

Procedure and Organization

Commons Act. Section 18 of the British North America Act provides that—

—the privileges, immunities, and powers to be held, enjoyed and exercised by the Senate and by the House of Commons, and by the members thereof respectively, shall be such as are from time to time defined by act of the Parliament of Canada, but so that any act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities, or powers exceeding those at the passing of such act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof.

Pursuant to that authority the Senate and House of Commons Act was enacted. Section 4 of Chapter 249 of the Revised Statutes of Canada provides:

The Senate and the House of Commons respectively, and the members thereof respectively, shall hold, enjoy and exercise,

(a) such and the like privileges, immunities and powers as, at the time of the passing of the British North America Act 1867, were held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom, and by the members thereof, so far as the same are consistent with and not repugnant to the said act; and

(b) such privileges, immunities and powers as are from time to time defined by act of the Parliament of Canada, not exceeding those at the time of the passing of such act held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof respectively.

In other words the chain runs from the B.N.A. Act—the original constitutional document—to the Senate and House of Commons Act, which gives the House of Commons certain powers, including the power to make its own rules of procedure by way of standing orders, and pursuant to the provisions stipulated in chapter 12 of May's 17th edition. I therefore suggest, Mr. Speaker, that there is a direct chain of title from the constitutional authority, that is to say the legislature of the United Kingdom, and that that authority has been exercised by the Senate and House of Commons Act so that the powers are held by the house to make changes in its own standing orders from time to time, pursuant to that power in the statute. Therefore the hon. member's argument falls to one side.

Mr. Speaker: If there are no further contributions on this very interesting point raised by the hon. member for Peace River (Mr. Baldwin) I would presume to make a ruling at this time. As I am sure the hon. member for Peace River suspects, the Chair would have to rule that the point of order he has made at the present time is not so much a point of order as a point of debate

which would perhaps be valid in the course of the discussion. I would assume the hon. member would raise the point when we reach the moment in our proceedings when the substance of the hon. member's motion is before us.

I have had occasion in the past to indicate that it is not the responsibility of the Chair to rule on questions of law or on constitutional questions. This ruling has been made in many instances by previous Speakers. I should like, if hon. members would allow me to do so, to quote at this time a ruling made by the Deputy Speaker on Friday October 25, 1963. It reviews some of the authorities on this point:

I have listened with much interest to the argument made by the honourable and learned member for Rosedale (Mr. Macdonald). I gather the essence of the argument he submits now is that the bill should not be considered, that it is out of order because it is *ultra vires* the Parliament of Canada. My submission at this time is that it should not be the responsibility of the Chair to rule whether a particular bill or particular piece of legislation submitted to parliament is or is not within the competence of this house. Firstly, I should like to refer honourable members to Standing Order 12(1) which limits and defines the duties and responsibilities of the Speaker: "Mr. Speaker shall preserve order and decorum, and shall decide questions of order, subject to an appeal to the house without debate—"

In other words, this limits the powers and responsibilities of the Speaker to deciding on questions of order, not questions of law. This is further confirmed in citation 69(3) of Beauchesne's fourth edition, at page 59: "Standing Order 12 being restrictive should be given the strictest literal interpretation—"

There is another citation referred to in the same ruling. I am still quoting from the same ruling of Friday October 25, 1963:

—I should like to refer at this time to citation 71(5) of Beauchesne's fourth edition, at page 61: "The Speaker will not give a decision upon a constitutional question nor decide a question of law, though the same may be raised on a point of order or privilege," which is what the honourable member did at the moment he raised it as a question of order. But it shall not be the responsibility of the Chair or the Speaker to make a decision.

Lastly, I should like to refer to a more recent ruling made by Mr. Speaker Lemieux, reported in *Hansard* for June 4, 1925, page 3875:

I apologize to the hon. member for Peace River for going back almost as far as he has in his argument.

"The Parliament of Canada is supreme, and if it should pass any act which is *ultra vires*, the courts would decide the validity of such act. It is not for the Speaker to declare—although he presides over the highest court in the land—as to whether any proposed legislation is *ultra vires*—"