

Withholding of Grain Payments

• (3:20 p.m.)

Apart from considering the difference in the constitutional characteristics of our Senate and the British House of Lords, and that appears to me to be a matter of some consequence but one which it is not competent for the Chair to explore in detail, but I believe it would be relevant and useful to consider the actual procedure observed in recorded impeachment proceedings in the United Kingdom. The most recent case that might be referred to, as I have said, is the one recorded in the year 1805. The proceedings of impeachment in that year were against Lord Melville. The matter was initiated by the British House of Commons by the drafting of articles of impeachment. The articles were then sent to the House of Lords for the lords to consider the charge, hear evidence, adjudicate thereon and act in their judicial capacity. In this regard, I wish to quote both May's 17th edition and Anson, *The Law and Custom of the Constitution*, 5th edition. The citation from May's 17th edition is at page 39 and reads as follows:

Acts of Attainder and Impeachments

In passing Acts of attainder and of pains and penalties, the judicature of the entire Parliament is exercised and there is another high parliamentary judicature in which both Houses also have a share. In impeachments, the Commons, as a great representative inquest of the nation, first find the crime, and then, as prosecutors, support their charge before the Lords; while the Lords, exercising at once the functions of a high court of justice and of a jury, try and also adjudicate upon the charge preferred.

At page 37 May reminds us:

The most distinguishing characteristic of the Lords is their judicature, of which they exercise several kinds. They have a judicature in claims of peerage and offices of honour, under references from the Crown, but not otherwise.

Anson, *The Law and Custom of the Constitution*, 5th edition, 1922, contains the following:

The Commons appoint managers to conduct their case, and the trial proceeds in Westminster Hall. The forms of a criminal trial are followed, the Lords sitting as judges, the Lord High Steward presiding if a peer is on his trial, the Lord Chancellor or Speaker of the House of Lords in the case of a commoner.

Finally, Abraham and Hawtrey, page 107:

The trial of a person, usually a minister of the Crown, before the House of Lords, on an accusation of treason or other crimes and misdemeanours brought by the House of Commons.

The thought which runs through these citations is that while so-called articles of impeachment may be started in the House of Commons, in the British tradition, in the usage and custom to which reference has been made, the actual case is heard and the determination is made in the House of Lords in its judicial capacity. This was the constitutional and procedural position in the United Kingdom in the year 1867. The proceedings were based on the exercise of judicial functions possessed by the House of Lords, a function not discharged in the Canadian Senate. I doubt, therefore, that it can be said the customs and usages of the United Kingdom are applicable to Canada under Standing Order 1. I suggest these are two entirely different situations. While an article of impeachment can be sent from the British House of Commons to the House of Lords to be considered by the upper House in its judicial capacity, this cannot be done in Canada because the Senate in the strict sense of the House of Lords does not have a judicial capacity.

[Mr. Speaker.]

Let me also refer to May's first edition, published in 1844, at page 39:

"The institution had fallen into disuse," says Mr. Hallam, "partly from the loss of that control which the commons had obtained under Richard 2, and the Lancastrian kings, and partly from the preference the Tudor princes had given to bills of attainder or of pains and penalties, when they wished to turn the arm of Parliament against an obnoxious subject."

It should be noted that that comment was published some 23 years prior to the enactment of our Standing Order 1. The case I am now making is that 23 years before the adoption of our Standing Order 1 there was authority to indicate this procedure which we are now seeking to bring into our own procedures had already fallen into disuse in the British House.

In none of the editions of our own authors have I been able to find any support for the proposition that impeachment procedure has been carried over into our Canadian practice. I suggest that, based on recent British authorities, it would be difficult to support such a proposition even in the British Parliament. In view of the fact that the last known precedent in the British House occurred in 1805 and in the absence of any known precedent in 105 years in our parliamentary history, it seems to me that such a motion is not in accordance with our modern parliamentary practice.

As stated earlier in my comments when I referred to May's first edition, other usages, practices and circumstances have arisen which render the ancient impeachment proceedings obsolete and unnecessary.

Having said all this, I will go into the arguments brought forward for the consideration of the Chair by all hon. members who took part in this debate. As I said, in my view some of these arguments were more relative to the substance of the matter and had more reference to moral considerations. Hon. members have suggested that it is the responsibility of the Chair to provide an opportunity for debate on this matter. I suggest that, even if it were so, this could hardly be done under the guise of the impeachment motion proposed by the hon. member for Peace River.

[Translation]

ROUTINE PROCEEDINGS

FINANCE, TRADE AND ECONOMIC AFFAIRS

Eighteenth report of Standing Committee on Finance, Trade and Economic Affairs, in the two official languages.—Mr. Clermont.

[Editor's Note: For text of above report, see today's Votes and Proceedings.]

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ECONOMIC COUNCIL OF CANADA

ANNOUNCEMENT OF APPOINTMENT OF DR. RAYNAULD
AS CHAIRMAN

Right Hon. P. E. Trudeau (Prime Minister): Mr. Speaker, I am happy to be able to announce the appointment of a