

*Supreme Court Act*

The purpose of and the result which would flow from the passing of this bill must be taken into consideration along with the statements which are made in the speech from the throne about proposals to take certain steps in regard to the amendment of the constitution. I should like to read two paragraphs from the speech from the throne which, it seems to me, have a direct bearing on a proper consideration of the full effect of the bill which is now before us. I quote:

You will also be asked to approve addresses praying the parliament of the United Kingdom to vest in the parliament of Canada the right to amend the constitution of Canada in relation to matters not coming within the jurisdiction of the legislatures of the provinces nor affecting the constitutional rights and privileges of the provinces or existing rights and privileges with respect to education or the use of the English and French languages.

My ministers will seek to arrange for early consultation with the provincial governments with a view to agreeing upon an appropriate procedure for making within Canada such other amendments to the constitution as may from time to time be required.

As I said in my remarks in the debate on the address in reply, it is not easy to say exactly what those words mean until we have before us the resolution which is forecast in those two paragraphs. But from the wording of the second paragraph it would appear that this parliament is to be asked to draw a distinction between federal and provincial responsibilities and jurisdictions. May I qualify that statement by saying that when the resolution is introduced, it may, as sometimes happens, present a different picture from that which would seem to be indicated by the wording of the speech from the throne. I do not suggest that there is any intention that these words should not convey a completely accurate impression, but they are of necessity brief; and the resolutions which carry forward the intention stated in the speech from the throne may go much further than is here suggested. But if the wording of the second paragraph I have quoted means what it seems to mean, it would appear that the provincial governments are to be consulted only in regard to matters which in the opinion of the dominion government—with, of course, the support of parliament—do not fall within the federal jurisdiction.

The very fact that it is so difficult to determine what these words mean is in itself a reason why this whole subject should be approached with great caution, and, in the desire to carry out the object stated by the Minister of Justice, undue haste should not create any situation which might in itself defeat the purpose he has in mind. After all, the whole record of decisions of the privy council in constitutional matters since 1867 is almost entirely an interpretation of the

rights or responsibilities of the various governments of Canada, and from time to time there was a different point of view as to where the boundary line between the rights and the responsibilities should be drawn. That being so, it would be unwise for the government or this parliament to seek to deliver the judgment of Solomon without calling in the parties concerned and at least trying to find out which one of them thinks it really owns any particular child that may be under consideration at the moment. After all, this is something that has been under consideration for a long time, and there are still many points of difference as to where that boundary line actually is.

This is not the first time this matter has been spoken of. It is not the first time it has been considered elsewhere. It was considered by a body which has, of course, no official authority to guide the course of any member of this house, which deals with the business of the people of Canada. But in view of the fact that this is largely a legal problem, some attention might well be paid to the views expressed by the lawyers of Canada at their annual meeting, in the same way that in a matter affecting the health of the people it might be wise to consider the opinions expressed by medical experts, or, in the case of some important construction program, the opinion of engineers through their organization. A resolution of the Canadian Bar Association has no higher authority than that of any other similar body, but at least it represents the considered opinion of a profession which is trained to deal with constitutional matters and with legal problems arising out of constitutional questions.

For this reason, and because of the importance of the subject, I should like to read into the record a resolution which was passed, I understand unanimously, by the Canadian Bar Association and—on the very day, if I am not misinformed, that the Prime Minister (Mr. St. Laurent) was honoured by being chosen a life president of that important organization.

The resolution is headed, "Abolition of appeals to the privy council". It reads as follows:

Whereas the government of Canada has announced its intention to introduce legislation, at the next session of the parliament of Canada, providing for the abolition of appeals to the privy council, and making the Supreme Court of Canada our final court of appeal in all matters;

Be it resolved that the Canadian Bar Association, without expressing any view as to the wisdom or otherwise of the proposed abolition, is of the opinion:

1. That any bill for the abolition of the privy council appeal should contain the necessary provisions as to the organization and jurisdiction of the supreme court of the system by which its judges will be appointed. That sufficient time be given