

● (1530)

May I, once again, reiterate the consequences of that decision.

That is whether or not Mr. Speaker was to find, as he did, a prime facie case. Mr. Speaker continued by saying:

The job that I have in matters of privilege is a preliminary, procedural review of the matter to determine whether in fact it touches the privileges of members of the House of Commons or of the House itself. Having done so, I concluded that the motion put forward by the hon. member must therefore be given immediate priority and taken into consideration by the House at once.

Here follow the rather important words, Madam Speaker. The paragraph concludes:

The House itself makes the decision on whether the motion shall carry, whether it shall be amended, or in any way altered and, in fact, whether there is a contempt. I do not make that decision; the House does.

In another precedent which can be found in *Hansard* for March 21, 1978, we find at page 3975 Mr. Speaker Jerome dealing with a question of privilege raised by the then hon. member for Nickel Belt, Mr. Rodriguez, no longer a member of the House. That matter had to do with an allegation by one Warren Hart, which allegation had been made in a sworn affidavit relating to electronic surveillance of members' telephones. The member said that act constituted a breach of privilege if true, and Mr. Speaker Jerome had this to say:

In this connection I wish to refer the House to some excellent language contained in the *Report of the Select Committee on Parliamentary Privilege* dated 1967, in the United Kingdom. I have the reference here and I will table it with my notes today for the benefit of the reporters. The document is dated February 20, 1967, and I call attention to the following passage which appears on page 111:

From this circumstance it might be inferred that the test applied by the Speaker in deciding whether to give precedence over the orders of the day to a complaint of breach of privilege—or rather to the motion which the member who has made the complaint desires to move in reference thereto—is, does the act complained of appear to me at first sight to be a breach of privilege? Rigorously applied, it would mean that no complaint of breach of privilege could ever be entertained unless the Speaker was of the opinion that the act or conduct complained of was a breach of privilege.

I draw attention to the words, “was a breach of privilege”, a substantive decision. Mr. Speaker Jerome continued reading from this document dated February 20, 1957 as follows:

The result would be that the House which alone is competent to decide whether a particular act is a breach of privilege—

It is not the responsibility of the Chair. The passage from which Mr. Speaker was quoting concluded as follows:

—would have no opportunity of deciding the question unless the government gave time for its discussion. Borderline cases and arguable ones would be excluded automatically because in such cases the Speaker could not say that he was of opinion that the act or conduct which was the subject of complaint prima facie constituted a breach of privilege.

Mr. Speaker Jerome then said:

I ask hon. members to note the phrase “which alone is competent to decide”.

He was referring to the House being competent to decide. Mr. Speaker Jerome continued by saying:

That is the point I wish to stress. To continue quoting:

In my submission the question which the Speaker should ask himself, when he has to decide whether to grant precedence over other public business to a motion which a member who has complained of some act or conduct as constituting a breach of privilege desires to move, should be, not—do I consider that, assuming that the facts are as stated, the act or conduct constitutes a breach of privilege,

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but could it reasonably be held to be a breach of privilege, or to put it shortly, has the member an arguable point? If the Speaker feels any doubt on the question, he should, in my view, leave it to the House.

That is the position in which I find myself here. In all the circumstances, I hesitate very much to take away on procedural grounds the possibility of reaching a decision on a subject to which the House might wish to address itself.

I might parenthetically say, even those ministers on whom doubts are cast. Mr. Speaker went on to say:

In debating the motion put forward by the hon. member, members of the House might make valuable contributions to the question of whether or not we should treat this kind of electronic interference in some special way. Indeed, if the House decides in its wisdom that the matter should be referred to a committee for consideration, the committee hearing might result in an indication of the proper attitude which should be taken toward the matter.

Therefore, on balance, in the special circumstances which exist here, it is my conclusion that I should resolve my doubt in favour of putting the question to the House at the proper time.

That is what Mr. Speaker did on matters of privilege upon which he had a doubt.

At this point, Madam Speaker, may I submit to you, with great respect, that it is not the function of the Chair to insist upon that degree of evidence which, in criminal trial, would result in a conviction of an accused person. All that is necessary here, in my submission, is that some evidence be submitted upon which the Chair can make a valued judgment as to whether a question of privilege exists, and, if it exists in that very shallow sense of prima facie—and that in effect is what prima facie means—some evidence to warrant and explanation or some evidence in a criminal court that would require a defence, in the absence of which a conviction would be registered. That, I suggest, is the proper meaning to be attached to the words prima facie. All the Chair requires is that some evidence be before it, not a preponderance of evidence. Of course, it has to be privilege, to which I will speak in a moment.

A further precedent is to be found in *Hansard* dated June 7, 1977, at page 6388. Just to digress for a moment for the edification of the Parliamentary Secretary to the President of the Privy Council, and indeed of the President of the Privy Council (Mr. Pinard) himself who spoke about it yesterday, as did the hon. member for St. John's East (Mr. McGrath), I am speaking of this myth, “Make a charge and put your seat on the line, and if you do not justify the charge, you lose your seat.” That is utter nonsense. It has no place in our precedents. It has no place in our practices.

Mr. Smith: Tradition.

Mr. Nielsen: That finding has been upheld by Speaker after Speaker in the House, and by a Speaker for whom I am sure all members in this House have the greatest respect. I am referring, of course, to your predecessor, Mr. Speaker Jerome who interrupted one of your deputies, the hon. member for Lachine (Mr. Blaker) who in 1977 was parliamentary secretary to the minister of supply and services. He said in essence exactly what I have just finished saying with respect to this business of putting a member's seat on the line. At page 6388 of *Hansard* Mr. Speaker Jerome said this: