

Point of Order—Mr. Clark

The third part of what I want to say—and here I say I have had the gall to divide my remarks into three parts—has to do with the reference again today by the Leader of the Opposition to Citation 338(4) of Beauchesne's Fifth Edition, which reads:

The reference of a bill to the Supreme Court of Canada withdraws that bill temporarily from the jurisdiction of Parliament. If the constitutional situation of human rights is submitted to the Supreme Court, it thereby becomes sub judice and cannot be considered by a committee of the House until the Court has given its decision. The question cannot be before two public bodies at the same time.

That is the citation. The other night I was arguing for something and I was quoting citations as though they were iron-clad. Your Honour may throw that back at me when you get to rule on that point. Incidentally, in going through the book today I find that there is a citation that says we can address the Speaker as "Mr. Speaker," "Sir," or "Your Honour". You, Your Honour, are not a sir, so there are some things in Beauchesne that have to be considered as to their origins!

Citation 338(4), as it is stated right there in the book, had its origin in the *Journals* of April 12, 1948, at page 344. The first thing I did when the issue came up the other day was to send to the Library for the *Journals* of April, 1948.

Miss Jewett: You mean you didn't remember?

Mr. Knowles: My friend the hon. member for New Westminster-Coquitlam (Miss Jewett) says, "didn't you remember?" I have to confess that the matter rang a bell.

Some hon. Members: Oh, oh!

Mr. Knowles: As members will discover in a moment, I was here. The bell that was ringing was not in the belfry, it was a real one. What was before the House at the time was a government motion proposed by Prime Minister Mackenzie King that a joint committee of both Houses of Parliament be set up to consider the question of human rights and fundamental freedoms. That was in 1948, 33 years ago, and it has not got there yet. At any rate, Mr. King presented this motion. A respected friend of ours, the late Right Hon. John Diefenbaker, moved as an amendment to that motion:

—that in order to assist the committee in its deliberations the government do immediately submit 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.

There was considerable debate on the procedural admissibility of that amendment. Mr. Speaker Fauteux ruled at that time. Since they are both gone, I can say that John Diefenbaker used to like to say of the Speaker that he was a dentist, and he sometimes pulled some boners.

Some hon. Members: Oh, oh!

Mr. Knowles: That was his humour, not mine. The ruling was as follows:

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.

It had nothing to do with a bill or with anybody referring something to the Supreme Court. The issue was that right here on the floor of the House of Commons there was a proposal that the question of human rights and fundamental freedoms be referred to a committee and, by way of amendment, that at the same time it be referred to the Supreme Court of Canada. Mr. Speaker Fauteux ruled it out of order. It is in that context that he says the question cannot be before two public bodies at the same time.

This means that Citation 338(4) in its attempt to abbreviate that long ruling has missed the point. There is nothing in this ruling about a bill. It has to do entirely with the House of Commons itself trying to do two different things with the same subject at the same time. The Speaker of the day said that that could not be done. I suggest, therefore, that to ask you, Madam Speaker, to rule the discussion on the constitutional resolution out of order in this House because some provinces have referred the matter to the Supreme Court is not covered by this citation at all.

● (1620)

I go on just a moment more in this regard to say to hon. members—and if I seem to be doing what we are not supposed to do, forgive me for it—that right after the ruling out of Mr. Diefenbaker's motion, the *Journals* state:

And the Debate continuing on the main motion;

Mr. Knowles, seconded by Mr. Jaenicke, moved an amendment thereto:—

I will not read it as it is a bit lengthy. My motions and amendments were much longer in those days than they are now. The gist of my motion was that the committee to which the matter was being referred be given the power to request a reference to the Supreme Court if it wished to do so. What happened to that motion? The Speaker allowed it and the House passed it.

In any case, I conclude now by summarizing the three points I have sought to make. In the first place, I contend that the citations are clear, that Your Honour does not have the authority, the power or the right to rule on a matter which is legal or constitutional. My second point is that the custom regarding sub judice, if it is looked at carefully, does not prevent this highest court of the land from considering or dealing with any matter concerning which it feels it has the right to legislate. My third point is that Citation 338(4) does not cover the case of a request being made to the House of Commons to send the same thing to two places at the same time. That is not the present situation.

I go along with those who have referred to the citations that say that this is the highest court of the land, that our acts can be reviewed by the Supreme Court or by courts up to the Supreme Court and can be thrown out, but the courts do not have the right to tell us what we can do before we start.