon a subject which we submit to them as an open proposition which they may recommend, each to the body which appointed them.

Mr. TELLER. I think the Senator from Wisconsin has laid down the rule correctly. I only want to emphasize what he said.

¹ Record, pp. 7924, 7926, 7931.

It was in the power of the conference committee to modify what the Senate had put in which was new. I think in this case, as the Senator from Texas says, they went beyond their power when they repealed, practically, the act existing to-day, which our amendment did not repeal, but only modified.

A little later in the same discussion, Mr. Spooner discussed with Mr. Eugene Hale, of Maine, Mr. Henry Cabot Lodge, of Massachusetts, and Mr. Tillman another feature:

Mr. SPOONER. Now, Mr. President, I pass for a moment from that to another provision in this conference report. It has been criticised as beyond the power of the conference committee. I do not think that is a just criticism. It is to be found on pages 6 and 7 of the conference report. As we passed it, it provided that—

“Any common carrier subject to the provisions of this act shall promptly, upon application of any shipper tendering interstate traffic for transportation, construct, maintain, and operate upon reasonable terms a switch connection with any private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same.”

The conference committee inserted “any lateral branch line of railroad, or of.” Then follow the words: “Any shipper tendering interstate traffic for transportation.” That is all qualified by the language before that in the section. It deals with precisely the same subject. It simply enlarges the class so as to take in the lateral branch lines of railroads with the shipper. I think it was open to that modification and that the committee of conference did not exceed its authority in incorporating it.

Moreover, Mr. President, I think it is a wise provision to incorporate in the bill. I think—and I have had in my life some opportunity to form an accurate opinion about it—it is a very important provision. Many times I have known short lines of railroad connecting with a trunk line or a long line of railroad, constructed for some special purpose and a common carrier.

I fancy that my friend from Minnesota [Mr. Clapp] has known of the same thing—to carry lumber, if you please, or some other commodity, to reach raw materials to be developed into finished products and find somewhere a market. But, Mr. President, it has very often happened that the men who put their money into the construction of such railroads have found themselves at one end of it practically in a pocket. They would be denied connections and prorating upon any fair basis. They have been frozen out repeatedly of their ownership because of the impossibility of operating under the unfair restrictions, and have been obliged in the end to sell their railroads at a great loss to the single company with whose road they were connected.

Mr. LODGE. I do not think I disagree with the Senator as to the merits, which he has been discussing of this amendment, but on the point of its being new matter, this proposition, which is a substantive proposition, was taken up as a separate matter when the bill was before the Senate. It was discussed and voted upon and voted down. It seems to me that that constitutes it a distinct and a new proposition. It was not in the bill as it passed the House. It did not come to us from the House. We took it up as a separate proposition from the switches and spur tracks and decided that we would not put it in the bill. It seems to me if the conference committee is going to be able to take a substantive proposition that the Senate voted down and put it into a bill it enlarges their powers very much.

Mr. SPOONER. If the Senator will permit me a minute, it is no more a substantive proposition than the proposition in regard to passes, which was proposed by the House conferees and accepted reluctantly by the Senate conferees.

Mr. LODGE. But the Senate did not vote down the pass proposition.

Mr. SPOONER. I do not think the Senate, by voting down an amendment proposed to a section, thereby prevents the conferees on the part of the House from proposing it as a modification of the Senate proposition.

Mr. HALE. I think the Senator is correct to a certain extent, but if the House has not brought forward any proposition upon this matter and the Senate seeks to put in a new proposition and that proposition fails then certainly there is nothing for the conferees to consider.

Mr. SPOONER. I think when the House of Representatives refused to agree to this section which the Senate had proposed, it was open when it was sent to conference—

Mr. LODGE. It was not properly open to new matter.

Mr. SPOONER. The Senator from Massachusetts says that it was not properly open to new matter. That begs the question.

Mr. HALE. What was before the conferees? It may be that I do not know the facts, but if the House had nothing in the bill that covered this matter and the Senate voted down everything covering the matter, what had the conferees to consider?

Mr. SPOONER. This is what the Senate did—

Mr. HALE. It is not a question of what the Senate did, but the fundamental thing in a conference report is that nothing shall be put in that neither House has considered or adopted. If there is nothing put in by either House, then clearly the conferees have no jurisdiction.

Mr. SPOONER. On page 6, amendment 6, if I may have the attention of the Senator from Maine, the provision is that—

“Any common carrier subject to the provisions of this act shall promptly, upon application of any shipper tendering interstate traffic for transportation, construct, maintain, and operate upon reasonable terms a switch connection with any private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same.”

Now, that is in a section which was in the bill as passed by the House and which the Senate amended. It is precisely the same subject-matter. It relates to a compulsory connection upon fair terms.

Mr. LODGE. That was not in the bill as passed by the House. It was our amendment.

Mr. HALE. Was that provision in the bill as passed by the House?

Mr. SPOONER. I think it was. I am not sure. The argument is all the stronger if it were not.

Mr. HALE. I agree, if that proposition was in the bill as passed by the House, and was therefore before the conferees, they had a right to consider it. But if it was not in the bill as passed by the House and an amendment was offered in the Senate and voted down, then clearly it was beyond the jurisdiction of the conferees.

Mr. TILLMAN. On a paragraph of new matter relating to connections between railroads and a private side track, we will say, and there are no side tracks unless those side tracks come from something—some man who has some factory or some mine or something to take the product—does the Senator from Maine contend that the House conferees have no right to say to us, “You want connection with a private side track. We will grant you that provided you will put in here a provision that there shall be connection between spur railroads?”

Mr. HALE. No; I do not. If the Senate had voted in an amendment and had made it a part of the business of the conferees, then, undoubtedly, they would have jurisdiction.

Mr. TILLMAN. That is exactly what we did.

Mr. HALE. But if the House did not put anything in and the Senate voted down the proposition, then the conferees had no jurisdiction.

Mr. TILLMAN. Then the Senator from Maine entirely misunderstands the situation, because if he will examine the amendment numbered 6 at the bottom of page 6 and the top of page 7, the Senate amendment relating to this very subject, he will see what the Senate put in. All the House did was to ask us to incorporate the words “any lateral branch line of railroad,” so as to make the provision put in by the Senate, which was applicable to private side tracks, applicable to spur railroads and lateral railroads.

Mr. TELLER. Of course, in the House the Speaker determines whether it is new matter, and that ends the controversy. Here the rule has been—I think for a good many years—that the Senate determines those questions. A question of this kind a good many years ago was determined one way by the Presiding Officer, who was then Mr. Edmunds. That was as to instructions, and not as to this vital question whether the committee has put new matter in a bill. In that case it was whether there should be instructions. The Presiding Officer held, as I recollect, that there could not be instructions, and the Senate held there could be. I think it will be found that the Senate has held both ways on that subject. I think there can be instructions myself. I do not think that is a matter of very great concern, except as to when the instructions are made.

Senators will remember that not long ago—within the last two years—the House appointed conferees and before they had had any conference with the Senate conferees the House instructed their conferees what to do and what not to do; whereupon the Senate refused to confer with the House conferees until they receded from that position.

I regard the question whether there shall be new matter put into a bill by the agency of a conference committee as the most important one which can be raised here in reference to the orderly proceeding of this body. In the great majority of cases we accept a conference report *nem. con.* We pay little attention to it. We believe the committee have done the best they could. Where they have taken what was in the House bill and what was put in by the Senate, and arranged them in any way consistent with the fact that both had been passed upon by the Senate, we have accepted them.

I dare say that in the whole history of the Senate—it ought to be said of every legislative body, and I believe it is true of the Parliament of Great Britain—there never has been a case where the conferees have put in new legislation, and it was apparent that it was new legislation, and it was admitted to be new legislation, that the House has accepted it as a part of the transaction.

There are a great many cases that come before us where it is difficult to determine whether or not it is new legislation. I am disposed myself to believe that the provision in this bill concerning passes goes beyond the power of the conference committee, but Senators in whose judgment I have great confidence tell me I am wrong, and very likely I am, although upon a question of that kind the Senate might divide. The Senate might determine that I was wrong, and that would be the end of the controversy.

But we have in this report several things that the conference committee say they knew were new, but they thought it would improve the bill if they put them in. That is not the province of a conference committee, speaking with all due respect for the committee. They are not empowered to do that. They are simply to determine what was the mind of the Senate on one proposition and what was the mind of the House on the same proposition, and, if possible, to reconcile the differences between the two. That they can do. But when they come to say, “We thought it would be a good thing to put in this provision, and therefore we have put it in, although neither body had ever considered it,” such a proceeding would lead to interminable confusion, and it would be the duty of every Senator—he would be compelled to watch with the greatest care—to see that these things were not done. We have a right to suppose when a conference committee go out that they will confine themselves to the custom that has been in vogue in this country and in England, and that new matter shall not be put in.

I speak with some feeling on this subject, because we have been condemning this practice for some time. I have myself been on a good many conference committees where there has been an attempt to change the text of a bill and to put in some new matter, and I will say for myself that I have never consented to that, and I do not recall now that I was ever a party to a conference committee that did agree to it. I know the members of the Appropriations Committee have stood inflexibly against the slightest change that was not justified by the rule.

Mr. HALE. I want to bear testimony to what the Senator is just saying. There is no committee in this body that deals with so many subjects affected by legislation as does the Committee on Appropriations, of which the Senator from Colorado is an old, experienced, and most valuable member. The practice of that committee is to report the result of a conference to the Senate. It mentions amendments by number. It declares what amendments have been added. In twenty years I have hardly ever known, or ever known, a question to arise as to whether new legislation was embodied in those reports. The reason is that the Committee on Appropriations sets its face sternly against all new matter. As an old member of that committee, I would hold myself delinquent if I ever consented, in the numerous matters that come before that committee, to anything that involves new matter. I would consider myself, as the Senator from Colorado would consider himself, delinquent in my duty to this body if I did so.

I hope the rule of that committee will be maintained not only in that committee, but in reports from all other conference committees. This discussion, Mr. President, is not without its great uses.¹

On June 7,² after a discussion which went also to the merits of propositions contained in the report, the Senate without division disagreed to the report and asked a new conference.

6432. On March 2, 1895,³ in the Senate, objection was made that the conferees on the Indian appropriation bill had exceeded their authority in bringing

¹For reference to earlier case see remarks of Mr. Howe, of Wisconsin, in Senate. (Second session Thirty-seventh Congress, Globe, pp. 2862, 2863.)

²Record, p. 7998.

³Third session Fifty-third Congress, Record, pp. 3057–3059.

into the report matters not in issue between the two Houses, and by consent of the Senate the report was withdrawn.

6433. The text to which both Houses have agreed may not be changed except by the consent of both Houses.

A provision changing the text to which both Houses have agreed has been appended to a conference report and agreed to by unanimous consent after action on the report.

On July 27, 1866,¹ the conferees on the disagreeing votes of the two Houses on the bill (H. R. 780) to protect the revenue reported a change of the original text of the bill. The Senate conferees appear from the *Globe* to have made this change the subject of a paragraph at the end and outside of their signed report. And when the report was acted on in the Senate, separate action was taken on the change of text, the President pro tempore² holding that it could be agreed to only by unanimous consent. So when the Senate notified the House of their agreement to the report, they sent a distinct notification of their agreement to the change of the text. The House conferees made the change of text a part of their report, and there was only one question put on agreeing to the report.

6434. On March 2, 1867,³ the conferees on the disagreeing votes of the two Houses on the bill (H. R. 234) to incorporate the National Capital Insurance Company made a report dealing with the differences of the two Houses. This report was duly signed. Following it, but accompanying it, they submitted a statement recommending a series of amendments to the text of the bill. This statement was signed by the same conferees who signed the report.

When the report, with the appended statement, came up in the House for action, the Speaker⁴ said:

It will require unanimous consent to change the text of the bill.

Thereupon the report was agreed to by unanimous consent, the statement included.

6435. On June 16, 1862,⁵ the conference report on the bill (H. R. 413) for the payment of bounties to volunteers came before the Senate, and the Vice-President, Hannibal Hamlin, of Maine, called the attention of the Senate to the fact that the conferees had changed the text of the bill, to which both Houses had agreed. The subject was debated at length on this and the succeeding day, and for this reason the report was rejected—yeas 20, nays 17—on a motion to disagree. A second conference was had, and as the conferees found that a perfect bill could not be obtained without changing the original text they decided to report a disagreement, with the purpose of abandoning the bill. This was done.⁶

6436. On June 9, 1880,⁷ Mr. Speaker Randall held that the House might not consider a proposed concurrent resolution authorizing conferees on the legislative

¹ First session Thirty-ninth Congress, *Journal*, pp. 1162, 1165, 1166; *Globe*, pp. 4225, 4266.

² LaFayette S. Foster, of Connecticut, President pro tempore.

³ Second session Thirty-ninth Congress, *Journal*, p. 589; *Globe*, p. 1764.

⁴ Schuyler Colfax, of Indiana, Speaker.

⁵ Second session Thirty-seventh Congress, *Globe*, pp. 2722–2724, 2746–2748.

⁶ *Globe*, p. 2847.

⁷ Second session Forty-sixth Congress, *Journal*, p. 1435; *Record*, p. 4337.

appropriation bill to take into consideration a subject included in the text to which both Houses had agreed. The Speaker said that under the parliamentary law neither House might change the text to which both Houses had agreed, and, in his opinion, conferees might not be endowed with power greater than either of the Houses possessed.

6437. By concurrent resolution managers of a conference are sometimes authorized to include in their report subjects not in issue between the two Houses.—On March 2, 1901,¹ the conference report on the legislative, executive, and judicial appropriation bill was before the House, and contained this statement:

The action taken by the committee of conference and recommended in this report with reference to amendments of the Senate numbered 16, 17: 18, and 19, whereby new matter and certain provisions of law are inserted affecting the officers and employees of the House of Representatives, is based upon the authority expressed in the concurrent resolution of the two Houses adopted February 27, 1901, and which is as follows:

“Resolved by the House of Representatives (the Senate concurring), That the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 12291) making appropriations for legislative, executive, and judicial expenses are authorized to include in their report such alterations, changes, and recommendations as they may deem proper with reference to so much of the text of said bill as relates to the officers. and employees of the House of Representatives.”

Mr. William P. Hepburn, of Iowa, made the point of order that the conferees had exceeded their authority in reporting this amendment:

The library of the House of Representatives shall hereafter be under the control and direction of the Librarian of Congress, who shall provide all needful books of reference therefor. The librarian, two assistant librarians, and assistant in the library, above provided for, shall be appointed by the Clerk of the House, with the approval of the Speaker of the House of Representatives of the Fifty-sixth Congress, and thereafter no removals shall be made from the said positions except for cause reported to and approved by the Committee on Rules.

The Speaker² overruled the point of order, holding that the conferees had received full power in this respect.

6438. On June 7, 1902,³ on motion of Mr. Joseph G. Cannon, of Illinois, the House agreed to the following:

Resolved by the Howe of Representatives (the Senate concurring), That the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the sundry civil appropriation bill (H. R. 13123) are authorized to consider and recommend the inclusion in said bill of necessary appropriations to carry out the several objects authorized in the “act to increase the limit of cost of certain public buildings, to authorize the purchase of sites for public buildings, to authorize the erection and completion of public buildings, and for other purposes,” approved June 6, 1902.

On June 18⁴ the Senate agreed to this resolution.

6439. On April 12, 1906,⁵ in the Senate, Mr. Charles A. Culberson of Texas, said:

Several weeks ago the House of Representatives passed a bill, H. R. 10129, amending section 5501 of the Revised Statutes. The Senate after receiving the bill passed it with an amendment and it went to conference. The conferees reported to each of the Houses among other things an amendment to add,

¹ Second session Fifty-sixth Congress, Record, pp. 3455–3459.

² David B. Henderson, of Iowa, Speaker.

³ First session Fifty-seventh Congress, Journal, p. 784 Record, pp. 6449, 6450.

⁴ Record, p. 6974.

⁵ Record, p. 5122.

after the word "thereof," on page 2, line 14, of the bill, the words "and every Member of Congress." The report of the conference committee stated frankly that in the judgment of the committee this amendment was contrary to the rule of the two Houses because it had not passed either of the Houses. On objection by several Senators the report was withdrawn. The Senator from Massachusetts [Mr. Lodge] suggested that the matter could be cured by the adoption of a concurrent resolution authorizing the committee of conference to make the amendment to which I have called attention. In order that that may be done I offer the concurrent resolution which I send to the desk:

"Resolved by the Senate (the House of Representatives concurring), That the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 10129) to amend section 5501 of the Revised Statutes of the United States be, and the same is hereby, authorized to agree to an amendment on page 2, line 14, of the bill, by inserting after the word 'thereof' the words 'and every Member of Congress.'"

By unanimous consent the resolution was considered, and was agreed to.

On April 13,¹ the concurrent resolution was considered in the House by unanimous consent, and was agreed to.

6440. A point of order as to a conference report should be made before the consideration of the report has begun.—On March 3, 1899,² the House was considering the conference report on the disagreeing votes of the two Houses on the river and harbor appropriation bill (H. R. 11795).

The statement of the conferees was read, and the reading of the report was dispensed with by unanimous consent, except as to certain portions, which were read.

Debate having begun, Mr. William P. Hepburn, of Iowa, proposed to raise a point of order against the portion of the report relating to the Nicaragua Canal.

Mr. Theodore E. Burton, of Ohio, raised the point of order that the point of order of the gentleman from Iowa came too late.

The Speaker³ said:

The Chair thinks the point of order was not taken at the proper time. Nothing is better settled than that a point of order must be raised prior to discussion.

6441. A point of order against a conference report should be made before the statement is read.—On May 13, 1902,⁴ Mr. Thaddeus M. Mahon, of Pennsylvania, presented the conference report on the disagreeing votes of the two Houses on the Senate amendment to 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, and for other purposes.

The report having been read, and the Clerk being about to read the statement, Mr. Oscar W. Underwood, of Alabama, proposed to make a point of order against the report.

The Speaker⁵ held that the point of order should be made before the statement was read, since, if the point of order should be sustained, the reading of the statement would be unnecessary.

¹ Record, p. 5235.

² Third session Fifty-fifth Congress, Record, p. 2925; Journal, pp. 271, 274.

³ Thomas B. Reed, of Maine, Speaker.

⁴ First session, Fifty-seventh Congress, Record, p. 5366.

⁵ David B. Henderson, of Iowa, Speaker.

6442. A conference report having been agreed to, it is too late to raise, as a matter of privilege a question as to whether or not the managers have exceeded their authority.—On March 8, 1902,¹ Mr. Thetus W. Sims, of Tennessee, claiming the floor for a question of privilege, alleged that the conferees on the bill (H. R. 10308) for the establishment of a permanent census bureau, had exceeded their authority by changing the text of the bill to which both Houses had agreed.

Mr. Eugene F. Loud, of California, made the point of order that no question of privilege could be raised because the conference report had been agreed to by both Houses, and the bill had become a law.

The Speaker² said:

The point of order has been made by the gentleman from California that this is not a question of privilege, because the matter has been disposed of by the House. There is no question but what this would have been a proper matter, possibly, to have considered when the conference report was before the House, because the report was before the House and was read.

¹First session Fifty-seventh Congress, Record, pp. 2527, 2528.

²David B. Henderson, of Iowa, Speaker.