

*Supreme Court Act*

thing which affects only lawyers or persons who are interested in constitutional niceties; it affects the daily life of all our people.

If we look at the duties which are carried out by the dominion and the provincial governments through all their different departments, we find that many of these departments, if not most of them, are not even mentioned by name—or the subject is not mentioned by name—in the constitution. Whether these responsibilities and administrative duties fall within the jurisdiction of the dominion or of the province was in most cases determined by the result of an appeal to the courts to decide where the dividing line really lay between the fields of rights, responsibilities and duties of the different governments.

If the decisions in the past of the Supreme Court of Canada and of the privy council were to be swept aside, there would be endless confusion, and the whole structure of government would to some extent lose its defined form. Therefore great importance should be attached to the recommendation of the Canadian Bar Association that, when this matter is dealt with, there be no doubt as to the extent to which judgments refining and defining our constitution, either by the Supreme Court of Canada or by the judicial committee of the privy council, shall have their continuing effect in the ordinary way as precedents to be recognized in future interpretations of that statute, except to such a degree as it may be amended.

At the moment we are not in a position to say how far these past decisions would be binding. We are not in a position to say exactly where the boundary line is to be, and what the things are in regard to which the members of the dominion government are to consult the provincial governments. Granted, it says in the speech from the throne that this consultation will be in regard to those other matters; but that implies that there is to be a decision as to what falls within the jurisdiction of the dominion government.

It may be said that it would be extremely difficult to get complete agreement, but the desirability of agreement and of consultation is asserted in the speech from the throne. If it is desirable that the provincial governments be consulted in regard to the way in which the amendments in respect to matters which are strictly provincial are to be made, it is equally important, if not more important, that there be consultation before any attempt is made to divide those fields, because there may be wide disagreement as to where the boundary line actually is. Until some statement is made as to how that definition will

be worked out, it is difficult for the provincial governments to know what the basis of consultation will be, or where the borderline will be.

What this really means is that we are splitting our constitution in two, and that in regard to a single constitution which has been the very framework of our nation, all of that structure might be changed without an opportunity to secure the opinion of those who carry on the other part of the combined business of government in this country.

Undoubtedly there are many who sincerely believe that it would be infinitely better if the powers of the provincial governments were limited, and that this country could be more efficiently governed if there were one single government having full authority over the whole of Canada. Those who hold this view are no doubt quite sincere in their expression of that opinion. There are others who do not hold that view, but who nevertheless seem to be unaware of the extent to which that division of authority can be whittled down by apparently innocent extensions of central authority which, step by step, might produce a fully centralized government, in fact if not in name.

There are many who regard the assertion of provincial rights as a relic of the past, as an attempt to play up the importance of provincial authority. But it goes far beyond that. In their wisdom the fathers of the Canadian confederation obtained from the parliament at Westminster a constitution which respected the traditions of our people in different parts of Canada, respected the rights of the people in different geographical areas, and established the rights of those who joined to make this one nation. And it is not enough to assert in mere words the retention of those rights. It is not enough to assert in mere words the retention of that local administrative authority. It must be a reality.

Suppose the dominion government further encroaches upon provincial fields of taxation, which might come from amendments which could be made by this parliament; how much meaning has an assertion of the right of the province to administer education or other local matters, if the province is not to have independent authority to raise the revenues to carry out its responsibilities in that field? The right and the power to obtain such revenue as is required for a particular purpose is the very power of government itself. Any government can be clothed with apparent authority and can be given apparent jurisdiction which has little or no meaning if that government must come to some other government and ask for a sum of money to carry it out.