# Chapter CXXI.

## THE ORDINARY MOTION TO REFER.[1]



**5521. The ordinary motion to commit may be amended, as by adding instructions, unless such amendment is prevented by moving the previous question.**

**The motions to refer, commit, and recommit are practically the same.**

On July 25, 1882,[3] the regular order being called for, the House resumed, under the special rule, the consideration of the bill (H. R. 3902) permitting the use of domestic materials in the construction of steam and sailing vessels for foreign account, the pending question being on the motion of Mr. William D. Kelley, of Pennsylvania, to refer the bill and pending amendment to the Committee on Ways and Means,

Mr. John Randolph Tucker, of Virginia, moved to amend that motion by adding certain instructions.

Mr. Dudley C. Haskell, of Kansas, made the point of order that the motion to refer might not be amended.

After debate the Speaker[4] held:

The Chair does not remember to have passed on the precise question here involved. The parliamentary practice has been to permit an amendment to a motion to refer or commit, or recommit, which is substantially the same thing. That, in the opinion of the Chair, is limited to one motion without amendment, under the new rule, after the previous question has been ordered on the passage of a bill or joint resolution. In that case the Chair thinks a fair interpretation of the rule limits it to a single motion, and therefore, for that reason, an amendment can not be made, because the House is operating under the previous question, and the operation of the previous question is to bring the House to a vote on the

[1] Not in order in Committee of the Whole. (Sec. 4721 of Vol. IV.)

Not in order to refer a conference report to standing or select committee. (Sec. 6558 of this volume.)

[2] Division of the question in order on vote on motion to refer with instructions. (Secs. 6134–6137 of this volume.)

[3] First session Forty-seventh Congress, Record, p. 6475; Journal, p. 1724.

[4] J. Warren Keiffer, of Ohio, Speaker.

main question at the earliest practicable moment. The Chair thinks, under a strict construction, after the previous question has been called or ordered, it can only allow a motion to commit, but no amendment to it, and this it has so held.[1]

But that does not apply to this case, as the previous question has not been demanded, and parliamentary practice would admit of an amendment to this motion to refer; and therefore the Chair holds the motion of the gentleman from Virginia [Mr. Tucker] to amend the motion to refer with instructions to be in order.

**5522. It has been held not in order to move to instruct a committee on the first reference of a matter to it.—**On February 15, 1887,[2] at the conclusion of a decision by the Speaker in reference to the function of the Committee on Rules, Mr. Albert S. Willis, of Kentucky, as a parliamentary inquiry, asked whether or not a motion to refer a matter to the Committee on Rules with instructions would be in order.

The Speaker[3] replied:

The Chair has always held that it is not competent to move instructions upon the reference of a matter which has not been reported by a committee. Matters reported to the House by a committee can be recommitted with or without instructions under the rules of the House.

**5523.** On April 4, 1792,[4] the House resumed the consideration of the resolutions reported by the Committee of the Whole House on Monday last, to whom was referred a report of the Secretary of the Treasury on the subject of the public debt; whereupon—

*Ordered,* That a bill or bills be brought in pursuant to the first, second, fourth, sixth, seventh, and eighth resolutions; and that Mr. Fitzsimons, Mr. Laurance, Mr. Key, Mr. Macon, and Mr. Smith (of South Carolina) do prepare and bring in the same.

A motion being made and seconded—

That it be an instruction to the committee last appointed to report a provision for a loan of the remaining debts of the individual States;

The motion was objected to as out of order.

The Speaker[5] sustained the point of order.

An appeal being taken, the question was put, "Is the said motion in order!"[6], and decided in the negative.

**5524.** On January 30, 1882,[7] Mr. Speaker Keifer expressed the opinion that a motion to instruct a committee on referring a bill on its introduction, was not proper.[8]

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[1] See Chapter CXXII, section 5569, etc., for later practice in this respect.

[2] Second session Forty-ninth Congress, Record, p. 1785.

[3] John G. Carlisle, of Kentucky, Speaker.

[4] First session Second Congress, Journal, p. 164 (old ed.), 561 (Gales and Seaton ed.).

[5] Jonathan Trumbull, of Connecticut, Speaker.

[6] The present mode of putting the question on appeal is, "Shall the decision of the Chair stand as the judgment of the House?"

[7] First session Forty-seventh Congress, Record, p. 727.

[8] A notable instance of instruction of a committee occurred on February 8, 1836, when the House agreed to the following resolution:

*"Resolved,* That all memorials which have been offered, or may hereafter be presented to thin House, praying for the abolition of slavery in the District of Columbia, and also the resolutions offered by an honorable Member from Maine [Mr. Jarvis], with the amendment thereto proposed by an honorable

**5525.** On December 14, 1868,[1] Mr. James W. Grimes, of Iowa, in addressing the Senate, said:

During the time that I have been here, and, as I have been told frequently by those who were much longer in the Senate when I came here, from the foundations of the Government to this time, a resolution has never been passed instructing one of the committees of this body. The object of a reference to a committee is to enable them to consider the subject and report their judgment, and their judgment alone, and the Senate is presumed to act upon it.

**5526. When a bill is recommitted with instructions relating only to a certain portion the committee may not review other portions.—**On February 5, 1896,[2] the District of Columbia appropriation bill had been refused a passage, and that vote had been reconsidered.

The question then recurred on the passage of the bill, when Mr. Charles H. Grosvenor, of Ohio, moved to recommit the bill to the Committee on Appropriations, with instructions to reexamine and report a new paragraph of so much of the bill as appeared under the subhead "For charities."

Mr. Alexander M. Dockery, of Missouri, submitted a parliamentary inquiry as to whether or not it would be competent for the Committee on Appropriations, in case the motion should prevail, to review other paragraphs of the bill than the one specifically mentioned.

The Speaker[3] expressed the opinion that it would not be in order.

**5527. A bill to establish a department of commerce and labor may be recommitted with instructions to report instead two bills establishing separate departments of commerce and labor.—**On January 17, 1903,[4] the House had ordered to be read a third time the bill (S. 569) to establish a department of commerce and labor.

Thereupon Mr. William Richardson, of Alabama, moved as follows:

*Resolved,* That the pending bill be recommitted to the Committee on Interstate and Foreign Commerce with instructions to report a bill or bills to the House to create and establish two separate departments, a department of labor and a department of commerce, each of the same dignity as existing Departments and each with a secretary in the Cabinet of the President, and to assign to each of the departments proper and relative bureaus.

Thereupon Mr. James R. Mann, of Illinois, made the point of order against the motion—

That it directs the Committee on interstate and Foreign Commerce to report a bill creating a department of labor, which, under the rules of the House, can not be done by this committee. The

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Member from Virginia [Mr. Wise], together with every other paper or proposition that may be submitted in relation to the subject, be referred to a select committee, with instructions to report:

"That Congress possesses no constitutional authority to interfere in any way with the institution of slavery in any of the States of this confederacy; and

That, in the opinion of this House, Congress ought not to interfere in any way with slavery in the District of Columbia, because it would be a violation of the public faith, unwise, impolitic, and dangerous to the Union. Assigning such reasons for these conclusions as, in the judgment of the committee, may be best calculated to enlighten the public mind, to allay excitement, to repress agitation, to secure and maintain the just rights of the slave-holding States, and of the people of this District, and to restore harmony and tranquillity amongst the various sections of the Union." (First session Twenty-fourth Congress, Journal, p. 316.)

[1] Third session Fortieth Congress, Globe, p. 63.

[2] First session Fifty-fourth Congress, Record, p. 1342.

[3] Thorn B. Reed, of Maine, Speaker.

[4] Second session Fifty-seventh Congress, Record, p. 928; Journal, p. 134.

Committee on Interstate and Foreign Commerce has not jurisdiction, and could not have jurisdiction, of a bill to organize a department of labor. * * * I make the further point that a bill to create a department of labor is not germane as an amendment to the bill pending before the House.

In the debate Mr. James D. Richardson, of Tennessee, said:

I desire only to say that it is competent for the House of Representatives to refer a bill to any committee that it choose. A particular committee might not have jurisdiction in the first place without the direct action of the House. A bill might inadvertently be referred to a committee not having jurisdiction of the subject under the rules, and the House might correct such reference, because under the rules the bill would not go there. But it is competent for the House in its majesty, as the House sits here this evening, to refer this or any other bill to the Committee on Interstate and Foreign Commerce.

The Speaker pro tempore [1] said:

The Chair is very clearly of opinion that the 6ew expressed by the gentleman from Tennessee [Mr. Richardson] as to the power of the House to refer this matter to the Committee on Interstate and Foreign Commerce states correctly the situation.

After debate on the question of germaneness, the Speaker pro tempore said:

There is no question in the mind of the Chair as to the power of the House to authorize the Committee on Interstate and Foreign Commerce to report a bill creating a department of labor, if the House sees fit to refer that subject to that committee. This is a bill creating a department of commerce and labor. The proposition contained in the motion is to return this bill to that committee with instructions to separate the two branches of the subject, and to report instead of a measure for one department a measure for two departments, covering the same subjects as are now covered in the bill pending before the House. The Chair holds that the motion is germane. The point of order is therefore overruled. The question is on the motion of the gentleman from Alabama [Mr. Richardson] to recommit the bill with instructions, as read by the Clerk.[2]

**5528. Reasoning from the parliamentary law that a part of a bill may be committed to one committee and a part to another, it was held in order in the Senate to recommit a bill with instructions to report it as two bills.—** On June 16, 1836,[3] the Senate was considering the bill to regulate the public deposits, Mr. Silas Wright, of New York, having moved to recommit the bill with the substitutes reported by the select committee and the amendments adopted by the Senate to the Committee on Finance with instructions to divide them into two separate bills so that one should contain all that related to the deposit banks and the other all that related to the surplus.

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[1] John Dalzell, of Pennsylvania, Speaker pro tempore.

[2] There is, however, a ruling made on a different theory. On August 27, 1888, the previous question had been ordered on the bill (H. R. 10896) making appropriations to supply deficiencies, etc., and under the operation thereof the bill was engrossed and read the third time.

Mr. Charles E. Hooker, of Mississippi, moved to recommit the bill with instructions to strike out section 4 thereof, and to report the subject-matter of said section as a separate bill.

Mr. Charles F. Crisp, of Georgia, made the point of order that the motion was out of order, for the reason that it is not in order to move to recommit a bill with instructions to report the same together with a separate bill.

The Speaker sustained the point of order. (First session Fiftieth Congress, Journal, p. 2682; Record, p. 8012.) There is some doubt as to who was in the chair when this ruling was made. The Record indicates that Mr. Speaker Carlisle was presiding, while the Journal indicates a Speaker pro tempore, probably Mr. Benton McMillin, of Tennessee; for Mr. Crisp, who, on August 25 (Journal, p. 2664), had been elected Speaker pro tempore, raised the point of order, and consequently could not have been in the chair.

[3] First session Twenty-fourth Congress, Debates, p. 1782.

Mr. John C. Calhoun, of South Carolina, having raised a question of order, the Presiding Officer,[1] stated that he had no doubts on the subject as to the power of the Senate. It could not only recommit the whole bill, but any portion of a bill, leaving the residue of it precisely as it stood either in committee or in the House. The parliamentary rule was precise. They could commit any portion of a bill to one committee and the other portion to another committee, with instructions; and if they could thus commit two parts of the same bill to two different committees, it followed, of course, that they could instruct one committee to separate a bill into two parts. When it came, thus separated, before the Senate it was in their power to take either proposition, or both, as the majority might decide.

The Presiding Officer quoted Jefferson's Manual in support of his view.

**5529. It is not in order to do indirectly by a motion to commit with instructions what may not be done directly by way of amendment.**

**To a bill proposing the admission of one Territory into the Union an amendment proposing the admission of another Territory is not germane.**

On February 12, 1859,[2] the House resumed the consideration of the bill of the Senate (S. 239) for the admission of Oregon into the Union; and the question being on the third reading of the bill, Mr. Galusha A. Grow, of Pennsylvania, proposed to submit an amendment, in the nature of a substitute, the amendment being, in substance, an enabling act for the Territories of Oregon and Kansas.

Mr. John M. Sandidge, of Louisiana, made the point of order that the amendment was not in order, on the ground that it was not germane to the bill.

The Speaker[3] decided that the amendment was out of order under the fifty-fifth rule, which declares that "no motion or proposition on a subject different from that under consideration shall be admitted under color of amendment."

From this decision of the Chair Mr. Grow appealed, and the appeal, on motion of Mr. Alexander H. Stephens, of Georgia, was laid on the table by a vote of 126 yeas to 92 nays.

Mr. John G. Davis, of Indiana, moved to recommit the bill to the Committee on the Territories, with the following instructions:

> Insert a clause therein, or add a section thereto, repealing so much of the act entitled "An act for the admission of the State of Kansas into the Union," approved May 4, 1858; as prohibits the people of Kansas from forming a constitution and asking admission into the Union as a State until "it is ascertained by a census, duly and legally taken, that the population of said Territory equals or exceeds the ratio of representation required for a Member of the House of Representatives of the Congress of the United States."

Mr. Sandidge made the point of order that the motion was out of order.

The Speaker stated that inasmuch as it was not competent for the House to amend the bill in the manner proposed—the same not being germane—it was not in order for the House to instruct the committee to do what the House itself could not do. He therefore decided that the motion was out of order.[4]

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[1] William R. King, of Alabama, Presiding Officer.

[2] Second session Thirty-fifth Congress, Journal, p. 389; Globe, pp. 1007, 1009.

[3] James L. Orr, of South Carolina, Speaker.

[4] On September 24, 1850 (First session Thirty-first Congress, Journal, pp. 1513, 1514; Globe, p. 1951), Mr. Speaker Cobb had decided that a proposition not in order as an amendment could not be offered as part of a motion to commit with instructions.

From this decision of the Chair Mr. John G. Davis appealed, and on motion of Mr. James Hughes, of Indiana, the appeal was laid on the table, 118 yeas to 95 nays.

**5530.** On February 13, 1851,[1] the House was considering the joint resolution (No. 36) "for the relief of Thomas Ritchie on the subject of the public printing," the pending question being on a motion to recommit with instructions providing that the same relief should be granted to the printers of the Thirtieth Congress.

Mr. John A. McClernand, of Illinois, made a point of order that the provision of the instruction was out of order.

The Speaker[2] stated that inasmuch as the resolution under consideration contained but two sections—one of which provided for additional compensation to one of the Public Printers, and the other for auditing the accounts of the Public Printers during recess—it would be clearly out of order, under the uniform practice of the House, to amend the said resolution by a provision for the relief of other individuals. It was also well settled that it was not competent for the House to instruct the committee to do what it could not do itself. He therefore sustained the point of order, and decided the amendment to the instructions to be out of order.

Mr. John Crowell, of Ohio, having appealed the decision of the Chair was sustained.

**5531.** On July 27, 1886,[3] the previous question had been demanded on the passage of a bill restoring to the United States certain lands granted to railroads, when Mr. Robert R. Hitt, of Illinois, moved to recommit the bill with instructions to report the Senate bill for which this substitute had been adopted.

Mr. William M. Springer, of Illinois, made the point of order that this Senate bill was the text that the House had stricken out, and it was not in order to direct the committee to report that which the House had just rejected.

The Speaker[4] sustained the point of order, and held it was not in order to move the recommitment of a bill with instructions to report matter which would not be in order if offered as an amendment in the House. The House had just voted to strike out the text of the Senate bill and insert a new proposition, and it was not therefore in order to do indirectly by way of recommitment that which could not be done directly by way of amendment.

**5632.** On August 23, 1890,[5] the House had ordered the previous question on the passage of the bill relating to the manufacture and sale of "compound lard," when Mr. William C. Oates, of Alabama, moved to recommit the bill with instructions to report therefore a substitute, which had already, in the previous consideration of the bill, been ruled out of order when offered as an amendment.

Mr. Marriott Brosius, of Pennsylvania, made the point of order that the motion was not in order, for the reason that the proposition was in violation of the rules of the House.

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[1] Second session Thirty-first Congress, Journal, p. 271; Globe, p. 526.

[2] Howell Cobb, of Georgia, Speaker.

[3] First session Forty-ninth Congress, Record, p. 7613; Journal, p. 2363.

[4] John G. Carlisle, of Kentucky, Speaker.

[5] First session Fifty-first Congress, Journal, pp. 984, 985; Record, p. 9105.

Mr. Edward H. Funston, of Kansas, made the additional point of order that it was not in order to do by commitment what could not be done by way of amendment.

The Speaker pro tempore[1] sustained the said point of order made by Mr. Funston on the ground stated by Speaker Carlisle in the Forty-ninth Congress, that it was not in order to do indirectly by way of recommitment what it was not in order to do directly by way of amendment, and that as the proposition submitted by Mr. Oates had been ruled out of order as an amendment it was not in order by way of recommitment.

**5533.** On March 3, 1892,[2] the previous question had been ordered on the passage of the District of Columbia appropriation bill, when Mr. David B. Henderson, of Iowa, moved to recommit the bill to the Committee on Appropriations with instructions to report the same to the House with the following amendment:

On page 22, in line 15, strike out the word "four" "and insert "six;" "and in line 20, strike out the word "twelve" and insert "thirty-five."

Mr. David A. De Armond, of Missouri, moved to amend the motion to recommit by adding thereto the following instructions:

That the bill be further amended by striking out the word "half "in line 3, page 1, and insert in lieu thereof the word "one-fourth, "and by striking out the word "half "in line 5 of same page, and inserting in lieu thereof the word "three-fourths."

Mr. Thomas B. Reed, of Maine, and Mr. Julius C. Burrows, of Michigan, made the point of order against the amendment submitted by Mr. De Armond, that the amendment was not in order, for the reason that the proposed additional instructions required the committee to amend the bill by changing existing law, and that inasmuch as no retrenchment of expenditure thereby was apparent, such amendment would be a violation of clause 2, Rule XXI.[3]

The Speaker[4] overruled the point of order, holding as follows:

The Chair is of the opinion that it is not competent to do by indirection that which could not be directly done; that it is not competent for the House to direct the committee to do something which the committee itself could not do by reason of a rule restricting it from such action. Therefore the question for the Chair to determine is whether this amendment would be in order in Committee of the Whole. Concededly it changes existing law. It is in order, then, if it reduces expenditures, and is not in order if it does not. This bill, a copy of which is before the Chair, provides "That the half of the following sums named, respectively, is hereby appropriated out of any money in the Treasury not otherwise appropriated, and the other half out of the revenues of the District of Columbia." So there seems to be an amount of money in the Treasury recognized as the "revenues of the District of Columbia," distinct from money in the Treasury from general sources; and this proposition, as the Chair understands, is to reduce the amount appropriated from the general fund—that raised for general purposes. Therefore the Chair thinks the amendment reduces expenditures, and is in order.

**5534.** On February 17, 1893,[5] Mr. William Mutchler, of Pennsylvania moved the previous question on the passage of the bill making appropriations for the payment of invalid and other pensions.

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[1] Lewis E. Payson, of Illinois, Speaker pro tempore.

[2] First session Fifty-second Congress, Journal, pp. 86, 87; Record, p. 1698.

[3] The present form of the rule is different. (See see. 3578 of Vol. IV of this work.)

[4] Charles F. Crisp, of Georgia, Speaker.

[5] Second session Fifty-second Congress, Journal, p. 96; Record, p. 1754.

Pending this, Mr. Amos J. Cummings, of New York, moved to recommit the bill with instructions to report an amendment providing that honorably discharged soldiers and sailors of the civil war should be preferred in the administration of the civil service.

Mr. Mutchler made the point of order that the motion was not in order, for the reason that the amendment proposed in the instructions was a change of existing law and did not retrench expenditures in the manner provided by the rule.

The Speaker [1] sustained the point of order.

**5535.** On March 20, 1894,[2] pending the question on the passage of the sundry civil appropriation bill, Mr. William W. Bowers, of California, proposed to recommit the bill with instructions to report an amendment for assistance to certain holders of Government land whose patents were threatened by legal procedure.

Mr. Joseph D. Sayers, of Texas, made the point that the amendment proposed in the motion of Mr. Bowers was not in order, and that the motion was, therefore, not in order.

The Speaker [1] sustained the point of order, holding that the House can not do indirectly, by means of a motion to recommit, what can not be done directly by amendment.

**5536.** On June 16, 1894,[3] the question being on the passage of the Indian appropriation bill, Mr. John H. Gear, of Iowa, moved that it be recommitted with instructions to report the same back to the House forthwith, amended as follows:

Strike out all of the bill relating to Indian schools and insert in lieu thereof the following:

"For support of Government Indian day and industrial schools, and the erection and repair of Government school buildings on Indian reservations and at places where the Government has established and is now maintaining Government Indian schools, and for each and every purpose necessary in the judgment of the Secretary of the Interior for the establishment and proper conduct of such schools, $2,225,000: *Provided,* That pending the establishment of such schools on Indian reservations, the Secretary of the Interior may, in his discretion, during the fiscal year 1895, authorize contracts to be made with established schools not conducted by the Government, for the education and support of Indian pupils and to pay therefor from this appropriation; and the Secretary of the Interior shall report to the first regular session of the Fifty-fourth Congress, in detail, all expenditures made and authorized by him under this appropriation: *Provided further,* That nothing herein shall be construed to prevent the sending of Indian children, at no expense to the United States, to schools not conducted by the Government."

Mr. Charles Tracey, of New York, and Mr. Joseph H. O'Neil, of Massachusetts, made the point of order that the instruction was not in order, for the reason that the amendment provided therein was a change of existing law, or new legislation, not retrenching expenditure.

The Speaker [1] sustained the point of order, holding that the scope and intent of the proposed amendment was to do away with the contract schools for Indians, and to establish Government schools, thus changing the present law in that respect.

Mr. Joseph G. Cannon, of Illinois, appealed from the decision of the Chair.

Mr. Tracey moved to lay the appeal on the table. The appeal was laid on the table, 158 yeas to 57 nays.

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] Second session Fifty-third Congress, Journal, pp. 256–258; Record, p. 3155.

[3] Second session Fifty-third Congress, Journal, p. 436; Record, pp. 6433, 6434.

**5537.** On June 27, 1894,[1] Mr. Joseph H. Outhwaite, of Ohio, from the Committee on Rules, reported a resolution providing for the consideration of the bill (H. R. 353) to enable the people of New Mexico to form a constitution and State government and be admitted into the Union on an equal footing with the original States.

After debate for thirty minutes, Mr. John F. Lacey, of Iowa, moved to recommit the resolution to the Committee on Rules, with instruction to amend the same by providing also for the consideration of the bill to admit into the Union the Territory of Oklahoma.

Mr. Outhwaite made the point that the motion to recommit was not in order.

The Speaker[2] held that the amendment proposed in the motion of Mr. Lacey was not germane to the pending resolution, and therefore sustained the point of order.

**5538.** On January 20, 1898,[3] the bill (H. R. 6449) making appropriations for the diplomatic and consular service for the fiscal year ending June 30, 1889, was passed to be engrossed and read a third time, and the question was on its passage, the previous question having been ordered.

Mr. Joseph W. Bailey, of Texas, moved to recommit the bill to the Committee on Foreign Affairs with instructions to report it back with this amendment:

> That a condition of public war exists between the Government of Spain and the government proclaimed and for some time maintained by force of arms by the people of Cuba, and that the United States of America should maintain a strict neutrality between the contending parties, according to each all the rights of belligerents in the ports and territory of the United States.

Mr. Robert R. Hitt, of Illinois, made the point of order that the amendment would not be germane and would be new legislation.

The Speaker[4] ruled that the motion to commit with instructions was not in order, upon the ground that a motion to commit, which would not be admissible as an amendment, was not admissible as instructions.

**5539.** On February 16, 1899,[5] the sundry civil appropriation bill had been passed to be engrossed and read a third time, when Mr. William P. Hepburn, of Iowa, moved that the bill be recommitted with instructions that there be added legislation providing for the construction of the Nicaragua Canal.

Mr. Joseph G. Cannon, of Illinois, made the point of order that it was not in order to accomplish by a motion to recommit with instructions what could not be accomplished directly by an amendment.

The Speaker[4] Sustained the point of order.

Mr. Hepburn appealed, whereupon Mr. Sereno E. Payne, of New York, moved to lay the appeal on the table.

On the succeeding day[6] the appeal was laid on the table by a vote of 158 ayes to 95 noes, and so the decision of the Chair was sustained.

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[1] Second session Fifty-third Congress, Journal, p. 453; Record, p. 6908.

[2] Charles F. Crisp, of Georgia, Speaker.

[3] Second session Fifty-fifth Congress, Record, p. 811.

[4] Thomas B. Reed, of Maine, Speaker.

[5] Third session Fifty-fifth Congress, Record, p. 1960; Journal, pp. 170, 174.

[6] Record, p. 1995.

**5540.** On February 26, 1904,[1] the naval appropriation bill had passed to be engrossed and read a third time, and pending the question on the passage Mr. Adolph Meyer, of Louisiana, proposed a motion to recommit with certain instructions.

Mr. George E. Foss, of Illinois, made the point of order that the instructions involved legislation on an appropriation bill.

The Speaker[2] sustained the point of order, saying:

The Chair, as he caught the reading of the motion, and he was paying as close attention as was possible for the Chair to do, is of opinion that several of the instructions in the motion cover legislation, and therefore, as you can not do indirectly that which you can not do directly, the Chair sustains the point of order.

**5541.** On March 1, 1905,[3] the pending question was on the passage of the bill (H. R. 18787) to amend the homestead laws as to certain unappropriated and unreserved lands in Colorado.

Mr. Oscar W. Underwood, of Alabama, moved to recommit the bill with instructions to report it back with an amendment repealing section 2301 of the Revised Statutes of the United States.

Mr. Franklin E. Brooks, of Colorado, made a point of order that, as the amendment was not germane, the instructions were not in order.

After debate, the Speaker[2] held:

On the motion the gentleman from Colorado makes the point of order that the instructions are not germane under the rules of the House, and, under the rules of the House, it is not debatable. This matter came up substantially on yesterday in the consideration of the bill before the House, and an amendment substantially the same as this in part was ruled out of order, and this amendment is clearly not germane, because it directs the reporting back of the bill with a provision that would repeal the commutation homestead act everywhere in the United States, this bill applying only to the State of Colorado. For that reason the Chair sustains the point of order.* * * The Chair reads from the Digest: "It is not in order to move to recommit a bill with instructions to a committee to report an amendment which is not germane." Many precedents are given, running through a period of substantially fifty years. And again, the House can not do indirectly what it can not do directly. Therefore the Chair sustains the point of order.

**5542. After the previous question had been ordered it was once held in order to move to commit with instructions to strike out a portion of an amendment already agreed to, although such a purpose might not be accomplished directly by a motion to amend.—**On February 25, 1895,[4] the previous question had been ordered on the passage of the deficiency appropriation bill, when Mr. John W. Maddox, of Georgia, moved that the bill be recommitted to the Committee on Appropriations, with instruction to report the same forthwith with the provision for one month's extra pay to Members' clerks stricken from the bill.

Mr. William A. Stone, of Pennsylvania, made the point of order that, the House having just agreed to an amendment adding to the bill what it was proposed in said instruction to strike out, the said motion to recommit was not in order.

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[1] Second session Fifty-eighth Congress, Record, pp. 2448, 2449.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] Third session Fifty-eighth Congress, Record, p. 3775.

[4] Third session Fifty-third Congress, Journal, pp. 156–158; Record, p. 2729.

The Speaker[1] held that inasmuch as the amendment which the House had just agreed to included several propositions, only one of which it was proposed by the present motion to have stricken out, the question on which the House had voted was not identical with the pending question. The motion to recommit with said instruction was therefore entertained.[2]

**5543. On a motion to commit with instructions the instructions may not authorize a committee to report at any time, as such authorization would constitute a change of the rules.—**On January 12, 1883,[3] the House was considering a bill to remove certain burdens on the American merchant marine, etc., and the previous question had been demanded on the passage of the bill, when Mr. Samuel S. Cox, of New York, moved that the bill be recommitted to the Committee on Commerce with instructions to report back to the House without delay a bill providing for the purchase, free admission, and registry of foreign-built vessels, and for the free admission of all material used in the construction and repair of vessels in American yards; and that the committee have leave to report at any time.

Mr. Thomas B. Reed, of Maine, made the point of order that the provision relating to reporting at any time would cause a change of the rules.

The Speaker[4] said:

> The clause of the proposed instructions that the committee have authority to report at any time[5] is not, in the opinion of the Chair, in order; and unless that clause be withdrawn the Chair will have to rule out the whole.[6]

**5544.** On December 4, 1860,[7] after the reading of the annual message of the President of the United States, Mr. Alexander R. Boteler, of Virginia, offered the following:

> *Resolved,* That so much of the President's message as relates to the present perilous condition of the country, be referred to a special committee of one from each State, with leave to report at any time.

Mr. Thomas S. Bocock, of Virginia, made the point of order that to give the committee leave to report at any time would be to change the rules of the House.

The Speaker[8] sustained the point of order, saying that the motion could not be entertained in its present shape.

**5545. A bill may be committed with instructions that it be reported "forthwith;" and in such a case the chairman of the committee to which**

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[1] Charles F. Crisp, of Georgia, Speaker.

[2] This ruling is exceptional. It is a well-understood rule that what is once inserted by way of amendment may not be amended by simply striking out a portion of it. (See secs. 5758–5771 of this volume); and it is also well understood that it is not in order to do indirectly by referring with instructions what may not be done directly by way of amendment.

[3] Second session Forty-seventh Congress, Journal, p. 229; Record, pp. 1147, 1148.

[4] J. Warren Keifer, of Ohio, Speaker.

[5] Under the later development of the rules this right to report at any time is valuable only in so far as it carries with it the right that the matter reported may be considered at anytime. Every Committee may report whenever its report is ready.

[6] Mr. Speaker Randall also decided this way in a case wherein the same point of order was made. (Second session Forty-fourth Congress, Journal, p. 285.)

[7] Second session Thirty-sixth Congress, Globe, p. 6.

[8] William Pennington, of New Jersey, Speaker.

**it is committed makes a report at once without awaiting action of the committee.**

**A bill having been considered in Committee of the Whole, and the House, pending a vote on the passage, having recommitted it with instructions that it be reported "forthwith" with an amendment in the nature of a substitute, it was held that the substitute did not require consideration in Committee of the Whole.**

On February 27, 1891,[1] the House had been considering the bill (S. 3738) to place the American merchant marine engaged in the foreign trade on an equality with that of other nations, under the terms of a special order which, at a certain time, ordered the previous question to the passage.

The bill had been ordered to be engrossed and read a third time, when Mr. Joseph G. Cannon, of Illinois, moved to recommit the bill to the Committee on Merchant Marine and Fisheries, with instructions "to report forthwith" an amendment in the nature of a substitute, which he presented therewith.

Mr. Richard P. Bland, of Missouri, made the point of order that the direction to the committee to report forthwith was not in order.

The Speaker[2] overruled the point of order.

The House having passed in the affirmative the motion of Mr. Cannon, the chairman of the Committee on Merchant Marine and Fisheries, Mr. John M. Farquhar, of New York, immediately rose in his place and announced that, as chairman of that committee, he reported back the substitute bill as instructed by the House.

Mr. Charles F. Crisp, of Georgia, made the point of order that there had been no meeting of the committee, and that therefore its chairman could not, under the rules of the House, make report.

The Speaker ruled:

The Chair has some sympathy with the observations which have been made by the gentleman from Georgia [Mr. Crisp], because he himself made somewhat similar observations on the 10th day of July, 1886, upon a similar question; but the result was very much as the Chair will now decide, after stating what he thinks to be the parliamentary condition of affairs.

The House of Representatives, considering the bill that was before it, passed it with sundry amendments. The rules of the House provide that after a bill has been ordered to a third reading—that is, after it passes the amendment stage—then the House has an opportunity to look at the bill as amended, and if not satisfied with it, it has a right under the rules to recommit with specific instructions. That is only another method of reconsidering its action. It may very often happen—the Chair will not say very often because it has been seldom in the experience of Members of the House, but it might happen—that an amendment was adopted by a majority composed of one set of Members and another amendment adopted by a majority composed of another set of Members, and that the majority of the House would not be in favor of both amendments together.

It is to give opportunity to remedy this that the motion to recommit is permitted. Now, the form which that takes is a peremptory instruction on the part of the House to the committee to make that return; and it seems to the Chair, after consideration of the matter, that it would be adhering too much to technicalities to take the view entertained by the gentleman from Georgia [Mr. Crisp], and it would seem to be more suitable that the chairman of the committee should promptly obey the orders of the House and follow its direction.

The gentleman from Georgia is correct in saying that the chairman of the committee is the mouthpiece of the committee, but the committee itself is the agent of the House, and the House has a perfect

[1] Second session Fifty-first Congress, Record, p. 3505–3508; Journal, pp. 312–321.

[2] Thomas B. Reed, of Maine, Speaker.

right to order the committee to do its will in whatever fashion it sees fit. In response to parliamentary inquiries, the Chair stated to the House what he thought to be the parliamentary law with regard to it, and the House has acted in that connection. That is the impression which the Chair entertains upon the subject. Such being the case, it seems as if the point of order should be overruled.

**5546.** Mr. Crisp having made the point of order that the bill reported back must be referred to the Committee of the Whole House on the state of the Union, and Mr. W. C. P. Breckinridge, of Kentucky, having made the point that the bill should take its place on the Calendar, since the Committee on Merchant Marine and Fisheries was not privileged to report at any time under the rules, the Speaker held:

The Chair would be glad to have the attention of the House for a moment. The rules of the House must be construed having them all in view. This method of reference to a committee after a bill has been ordered to be engrossed is a part of a system of consideration. The Chair has already passed upon some parts of that system, and it is not necessary to repeat what he has said; but, according to the idea of the Chair, when the House ordered the committee to report a particular substitute back "forthwith," that expression carried with it the right of immediate consideration; precisely as in Rule XI the expression "The following-named committees shall have leave to report at any time" carries with it the right of consideration at the time of the report.

Such a course enables the House to finish the business upon which it has entered, and to finish it in accordance with the wishes of the Members of the House. On the proposition which has been made that this bill must go to the Committee of the Whole, the Chair desires to remind the House that the whole subject in the original bill was referred to the Committee of the Whole, and was therein discussed. No one proposed that the substitute which was offered after the House came out of Committee of the Whole should be sent back to that committee because it had not been there considered.

No more can the substitute which the House has ordered to be reported forthwith be sent to the Committee of the Whole for consideration, for what could that committee do with it? The bill is here by the order of the House, and the subordinate of the House, the Committee of the Whole, could not act upon what the House itself has already acted upon. The House has directed this bill to be brought before it, and to be brought before it through the medium of the committee that had the original bill in charge.

The whole subject, within the purview of the rules, has been considered by the Committee of the Whole, and the functions of that committee have been performed. The Committee of the Whole has reported, and the result thus far is that the House has disagreed with the Committee of the Whole so pointedly that it has substituted directly its own will for the will of the Committee of the Whole, and, after considering the bill, which had been ordered to a third reading, as amended, has directed the committee in charge of this matter to bring back to the House "forthwith" another bill. It seems to the Chair that that is a plain, logical system for the transaction of business, and that it will justify itself thoroughly in actual practice in the House. The Chair is not aware whether this question has been up fully before, but it has been up to some extent, and the Chair thinks that the debate on the 10th of July, 1886, will throw light upon the subject for such gentlemen as desire to examine it.

Mr. John H. Rogers, of Arkansas, made the further point of order that, under the rules, neither the committees nor the chairman of the committee was authorized to make a report in the manner in which this bill had been reported.

Mr. Charles H. Mansur, of Missouri, made the additional point of order that the proper construction of the word "forthwith" was the legal construction, which meant within twenty-four hours.

The Speaker overruled the points of order.

**5547.** On April 6, 1900,[1] the House was considering the bill (S. 222) to provide a government for the Territory of Hawaii, and the bill having been read a third

[1] First session Fifty-sixth Congress, Record, p. 3866.

time, Mr. Richard Bartholdt, of Missouri, offered a motion that the bill be recommitted to the Committee on Territories with instructions to strike out of page 71, line 7, after the word "allowed," the words "nor shall saloons for the sale of intoxicating liquors be allowed," and that the bill be reported back forthwith.

Mr. Joseph G. Cannon, of Illinois, rising to a parliamentary inquiry, asked whether or not, the motion being adopted, it would be the duty of the gentleman in charge of the bill at once to report the bill back as instructed.

The Speaker [1] said:

The Chair will state, in reply to the parliamentary inquiry of the gentleman from Illinois, that it has been held repeatedly that the chairman of the committee who reports the bill, if this motion should prevail, should report it back forthwith, without leaving his seat or consulting his committee; and the Chair will further state that in the recollection of the Chair, on a motion made by the gentleman from Illinois who makes the parliamentary inquiry, that ruling was made.

The question being taken the motion was disagreed to.

**5548. It is in order to move to recommit with instructions to the committee to report "forthwith" a certain proposition; but instructions that the report be made on a certain day in the future involve a different principle.—**On February 27, 1891,[2] the House, acting under a special order, had passed to be engrossed and read a third time the bill (S. 3738) to place the American merchant marine engaged in the foreign trade upon an equality with that of other nations.

The bill having been read a third time, and the question being on its passage, Mr. Joseph G. Cannon, of Illinois, moved that the bill be recommitted to the Committee on Merchant Marine and Fisheries, with instructions to report the same forthwith, with an amendment in the nature of a substitute.

Mr. Richard P. Bland, of Missouri, made the point of order that so much of the motion as instructed the committee to report forthwith was not in order, and that a similar motion made by him in respect to the silver-coinage bill had been ruled out by the Speaker on a point of order.

The Speaker [3] ruled the motion submitted by Mr. Cannon to be in order, and stated that no ruling was made by him on the motion made by Mr. Bland as to the silver bill, but that instead Mr. Bland modified his motion so as to require the Committee on Coinage, Weights, and Measures to report back a bill for the free coinage of silver.

**5549.** On June 7, 1890,[4] the House resumed the consideration of the special order, it being the bill of the House (H. R. 5381) authorizing the issue of Treasury notes on deposit of silver bullion, with amendments.

The bill as amended was engrossed and read the third time, and the question was on its passage, when Mr. Richard P. Bland, of Missouri, submitted the following resolution:

*Resolved,* That the bill be recommitted to the Committee on Coinage, Weights, and Measures, with instructions to strike out all after the enacting clause and insert in lieu thereof the following:

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[1] David B. Henderson, of Iowa, Speaker.

[2] Second session Fifty-first Congress, Journal, pp. 31 2–321; Record, pp. 3505–3508.

[3] Thomas B. Reed, of Maine, Speaker.

[4] First session Fifty-first Congress, Journal, p. 713; Record, p. 5813.

"That from and after the passage of this act all holders of silver bullion of the value of $50 or more, standard fineness, shall be entitled to have the same coined into standard silver dollars," etc.

And that the committee report the bill so amended back to the House for consideration immediately after the reading of the Journal on next Tuesday, the 10th instant.

Mr. Nelson Dingley, jr., of Maine, made the point of order that the clause directing the committee to report back the bill at a designated time was not in order, being a change of the rules. The Speaker [1] sustained the point of order.[2]

**5550. It is in order to refer a matter already under consideration to a committee with instructions to report a bill forthwith, and such bill being reported is in order for immediate consideration.—**On January 15, 1842,[3] during a time set apart by special order for the reception of petitions and memorials, Mr. Linn Boyd, of Kentucky, presented a petition of inhabitants of the county of Otsego, in the State of New York, praying Congress to repeal the act, passed at the last session, to establish a uniform system of bankruptcy. Thereupon, on motion of Mr. Boyd, it was—

*Ordered,* That the memorial of the inhabitants of the county of Otsego, in the State of New York, be referred to the Committee on the Judiciary, with instructions to report, instanter, in execution of an order of the House made on the 8th instant, a bill for the repeal of the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved 19th of August, 1841.

Thereupon Mr. Henry A. Wise, of Virginia, demanded that the committee report instantly the bill.

Mr. Millard Fillmore, of New York, objected on the ground that the House was now acting under a special order, and that the reception of petitions and memorials was the business in order.

The Speaker [4] stated that this was a novel case, and that he had searched in vain for precedents to guide him. He must therefore rely on his own convictions of propriety. On the 11th instant he had decided that it was not in order for the Committee on the Judiciary to report the bill repealing the bankruptcy law, which the House, on the 8th instant, had ordered the committee to report on the 11th, for the reason that between the time of making the order and the time of its execution business under the pending special order had not been completed. Therefore the decision was made that the report could not be made. This was a different case, inasmuch as the order for the committee to report was imperative, and the time fixed was "instanter," and it was, in fact, but a mere continuation of the same proceeding; and, considering that, if the committee could not be called upon to report now, the power of the majority to carry out its intentions would become nugatory, the Speaker felt himself bound by the order of the House to call upon the committee to report the bill.

Mr. Caleb Cushing, of Massachusetts, having appealed, the appeal was laid on the table, yeas 101, nays 98.

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[1] Thomas B. Reed, of Maine, Speaker.

[2] The Record (p. 5813) shows that the Speaker made no ruling, but that Mr. Bland, when the point of order was made, withdrew that part of the motion, assuming that it would be held out of order.

[3] Second session Twenty-seventh Congress, Journal, pp. 189–199, 202, 207; Globe, pp. 134–138.

[4] John White, of Kentucky, Speaker.

Thereupon Mr. Daniel D. Barnard, of New York, chairman of the Committee on the Judiciary, in execution of the order of the House, reported a bill (No. 72) to repeal the act to establish a uniform system of bankruptcy.

The bill having been received and read a first time, Mr. Robert C. Winthrop, of Massachusetts, objected to any proceeding at this time on the bill on the ground that the order of the House had been fully executed by the reporting of the bill, and was therefore exhausted, and that the bill must take its place with business on the Speaker's table, and be taken up and proceeded with according to the rules when that class of business should be in order.

The Speaker sustained the point of order, but on an appeal, and on the succeeding day, this decision was reversed, yeas 99, nays 118.

**§ 5551. A bill recommitted under Rule XVII with instructions that it be reported "forthwith" was, when reported, again passed to be engrossed and read a third time.—**On January 30, 1904,[1] the House was considering the bill (H. R. 10418) to ratify and amend an agreement with the Sioux tribe of Indians of the Rosebud Reservation, in South Dakota, and making appropriation and provision to carry the same into effect.

The bill having been engrossed and read a third time, Mr. David E. Finley, of South Carolina, moved that the bill be recommitted to the Committee on Indian Affairs with instructions that it be reported forthwith with a certain amendment.

The motion being agreed to, Mr. Charles H. Burke, of South Dakota, from the Committee on Indian Affairs, at once reported the bill with the amendment specified.

Mr. Robert Baker, of New York, having made a point of order, the Speaker[2] said:

> The Chair is informed, and his recollection without the information concurs with the information, that this is the usual proceeding and that there are precedents. The Clerk will read section 1022 of Hinds's Parliamentary Practice.
>
> The Clerk read as follows:
>
> "SEC. 1022. A bill may be recommitted with instructions that it be reported back forthwith, and this report may be made at once by the chairman of the committee and is not subject to the point that it must be considered in the Committee of the Whole if it has previously been considered there.

The amendment reported by Mr. Baker was then agreed to.

The question being taken on the engrossment and third reading of the bill, a quorum failed on the division. Thereupon the House adjourned.

On February 1[3] the bill coming up, Mr. Burke moved the previous question on the bill to its passage. This motion was agreed to, and under the operation thereof the bill was engrossed, read a third time, and passed.[4]

**5552. A bill is sometimes recommitted to the Committee of the Whole with instructions.—**On February 25, 1833,[5] the House passed to the consideration of the bill (H. R. 641) to reduce and otherwise alter the duties on imports. This

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[1] Second session Fifty-eighth Congress, Journal, p. 225; Record, pp. 1428, 1429.

[2] Joseph G. Cannon, of Illinois, Speaker.

[3] Journal, p. 227; Record, p. 1469.

[4] The reengrossment of the bill, under operation of the previous question was in accordance with the procedure on February 27, 1891 (second session Fifty-first Congress, Journal, p. 319).

[5] Second session Twenty-second Congress, Journal, pp. 415–423; Debates, p. 1772.

bill had been reported from the Committee of the Whole House on the state of the Union with certain amendments, a portion of which had been acted on by the House.

Mr. Robert P. Letcher, of Kentucky, moved to strike out all after the enacting clause and insert a new text,[1] which he presented.

This motion being objected to, Mr. Letcher moved that the bill be recommitted to the Committee of the Whole House on the state of the Union, with instructions to amend the same to read as follows: i. e., in accordance with a new draft of a bill, which he presented.

This motion was agreed to, yeas 95, nays 54.

The House at once resolved itself into Committee of the Whole; and the Committee of the Whole amended the bill as directed. The substitute was read in Committee; but apparently there was no debate. The Committee then rose and reported the bill to the House.

The House concurred in the amendment of the Committee of the Whole.

**5553.** On April 10, 1828[2] the motion pending was to recommit the tariff bill to the Committee of the Whole House on the state of the Union (whence it had been reported with amendments), with certain instructions.

Mr. Michael Hoffman, of New York, rising to a parliamentary inquiry, asked if it were competent for the House to instruct the Committee of the Whole what amendments they should report.

The Speaker[3] decided that it was competent for the House so to instruct the Committee. Here the motion was to "inquire into the expediency of making certain specific amendments," which the Chair pronounced to be perfectly in order. The decision was acquiesced in by the House.

Mr. Benjamin Gorham, of Massachusetts, inquired whether, if the bill were recommitted, it would be in order to confine the Committee of the Whole, as proposed by the motion.

The Speaker said that the committee, if not instructed, would have the whole bill before them open to amendment; but the House might restrain them by instructions to the consideration of a single section, or a single point in the bill.

In this decision the House also acquiesced.

**5554. The question of consideration being pending, a motion to refer is not in order.—**On February 26, 1901.[4] Mr. James D. Richardson, of Tennessee, had offered a resolution relating to the right of supervision proper to be exercised over the Congressional Record by the Speaker.

Mr. John F. Lacey, of Iowa, raised the question of consideration.

Mr. James S. Sherman, of New York, rising to a parliamentary inquiry, asked if it would be in order to move to refer the resolution to the Committee on Rules.

The Speaker[5] held that the question of consideration must be disposed of first.

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[1] This text was the Clay bill, already presented in the Senate. It passed the Senate without amendment and became a law.

[2] First session Twentieth Congress, Journal, p. 1039; Debates, pp. 2260–2262.

[3] Andrew Stevenson, of Virginia, Speaker.

[4] Second session Fifty-sixth Congress, Record, p. 3093.

[5] David B. Henderson, of Iowa, Speaker.

**5555. The motion to refer, the previous question not being ordered, has precedence of the motion to amend.—**On March 7, 1902,[1] Mr. Joel P. Heatwole, of Minnesota, chairman of the Committee on Printing, reported a joint resolution (H. J. Res. 26) providing for the Special Report on the Diseases of the Horse.

After consideration Mr. Heatwole moved to recommit the bill.

Mr. Oscar W. Underwood, of Alabama, proposed an amendment.

The Speaker[2] said:

The Chair will say that under Rule XVI the motion to recommit has precedence over the motion to amend, and that therefore the Chair will put the motion to recommit.

**5556. It was held in the Senate that a pending motion might not be referred to a committee.—**On June 30,1868,[3] in the Senate, a motion was made that the oath be administered to Thomas W. Osborn, Senator-elect from Florida.

Mr. Thomas A. Hendricks, of Indiana, proposed to refer this motion with certain papers to the Committee on the Judiciary, and Mr. Henry B. Anthony, of Rhode Island, made such a motion.

Mr. John Conness, of California, made the point of order that it was not in order to refer a pending motion to a committee.

The President pro tempore[4] said:

They are entirely independent motions, and the first made must be disposed of first. The question now is, Shall the Senator-elect from Florida be admitted to take the oath and his seat? The Senator from Rhode Island moves that that motion be referred to the Committee on the Judiciary. I can hardly think that that is in order, because you could never get a decision in that way. Motion after motion might be put, and the last one would have to go to a committee. I know of no case where motions of that kind have been referred, and I think I can see great difficulty in establishing such a rule.

Mr. Anthony raised the point that had his motion been reduced to writing it would have been in order to refer it.

The President pro tempore said:

The Chair has already stated that in his opinion a motion to refer another motion is not in order. It takes nothing with it in this case. There are many motions that can be made that can be referred, because they take some substantial thing along with them to be deliberated upon and decided by the committee. But here is a motion to admit this Senator to take the oath. A motion to refer that motion to a committee takes nothing with it; there is nothing for the committee to consider; and therefore, and because of its inconvenience, the Chair believes it not to be in order; that it would establish a bad rule. If Senators think that is a wrong decision, and probably it may be, they will take an appeal and settle the question.

No appeal was taken.

**5557. After discussion the Senate decided out of order a motion to refer an amendment to a pending bill without the bill itself.—**On May 9, 1906,[5] the Senate resumed the consideration of the bill (H. R. 12987) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all

[1] First session Fifty-seventh Congress, Record, p. 2495.

[2] David B. Henderson, of Iowa, Speaker.

[3] Second session Fortieth Congress, Globe, p. 3606.

[4] Benjamin F. Wade, of Ohio, President pro tempore.

[5] First session Fifty-ninth Congress, Record, pp. 6553–6559.

acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission.

There was pending an amendment proposed by Mr. John F. Dryden, of New Jersey, which had been amended by the Senate on motion of Mr. Stephen B. Elkins, of West Virginia.

Mr. Albert J. Hopkins, of Illinois, moved to refer the amendment as amended to the Committee on Interstate Commerce.

Mr. Joseph W. Bailey, of Texas, made the point of order that the amendment might not be committed to a committee.

Mr. Nelson W. Aldrich, of Rhode Island, requested the following rule of the Senate to be read:

RULE XXII.—*Precedents of motions.*

When a question is pending, no motion shall be received but—
To adjourn.
To adjourn to a day certain, or that when the Senate adjourn it shall be to a day certain.
To take a recess.
To proceed to the consideration of executive business.
To lay on the table.
To postpone indefinitely.
To postpone to a day certain.
To commit.
To amend.

Which several motions shall have precedence as they stand arranged; and the motions relating to adjournment, to take a recess, to proceed to the consideration of executive business, to lay on the table, shall be decided without debate.

Mr. Aldrich further said:

The parliamentary law as understood in the Senate is Jefferson's Manual, which was made years ago the authority of the Senate upon all questions of parliamentary law not included within the Senate rules. I call attention to page 106, where it is said in terms:

"A particular clause of a bill may be committed without the whole bill."

* * * If we can commit a clause, we certainly can commit an amendment or a proposed clause. The only difference is that one is a clause and the other is a proposed clause.

Mr. Henry Cabot Lodge, of Massachusetts, said:

Mr. President, I am as anxious as anybody could possibly be to have this subject, which I think a large and complicated one, referred to a committee, so that before the conclusion of the session we may act upon it intelligently and better than we possibly can now; but I can not vote, Mr. President, to attain that result, which is easily attainable in an orderly manner and in conformity with what I believe to be parliamentary law, in a manner which I believe to be contrary to parliamentary law and contrary to the practice of the Senate.

An amendment has no existence except in connection with the measure to which it is proposed. When we send amendments to a committee to consider, it is because the bill to which they are proposed is in a committee in a state of preparation; but this bill is before the Senate; it is not before the committee; and there is no bill before the committee relating to this subject. If there were a bill before the committee relating to this matter—the divorcing of railroads from the ownership of coal lands—it would be then perfectly proper to refer these amendments for the consideration of the committee in connection with that bill. But to take the amendment away from the bill by which alone it can have parliamentary existence, I do not believe can possibly be done.

I have looked as well as a very brief time would permit me to do so at the very full collection of precedents of the House which were prepared for the House, and there is not a suggestion in all the innumerable questions that have arisen about amendments and committal that a motion to commit

could ever be applied to an amendment by itself. A motion to commit invariably applies—and every decision in this great work shows that it applies—to the bill, to the subject before the House, and not to an amendment to the subject or the proposition before the House. The first words of the eighteenth chapter on amendments are:

"Under the rule relating to amendments the following motions are in order: To amend; to amend that amendment; for a substitute; and to amend the substitute."

These are all the motions that are in order in regard to an amendment.

Our standing rule simply establishes the order of motions. It does not say what we can commit. Those are the motions, in their order, which may apply to the proposition before the Senate, or, like a motion to adjourn, apply only to the action of the body and not to the proposition then pending. * * * The motion to commit, the Senator from Wisconsin suggests, must apply to some substantive proposition. The substantive proposition before the Senate is the bill, and nothing else. The amendment is a mere attachment proposed to the bill, which may come into existence, or may have no existence; but it is here only because the bill is here. If there was no bill here, nobody would suggest that an amendment could be discussed when no bill existed to which it could apply.

Mr. President, I can find nothing in the general parliamentary law that refers to anything but the committal of the subject before the body. There is an utter absence of any suggestion, in any volume of rules at which I have been able to look, that it was ever contemplated that an amendment by itself could be committed to a committee or referred separately from the main proposition.

Mr. Charles A. Culberson, of Texas, said:

On page 115 of Jefferson's Manual it is said:

"1. It would be absurd to postpone the previous question, commitment, or amendment, alone, and thus separate the appendage from its principal; yet it must be postponed separately from its original, if at all; because the eighth rule of Senate says that when a main question is before the House—"

The main question here is the bill to regulate commerce—

"no motion shall be received but to commit, amend, or prequestion the original question, which is the parliamentary doctrine also."

At the conclusion of the debate the Vice-President [1] said:

The Senator from Texas raises a point of order against the motion of the Senator from Illinois to the effect that the motion is not in order under the rules of the Senate. The Chair finds no sanction for the motion in the well-recognized practice and usage of the Senate. The Chair will, therefore, leave the question to the determination of the Senate itself, as it is entirely within its competency to decide whether the motion is in order or not. * * * Those who are of opinion that the motion is in order will vote "yea" as their names are called, and those opposed "nay." The Secretary will call the roll.

The Secretary called the roll; and the result was, yeas 25, nays 48.

So the motion to refer was held not to be in order.

**5558. A bill referred to a committee and reported therefrom is sometimes recommitted.**

**When a bill is recommitted to the committee which reported it the whole question is before the committee anew, as if it had not been before considered.**

**The parliamentary law provides that the House may commit a portion of a bill or part to one committee and part to another.**

Section XXVIII of Jefferson's Manual provides:

After a bill has been committed and reported it ought not, in an ordinary course, to be recommitted; but in cases of importance, and for special reasons, it is sometimes recommitted, and usually to the same committee. (Hakew., 151.) If a report be recommitted before agreed to in the House,

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

what has passed in committee is of no validity; the whole question is again before the committee, and a new resolution must be again moved, as if nothing had passed. (3 Hats., 131—note.)

In Senate, January, 1800, the salvage bill was recommitted three times after the commitment.

A particular clause of a bill may be committed without the whole bill[1] (3 Hats., 131); or so much of a paper to one and so much to another committee.

**5559. The House having disposed of a report adversely, it is not in order to recommit it.—**On July 23, 1842,[2] the House proceeded to the consideration of the report of the Committee on the Judiciary, which recommended: "That it is not expedient to amend the existing bankrupt law, so as to include associations and corporate bodies issuing notes or bills for circulation as money."

The question being put on agreeing to the recommendation of the report, it was decided in the negative.

A motion was then made by Mr. James I. Roosevelt, of New York, that the report be recommitted to the Committee on the Judiciary.

The Speaker[3] decided the motion not to be in order.

Mr. Roosevelt having appealed, the appeal was laid on the table.

**5560. It is not in order to recommit a report until a question of order relating to its reception has been settled.—**On February 19, 1857,[4] the select committee appointed to investigate certain alleged corrupt combinations among Members made a report in relation to Mr. W. A. Gilbert, of New York.

Objection was made to the reception of this report on the ground that it was not privileged.

Pending consideration of the question of order involved, Mr. Henry Bennett, of New York, moved that the report be recommitted.

The Speaker[5] held that the motion to recommit was not in order, as the House had not yet received the report.

Mr. Bennett proposed to appeal, but later withdrew his motion to recommit.

**5561. The motion to recommit with instructions may be made before the engrossment of a bill, and is debatable; but a demand for the previous question on the bill to the passage, if sustained, cuts it off.—**On January 11, 1899,[6] the House was considering the bill (H. R. 8571) to provide a criminal code for the District of Alaska, the question being on the engrossment and third reading of the bill, and the previous question not having been demanded or ordered.

Mr. Oscar W. Underwood, of Alabama, moved to recommit the bill with certain instructions.

Mr. Sereno E. Payne, of New York, made the point of order that the motion to recommit was not in order as the bill had not been ordered to be engrossed and read a third time.

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[1] This, of course, can only apply to cases where the House commits a bill. Under the present system bills on their introduction are referred under the rule, and a bill may not be divided among two or more committees.

[2] Second session Twenty-seventh Congress, Journal, pp. 1149, 1150; Globe, p. 782.

[3] John White, of Kentucky, Speaker.

[4] Third session Thirty-fourth Congress, Globe, pp. 762, 764.

[5] Nathaniel P. Banks, of Massachusetts, Speaker.

[6] Third session Fifty-fifth Congress, Record, pp. 595, 597.

The Speaker pro tempore [1] held:

The previous question not having been asked for or ordered a motion to recommit is in order.

Debate having begun, Mr. John J. Jenkins, of Wisconsin, made the point of order that the motion was not debatable.

The Speaker pro tempore [1] said:

The Chair decides that a motion to recommit with instructions opens up the entire subject.

Debate having proceeded, Mr. Vespasian Warner, of Illinois, demanded the previous question on the bill to its passage.

Mr. Underwood having called attention to the pendency of his motion to recommit the Speaker [2] said that ordering the previous question on the bill to its passage would cut off the motion to recommit with instructions; [3] but that the latter motion might be made after the bill had passed to be engrossed, provided the previous question on the bill to its passage should be ordered.

**5562. The motion to recommit may be made after the engrossment and third reading of a bill, even though the previous question may not have been ordered.—**On February 16, 1899,[4] the House was considering the sundry civil appropriation bill, and had ordered it to be engrossed and read a third time. The question then recurred on its passage, and the previous question had not been ordered.

Mr. William P. Hepburn, of Iowa, moved to recommit the bill with instructions that there be added to it legislation providing for the construction of the Nicaragua Canal.

Mr. Joseph G. Cannon, of Illinois, made the point of order that the motion was not in order, as the previous question had not been ordered.

The Speaker [2] said:

The Chair thinks the motion is regular, and the Clerk will present it.

**5563.** On January 22, 1855,[5] the House was considering the bill to provide for railroad and telegraph communication between the Atlantic States and the Pacific Ocean, which had been passed to be engrossed and read a third time under the operation of the previous question.

Mr. Lewis D. Campbell, of Ohio, moved that the vote whereby the main question was ordered be reconsidered, in order that a motion might be made to recommit the bill to the select committee which had reported it.

A question arising as to the proper procedure, the Speaker [6] said:

The Chair will state the exact effect of the motion. If the vote by which the main question was ordered to be now put be reconsidered, and the House should see proper to reconsider the vote by which the bill was ordered to be engrossed and read a third time, it may be committed, but only after the vote by which it was ordered to be engrossed has been reconsidered. Before that vote is taken, however,

[1] Israel F. Fischer, of New York, Speaker pro tempore.

[2] Thomas B. Reed, of Maine, Speaker.

[3] Of course the previous question might have been demanded on the motion to recommit with instructions instead of being offered as a motion having priority under section 4 of Rule XVI.

[4] Third session Fifty-fifth Congress, Record, p. 1960.

[5] Second-session Thirty-third Congress, Globe, p. 353.

[6] Linn Boyd, of Kentucky, Speaker.

it may be recommitted to the select committee under an express rule, but it can not be committed to a new committee.[1] That is the recollection of the Chair in regard to the rule. But the reconsideration of the vote by which the bill was ordered to be engrossed will place it in a position to be committed or recommitted.

**5564. The simple motion to refer or commit is debatable, but the merits of the proposition which it is proposed to refer may not be brought into the debate.**

**A former rule of the House provided that a motion to refer should not be debatable. (Footnote.)**

On February 21, 1893,[2] the House was considering the Senate amendments to the bill (H. R. 9350) to promote the safety of employees and travelers, etc., and Mr. James D. Richardson, of Tennessee, submitted a motion that the bill and amendments be committed to the Committee on Interstate and Foreign Commerce. He was proceeding to debate this motion to commit, when Mr. John Lind, of Minnesota, made the point of order that the motion of Mr. Richardson was not debatable.

The Speaker[3] sustained the point of order on the ground that the amendments not having been considered by or reported form a committee of the House, under clause 2 of Rule XIII[4] the question on the motion to commit was not debatable.

**5565.** On December 19, 1825,[5] Mr. Edward Livingston, of Louisiana, was recognized in debate, the pending question being on a motion to refer to the Committee on Ways and Means a resolution calling on the Secretary of the Treasury for a detailed account of unclaimed dividends on United States stock.

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[1] The rule referred to, No. 120 at this time, was as follows: "After commitment and report thereof to the House, or at any time before its passage, a bill may be recommitted." This rule dated from 1789, but has not existed for many years.

[2] Second session Fifty-second Congress, Journal, p. 101; Record, p. 1956.

[3] Charles F. Crisp, of Georgia, Speaker.

[4] This rule is no longer a part of the rules. It provided: "The question of reference of any proposition, other than that reported from a committee, shall be decided without debate, in the following order, viz, a standing committee, a select committee; but the reference of a proposition reported by a committee, when demanded, shall be decided according to its character, without debate, in the following order, viz, House Calendar, Committee of the Whole House on the state of the Union, Committee of the Whole House, a standing committee, a select committee." This rule had its inception on March 13, 1822 (first session Seventeenth Congress, Journal, p. 350), and was evidently intended to remedy troubles such as occurred January 29, 1822 (first session Seventeenth Congress, Annals, p. 827), when there was much debate and contention over the reference of papers relating to the difficulties of General Jackson and Judge Fromentin. In the first form the motion to refer was left debatable, and long debates over reference frequently occurred, as in the case of the President's message relating to the Creek treaties, on February 9, 1827 (second session Nineteenth Congress, Debates, pp. 1029–1033).

Section 4 of Rule XVI (see sec. 5301 of this volume) seems to imply that the motion to commit may be debatable, under certain circumstances at least, and the relations of these two rules, which existed together in the Fifty-second Congress, were discussed at this time. (Record, p. 1955.)

The general parliamentary law (see sec. 120 of Reed's Parliamentary Rules) provides:

"The motion to commit is debatable, but the merits of the main question are not open to discussion on this motion, since that discussion will be in order when the committee reports. If, however, the proposition be to commit with instructions as to the main question, then debate can be had on the merits."

[5] First session Nineteenth Congress, Debates, p. 828.

Mr. Livingston was proceeding to discuss the condition and situation of these balances when the Chair[1] reminded him that it was not in order to discuss the merits on a motion to refer to a committee.

**5566.** On February 4, 1834,[2] a message was received from the President on the subject of the refusal of the Bank of the United States to transfer the money and books of the pension fund to the Girard bank.

The message having been read, Mr. Henry Hubbard, of New Hampshire, moved that the message, with the accompanying documents, be referred to the Committee on Ways and Means.

Debate arising the Speaker[3] twice admonished Members that it was not in order to enter on the merits of the question referred to by the message.

Again on February 25[4] the Speaker ruled in the same way on a motion to recommit the fortifications appropriation bill to the Committee of the Whole.

**5567.** On December 2, 1902,[5] the message of the President had been read when Mr. Sereno E. Payne, of New York, moved that it be referred to the Committee of the Whole House on the state of the Union.

Mr. Galusha A. Grow, of Pennsylvania, rising to a parliamentary inquiry, asked if the message itself might be debated on the motion to refer.

The Speaker[6] said:

> The Chair thinks that is not the practice.

**5568.** On December 10, 1903,[7] Mr. John F. Lacey, of Iowa, moved to refer to the Committee on the Judiciary a resolution proposing proceedings in relation to the impeachment of Judge Charles Swayne.

Mr. Charles H. Grosvenor, of Ohio, made the point of order that the motion was not debatable.

The Speaker[8] said:

> The Chair thinks the motion of the gentleman from Iowa [Mr. Lacey] is debatable, as to the propriety of the proposed reference, and has recognized the gentleman from Mississippi [Mr. Williams], who will confine himself within the limits.

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[1] John W. Taylor, of New York, Speaker.

[2] First session Twenty-third Congress, Debates, p. 2616.

[3] Andrew Stevenson, of Virginia, Speaker.

[4] Debates, pp. 2784, 2785.

[5] Second session Fifty-seventh Congress, Record, p. 20.

[6] David B. Henderson, of Iowa, Speaker.

[7] Second session Fifty-eighth Congress, Record, p. 97.

[8] Joseph G. Cannon, of Illinois, Speaker.