

one cannot say what historians will note in years to come, but it does appear to me that those who will look back upon this matter, in connection with other progress which we have made, will mention it with pride.

This bill, in my judgment, represents progress in our land. It seems to me that no nation worthy of the name would permit any other nation to constitute its courts and to control its judicial system, as we have been doing in the past, but, I am very glad to say, will not do in the future. As a Canadian, as a lawyer of some years' standing at the Ontario Bar, as a member of Parliament, I must at least express my satisfaction with the step which we are now taking.

When I have said that I have really said nearly all that is required. A long address on this subject, particularly on this night, would be inappropriate, and for three good reasons.

The first is that advocacy is at this stage quite unnecessary, because there is so little opposition to the bill that it is passing into law with almost universal consent and approval. The bill that is before us has already passed the House of Commons, and I think I am right in saying that we in the Senate are ready to pass it on to the Governor General.

A second good reason is that while the bill represents an exceedingly important constitutional and legal development, it will not be followed by any very far-reaching or drastic changes in our substantive law. At least, that is my opinion. If the constitutional amendments now in contemplation are carried into effect, the consequential changes will be very deliberate, will take place over some years, and in every instance will be only such as may be reviewed and approved by our parliament and, if necessary, corrected. So I see no danger at all to the substantive law of Canada by reason of the amendments proposed in this bill.

The third reason which makes it unnecessary for me to discuss the matter much longer is the masterly and complete address, entirely in accordance with my views, which was delivered in this house on the 18th of the month by one of our members. With the views of the honourable senator from Inkerman (Hon. Mr. Hugessen) I very heartily agree, and I congratulate him on the skill and ability with which he presented his thoughts to this house.

With that observation I might well conclude my remarks, but there are one or two points which I should like to add.

The honourable senator from Inkerman told us, in effect, that the Judicial Committee of the Privy Council exercises legislative as well as judicial functions. Of course, every court does that, to at least some extent. In

countries such as Canada, where judges are expected to follow, the decisions of other judges of co-ordinate or superior jurisdiction, precedents are set and new laws are made. This is a legislative function. The distinction between the judges of the Canadian courts and the members of the Judicial Committee of the Privy Council is that our judges carefully refrain from altering an Act of parliament, and so overriding parliament itself; on the other hand, the members of the Judicial Committee of the Privy Council apparently have considered themselves beyond any such limitations. Our judges regard themselves as the servants of parliament, bound as a matter of honour and duty to carry out the Acts of the parliament which they serve. The members of the Privy Council do not so regard themselves.

The senator from Inkerman told us that the members of the Privy Council, in their interpreting of the British North America Act and in the filling in of the gaps which were necessarily left by the Fathers of Confederation in the legislation of 1867, have actually altered the fundamental enactment of the Imperial House which forms the constitution of Canada. This they have done in keeping with their own ideas of a policy suitable to the circumstances which they imagined existed from time to time in Canada. I believe the member from Inkerman proved his point.

I have in my hand a notable booklet entitled *A Study in Canadian Citizenship*, by Ira A. MacKay, M.A., LL.B., Ph.D., of McGill University, written in 1924 and widely publicized by the Kiwanis Clubs of Montreal. It is an authoritative document on the entire governmental system in Canada. In my opinion this booklet, which came to my hands through the kindness and courtesy of the senator from Sorel (Hon. Mr. David) shows so wide and accurate a grasp of our governmental institutions that I wish, with leave, to burden the house with a quotation from it.

The author says:

The Privy Council, in a word, is a select loosely constituted body of the King's constitutional advisers and personal companions and attendants. It is at once a legislative, judicial, executive and purely private body privy to the King in person and assisting him in every human way in the government of a great people. Historically it is the lineal descendant, the apostolic successor to the old Witenagemot of Anglo-Saxon days and the *Curia Regis* of later Norman days which has never really ceased to exist from then until now.

He continues:

What then is the Judicial Committee? The answer is that the Judicial Committee is a committee of jurists carved out of the Privy Council to act as a final court of appeal in law for the overseas dominions, just as the Imperial Cabinet is a committee carved out of the Privy Council to act as the King's executive council for the United Kingdom.