

Interim Supply

his rights denies freedom. Our British heritage gave us our national freedoms. Our individual freedoms are maintainable only at the caprice of the government of the day. If we acknowledge the right of a government to declare the non-existence of these freedoms, while at the same time the great charters proclaim their existence, we deny those freedoms unless we permit the aggrieved individual recourse to the courts.

Then again at page 3158 on May 16, 1947, in the same debate the Prime Minister had this to say:

A declaration of a Bill of Rights in this country would be a positive declaration on the part of men and women of all political faiths in their belief in civil liberties. Whether the federal authority has the power or not to pass legislation respecting civil liberties, its passage would strengthen the hand of the Minister of Justice in the matter of the disallowance of any statute which would deny freedom anywhere in our country.

Now, Mr. Chairman, we all know the very strong stand which the Prime Minister has taken throughout the years with respect to fundamental rights and human freedoms and the protection of the individual in this country. And we are all quite certain that that is his opinion today. That is why we are making this appeal to him with respect to this legislation recently passed by the legislative assembly of Newfoundland. As a result of the passage of this legislation the Canadian Labour Congress has made representations to the government of Canada, and on March 10, 1959 senior officials of the Canadian Labour Congress presented the petition of the congress to the governor general in council for disallowance of the Newfoundland trade union (emergency provisions) act, 1959. This petition mentions at great length—

The Chairman: Order. I must regret interrupting the hon. member again. I have listened to the text which he read from the law book he referred to; I have also listened to his comments on the Prime Minister's remarks on civil and human rights. In connection with the latter part I must inform the hon. member that there will be a debate on this bill of rights and I do not think that this is the proper time to discuss that particular item. Furthermore, in connection with the allowance or disallowance by this house of the measures taken by provincial legislatures, I must advise the house that the disallowance of provincial laws is not one of the functions of the dominion parliament. This is clearly expressed in Beauchesne, fourth edition, page 135, item 161, which reads as follows:

Disallowance of provincial laws is not one of the functions of the dominion parliament. The fact that this subject is dealt with in section 90 of the British North America Act and not in section 91 shows clearly that the legislator did not intend to include it with the residue of powers vested in the dominion parliament. The only

authority that can disallow provincial laws is the governor in council. As the governor in council is responsible to parliament, the House of Commons may criticize the action taken by the cabinet in cases of proposed disallowances, but a member cannot raise a debate on a provincial act on the motion to go into supply.

Since the only power enjoyed by our House of Commons in matters of disallowance is to criticize the action of the dominion government after it has either disallowed or refused to disallow a provincial act, it follows that the house must await government action before taking the matter up. If the house considered the act before the expiration of the one-year period during which council must give its decision, it would exceed its own jurisdiction.

When the year within which disallowance may take place has expired, the government's action or inaction may be discussed in the House of Commons. The practice usually followed has been to wait until the question of disallowance has been decided upon by the government and then to move for the production of papers relating thereto.

The adoption of a resolution calling upon the government to disallow a provincial act would be an encroachment by the House of Commons on the powers of the Legislative Assemblies as set forth in section 92 of the British North America Act. Such a resolution was moved in the Canadian House of Commons on the 15th of May, 1873, but it was severely criticized and never accepted as a precedent.

Lefroy, "Canada's Federal System", says, page 32: "Moreover the Dominion House of Commons cannot constitutionally interfere with the operation of provincial acts by passing resolutions urging their disallowance by the Governor-General." And Lefroy quotes Lord Kimberley's dispatch of June 30, 1873, saying that: "If such a resolution were allowed to have effect, it would amount to a virtual repeal of the section of the British North America Act, 1867, which gives the exclusive right of legislating on these matters to the provincial legislatures."

Consequently, the Chair must rule that a debate on this question on disallowing actions taken by a provincial legislature is out of order and cannot be permitted.

Mr. Herridge: I accept your ruling, Mr. Chairman, and in conclusion I will simply say this: that had I been permitted, according to the rules, I would have asked the government on behalf of this group to disallow this most unfortunate legislation in order to protect the rights of the Canadian people.

Mr. Carter: Mr. Chairman, since you have permitted the hon. member for Kootenay West to put on record in *Hansard* certain statements concerning recent legislation in Newfoundland I hope you will accord me the same privilege so that I may correct the impressions he gave to this committee in the course of his argument that the legislation should be disallowed.

Mr. Fleming (Eglinton): Order.

Mr. Carter: I am asking for the same privilege as was accorded to the hon. member for Kootenay West.