

*Committee Reports*

**Mr. Deans:** It is talking about a motion. I draw your attention, Mr. Speaker, and the attention of all learned Members, to "superfluous" in subclause (2) at page 545 which reads in part:

—notice has been taken that the powers proposed to be conferred by the instruction are within the competence of the committee, the Speaker has declined to put the question.

In a nutshell, my argument is quite simple. The House of Commons cannot second-guess its committee and ask it to consider something which it could have already considered but chose not to by way of a referral with instruction. I think that is quite clear, both from reading Erskine May and Beauchesne's.

I do not want to belabour the point. I am sure the weight of the argument which I have put before the House will render the motion, which is an interesting motion, out of order. Therefore, Mr. Speaker, I ask you to consider it in light of the comments that I have made.

**Hon. Herb Gray (Windsor West):** Mr. Speaker, this is an important point which deserves the full and considered attention of the House. It should be very thoroughly considered. I would like to refer Your Honour to Citation No. 756 and Citation No. 757 on page 229 of Beauchesne's Fifth Edition. Citation No. 756(3) reads as follows:

There are two types of Instructions—permissive and mandatory.

Citation No. 757(1) goes on to state:

The object of a permissive Instruction, which is the more ordinary form, is to confer on the committee authority to do something which, without the Instruction, it would have no power to do.

If we look at the wording of the motion it states:

"the Third Report of the Standing Committee . . . be not now concurred in but that it be recommitted to the said Committee and that it be an instruction to the Committee that they have the power to amend the same—"

It is clear from the wording of the motion that we are dealing with an effort to send the committee what the citation from Beauchesne's calls "permissive instruction". If that is the case, I submit that the motion is clearly out of order because it asks the House to instruct the committee that it has the power to amend a report that the House is now considering. Certainly, this is something which the committee already has the power to do and which it had the power to do at the time it was preparing the report which is before the House. I think we, as well as yourself, Sir, must take notice—judicial notice, if I may put it that way—of the fact that the members of the committee were fully aware of their powers and authority and, yet, they chose not to write a report covering the point in the motion, which its mover wishes to have the committee consider.

May I again say that the mover of the motion has not drafted his motion in a form which makes the instruction it seeks to give mandatory. The motion does not say that the committee must do what is in it and nothing else. In effect, it simply reminds the committee that it has the power to amend the report which is now before the House in a certain way. This is something that the members of the committee must

have known. The power in question is one which the committee has always had.

**Mr. Deans:** Ignorance of the law is no excuse.

**Mr. Gray (Windsor West):** Therefore, I submit that this motion is out of order. It is a permissive instruction, or attempts to convey a permissive instruction. Because it does so in a way which attempts to confer on the committee something which it already has the authority to do, I respectfully submit that you must rule this motion out of order, Mr. Speaker.

**Mr. Speaker:** With great respect, I am fully prepared to rule on the matter. I think the President of the Privy Council (Mr. Hnatyshyn) will be arguing against the argument which has been made and I think I can save him the trouble. I am sure he has a creative argument to make. Both Members have made creative arguments thus far. I want them to know that I am sure it is not because today is Friday the thirteenth that we are getting into these types of matters.

The Hon. Member for Hamilton Mountain (Mr. Deans) and the Hon. Member for Windsor West (Mr. Gray) have made persuasive arguments relating to Citations Nos. 756 and 757 of Beauchesne's. I remind the Hon. Members that these citations refer to committees studying Bills and are therefore the instructions that the House may or may not give to a committee in advance of the study of a Bill.

I remind Hon. Members that they may want to refer to Citation 660 of Beauchesne's, which I think governs the matter rather successfully. Citation 660 reads as follows:

When the motion to concur is moved, the House may refer the report back to the committee for further consideration or with instructions to amend it in any respect.

That seems to me to be entirely clear. The point of that, I suggest to Hon. Members, is that the intention of the restrictions on the power to instruct with regard to initial study is logically to say that if a committee had the power to do something, it made no sense to give it an instruction to do that since it had the power. However, once the committee has reported, it has no power over its report; only the House has power over the report. I would like to suggest to Hon. Members that the House must have the right, in logic, to refer a report back for reconsideration of the report in whole or for reconsideration of any clause, otherwise the House would be bound to deal with only the report the committee submitted. Clearly, the House cannot be bound simply to accept or reject a report on a matter. The House itself cannot amend the report. However, it can clearly refer a report back for amendment, either minor or major, or for complete reconsideration. Those are the practices and traditions of this House.

The committee's right of decision on the matter is by no means constrained, no matter what the House has asked it to reconsider.

Therefore, I find the amendment entirely in order.

**Mr. Gray (Windsor West):** Mr. Speaker, I do not want to reflect on your order in particular. I wish to draw to your