

amongst lawyers and judges competent to speak on the subject, there is but one opinion, that where constitutional questions are concerned an appeal to the judicial committee must always be retained.

I am offering that opinion to balance to some extent the opposite opinions which have been offered. I rather think the Judicial Committee of the Privy Council has rendered a real service to Canada. Their decisions have been one judgment, no dissenting judgments.

I would hate to think that this parliament was attempting to have the courts interpret the laws not as expressed by statute but according to their own views of what is in the interest of the state. We have seen the disastrous results of that procedure in other countries. It has done more harm and injury to the judiciary and the administration of justice than anything else I can think of. I am not criticizing the fact that this matter has been brought up in parliament, but I think we should keep in mind that this parliament has certain duties to perform and that the courts also have certain duties to perform. We should not try to have the one conflict with the other.

Mr. CAHAN: Should the court give a decision in accordance with the intention of parliament?

Mr. POTTIER: According to the words expressed by parliament. If parliament has used the wrong words and has given the wrong intention, the court should not be asked to place on the words an intention which they do not express. I think that is a clear principle of law. That is the point I was trying to make in defending appeals to the Judicial Committee of the Privy Council.

We must realize that two developments have been taking place in Canada at the same time. One has been the growth of Canada as a whole, and the other has been the development of the provinces. These two developments have reached the point where we find them to-day more or less in conflict. This situation has developed since the British North America Act was passed, and it was not contemplated at the time that statute was enacted. Therefore, the statute does not cover the situation to-day as we might hope it would. Our constitution is out of date.

I should like also to make a few observations on whether this parliament has the power to abolish appeals to the privy council. This afternoon the Minister of Justice (Mr. Lapointe) indicated that we had that power, and he depended upon section 101 of the

British North America Act. I submit that the British Coal Corporation case does not bear out that opinion.

Mr. MARTIN: It does not deal with it.

Mr. POTTIER: I think it does deal with the powers of the provinces to abolish appeals in civil matters. I shall quote from the case itself, as follows:

Among the powers which go to constitute self-government there are necessarily included powers to constitute the law courts and regulate their procedure and to appoint their judges: save for the provisions of the act, these powers in regard to the then newly constituted dominion would have all belonged to the king as the fountain of justice: but by the act these powers are vested in the dominion legislature, and thus pro tanto the prerogative is merged in the statutory powers. A most essential part of the administration of justice consists of the system of appeals. It is not doubted that with the single exception of what is called the prerogative appeal, that is, the appeal by special leave given in the privy council in London, matters of appeal from Canadian courts are within the legislative control of Canada, that is of the dominion or the provinces as the case may be.

And further:

The question whether the dominion or the provinces is in any given case the proper authority to act depends mainly upon the subject matter dealt with.

While that is not a definite decision, it is at least an indication that in certain subject-matters the provinces only can abolish the right to appeal. Section 92 deals with civil procedure.

Mr. MARTIN: In order that the record may be complete, I would refer my hon. friend to the third paragraph of the judgment at page 523. Perhaps he would care to read it himself? The point is not decided. The privy council refused to deal with the matter.

Mr. POTTIER: I quite agree with that. I said that it was not decided definitely.

Mr. MARTIN: They did not decide it at all.

Mr. POTTIER: I said that the words used were an indication that in connection with those subject matters in which the province had jurisdiction, the province was the proper authority to abolish the right to appeal. I gave that quotation for that purpose, and I shall repeat it again:

The question whether the dominion or the provinces is in any given case the proper authority to act depends mainly upon the subject matter dealt with.

That must have meant something. I submit that there is room there for the belief that in connection with those subject matters