

should be a very simple matter to make an explanation to the house. With all due deference to the collective wisdom of able counsel and committee members who have dealt with this legislation it seems to me it is the function of the committee of the whole to secure the fullest explanation before such legislation is passed.

I have before me the last decision of the judicial committee of the privy council given on October 22, 1931, in which it is held that the dominion parliament has no authority to deny to British or foreign insurance companies the right to transact business in Canada, or to make it a condition of transacting business that they take out dominion licences. I think my statement sets out the effect of the decision. I understood the Prime Minister, in his explanation of the proposed legislation, to say that we do have the right to deny the right to licence or the right to be registered in Canada, and to stipulate that companies must be registered in order to do business. Perhaps I would not be occupying the time of the committee unduly if I were to read a short extract from this decision of the judicial committee of the privy council in which Viscount Dunedin expressed the matter very clearly:

What has got to be considered is whether this is in a true sense of the word alien legislation, and that is what Lord Haldane meant by "properly framed legislation." Their lordships have no doubt that the Dominion parliament might pass an act forbidding aliens to enter Canada or forbidding them so to enter to engage in any business without a licence, and further they might furnish rules for their conduct while in Canada, requiring them, e.g., to report at stated intervals. But the sections here are not of that sort, they do not deal with the position of an alien as such; but under the guise of legislation as to aliens they seek to intermeddle with the conduct of insurance business, a business which by the first branch of the 1916 case has been declared to be exclusively subject to provincial law. Their lordships have, therefore, no hesitation in declaring that this is not "properly framed" alien legislation.

My submission is that the Minister of Finance ought to explain to this committee of the whole how and in what respects the legislation before the house is properly framed alien legislation, and in what respect it is different from the legislation which was declared ultra vires by the decision from which I have read—that is, so far as alien or foreign companies are concerned. When we come to British insurance companies about the same considerations apply, although they are not aliens. It was sought to control British insurance companies and subject them

to the necessity of taking out dominion licences on the ground that they were immigrants.

Mr. LUCHKOVICH: The hon. member has said that the legislation was declared ultra vires; I think it was the jurisdiction which was declared ultra vires by the privy council.

Mr. ILSLEY: No, it is always legislation that is declared ultra vires; my hon. friend will see that in both instances it was legislation which was declared ultra vires. The decision goes on to say:

As regards British subjects, who cannot be styled aliens, once the false definition is gone, the same remark applies as to alien immigrants. This is not properly framed law as to immigration, but an attempt to saddle British immigrants with a different code as to the conduct of insurance business from the code which has been settled to be the only valid code, that is, the provincial code.

I should like to have an adequate explanation as to how the proposed legislation gets over the effect of the privy council decision of 1931. That decision certainly held ultra vires a provision that alien companies must take out licences as a condition, under which business might be carried on. Looking over the present legislation, I cannot see that it is different from that which has been declared ultra vires.

Mr. RHODES: I would be the last person to attempt to give an explanation, which would be acceptable either to this committee, the House of Commons or the country, and which would make clear to all persons the position of legislation with respect to insurance. A very eminent lawyer, a friend of mine, said he knew of no instance where lawyers disagreed so widely or violently as they did with respect to the question of jurisdiction in insurance. I would not attempt either for my hon. friend or for the committee to enlarge upon the explanation which was offered with extreme clearness by the Prime Minister in response to a query by the hon. member for North Waterloo. I think he made it very clear. There has been no attempt in this legislation to get around any decisions of the privy council—none whatever. I submit we are seeking only to put in the form of legislation that which is within our absolute competence. We are not attempting to invade the field of the provinces with respect to insurance, or contracts of insurance. I think that has been made abundantly clear several times to-day. It is admitted we have absolute jurisdiction with respect to the question of aliens, alien companies and bankruptcy, and that is as far as we go in this legislation.

[Mr. Ulsley.]