

Morality in Government

Mr. Justice Spence is not going to make a finding on the credibility of the commissioner of the R.C.M.P. in respect of this particular collateral matter. Therefore I think it is perfectly open for the hon. member for Royal and for this house to discuss it.

Mr. Speaker: Order please. After hearing these very learned comments I think hon. members would expect the Chair to express an opinion about the point raised by the Minister of Public Works.

I think I should mention honestly to the house that this is a point I have had in the back of my mind for some days. It was brought to the forefront when questions were asked during the question period last week. The questions asked at that time were not allowed at that particular moment, but I did not want to convey the impression that these questions could not be debated at all in the house. It was my feeling that because of the way in which the questions were posed they were not so urgent.

However, this raised the issue and I had to consider the matter further when I received notice that the hon. members who had asked the questions wanted to debate them on the adjournment motion. This put me in a position where I thought I should give the matter very serious consideration, which I did over the week end and particularly this morning. Briefly I might say I agree substantially with the views expressed by hon. members who have taken part in the debate, for reasons which I will now give.

In a general way the principles that govern the sub judge doctrine are found in the following quotations. Lord Campion in May's Parliamentary Practice, sixteenth edition, at page 400 states:

A matter whilst under adjudication by a court of law, should not be brought before the house by a motion or otherwise. This rule does not apply to bills.

Also in the same edition, at page 457:

Matters awaiting the adjudication of a court of law should not be brought forward in debate, except by means of a bill. This rule was observed by Sir Robert Peel and Lord John Russell, both by the wording of the speech from the throne and by their procedure in the house, regarding Mr. O'Connell's case, and has been maintained by rulings from the Chair.

Bourinot's fourth edition at page 301 also states:

A matter which is under adjudication by a court of law cannot be brought forward before the house by a motion or otherwise.

Also, in Beauchesne, fourth edition, at page 127, is found the following, and this citation which I have before me was mentioned by a number of hon. members who took part in the discussion including the hon. member for Winnipeg North Centre:

Besides the prohibitions obtained in standing order 41, it has been sanctioned by usage both in England and Canada, that a member, while speaking must not . . .

(c) refer to any matter on which a judicial decision is pending.

Generally speaking I believe it may be stated that the creation of a royal commission is purely an administrative matter, that the commissioners are not called upon to render decisions on what has been submitted to them but are only asked to make recommendations which the government is free to act upon or not as it wills. In other words, parliament is still the highest court in the land. One of its traditional rights is to express its power by the enactment of legislation and this right cannot be set aside by a mere reference of certain matters to a royal commission for a study thereof and recommendations thereon.

As hon. members well know, commissioners are generally appointed under Part I of the Inquiries Act which simply provides that the governor in council may cause inquiry into public matters and appoint commissioners for the purpose who shall have the power of summoning witnesses and of requiring them to give evidence on oath. They are, it is true, given such powers as are vested in any court of record, but the wording of the act is that it does not constitute them a court of record.

On October 15, 1957, an order in council was passed to appoint commissioners under Part I of the Inquiries Act to inquire into and make recommendations concerning, *inter alia*, policies in relation to the export of energy, the regulation of the transmission of oil and natural gas, the financial structure and control of pipe line corporations, prices or charges, the extent of authority that might best be conferred on a National Energy Board, etc.

A few days later the then hon. member for Rosetown-Biggar sought to discuss the subject matter of the inquiry. A point of order was raised submitting that the hon. member was out of order because he was dealing directly with the terms of the royal commission and a subject referred to it. Mr. Coldwell then said:

May I say, Mr. Speaker, that I am not dealing with the report of the royal commission. When does an announcement that a royal commission is being set up preclude discussion in this house?