

*Federal Court Bill*

in regard to constitutional jurisdiction have been beneficial to the unity of Canada or to our whole structure.

We now find that we cannot amend the British North America Act by a mere majority of the House and the Senate, as was originally anticipated, because over the years the Supreme Court has ruled certain things within and others without the jurisdiction of the federal and provincial governments. It also rules, or practically has ruled and now it is accepted, that we must have the consent of the provinces. These were court decisions that we must have the consent of the provinces in order to amend the constitution, otherwise we would have repatriated it a long time ago.

I think the Supreme Court has a great role to play if there is any dispute between a citizen and the state. The Drybones case was probably the first example of where the court exercised this jurisdiction. As most hon. gentlemen know, this was the case of an Indian who was prosecuted under the Indian Act for being drunk in a hotel. The final court decision was that according to the Bill of Rights, which is in our parliamentary library and is bedecked with red ribbons, the punishment was wrong. The decision was that unless there is federal legislation specifically excluding the Bill of Rights, it shall stand. The minister is nodding at me but he might remember that in the Criminal Code, with regard to the breathalyzer test there was no specific exclusion of the Bill of Rights. While it says in the Bill of Rights that a man shall not be forced to incriminate himself—

**Mr. Turner (Ottawa-Carleton):** By statement.

**Mr. Otto:** I have very grave doubts about the position of the Supreme Court on constitutional matters. I am much more likely to subscribe to the viewpoint expressed at times by the Prime Minister (Mr. Trudeau) that there is going to be a meaningful role for the Senate. I know some hon. members would like to do away with the Senate, but that will not happen and a meaningful role can be given to the Senate with respect to just that question, the jurisdiction as between provinces and the federal government. Things change, and with a division of power over a period of 20, 30 or 40 years the whole structure of Canada will change and somebody will have to decide whether one area is no longer to be under the jurisdiction of the federal government and should be under the jurisdiction of the provinces, or vice versa.

For example, today we have the Trent Canal and the Rideau Canal system still under the jurisdiction of the federal government because it was originally a defence measure. Surely that is no longer so and it could easily be transferred to the provinces. But who is going to decide whether such use has expired? I strongly support the view that if the Senate is made up of members on a provincial participation basis, there should be no reason why it should not have that very important role, to decide or keep under constant review the question of jurisdiction. I would much rather see that than have this role continuing with the court.

I understand, of course, that the minister cannot remove this function or jurisdiction from the Supreme Court at the present time because there is no other agency. But I should not like it to be too solidly established in the minds of the people of Canada, and possibly in the mind of the court, that this is the strongest position they can assume. I do not believe that in Canada it should be their main role.

With these remarks I should like to support the bill and join with others who complimented the minister. We know the amount of work he put into this measure and the arguments he has had in connection with it. I hope the committee gives it careful consideration and that it passes.

**Mr. G. H. Aiken (Parry Sound-Muskoka):** Mr. Speaker, with my eye on the clock I shall keep my remarks brief. First, I want to say that the bill brings forward several new concepts in legal systems in Canada and gives more strength to the federal system, raising the status of federal courts and statutes. I believe it points up the great expansion of federal law-making in recent years and the extension of rules and regulations by the federal Parliament. Now it is necessary to recognize that while provincial courts are administered by provincial laws, there is a need for extensive and broad federal courts to deal with federal laws. I think this bill also recognizes the need for more direct means of access to the courts for people with complaints against federal government decisions and actions and, in fact, the increase in the number of such complaints that arise.

• (4:50 p.m.)

I shall refer to two points which have not been referred to by other hon. members. The minister might comment on them. The first relates to the question of veterans' disability