

*Validity of Quebec Statute*

a member should do as a matter of high policy. And the House of Commons negatived it by a vote of only thirteen opposing the government view on the merits of the case as presented to the house by Sir John Thompson on behalf of the government and by Mr. McCarthy really from a legal standpoint on behalf of Mr. O'Brien who made the amending motion on going into supply.

Mr. LAPOINTE (Quebec East): Mr. Speaker—

Mr. WOODSWORTH: Shall I get a chance to say a few words on a point of order?

Mr. LAPOINTE (Quebec East): I have now to raise the point of order. I did not do so when I spoke first but the remarks of my right hon. friend compel me to raise the point of order. I absolutely disagree with and contest the contention that the House of Commons may instruct the governor in council as to whether provincial legislation should or should not be disallowed. It may condemn the government afterwards—

Mr. BENNETT: They did it on the New Zealand treaty.

Mr. LAPOINTE (Quebec East): The governor in council is answerable to parliament and if parliament condemns the action that has been taken the government goes; it has lost the confidence of parliament because of the action it has taken. But under the British North America Act this House of Commons cannot instruct me as Minister of Justice as to what recommendation I must make to the governor in council as to the validity or fairness or constitutionality of legislation. The governor in council must act after that recommendation has been given, but the House of Commons cannot instruct me as Minister of Justice as to what recommendation I should make. I am surprised that my right hon. friend should contend—

Mr. BENNETT: There is no doubt about it.

Mr. LAPOINTE (Quebec East): —that I should receive instructions from him or the hon. member for Winnipeg North Centre or anybody as to my recommendation to the governor in council.

Mr. BENNETT: No; the direction is that the governor in council disallow.

Mr. LAPOINTE (Quebec East): But I must act first; the governor in council acts upon my recommendation.

Mr. BENNETT: That has nothing to do with it.

[Mr. Bennett.]

Mr. LAPOINTE (Quebec East): Even there I will follow my right hon. friend. This House of Commons cannot instruct the governor in council as to a duty—

Mr. BENNETT: Oh, yes, it can.

Mr. LAPOINTE (Quebec East): —which is given to the governor in council by the constitution. This House of Commons can dismiss the government after it has acted because the action of the government does not meet the approval of the House of Commons, but it cannot instruct the governor in council as to what should be done.

Mr. BENNETT: It did about the New Zealand treaty.

Mr. LAPOINTE (Quebec East): That was a matter of trade and commerce. This is within the jurisdiction of the parliament of Canada, under section 91, while this other matter is given not to the parliament of Canada, but by section 90, to the governor in council, to the queen in council, when this power of disallowance existed as far as dominion legislation is concerned. I say that I cannot be instructed as to what action should be taken, but I am responsible to parliament afterwards if the action of the governor in council does not meet with the approval of parliament.

My right hon. friend (Mr. Bennett) quotes the instance of the Jesuits' estates motion in 1889. When he quoted that I told him the government of the day had then made up its mind not to disallow the legislation. The whole debate was on the question as to whether the government had done well to refuse to disallow the legislation. Sir John Thompson made that great speech to which my right hon. friend alluded, showing that the legislation should not have been disallowed and that the government did well not to disallow it.

Mr. BENNETT: No, no.

Mr. LAPOINTE (Quebec East): I will show it; I have a reference here too. I am going to show the house and my right hon. friend that the government had reached that decision before the debate took place in the House of Commons. I quote the words of no less a personality than Sir John A. Macdonald, the then Prime Minister. At page 908 of Hansard for March 28, 1889, showing clearly that he had decided that the bill was not to be disallowed, he said:

I agree strongly with the language used by the hon. member for North York (Mr. Mulock). Supposing this bill had been disallowed, Mr. Mercier would have gained a great object. He would have been the champion of his church. The moment it was announced that this bill