

*Privy Council Appeals*

in which the provinces have jurisdiction, they are the proper authorities to take away the right of appeal.

Mr. BENNETT: It is a question whether they can or cannot, whether they have extra-territorial jurisdiction, because it arises under an imperial order in council.

Mr. POTTIER: I have a note on that and I was going to touch on it as another reason. The Statute of Westminster says that only the dominion legislature has extra-territorial jurisdiction. The hon. member for Essex East (Mr. Martin) has indicated a paragraph in the judgment in the British Coal Corporation case, which I shall place on the record:

Their lordships have in this judgment been dealing only with the legal position in Canada in regard to this type of appeal in criminal matters. It is here neither necessary nor desirable to touch on the position as regards civil cases.

I quite agree with that. I stated before that in my opinion there was room for argument whether, in connection with those subject matters in which the provinces had jurisdiction, they were the proper authorities to deal with the matter of appeals, rather than the dominion.

There is another reason that causes me to doubt whether section 101 gives us sufficient authority to deal with the abolishing of all appeals to the privy council. The bill in question repeals them in so far as they are part of the law of Canada. This reason was referred to this afternoon by the right hon. Minister of Justice. After all, appeals are matters of procedure. Appeals are not involved in the constitution, maintenance or organization of a court. Section 101 deals only with the constitution, maintenance and organization of a supreme court. Appeals are a part of an action and not the constitution, maintenance, or organization of the court; and I submit that at least there is room for argument in the fact that section 101 has no reference to appeals to the privy council, which the provinces have through order in council.

Mr. FINN: Would my hon. friend read section 101?

Mr. POTTIER: I shall quote section 101:

The parliament of Canada may, notwithstanding anything in this act, from time to time, provide for the constitution, maintenance, and organization of a general court of appeal for Canada, and for the establishment of any additional courts for the better administration of the laws of Canada.

There are a number of cases having reference to what the words "constitution" and

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"maintenance" of a court comprise, and I am suggesting that the above appeals of the provinces as a matter of procedure are not included in those terms.

Mr. CAHAN: The hon. member's contention is that section 101 does not give the supreme court control of procedure?

Mr. POTTIER: As to taking away the right of appeal to the privy council from provincial courts under order in council.

In conclusion, Mr. Speaker, I wish briefly to summarize as follows the arguments that I have attempted to put forward:

First, that the British North America Act has been interpreted as any other statute would be interpreted by the Judicial Committee of the Privy Council. What in effect we have been trying to do is to place upon the privy council the responsibility of legislating rather than interpreting.

Second, I have grave doubts whether section 101 referred to by the right hon. Minister of Justice gives power to this parliament to abolish all appeals to the privy council, particularly those which were passed to the provinces themselves by order in council and which the imperial parliament only has power to deal with.

Mr. CAHAN: May I ask just one question? Has the hon. member any doubt of the competence of the parliament of Canada to abolish appeals to the privy council in respect of any subject matter of legislation which is within the competence of the parliament of Canada?

Mr. POTTIER: Did I understand my hon. friend to say, any subject matter within their competence? No.

Mr. CAHAN: Then the hon. gentleman was combating, not the terms of the bill, but some observations made upon the bill.

Mr. POTTIER: I submit we are trying to abolish all appeals, which we cannot do, and the bill should not pass, at least in its present form.

Mr. J. H. BLACKMORE (Lethbridge): I rise with considerable diffidence to participate in this discussion because I have never laid any claim to being an authority on law, but I should like to say a word or two for the purpose of bringing before the house some considerations which, I believe, are of real import in the discussion of this question.

Everybody recognizes, I think, that we are grown up now as a nation. We have been saying we are and thinking we are, and from what I can gather, the British people are quite