

*Family Allowances*

we then had an entirely different attitude assumed by other hon. gentlemen opposite. In the speech of the leader of the opposition there was the old familiar exception taken to the measure as being unconstitutional. As I recollect it, that was the line taken up by the next speaker, the hon. member for Lake Centre (Mr. Diefenbaker). I have already said to my hon. friend that I thought he made out about as good a case as could be made out for the position that he was seeking to put forward; but that obviously it was such a weak position that it was not possible even for him to make a case.

The argument that this measure is unconstitutional, or may be unconstitutional, and for that reason should be referred by the government to the supreme court before it is permitted to find its place on the statutes or to come into force, has been supported by the hon. member for Lake Centre by the statement that a similar course was suggested by myself when I was in opposition with reference to the legislation that was brought forward by the former Prime Minister, now Lord Bennett, with regard to unemployment and social insurance legislation. Well, there is just this difference between the two measures. The legislation that was introduced by Mr. Bennett was obviously unconstitutional. This legislation is obviously constitutional. In order to make apparent to everyone that Mr. Bennett's legislation was ultra vires of this parliament it was necessary to have it referred to the supreme court. The supreme court gave a decision on it—one that I imagine every legal expert knew would be given—that the legislation was ultra vires of this parliament. What was the reason for that decision? The reason, essentially, was that the legislation inserted a condition in agreements between employers and employees in the different provinces to which the legislation was intended to apply. That was an interference with property and civil rights. The insertion of a condition by the federal government which affected the agreements between parties was obviously an invasion of the rights of the provinces in the field in which they had competent and exclusive legislative jurisdiction, and therefore it was ultra vires. But this legislation contains nothing of that kind which would justify any question as to its constitutionality.

Mr. DIEFENBAKER: Would the Prime Minister permit just one question?

Mr. MACKENZIE KING: Yes.

Mr. DIEFENBAKER: If that be so, why did the Prime Minister submit to the supreme court and to the privy council various other

matters of social legislation introduced by the Bennett administration which those courts found to be constitutional?

Mr. MACKENZIE KING: Well, I cannot recall at the moment, but I am pretty sure it was done in an attempt to clear up the whole situation once and for all. I would hope that my hon. friend would have been the first to profit by the opinion given by the supreme court, and that he would not have found it necessary even to suggest that this particular measure was unconstitutional. [The supreme court has made it perfectly clear, and certainly the judicial committee of the privy council, which is the highest court, has made it perfectly clear that this parliament is at all times free to make a grant of its own money in any way that this parliament may determine. This is a free grant. It is a grant made from this parliament by virtue of its control over its own money. There is no court that I know of in the world that has questioned that right so far as this parliament is concerned or were it similarly circumstanced so far as the parliament of the United Kingdom is concerned.] So that the raising of a constitutional issue amounts simply to throwing up a sort of smoke-screen, arising out of differences of view in the past, instead of constituting an effort to eliminate smoke-screens altogether in facing the future order, and seeking to find the best way to further that new order for the well-being of the Canadian people.

I need not say more about this matter except to refer to the question of government authority as exercised in the case of old age pensions. That has been quoted against this particular measure. The action of this parliament with respect to old age pensions only confirms what I have said about the right of this parliament to do what it pleases in the way of making grants. In that case parliament made a grant to the provincial governments.

Mr. HANSON (York-Sunbury): I do not want to interfere with my right hon. friend—

Mr. MACKENZIE KING: If you don't, don't speak.

Mr. HANSON (York-Sunbury): That is rather an abrupt reply. I do not want to divert the Prime Minister's attention from his speech, but may I say to him that the grant was made as a grant in aid because of the opinion of the Department of Justice that you could not take the money of the taxpayers and give it to individuals for this purpose. That was why the government of the day adopted the principle of grants in aid. I am sure I am right about that.

[Mr. Mackenzie King.]