

*Privy Council Appeals*

of appeal to the Supreme Court of Canada. No provincial legislation can give it or deny it. This is abundantly established by the decisions which I have quoted.

Mr. BENNETT: It is the essence of our confederation scheme.

Mr. LAPOINTE (Quebec East): It is the essence; but I believe that by parity of reasoning no provincial legislature can regulate or prohibit appeals to his majesty in council. If they cannot prohibit appeals to the Supreme Court of Canada because it is outside the province, they surely cannot legislate with regard to the privy council.

It follows that if the regulation of appeals in civil matters from provincial courts to an appellate court which is not provincial is a matter which is outside of the scope of provincial legislative authority, the legislatures of Ontario and Quebec have no power to repeal or alter the statutory provisions respecting appeals as of right to his majesty in council, and less still have they power to repeal appeals under the prerogative.

Mr. BENNETT: Or under the orders in council.

Mr. LAPOINTE (Quebec East): Or under the orders in council.

Mr. BENNETT: Because they are imperial orders in council.

Mr. LAPOINTE (Quebec East): Exactly. But if, as the judicial committee has said in the British Coal Corporation case, "such appeals seem to be essentially matters of Canadian concern, and the control and regulation of such appeals thus seem to be a prime element in Canadian sovereignty as appertaining to matters of justice," therefore as the powers distributed by the British North America Act between the dominion on the one side and the provinces on the other side "cover the whole area of self-government"—I am using the language of the privy council in the case of Attorney General of Ontario v. Attorney General of Canada, in 1912—"within the whole area of Canada," and "it would be subversive of the entire scheme and policy of the act to assume that any point of internal self-government was withheld from Canada," the power to regulate appeals to the king in council in civil matters, if it is not vested, as I think I have conclusively shown, in the provincial legislatures, must be vested in the dominion parliament, because we cover the whole area.

In my opinion this power is vested in the dominion government either in virtue of its residuary power under the opening words of section 91, "to make laws for the peace,

[Mr. E. Lapointe.]

order and good government of Canada" or under section 101, to provide for "the constitution, maintenance and organization of a general court of appeal for Canada." In re County Courts of British Columbia, Mr. Justice Strong, speaking with the concurrence of the other judges of the supreme court, said:

The constitution, maintenance and organization of provincial courts plainly includes the power to define the jurisdiction of such courts territorially as well as in other respects.

If that is true of a provincial court, surely it is true of the power of the parliament of Canada to define territorially the powers of its courts. The power given to the parliament of Canada for the establishment of a final court of appeal seems plenary, complete and paramount. If legislation such as that now embodied in the Supreme Court Act authorizing or permitting appeals to the Supreme Court of Canada from provincial courts, be legislation relating to "the constitution, maintenance and organization of a general court of appeal for Canada," I can see no reason for thinking that legislation requiring all such appeals to come to the Supreme Court of Canada would not be equally legislation relating strictly to the matters covered by such words.

But I have a second argument. In the *Nadan* case the section of our code providing that there should be no appeal in criminal matters was declared ineffective because we did not possess the extraterritorial operation that we could give to our legislation. This has disappeared by the Westminster act, but it has not disappeared as far as the legislatures of the provinces are concerned. True, the Colonial Laws Validity Act was repealed for the legislation of the provinces as well as the legislation of this parliament—

Mr. BENNETT: Quite.

Mr. LAPOINTE (Quebec East): —but under the extraterritorial jurisdiction—

Mr. BENNETT: Except that we gave the provinces some extraterritorial jurisdiction.

Mr. LAPOINTE (Quebec East): Yes, but it is closely limited. They would not have the extraterritorial power which is necessary to enable them to prohibit appeals to the privy council.

Mr. BENNETT: To repeal the provisions of an imperial statute.

Mr. LAPOINTE (Quebec East): To repeal an imperial statute. They have no legislative capacity in that respect any more than they had before, and therefore if extraterritoriality of operation is essential to the legal efficacy