

of the United Kingdom, and that the powers of the parliament of a dominion shall include the power to repeal any such act in so far as it is part of the law of the dominion; and

That no act of the parliament of the United Kingdom, passed after December 11, 1931, shall extend to a dominion as part of the law of that dominion unless that dominion has requested and consented to its enactment;

This bill purports to repeal the Judicial Committee Acts of 1833 and 1844 in so far as they form part of the law of this dominion.

In moving for leave to introduce this bill on February 10 last, I pointed out that by the commissions and instructions to governors of the provinces, authorizing the establishment of a judicial system, each governor in council was constituted the highest appellate tribunal in his province, and that such appellate tribunal consisted of the governor and members of his executive council, from whose decisions an appeal lay to the king in council.

That was an appeal from a provincial court, exercising both political and judicial functions, to another court at Westminster consisting of the king in council, which also exercised political as well as judicial functions.

That was the class of appeals which the Judicial Committee Act, 1833, purported to regulate, and eleven years later the Judicial Committee Act, 1844, provided for an appeal to the king in council from any judgment, sentence, decree or order of any inferior court of justice within any British colony or possession abroad. Those two acts of the parliament of the United Kingdom of Great Britain and Ireland, the one 105 years old, the other 94 years old, which were adapted to the times and to the conditions which prevailed before the establishment of responsible government in these colonies—when the government at Westminster, by order in council, arbitrarily exercised supervision and control over all colonies and possessions abroad—this parliament is now invited to repeal, in so far as they now form a part of the law of this dominion.

The judicial functions of governors in council were long ago abolished throughout Canada, but unfortunately the Judicial Committee of the Privy Council, to whom the judicial functions of the king in council were transferred by the Judicial Committee Acts of 1833 and 1844, have never wholly ceased, in the exercise of their political functions, to decide constitutional issues, on appeals from other countries of the empire, on grounds of imperial political policy, which is largely based on considerations of political expediency.

Though Canada is declared to be an autonomous community within the British empire, equal in status to the United Kingdom and to the other dominions of the commonwealth, and in no way subordinate to the United Kingdom in any aspect of our domestic or external affairs, yet a committee of the privy council of the United Kingdom, under those two ancient acts which it is the object of this bill to repeal, still controls and directs the political development of Canada, and dominates the independent judiciary of this country, in respect of all civil matters coming within the appellate jurisdiction of the judicial committee. Their jurisdiction in criminal matters was abolished by this parliament in 1931.

For practical purposes therefore the sovereignty of Canada in civil and constitutional matters now resides in the judicial committee. Its members assume a final veto power over all the important legislation of this parliament. They arrogate to themselves the right to weigh the motives of members of this parliament in enacting such legislation, and, although personally ignorant, except through meagre press reports, of the social, industrial and commercial conditions prevailing throughout this dominion, they arrogate to themselves a prescience and clairvoyance which entitles them to substitute their political judgments, and even their personal preferences, for the deliberate legislative enactments of the elected representatives of the people who sit in the parliament of Canada.

In a debate in the House of Commons at Westminster on March 28, 1867, Mr. Gladstone, referring to the enactment of the British North America Act, 1867, said that this act had been passed—

. . . with a promptitude which, if it had been a measure affecting ourselves, would have been precipitancy.

This was, however, he continued,

. . . an acknowledgment of the title of these colonies to deal practically with their own affairs.

Mr. Lowe, afterward Lord Sherbrooke, who followed, remarked that the act had been passed with the expedition commented on by Mr. Gladstone just because parliament felt that it was a matter with which it had only the most formal concern. Nevertheless, the judicial committee, which thereafter continued to exercise political as well as judicial functions, have construed and applied the British North America Act, 1867, as if it were an ordinary enactment of the parliament of Westminster. They have ever evinced an extreme reluctance to inform themselves, in