

The Bill of Rights is Wrong 285298

By Guy Kroft

One noon hour about seven years ago this writer attended a speech in the residence auditorium at Fort Garry. The speaker was one of the few western Conservative members of parliament. The subject of his address was "A Bill of Rights for Canadians." Now, that speaker is Prime Minister of Canada and it would appear that his Bill of Rights will soon be entered into our Statute books.

When this "great charter" becomes part of our written law it will indeed be a great day — a great day for Mr. Diefenbaker that is. To the rest of Canada the "Bill" will mean nothing. Or perhaps we should say that it will mean nothing if we are lucky, for it could conceivably become an indirect weapon of oppression.

If the "Bill added anything to

the essential freedoms already enjoyed by Canadians, then it, like other such enactments in British and American history might have some significance. However, we are at a stage in our political evolution where these rights have for many years been recognized and given effect to by our courts. They have been incorporated into much of our legislation. Moreover, all the privileges of the English parliamentary system, with its Magna Carta and its Bill of Rights were explicitly made a part of Canadian law by the document which gave the form to our nation, The British North American Act.

The Prime Minister's "Bill" supposedly recognizes certain human rights and fundamental freedoms and guarantees their continued existence. Mr. Diefenbaker apparently is not aware

that the Supreme Court has, without the "Bill," already reached the decision that no government in Canada could abrogate our freedom of speech, assembly, and the likes. In the famous Padlock case, Mr. Justice Abbot stated that since these privileges were inherent in the British system, and since the British system was guaranteed to us by the B. N.A. Act, our rights in this regard could not be limited by anything short of a major amendment to the B.N.A. Act.

The proposed "Bill" also suffers from the defect of exceeding the jurisdiction of the Federal Government. In so far as it deals with rights and property within a Province it is "ultra vires," for this field of legislation is given exclusively to the province by Section 92 of the British North American Act.

The "Charter for Freedom" is seen as a potential threat to our presently safe liberties when one appreciates the effect of definition. To define our rights is necessarily to limit them. Once limited, the citizen will be at the mercy of any persecutor who can show himself to be outside the designated bounds of protection. Furthermore, the area on the outside of the defined ground will grow because the nature of our society and the conditions affecting it will always tend to change faster than the rigid written law.

Another fear which has been voiced is that, while no Parliament is likely to restrict rights which exist by tradition and common law, if the rights become nothing more than enactments of Parliament, a future Parliament can easily repeal what its predecessor has done.

In spite of these comments, however, we are of the opinion that no party in Parliament will oppose the "Bill" with much vigor. To do so would be suicide. If anyone attacks it, come the next election, with the issues and details forgotten, the "Great Evangelist" will go forth across this land, once again proclaiming himself the champion of democracy and damning his critics as totalitarians, bent on depriving us of the very rights for which our ancestors fought.

Unfortunately, then the Bill of Rights will in due course be passed by Parliament and Mr. Diefenbaker, with his amazing talent and his crew of hucksters, will no doubt convince millions of Canadians that a pointless piece of legislation is a monumental achievement and a great step forward in our constitutional development.