

Point of Order—Mr. Clark

dealing with the Constitution of Canada and with the rule of law. What we are really asking the government to do—whether or not they will consider it is something else—is that in observing the rule of law and the concept of sub judice, they are being asked to put off the ultimate decision on this question until the Supreme Court of Canada has ruled, in about three weeks, on the appropriateness of the appeal from Manitoba.

I have read the reasons for the appeal and I submit that it makes good and interesting reading because it covers the customs, traditions and law, all the issues involved. All we are saying is that this country is—at least, I thought it was—a country governed by the rule of law, not by the rule of men, and that it is inappropriate for there to be advanced here something which might remove it from the jurisdiction of the courts.

To put the matter the other way, supposing the memorandum was wrong and after Westminster there was a judgment of the Supreme Court of Canada that went against this resolution. What constitutional position would the country be in? I do not know how that has been explored, but it has been explored by the Minister of Justice and they say we will not even get that far. That is why I commend this report to you.

I will not argue much longer, Madam Speaker. I have done my best to stay on this point, the sub judice rule. I have asked you to consider the new ground that has been presented by the Leader of the Opposition and consider it in light of the importance of the case. It is a case that has split the NDP, it has caused the Parliamentary Secretary to the Secretary of State for External Affairs (Mr. Duclos) to make a speech in this House saying he will vote against his party, and it has caused the member for Edmonton East (Mr. Yurko) to say that he is going to vote against his party. This is the right of every member. But I think it is also the duty of Parliament to ensure that nothing is done here to prejudice legal rights, even when we are breaking new ground. That was the purport of the brilliant argument advanced by the Leader of the Opposition, and I support him. I ask you, Madam Speaker, not to decide the issue on narrow, procedural grounds, as you have been invited to do by the deputy House leader of the government and the member for Winnipeg North Centre.

Madam Speaker: There are no other members of the other parties in the House rising; therefore I will hear one more speaker on the opposition side.

Hon. Ray Hnatyshyn (Saskatoon West): Madam Speaker, I will be brief; I do not want to delay the proceedings of the House unduly.

Some hon. Members: Oh, oh!

Mr. Hnatyshyn: In dealing with this matter I am going to make reference to some of the arguments put forward, because I submit to you, Madam Speaker, that this question raised by the Leader of the Opposition (Mr. Clark) is indeed new and novel, one that has to be considered by you.

I want to make this observation with respect to the matter before you to underline that particular point. What we have before us today, notwithstanding the statement of precedents and citations by the hon. member for Winnipeg North Centre (Mr. Knowles) that this somehow is a matter of legislation, is something quite different. It is a resolution in which the Minister of Justice (Mr. Chrétien) asks this House to address itself to a proposed bill to be passed by Westminster. Therefore, I want to look at this question from the point of view of finding out precisely what we are dealing with.

I suggest that when we read the precedents and the citations presented to us, we are in fact dealing quite specifically and precisely with our order of the House, a matter completely within the jurisdiction of the Parliament of Canada and not one which calls upon Your Honour to consider and resolve any question of law or of constitutionality, whether it be a legal interpretation or any of the references made by the member for Winnipeg North Centre. What we are talking about now is the appropriateness and propriety of this House dealing with a matter which is before the Supreme Court of Canada. We are creating disorder in this House by proceeding on the resolution of this matter in final form before the Supreme Court of Canada has an opportunity to rule on whether or not what we are doing is in fact legal. That is the very simple fact of the matter.

● (1650)

What is before the Supreme Court of Canada? As I have said, this is a matter of which your Honour can take judicial notice. The matter before the court quite frankly is a reference under the provisions of the Manitoba reference act dealing with whether or not the resolution before us is within the powers of government or Parliament to deal with.

To put it another way, the statement has been made that in this resolution we are dealing with matters which in fact infringe on provincial jurisdiction and provincial rights. Does Parliament have the right, in terms of this resolution, to beg the Parliament of the United Kingdom to proceed with legislation, based on the premise of a resolution for which there is no legal justification, no justification in the rules of the House or under existing law with respect to the ability and power of the Parliament of Canada? This is the question facing the Supreme Court of Canada.

I do not want to deal with the consequences of what might happen if the British Parliament acts on this resolution. It constitutes a message. It is not a bill. It is not a piece of legislation which raises the taxes or in fact changes the specific laws of Canada under what we normally call legislation. It is a resolution brought in under a motion.

I never thought I would see the day when the hon. member for Winnipeg North Centre, or the New Democratic Party, would associate themselves with the facilitation of closure in this House. The fact of the matter is that in this particular situation we are looking at a motion. I should like to turn to the citations quoted by the hon. member for Winnipeg North Centre. He referred to Citation 338 of Beauséne's Parlia-