

Senate and the precedents in our own Senate with respect to the instruction given to committees after bills had been committed.

Hon. John B. Stewart: Just a few words on this point. The Senate is, of course, master of its own proceedings. Moreover, there is no established prohibition that can be cited against Senator Graham's motion. That being the situation, we have to ask what reason there would be for a prohibition, if there were one.

I will not say anything about what can be done in the House of Commons; Senator MacEachen has established that a bill can be divided there, and I think Senator Flynn does not dispute that at all.

I suppose the basic argument against dividing a bill in the second chamber, the upper house, would be that it would disturb a decision of the House of Commons; however, every time the House of Lords or the Senate amends a Commons bill it disturbs or alters the bill that was passed by the House of Commons. So that argument does not help those who oppose Senator Graham's motion.

The fact that there is no constitutional principle that would be offended by a decision to divide a bill that already has passed the House of Commons is borne out eloquently by the precedents from the British House of Lords. Precedents are cited in *Erskine May's*, and the fact that they go back a long way shows that this is no frivolous, modern innovation. There is the precedent of the Bank of Ireland Bill in 1808; there is the precedent of the Municipal Corporations (Ireland) Bill in 1836; and there is the precedent of the Ministry of Transport Bill in 1919.

Some Hon. Senators: Come on!

Senator Stewart: It is wonderful how honourable senators adjust their viewpoint. When something old favours them, its age proves that it is fundamental, it supports an age-old principle; but when something old does not favour them, they guffaw. The truth of the matter, as Senator MacEachen has said, is that it is quite unusual for a second chamber to divide a bill. There is no contest on that point, but there are notable examples of motions to divide bills having been accepted as in order by the British House of Lords. This demonstrates that it is not against constitutional principles to divide a bill.

It is important to put the words that appear in *Erskine May's* on our record, because, although Senator Flynn attempted to do so, I think because he was doing it from memory it did not come out quite correctly.

Let us take what *Erskine May* says with regard to the 1919 or Salisbury precedent. *Erskine May* states:

An instruction was moved on 29 July 1919 to the committee on the Ministry of Transport Bill, which originated in the House of Commons, to enable them to divide the bill into two bills (*e*). This proposal was objected to on its merits and it was also stated that no precedent could be found for so dividing a bill which had been received from the Commons.

[Senator MacEachen.]

I interject that that is the argument that was made. It was not challenged on the ground that it was out of order. They said that they could not find the precedents, although *Erskine May's* shows that there were precedents. I go on quoting:

Although the defeat of the Instruction on a division cannot in itself be said to preclude the possibility of a bill being divided in the Second House (since the motion was not ruled out of order), it is clear that considerable technical difficulties would arise if the course were adopted.

In other words, *Erskine May's* is saying that there is no question but that the motion to divide the bill was in order. That was not challenged at all. Good arguments, however, were made that there would be practical difficulties if the bill were to be divided, and it was on that ground, the latter ground, not the ground of procedure, that the motion was defeated.

If the motion had not been in order, it would not have been defeated, because it would never have been put to a vote of the house.

The question of procedure is clear. However we want to decide on the merits of Senator Graham's motion. That motion clearly is in order.

Senator Flynn: Honourable senators, I have only one or two words. Senator MacEachen quoted a lot of precedents—none after second reading.

Senator MacEachen: They were all after second reading.

Senator Flynn: No, they were before second reading.

Senator MacEachen: No, you are totally wrong. A bill does not go to committee until after second reading takes place.

Senator Flynn: I do not recall having seen any precedent for that. You quoted cases in the other place, but none dealt with the situation after second reading.

Senator MacEachen: Yes, of course—a bill is not sent to committee unless it gets second reading.

Senator Flynn: Yes, I know, but we give instructions to the committee before second reading.

Senator MacEachen: No, no, no!

Senator Flynn: Well, anyway, the point is that the Senate has given approval to the bill, as such. If it had been split, we would have had two questions to decide instead of one. We would have made a decision on one and perhaps another decision on the other; that is obvious. We have already decided on both parts of the same bill. But, by giving instructions to the committee to split the bill without the Senate's having given second reading separately to each of these bills, they would be before the committee without approval on second reading. To me, this is a question of procedure. This has to be done in the house and the decision cannot be made by a committee. As Senator Stewart has mentioned, *May's Parliamentary Practice* suggests that it is technically difficult for a committee to draft two bills from one.