

Once again:

Since the committee sits as a King's Council, it is always something more than a strict court of law and, therefore, is not bound as rigidly as other courts are bound by existing rules of law. It is not bound by the decisions of any other court of law. It is not bound even by its own previous decisions.

Hon. Mr. Farris: Does he give any authority for these statements?

Hon. Mr. Roebuck: No, but I have checked them and found them to be true.

As a King's Council it has admittedly in addition to its judicial power some slight background or reserve of legislative power. It may, if it think just and proper, arrive at its decisions on principles of policy rather than by strictly defined rules of law. It is not wholly confined to the interpretation and administration of existing law; it may upon occasion make new laws or at least adapt old rules and principles of law to new conditions overseas. In this way it is not unlike the old Court of Chancery or Equity in England which was originally designed to add some element of flexibility or humanness to the rigid, technical rules of common law in cases of marked hardship or injustice. Perhaps it is this background of legislative or political power, this element of flexibility, and the consequent element of uncertainty in the decisions of the Committee which has brought upon its head so much sharp criticism by professional lawyers in Canada and in some of the other overseas dominions.

Hon. Mr. Horner: May I ask if the person who wrote this is an associate of Dr. Marsh?

Hon. Mr. Roebuck: I could not answer that question. At all events, what I have quoted coincides very closely with the information given us by the senator for Inkerman, and I might add that it checks with my own knowledge of actual conditions before the Privy Council.

I am not here to presume to criticize the members of the Privy Council for basing decisions with respect to the Canadian constitution upon questions of policy rather than upon rules of law. But I will say this, that if changes in our Canadian constitution are to be made on such grounds, those changes should be made here in Canada, not in the United Kingdom. When in future we wish to make any important amendment of the constitution of Canada, let us make it ourselves in accordance with our own ideas of a policy suitable to Canadian conditions. That principle is, I think, elementary for any truly national Canadian. It is the purpose for which parliament is maintained.

I know there are those who would retain the court across the sea because of a belief in the supposed superiority of the members of the bench and bar who are invited by the Chancellor of Great Britain to be so-called advisers of the King in this connection. Far kine usually have long horns. An expert has been defined as "a very ordinary fellow away from home." Apparently our judges suffer somewhat from their proximity to

ourselves. Perhaps it is familiarity that, on the part of some people, breeds contempt—a sentiment which I do not share. I recall the old saying from the highest source that "a prophet is not without honour save in his own country and in his own house."

As a matter of fact, honourable senators, having practised in both courts, and having met, both officially and socially, the judges both of the Privy Council and of the Supreme Court of Canada, it is my considered judgment that there is no need to disparage either court for the benefit of the other. All these are able men; all are public-spirited men and men of conscience. Finally, they are men of the same race as ourselves. That is true even of the French-Canadian members of our court: they, too, come from Normandy, the place of origin of a large section of our English-speaking people. The same type and the same class of men occupy seats on both these courts. Frankly, I hold them all in the greatest respect. Nor in the matter of education is there any general superiority of one set of men over the other. Who is there to say that our common school system, our secondary schools, our schools of law are in any way inferior to those elsewhere, or that ours are better than theirs? Nor, so far as I have been able to observe, is there anything in the intellectual atmosphere or environment on one side which makes for greater distinction than on the other. There is nothing on either side which would warrant the inquiry which Shakespeare makes in these words:

Upon what meat does this our Caesar feed
That he is grown so great?

The result of any comparison of the individuals who constitute these courts is necessarily a matter of opinion. Such a comparison, therefore, is futile; I will go further, and say that it is objectionable; it is this type of comparison which is referred to in the old saying that comparisons are odious. There are much more cogent reasons for the change that we now propose than any supposed superiority of one set of judges over another.

May I ask honourable senators what would be said were the Supreme Court of Canada to suddenly announce that its future hearings of Canadian cases would be held in London, England. Were such a preposterous proposal made, it would certainly meet with an overwhelming objection and the weaving of a crown of glory around the heads of the members of the bench would be no answer to the inconvenience and undue cost of arguing cases thousands of miles away from our own shores. Were our courts to suggest anything so utterly preposterous, our judges themselves would be laughed out of court. I know that at least some members of the Judicial Committee of the Privy Council are conscious of