

*Privy Council Appeals*

of the privy council are quite likely to be the mistaken ones. And in all these cases it was a question of vested right against the public weal . . .

We confess that these cases, coming within a couple of years, shake your idea of the desirability of the option of going to the privy council. We believe Canadian judges to be of as high a standard of honour as English judges and to be as judicial in their frame of mind . . .

At all events, the fact is decidedly discomfoting that in law suits affecting three great public contracts in Canada, all of which are governed by Canadian law, all the judicial decisions in Canada should have been in favour of the public and all the decisions of the imperial privy council in favour of the private corporations.

Without going into the arguments advanced for and against appeals, I would refer any student to Mr. J. S. Ewart's and Mr. George H. Sedgewick's article in *Queen's Quarterly*, 1930. It seems to me that the hon. member for Selkirk was quite right, that the appeal to the privy council is after all a relic of colonialism, and it should have no place since the passing of the Westminster act.

In closing, may I express the hope that the Minister of Justice will reconsider his position with regard to the desirability of further delay. Never had we a better opportunity of bringing about a much-needed and long overdue reform. As I heard him I could not but recall those lines from Shakespeare:

There is a tide in the affairs of men  
Which, taken at the flood, leads on to fortune;  
Omitted, all the voyage of their life  
Is bound in shallows and in miseries.

I hope the Liberal party will give consideration to that aspect of the matter. Continued hesitation is probably a hang-over of the long-continued inferiority complex.

Mr. W. F. KUHL (Jasper-Edson): Mr. Speaker, I listened this afternoon with much interest to the debate on this bill which has been introduced by the hon. member for St. Lawrence-St. George (Mr. Cahan). I listened also with interest to the Minister of Justice (Mr. Lapointe) and to the other hon. members who have spoken. All, or nearly all, of the references that have been quoted by hon. members are to the constitutional question, particularly judgments of the Judicial Committee of the Privy Council concerning the relationship of the provinces to the dominion. This relationship is set forth in sections 91 and 92 of the British North America Act. It is quite true that the judgments tend to disregard the intentions embodied in the Quebec resolutions of 1864; but in my humble opinion the fault lies not in the judgments themselves, but in the drafting of the British North America Act.

[Mr. Woodsworth.]

Lord Carnarvon was chairman of the meeting held prior to the introduction of the British North America Act in the House of Lords, on February 19, 1867. Montague Bernard was recording secretary, and the bill was drafted by Lord Thring.

On the address in reply to the speech from the throne I stated on February 10 that the British North America Act was an intentional misrepresentation of fact, and for that reason was null and void. I do not intend to repeat what I said at that time, but I would simply draw the attention of the house to the fact that no statement which I then made has to this date been refuted. At the first session of this parliament, the Prime Minister, on April 1, 1936, quoted from Sir Courtenay Ilbert, parliamentary counsel to the treasury, on the importance of a preamble. Without implying that Sir Courtenay Ilbert is not a great jurist, and without detracting in any measure from the honour that is his due, I desire to quote a few paragraphs from the works of his teacher, Lord Thring. In the Annual Register, of 1907, at page 110 we find that Lord Thring became counsel to the Home Office in 1860. In 1870 he left that post for the new office of parliamentary counsel to the treasury, his duty being to preside over a separate department charged with the preparation of government bills. This department, the idea of which was due to Mr. Lowe, was very successful, chiefly owing to the great skill in draftsmanship of its chief. He it was who drafted the British North America Act, the Interpretations Act of 1889, the Merchant Shipping Act amendment of 1862, the Irish Church Act of 1869, the Land Drainage Act of 1861, the Home Rule Bill of 1886, and numerous others, reference to which is made in his book *Practical Legislation* published in 1902. On page 9 of that book he says:

But it is necessary to attain, if possible, to a degree of precision which a person reading in bad faith cannot misunderstand. It is all the better if he cannot pretend to misunderstand it.

In speaking of the Army Act of 1881 he states that it took ten years to draft, and says:

Some idea of the labour involved in preparing this measure may be formed from the fact that the papers written to explain the law alone fill a folio volume of 1,067 printed pages.

In 1868 Lord Cairns appointed a statute law committee of which I am the only original member surviving. The duties of the committee are to make arrangements for, and superintend the publication of, a revised edition of the statutes.

The committee also superintend the preparation of an index of the whole statute law,