

Privy Council Appeals

Colonial Laws Validity Act was repealed as far as Canada and the dominions were concerned, so that the legislation of Canada, or of any other dominion, stands good even if it is in conflict with an imperial statute regarding the same matter.

In 1932 and 1933 this parliament reenacted section 1025, which had been declared null by the privy council in the Nadan case, and put it back in our statutes under the power conferred by the Statute of Westminster. This new section has stood the test of appeal to the privy council. The house will remember that in 1935 there were convictions in the courts of Quebec against certain coal companies after an investigation under the Combines Act. These companies tried to appeal those convictions to the privy council; they asked for special leave to appeal. That is the case of the British Coal Corporation and the King. The judicial committee, presided over by Lord Sankey, held that the new section of the criminal code was constitutionally effective to prohibit appeals to the king in council in criminal matters. I shall refrain from reading the copious notes I have of the judgment of Lord Sankey, but I wish to direct attention to these words:

Such appeals seem to be essentially matters of Canadian concern, and the regulation and control of such appeals would thus seem to be a prime element in Canadian sovereignty as appertaining to matters of justice.

So, as far as criminal appeals are concerned, there is no longer any difficulty.

Mr. BENNETT: The principle was considered to some extent also in the application for leave to appeal in the Riel case.

Mr. LAPOINTE (Quebec East): Yes, but that was very long ago.

Mr. BENNETT: That was before the statute was passed.

Mr. LAPOINTE (Quebec East): Yes. I come now to the other appeals. I submit that it is within the legislative competence of the parliament of Canada to abolish any right of appeal to his majesty in council, whether by special leave or otherwise, from any court in Canada, in civil no less than in criminal cases. But before going on with that I desire to discuss the policy and the right. Is it desirable to do away with these appeals; and then, can we do it? In other words there is first the policy and then the right. As to the policy, with regard to appeals to the privy council the imperial conference of 1926 said:

From these discussions it became clear that it was no part of the policy of His Majesty's government in Great Britain that questions

[Mr. E. Lapointe.]

affecting judicial appeals should be determined otherwise than in accordance with the wishes of the part of the empire primarily affected.

Then Berriedale Keith says:

. . . it is obviously absurd to declare that Canada is autonomous and an equal member of the commonwealth of nations and at the same time hold that the courts of the dominions are unfit to do justice to an unfortunate lady who has an accident while seeking to enter a Canadian railway station, to take one of the issues recently decided by the privy council overruling the dominion courts.

As far back as 1923 Lord Haldane said:

“ . . . it is obviously proper that the dominions should more and more dispose of their own cases. . . . It becomes with the dominions more and more or less and less as they please.” But although “several of the dominions have shown unmistakably that they wish to reduce its power over their affairs to the absolute minimum,” the situation so created has not yet been adequately dealt with.

I also have before me a statement by Lord Haldane in an article published in *The Empire Review* of July, 1927, but I do not think I have time to read it.

I must say that my reasons for the views I hold with regard to this matter may differ from those expressed by my hon. friend from St. Lawrence-St. George. He is opposed to the appeals mostly, or perhaps not mostly but largely, because of the quality of the decisions which have been rendered by the privy council. I will say in defence of the privy council that very often unsuccessful litigants have complained about that court as much as unsuccessful litigants here complain about the supreme court, and I should not be surprised if before the end of this debate we hear some member say things about the supreme court just as harsh as my hon. friend has said about the privy council. There have been most eminent men sitting in the privy council, and many of them have held the confidence of the people of the dominions. The privy council has been criticized very severely, for instance, on account of its decisions on the reference with regard to the social legislation a year or so ago. But after all, the privy council merely affirmed the decision of the majority of the Supreme Court of Canada, and if there had been no privy council the result would have been the same. So I do not think it is quite fair to blame the privy council for those decisions as much as it has been blamed in some instances.

Mr. BENNETT: Would the minister mind my saying a word?

Mr. LAPOINTE (Quebec East): Not at all.