

Supreme Court Act

the laws of the province of British Columbia. However, those decisions of the judicial committee are now the law of this country. The province of British Columbia could change the law within its proper sphere of legislative power. The amendment reads in part:

Subject to any enactment of the parliament of Canada or the legislature of any province in exercise of their respective powers—

That is merely a recognition of the rights of the province to change the law within the province with respect to its citizens. There is no attempt to infringe on provincial jurisdiction.

Mr. Stewart (Yorkton): If the hon. member is not afraid of the constitution of the court, and if he is not afraid of the court exercising proper jurisdiction and following precedents, what is the necessity for the amendment? What is the hon. member afraid of?

Mr. Fulton: I have not said that I am afraid of anything. I doubt if the hon. member himself will disagree with me when I say that the proper function of a legislative body is to define with as much accuracy as possible what it is trying to do and what are the laws and the rights and the duties which it seeks to create by the statute it may be passing. We are considering a statute here to give the supreme court final jurisdiction. I take it from the words of the Prime Minister and the Minister of Justice that there is no objection to the principal of *stare decisis* being followed and applied by that court, but there is a possibility, and we are dealing here with statutes, we are enacting laws—

Mr. Stewart (Yorkton): Why is there a possibility?

Mr. Fulton: We are enacting laws affecting all the people of Canada and it is conceivable that as a result of this law an entirely new set of decisions will be started. This does not call into question the constitution or the personnel of the court; it is simply a safeguard against that happening. It is only part of our legislative process and in the absence of further fundamental objections I am not in the least bit weakened in my support of this amendment. This is particularly so since the president of the Canadian Bar Association, which, as has been pointed out, embraces in its membership a large number of judges of Canada, has stated since this debate started that in his view, speaking as the president of the association, such an amendment should be written into the bill which is now under discussion.

Mr. Pouliot: I was struck with what my judicious friend has just said, and I wonder if he could tell us if in his capacity as member of parliament he has any judicial capacity,

[Mr. Fulton.]

although he may be very judicious. This is very important. Judicial powers and legislative powers are in tight compartments and must not be confused, although they seem to be in the mind of the hon. gentleman.

I ask him again how he got any judicial authority when he was sworn in as a member of parliament, and from whom? He may be a justice of the peace and as such may be able to speak with judicial authority, but the fact that he is a member of parliament does not mean that he is a justice of the peace. I have listened to justices of the peace who were a little less dogmatic than the hon. member for Kamloops, who were quite ponderous in their thinking. My hon. friend may be a justice of the peace, he may be a judge of the commissioner's court, he may have authority to give an oath, but that is not because he is a member of parliament. His only jurisdiction as a member of parliament is legislative jurisdiction. Does the hon. member not agree with me?

Mr. Fulton: I thank my hon. friend for the lecture he has just given me.

Mr. Pouliot: It is not a lecture; I am speaking what I have in my mind.

Mr. Fulton: I quite agree.

Mr. Pouliot: I was not clear enough, unfortunately. I should like to be understood by the hon. member.

Mr. Fulton: If you think it worth it.

Mr. Pouliot: Oh, yes; otherwise I would not rise to speak in answer to him. How can we give what we do not possess? Even the Prime Minister, who has one of the clearest and brightest legal minds in the country—hon. members will agree that is not flattery—has no judicial authority although he discharges one of the most important functions in the house. The Speaker and you, Mr. Chairman, have the right to reprimand members. It is a semi-judicial authority over your colleagues; perhaps it is judicial. How could the hon. member for Kamloops, who has a logical mind, confer upon the Supreme Court of Canada a power that he does not possess as a legislator, as a lawmaker, as a member of the House of Commons?

Mr. Fulton: He is not trying to do that.

Mr. Pouliot: My hon. friend will admit that we cannot do collectively in this manner what we cannot do individually and separately. Now he seems to be more confused than ever. I have tried to come to his rescue.

Mr. Fulton: Because I have been listening to you.

Mr. Pouliot: I am trying to make it clear. I ask my hon. friend what is the section of the House of Commons Act, what is the section of the B.N.A. Act, that confers upon