

Supreme Court Act

the judges of the supreme court shall be appointed by the federal authority.

Indeed, section 96 of the imperial act specifically states that the governor general shall appoint the judges of the superior courts. Section 101 of the same act further stipulates that the parliament of Canada may, from time to time, provide for the institution and organization of a general court of appeal for Canada and for the maintenance thereof in order to ensure a better administration of the laws of Canada.

It is therefore in accordance with the latter clause that the present measure is enacted to organize our supreme court. We must not forget that our constitution is the result of a compromise and of an agreement between the various parts of the whole, especially between Upper and Lower Canada and the provinces of Nova Scotia and New Brunswick. That agreement and the act which followed guaranteed not only the rights of the minorities but also those of the provinces. It is unfair to dissociate the rights of the minorities from those of the provinces, because a province would be unable to protect its minorities, its way of life, its philosophy and its traditions, were provincial rights—and especially those revenues which enable a province to provide for the maintenance of her institutions—constantly pared down.

I refer, in particular, to the subsections of section 92 which empower the provinces to legislate for the founding, the upkeep and the administration, within their boundaries, of hospitals, asylums, almshouses and sheltering homes intended for their citizens as well as for municipal institutions within these same geographical limits.

If the Supreme Court of Canada, a federal tribunal whose members are appointed by the central power, provides the final, the ultimate guarantee afforded a province in the event of a conflict arising between the said province and the federal authorities, would it not be fair that a province, and more particularly Quebec, the minority province, be pledged a minimum guarantee?

It may be argued that the government intends to appoint three judges from among the judges of the Court of King's Bench. These three appointees will be chosen by the dominion government. I do not object to this section. I feel, however, that the autonomy of the provinces as well as the rights and privileges they enjoy under the constitution should be safeguarded. This could be done by the appointment of four judges, of unimpeachable honesty and integrity,

[Mr. LaCroix.]

chosen from a list of candidates submitted by the lieutenant governors in council. Such a step would prove satisfactory to the provinces and, I believe, afford minimum security to the province of Quebec.

There is another proposal which I take the liberty of submitting to the government. Obviously, the suggestion need not be accepted.

I believe that the decisions of the supreme court on all constitutional matters should be unanimous.

Whenever an accused is tried before a jury for a capital offence, conviction can only be secured when the twelve jurymen bring in a unanimous verdict. That is the request I make on behalf of my province. If we are to be condemned to lose some of our rights to the federal government, I request that it be only after a unanimous decision—a decision from which there can be no appeal—by the court trying our case.

I believe that this amendment which I now propose to the Supreme Court Act is quite fair and reasonable and that none of the rights—and I do not say privileges—which were guaranteed to us in order to induce us to enter into confederation should be, I shall not say abolished, but even reduced without it being done by unanimous agreement and decision.

Otherwise the dissents of the judges would be such as to indicate to the people of my province that their rights were abolished by a majority decision of the supreme court.

I will not go so far as to ask that there be unanimity *in camera*, as in the privy council. On the contrary I would suggest that the government accept the principle of unanimity in the case of the supreme court, so that the provinces may be assured that the members of this court are at least agreed on matters of litigation, when dealing, of course, with legal or constitutional disputes.

These are suggestions which I intend to submit to the government and I also intend to suggest proper amendments when we are in committee on this bill.

(Text):

Some hon. Members: Question.

Some hon. Members: Eleven o'clock.

Mr. Speaker: Is the house ready for the question? The question is on the amendment. Those in favour of the amendment will please say "Yea."

Some hon. Members: Yea.