[*English*]

There is some considerable doubt, at least in my mind, that the Senate can rewrite or redraft Bills originating in the Commons, potentially so as to change their principle as adopted by the House without again first seeking the agreement of the House. That I view as a matter of privilege and not a matter related to the Constitution.

In the case of Bill C-103, it is my opinion, and with the great respect of course—

• (1520)

I am quoting now from a former judgment.

—that the Senate should have respected the propriety of asking the House of Commons to concur in its action of dividing Bill C-103 and in reporting only part of the bill back as a *fait accompli* has infringed the privileges of this place.

I went on to say:

I have ruled that the privileges of the House have been infringed. However, and it is important to understand this, I am without the power to enforce them directly. I cannot rule the Message from the Senate out of order for that would leave Bill C-103 in limbo. In other words, it would be nowhere. The cure in this case is for the House to claim its privileges or to forgo them if it so wishes, by way of message to Their Honours, that is, to the Senate, informing them accordingly.

I hasten to add, however, that I also said at that time that:

—the Speaker of the House of Commons by tradition does not rule on constitutional matters. It is not for me to decide whether the Senate has the constitutional power to do what it has done with Bill C-103.

Later, having noted that Bill C-103 was a financial bill and that the Senate is somewhat limited in its review of money bills, I specifically declined to answer such constitutional questions as whether the royal recommendation still applied to the split bill and whether the financial privileges of the Commons had been breached. In so ruling, I relied heavily on actions of two of my predecessors in the Chair.

My research indicates several occasions since Confederation when the Senate amended Commons' bills with financial implications. For example, messages were received by the House on May 23, 1873, May 23, 1874, September 15, 1917, May 23, 1918, June 11, 1941, and July, 14, 1959. A close examination of these six cases reveals that the House agreed with the Senate amendments in all but two of these instances. In 1873, the House disagreed with all the amendments and, in 1959, it agreed to one and disagreed with another. What is interesting to note from a procedural point of view is that the Speaker was only required to comment on two of the occasions, namely in the 1917 and 1959 cases.

In the first instance on September 15, 1917 the Speaker replied to two points of order, one regarding the authority of the Senate to amend a money bill and another regarding the obligation of the House to insist on its privileges and reject the amendment. On the first issue, the Speaker stated, and I quote:

—the question whether the Senate can make such amendments as has been made in the Bill now under consideration is a point of constitutional law in respect to which it would, I think, be improper for me to give an official decision. Matters of such high constitutional import are for the House and not for your Speaker to determine.

On the second issue, he stated:

—there is nothing contained in—our rules which prevents this House from adopting as its own, amendments such as this now under consideration—in my judgment the principle involved as to the authority of this House to waive under stated conditions its rights and privileges is the same.

In short, my predecessors many years ago refused become involved in a constitutional issue which should be settled by negotiation between the House and the Senate, and further ruled that nothing should prevent the House from waiving its financial rights and adopting the Senate amendment as though it were its own. I say that is an option always to the House.

The second case further clarifies the situation and emphasizes the fine line between the constitutional and procedural issues. After the government moved concurrence on certain Senate amendments on July 14, 1959, the Speaker drew the attention of the House to the procedural difficulties with a motion before the House to concur in a Senate amendment and to waive the House's rights, that is, the House of Commons' rights. The Speaker, in 1959, ruled, and I quote:

—if the House in its wisdom feels that—it should waive its asserted privileges in this particular case, by doing so it in effect suspends Standing Order 80(1). Therefore the view which I take is that unless the motion properly suspends Standing Order 80(1), it would require the unanimous consent of the House at this time to pass the amendments which are proposed—I have come to the conclusion that the motion—would require notice. That is why I said Standing Orders can only be suspended by an Order of the House made on proper notice or by unanimous consent.

[*Translation*]

In the 1959 case, unanimous consent was withheld and four days later the government introduced another motion, with notice to concur in some amendments