

been recognized by the United Kingdom courts because of their being based on challengeable—frequently qualified as “exorbitant”—bases of jurisdiction.

● (1420)

The European convention, however, contains a provision which enables the United Kingdom to declare that it will not recognize or enforce any judgment based on exorbitant grounds of jurisdiction given against a party that is domiciled or habitually resident in a specified non-European state. By article IX of the proposed Canada-United Kingdom convention, which is attached to the bill as a schedule, the United Kingdom undertakes to make such a declaration.

Before Canada can ratify this convention, both federal and provincial legislation has to be adopted. Almost all of the provinces have undertaken to adopt the necessary bill, and I can advise honourable senators that this has already been done in Ontario and my own province of Nova Scotia. Article XII of the proposed convention enables Canada to ratify and expand the application of the convention to specific provinces, not necessarily to all of the provinces.

Since it is expected that the European convention will come into force in January 1985, the passage of this bill will ensure that Canadian assets in the United Kingdom will be protected against claims and judgments which, but for the European convention, would not be recognized in the United Kingdom.

Honourable senators, the explanation is somewhat more complicated than I had thought when I first read the bill, and I was tempted to commence my remarks by saying that it was a simple bill. But I recalled, of course, the fate of a senator, unfortunately now no longer with us, who commenced a motion for second reading with that statement, and therefore I refrained from doing so. Then, when I read the notes setting out the reason for the implementation of this convention, I realized that it was not that simple after all. Nevertheless, with that explanation, I commend the bill to honourable senators and seek their support on second reading.

**Hon. Jacques Flynn (Leader of the Opposition):** Honourable senators, I concur with the last statement of the sponsor of the bill that this legislation is more complicated than at first glance it may appear. Normally the procedure for enforcing a judgment of a foreign country or another province is called exemplification, which, in fact, means a repetition of the previous trial, to enable a new judgment to be rendered by the court where the execution of the judgment is required to take place. Apparently this convention would merely provide for the registration of the judgment in a court and a retrial would not be necessary. That is how I saw the situation at first glance. However, I note also that this convention does not apply to many kinds of judgments. Article II in Part II of the bill, under the heading “Scope of the Convention”, says:

2. This Convention shall not apply to

(a) orders for the periodic payment of maintenance;

And we are aware of the problem between provinces regarding the execution of orders for maintenance:

[Senator Hicks.]

(b) the recovery of taxes, duties or charges of a like nature or the recovery of a fine or penalty;

(c) judgments given on appeal from decisions of tribunals other than courts;

(d) judgments which determine

(i) the status or legal capacity of natural persons;

(ii) custody or guardianship of infants;

(iii) matrimonial matters;

(iv) succession to or the administration of the estates of deceased persons;

(v) bankruptcy, insolvency or the winding up of companies or other legal persons;

(vi) the management of the affairs of a person not capable of managing his own affairs.

All of those classes of judgments are excluded from the application of the convention. Therefore I would say the legislation is restricted. As Senator Hicks has indicated, it requires complementary legislation by each province with regard to the courts in both civil and commercial matters. The convention has been negotiated for some time, and, for the reasons indicated by Senator Hicks, I see no problem in passing this bill today. As the legislation requires the concurrence of the provincial authorities, I am quite sure that we shall not be taking any risk in passing this bill.

**Hon. Henry D. Hicks:** Honourable senators—

**The Hon. the Speaker:** Honourable senators, I must inform the Senate that if the Honourable Senator Hicks speaks now, his speech will have the effect of closing the debate on the motion for second reading of this bill.

**Senator Hicks:** I thank the honourable senator for his perceptive intervention. I too was struck by the many exclusions from the types and classes of judgments that are dealt with by this convention, but I rationalized the situation by considering that it was better than nothing. I believe this to be a step in a direction which I am sure most of us will agree is the right one. Therefore I hope that honourable senators will support the bill on second reading.

Motion agreed to and bill read second time.

### THIRD READING

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

**Senator Hicks:** Honourable senators, this is the type of legislation about which I believe a Senate committee could not do very much. Accordingly, I do not believe there is any point in referring it to committee. Therefore, with leave of the Senate and notwithstanding rule 45(1)(b), I move that the bill be read the third time now.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

Motion agreed to and bill read third time and passed.