

Point of Order—Mr. Clark

our country before our highest court can decide on its constitutionality.

Some hon. Members: Hear, hear!

Hon. Stanley Knowles (Winnipeg North Centre): Madam Speaker, the Right Hon. Leader of the Opposition (Mr. Clark) both on Friday and again this afternoon, has spoken on a point of order. I propose to offer a few comments on the point of order. In other words, I do not choose to comment on the merits of asking Parliament to wait until the Supreme Court has made a decision. I do not choose to comment on the greater importance of other legislation. Rather, I propose to direct my remarks specifically to the point of order raised by the Right Hon. Leader of the Opposition.

I thought he stated that point of order succinctly and clearly in a sentence uttered not many minutes before he concluded his remarks. Referring to the constitutional proposal which is before this House, he asked this question: Is it within the legal competence of Parliament to pass it? I believe I am doing full justice to the Right Hon. Leader of the Opposition when I say that that is the point.

During the course of his remarks he referred to constitutional items as well, but certainly I think it is fair to sum up the case which has been made to Your Honour by saying that he wants you to rule the proposed resolution out of order on legal and constitutional grounds. Madam Speaker, I am sure you have been pouring over the literature in the last few days. You must be completely aware of citations which tell you that that is precisely what Your Honour must not do. For example, I refer to *Beauchesne's* fifth edition, pages 38 and 39, Citation 117, paragraph 6:

The Speaker will not give a decision upon a constitutional question nor decide a question of law, though the same may be raised on a point of order or privilege.

In other words, there is no question about the right of the Right Hon. Leader of the Opposition to raise questions regarding the law and the Constitution, but it is clear that Your Honour must not rule on legal or constitutional questions. That same dictum is found at page 79 of *Beauchesne's* fifth edition, Citation 240, which reads as follows:

The Speaker will not give a decision upon a constitutional question nor decide a question of law, though the same may be raised on a point of order or privilege.

Your Honour will be aware that this issue has been raised in the House of Commons a good many times. If I were to dig out all of the rulings from the Chair on the question, I would take up a lot more time than I want to take. I have chosen a couple within reasonably recent times.

● (1600)

On Friday, October 25, 1963, Mr. Speaker Macnaughton had before him a question of the law and the Constitution and he gave a ruling which begins on page 488 of the *Journals* for the day. Having quoted quite a bit by way of preliminary remarks, he said:

In other words this limits the powers and responsibilities of the Speaker to deciding on questions of order, not questions of law. This is further confirmed in

Citation 69(3) of *Beauchesne's* fourth edition, at page 59: "Standing Order 12 being restrictive should be given the strictest literal interpretation—"

Then he quotes from a ruling made by Mr. Speaker Wallbridge on June 25, 1864. None of us was here then! He brings it up to date by saying:

Lastly, I should like to refer to a more recent ruling made by Mr. Speaker Lemieux, reported in *Hansard* for June 4, 1925, page 3875:—

These are pretty important words and I shall be quoting them again as Mr. Speaker Lamoureux used them:

"The Parliament of Canada is supreme, and if it should pass any act which is ultra vires, the courts would decide the validity of such act. It is not for the Speaker to declare—although he presides over the highest court in the land—as to whether any proposed legislation is ultra vires"—

We have before us proposed legislation. The ruling is clear that Mr. Speaker does not rule as to whether or not proposed legislation is ultra vires. Mr. Speaker went on to say:

For these reasons, and in view of the citations to which I have just referred my honourable friend and which I have brought to the attention of the House, I cannot agree with the validity of the point of order raised by my honourable friend.

That was said by Mr. Speaker Macnaughton on October 25, 1963. A little later, on Tuesday, July 8, 1969, Mr. Speaker Lamoureux had a point that was raised by a good friend of all of us, the former member for Peace River, Mr. Baldwin. Mr. Speaker went through all of the precedents and citations, and finally he said:

In other words, this limits the powers and responsibilities of the Speaker to deciding on questions of order, not questions of law.

Remember that what the Leader of the Opposition is asking you to decide, Madam Speaker, is that it is not within the legal competence of Parliament to pass the resolution that is before us.

Then he goes on to apologize to the hon. member for Peace River for going back almost as far as the hon. member had gone in his argument. Still quoting the former Speaker, he says:

"The Parliament of Canada is supreme, and if it should pass any act which is ultra vires, the courts would decide the validity of such act. It is not for the Speaker to declare—although he presides over the highest court in the land—as to whether any proposed legislation is ultra vires"—

I submit, Madam Speaker, that there is the utmost of common sense in that proposition. If this Parliament were to be run by the Chair on the basis of the Chair's decision that certain matters were not legal or certain matters were not constitutional, that would certainly inhibit to a considerable extent the rights and privileges of this Parliament as the highest court in the land.

So, Madam Speaker, I defend on the basis of the citations the right of the Right Hon. Leader of the Opposition to raise this matter as a point of order. But I suggest to Your Honour that the citations make it clear that you cannot rule on a point of law, on a constitutional issue. That is the position in which you will find yourself, not only from citations but from the precedents that are on the books from many learned Speakers.