

I move on to a second point that was raised by the Right Hon. Leader of the Opposition. I have in mind that portion of his speech where he dealt with the sub judice convention.

Incidentally, while he was talking, I was reading the books that I have in front of me, Beauchesne and May. He referred particularly to the fact that we must not say things in this House that are prejudicial to the courts. I do not find that phrase anywhere in the literature that I have before me. The restriction is that the House must not say things or debate things in a way that would be prejudicial to the proceedings of the court or prejudicial to the parties before the court.

As a matter of fact, the citations relating to sub judice state that there are some exceptions to the rule that matters in the courts must not be dealt with here because, in the final analysis, Parliament is supreme. Parliament has the right to legislate as it will. The courts can rule on the legislation afterwards, but the right of the House to legislate as it will is not to be restricted by some doctrine of sub judice.

Let me read the main citations. On page 118 of Beauchesne, Citation 335 is brief and clear. It reads as follows:

Members are expected to refrain from discussing matters that are before the courts or tribunals which are courts of record.

Let us pay close attention to this:

The purpose of this sub judice convention is to protect the parties in a case awaiting or undergoing trial and persons who stand to be affected by the outcome of a judicial inquiry. It is a voluntary restraint imposed by the House upon itself in the interest of justice and fair play.

Citation 336(1) reads as follows:

The sub judice convention has been applied consistently in criminal cases.

Then there are other references and it continues:

(2) The precedents in criminal cases are consistent in preventing reference to court cases before a judgment is rendered; however, the convention ceases to apply after the judgment is given... Nevertheless, the convention is applied again when an appeal is launched.

Citation 337(1) reads:

No settled practice has been developed in relation to civil cases, as the convention has been applied in some cases but not in others.

As I say, I have read more in Beauchesne, and I have read a good deal in May, the nineteenth edition, and the rationale for the sub judice convention is well spelled out. It is not that we lose our rights to legislate as we see fit, but we must not do things here that would prejudice proceedings in the court or prejudice the position of either party to a dispute in the court. If we carry that to the conclusion that we must not discuss the Constitution because it is in the courts, that in my view goes way beyond any of the language that is to be found on the sub judice convention.

In particular, I chide the Right Hon. Leader of the Opposition for saying so often that the sub judice convention is one that keeps us from doing anything prejudicial to the courts. I do not find that phrase in any of the literature available to me.

### *Point of Order—Mr. Clark*

• (1610)

I have referred to May so let me pick up one or two things here. In May's nineteenth edition, at page 333 there appears the following:

By a resolution of the House matters awaiting or under adjudication in a criminal court or a court martial, and matters set down for trial or otherwise brought before a civil court may not be referred to in any debate or question; though the House has more recently resolved to allow reference to be made to matters awaiting or under jurisdiction in all civil courts, subject to the discretion of the Chair, provided that there is no real and substantial danger of prejudice to the proceedings.

That is the phrase which keeps coming back.

If the subject matter of the question is found to be, or becomes, sub judice after notice of the question has been given, the member is asked to withdraw it, or the Speaker may direct it to be removed from the notice paper or refuse to allow it to be asked if it is on the Order Paper.

As I say, all of this deals with the courts as dealing with issues between parties. In all fairness, we say that if an issue between parties is in the courts, we should not prejudice the proceedings or the position of either one. Like many members of this House, I have no training in law school, but it seems to me that these things are simple and very clear.

I then refer to page 368 of May's nineteenth edition where some of this language is repeated. I quote:

Subject to the discretion of the Chair, reference may be made to matters awaiting or under adjudication in the civil courts in so far as they relate to certain ministerial decisions or concern certain issues of national importance.

Surely the issue of the Constitution is one of national importance and that is excepted from the list of things that the Speaker of the British House must not allow to be discussed.

The general rule applies to motions for leave to bring in bills, but the House has expressly resolved that in cases other than motions for leave to bring in bills, the rule is subject to the right of the House to legislate on any matter.

It seems to me that is the doctrine. The Leader of the Opposition has all the right in the world to raise this as a point of order and all the right in the world to plead with the government to leave the matter. However, to put it on the basis of its being sub judice is contrary to the citations as I read them. Of course, in asking you to rule that this motion is out of order, he is asking you to make a decision on something that the citations and the precedents enjoin you against doing. The only other sentence I would like to read from May is at page 427:

Matters awaiting the adjudication of a court of law should not be brought forward in debate, subject to the right of the House to legislate on any matter;—

This is the highest court of the land. Can other persons or governments, if you will, stop the proceedings of this highest court in the land by referring the matter to the Supreme Court? I do not see how they can. As I said, Madam Speaker, I am trying to avoid a discussion on the merits of the issue or the substance of it. I am trying not to get into the Constitution debate. I am trying to be helpful to the Chair. It seems to me that you cannot call it sub judice if you are asked to discuss a matter concerning which we wish to legislate in this House. You cannot be expected to rule on a matter that is legal or constitutional in view of the very clear prohibitions against the Speaker doing that.