

Point of Order—Mr. Clark

vote in the House after hearing the judgment of the Supreme Court of Canada.

Some hon. Members: Hear, hear!

Hon. Walter Baker (Nepean-Carleton): Madam Speaker, I should like to speak to two points. The first point is the one of the Prime Minister (Mr. Trudeau) concerning the program of R. B. Bennett in the thirties. The difference between R. B. Bennett's proposition and the proposition we have before us is that in the 1930s, when Parliament moved to pass that program, it was not faced with a judgment of the Supreme Court of a province which held the program to be illegal; that occurred afterwards.

Mr. Nowlan: That is absolutely correct.

Mr. Baker (Nepean-Carleton): This is why I suggest the analogy of the Prime Minister does not apply.

With respect to the program itself, what has concerned us from the outset has been that Parliament would be asked finally to make an adjudication with respect to the matter before it had been considered by the Supreme Court of Canada. It appears that we see a split coming in the irresistible force meeting the immovable object.

● (1520)

With respect to this issue, I must say that we would be prepared to discuss an arrangement which would accommodate the constituencies represented by the various proposals for amendments before the House, provided, of course, that as a bottom line of those discussions it was understood that there would be no finality with respect to this matter until after the Supreme Court of Canada had adjudicated the issues which are before the court, or which may well be before the court.

We must remember, of course, that the Government of Canada must enter as a respondent in the appeal. It must defend itself in the appeal from the ruling of the Appeal Court of Manitoba, remembering that however it is resolved the Government of Canada must find itself in court. Finding itself in court, then, allows me to underscore to the Prime Minister, to the government House leader and to the Leader of the New Democratic Party the importance of the arrangement, which is that no final decision will be taken by this Parliament until the highest court in our country has ruled upon the constitutional validity of the proposals before it.

Hon. Jean Chrétien (Minister of Justice and Minister of State for Social Development): Madam Speaker, in the proposition which is being put forward at this time there is one problem, and that is that the court would not be faced with a final decision.

Earlier in the question period the hon. member for Saskatchewan West (Mr. Hnatyshyn) asked me how we intend to transmit the resolution, or whatever it is, to the Supreme Court. I would like to advise the House of Commons that the Supreme Court of Canada must take judicial notice of anything which has been passed by Parliament. If we accept the

proposition put forward by the House leader of the Conservative Party, the Supreme Court of Canada will not be considering something which has been finally decided upon by the House of Commons. That would be one of the problems; the Supreme Court of Canada would be faced with a resolution which would not have been finalized. It would still be a hypothetical question to them because, coming back to the House of Commons after adjudication, someone could propose some amendment and the question of legality could be reopened completely.

If the Conservative House leader wishes to be serious in his proposition, he should recognize that we should help the work of the Supreme Court and give them something final, or have a very definite agreement that when the question has been decided by the Supreme Court, we pass it right away without debate.

Some hon. Members: Oh, oh!

Mr. Broadbent: Madam Speaker, I am not sure if the Minister of Justice (Mr. Chrétien) listened with care. If he did, then I am not at all persuaded by his reply. As I heard the proposal of the Leader of the Opposition, there would be very specific amendments agreed upon by all the parties.

Mr. Baker (Nepean-Carleton): That is right.

Mr. Broadbent: The only nuance that I added to the suggestion, and there seemed to be agreement on this side of the House, was that we could take the votes on the amendments here in the House before the package was sent to the Supreme Court for adjudication. There seems to be unanimity on this side of the House on that point. I simply cannot understand the argument of the Minister of Justice.

If there was a solemn agreement entered into, perhaps by a special House order passed in the House and supported by all parties, then that would be the definitive resolution that we are asking the Supreme Court to pass judgment upon. Surely there is no problem with that whatsoever. As I see it, the only problem is that the government is not responding in a reasonable way to a fair-minded proposition.

Some hon. Members: Hear, hear!

Mr. Svend J. Robinson (Burnaby): Madam Speaker, I would like to respond to one argument that was made by the Minister of Justice (Mr. Chrétien) on this question of the reference and the fact that there may be amendments still outstanding. I would draw to the attention of the Minister of Justice the provisions of the Supreme Court Act respecting references. Perhaps the Minister of Justice may like to read Section 55(1)(d), which reads:

55. (1) Important questions of law or fact concerning

(d) the powers of the Parliament of Canada, or of the legislatures of the provinces, or of the respective governments thereof, whether or not the particular power in question has been or is proposed to be exercised;

What is being suggested in the House by the Leader of the Opposition is simply that we, as a chamber, decide what amendments we wish the Supreme Court of Canada to consid-