

Speaker's Ruling

In his submission the hon. House leader of the New Democratic Party made reference to citation 508(4) of Beauchesne's sixth edition which, as I noted a moment ago, states:

The reference of a bill to the Supreme Court of Canada withdraws that bill temporarily from the jurisdiction of Parliament—The question cannot be before two public bodies at the same time.

I have to say to the House that having heard that in argument it immediately gave me great difficulty because there sits a statement which, at least on the surface, seems to be clear indeed and seems to be very much in favour of the proposition being put forward by the hon. House leader. I must say that whatever side of the House one might be on on this question, a citation like that in Beauchesne's would I think completely justify the argument being presented to the Speaker.

This citation is apparently based on a ruling by Speaker Fauteux given on April 12, 1948, at page 344 of the *Journals*. Citation 508(4) is a truncation of Citation 338(4) of Beauchesne's fifth edition, which is itself a truncation of Citation 153 of the fourth edition. If members are having some difficulty with this I assure them so does the Speaker. Truncation is a polite way of putting what could be put in other terms.

I now quote:

The reference of a Bill to the Supreme Court of Canada withdraws that Bill temporarily from the jurisdiction of Parliament. On April 12, 1948, the Prime Minister moved that a select committee be set up to consider, *inter alia*, what is the legal and constitutional situation in Canada with respect to human rights and fundamental freedoms. Mr. Diefenbaker moved in amendment that, in order to assist the committee, the government submit immediately, to the Supreme Court of Canada such questions as are necessary to determine to what extent the preservation of the fundamental freedoms of religion, speech, press, assembly and the maintenance of constitutional safeguards of the individual are matters of federal jurisdiction. The Speaker said: "This amendment actually proposes that the Supreme Court be asked to consider the same matter that the main motion proposes to refer to a select committee. It seems to me that both those propositions cannot be approved at the same time by the House. If the constitutional situation of human rights is submitted to the Supreme Court it thereby becomes *sub judice* and cannot be considered by the Committee until the Court has given its decision. The question cannot be before two public bodies at the same time. For this reason I feel bound to rule the amendment out of order.

Having reviewed Speaker Fauteux's original ruling and the matter under debate in 1948, I have concluded that

there is a serious flaw in the Beauchesne's citation in the fourth edition which has been compounded in the fifth and sixth editions. That of course refers to the word truncation which I mentioned earlier.

I do not feel that the citation is at all applicable. As the case before the Speaker in 1948 dealt with a motion and not a bill, I would like to summarize the situation then and set the record straight as regards this citation in Beauchesne's.

[*Translation*]

On April 9, 1948, the House began debate on a motion to set up a special committee to consider the question of human rights and fundamental freedoms, and the manner in which those obligations accepted by all member states of the United Nations might best be implemented in Canada. This was the same motion as a resolution passed by the House in the previous session on Monday, May 26, 1947 and was based on a report of that committee which recommended that a Joint Committee be set up early in the next session to continue the study of this matter.

[*English*]

During debate on the night of April 9, 1948, Mr. John George Diefenbaker proposed an amendment to the motion that the government immediately submit to the Supreme Court such questions as were necessary to determine to what extent the preservation of the fundamental freedoms of religion, speech, press, assembly and the maintenance of constitutional safeguards of the individual were matters of federal jurisdiction.

On Monday, April 12, 1948, debate on the motion and the proposed amendment resumed. The Hon. J. L. Ilsley, who was then Minister of Justice, rose on a point of order to challenge the procedural acceptability of the amendment of Mr. Diefenbaker, arguing that since the amendment did not add to the duties, functions or purposes of the committee but directed the government to perform a duty, it was a separate motion and not an amendment.

In addition, he also argued that the function of the committee was to consider what the legal and constitutional situation was in Canada with respect to human rights.