

National Defence

fact just the other day I was reading in one of the Ottawa papers about a householder shooting a housebreaker dead. The judge, in an Ottawa court I presume, directed the jury that there was nothing for them to decide, because the individual was acting within his rights. Someone died as a result of that incident. I wish, therefore, the minister or someone would explain to us why we have narrowed these serious crimes and confined the jurisdiction within the service.

Mr. Claxton: Mr. Chairman, while the observations of the member for Calgary West might properly be made under section 62 of the bill, I am sure that hon. members will allow me to follow him and deal with his remarks, because I agree with him that they have a rather wider connotation than their relationship to section 62 and following sections.

I should like to point out, with respect, that the hon. member is clearly under a misapprehension as to the state of the existing service law, and also as to what is proposed under this bill concerning the relationship of service law to civil law. In the first place, it is part of the existing law of the land, whether it be service or civil, and it is fundamental to our system of law, that the civil authority is supreme.

Mr. Smith (Calgary West): I said that, of course.

Mr. Claxton: That is stated in section 62, subsection 1:

Nothing in the code of service discipline affects the jurisdiction of any civil court to try a person for any offence triable by that court.

Quite contrary to the service courts ousting the jurisdiction of the civil courts, this provision, and indeed the common law, expressly provides that the civil courts shall be supreme. In any cases which service courts or service law purport or attempt to deal with, it is stated that that is exclusive of civil jurisdiction.

Mr. Smith (Calgary West): I agree with that, of course.

Mr. Claxton: Service courts have no exclusive jurisdiction in respect of civil offences. In fact, they do not try civil offences where the civil courts try civil offences, because if a civil offence is tried by a civil court then the service court has not jurisdiction. Under no circumstances does the service court oust the jurisdiction of the civil court. If the offence is in fact tried by the latter, in consequence of the civil attorney general laying an indictment or commencing other civil procedure, then the service court by that very fact has not any jurisdiction.

[Mr. Smith (Calgary West).]

Mr. Smith (Calgary West): Yes, that is right.

Mr. Claxton: The reason, therefore, for providing that a number of civil offences shall also be service offences is to take care of the case where the civil court does not act or cannot act. It is for that reason that our statute makes the express provision that civil offences are also service offences. In that respect it is similar to the service law of the United Kingdom and the United States, as well as every other country of which I know. There is no other way of doing it. We must provide a complete system of law which is ready to go into effect if the civil law authorities do not act.

The reasons for that, I think, are threefold. In the first place, in the event of war, service personnel may be serving overseas where no civil court is set up. That was true of a large part of the areas in which our forces were during the second world war. In the second place, even in peacetime service establishments are set up at places where there are no organized civil courts, and if a man commits an act of assault against a fellow soldier there is no civil court operating there to deal with the case. The case should be dealt with. Then there is a third reason, and that is that the civil authorities themselves, in a considerable number of cases, prefer to have the matter dealt with by the military authorities. Take as an illustration the case I mentioned a moment ago. If within the confines of a camp a soldier commits an act of assault against another soldier, ordinarily the civil authorities prefer that we deal with it. We do deal with it. But if the civil authorities deal with it, then we cannot deal with it and we have no means of indicating to them our preference. The civil authority is always supreme.

Mr. Smith (Calgary West): If the minister looks at section 61, he will see it is headed "Limitations with respect to certain offences." It reads:

A service tribunal shall not try any person charged with an offence of murder, rape or manslaughter, committed in Canada.

May I say also that I agree with everything the minister has said about the law as it is or has been. But here we have those three things specifically excepted from the jurisdiction of service courts in Canada. My only suggestion is, and will continue to be, that other major offences should be added to section 61, such as those I mentioned a moment ago—robbery with violence, and breaking and entering. In these days those are the most serious offences which are committed. Obviously I was referring to