

*Family Allowances*

constitutionality of the measure, had the temerity to state as his own opinion on his responsibility as a lawyer that the measure is unconstitutional. His object throughout was to raise doubt and to ask that this be resolved by some other court than the high court of parliament. Doubts and smokescreens were what he was dealing in, not his own opinion regarding the bill.

Mr. FRASER (Peterborough West): What is your opinion?

Mr. ROEBUCK: I will state it before I am through. The hon. gentleman has suggested that this measure which he so highly approves be submitted to the courts, I presume before it is passed by this parliament, or at all events before it is allowed to come into effect. He refers to other legislation passed in 1935 which he thinks is in some way similar and which was referred by the present government to the Supreme Court of Canada. I would like to call his attention to the fact that that legislation was passed in 1935 and the decision of the privy council in England from which he read is dated 1937. In other words, it took two years to obtain a final decision on the legislation to which he referred.

I am wondering whether the real purpose of the suggestion that we refer this matter to the courts is along the line of a number of suggestions I have heard from the other side—something else, some other time; a matter of delay. Two years from now the hon. gentleman may not be a member of this house. No one knows just what two years may accomplish, but I do know that the members on this side believe in this legislation. They are not accepting proposals which defer its operation two, three or more years while the matter is fought out in the courts. The Prime Minister suggested that the legislation of 1935 be submitted to the courts. Why? Because for the main part it was obviously unconstitutional.

Mr. DIEFENBAKER: If it was obviously unconstitutional how did it come about that the hon. member, representing the province of Ontario on the submission before the privy council, argued that it was not unconstitutional?

Mr. ROEBUCK: The hon. gentleman has asked a very good question. The Minister of Justice (Mr. St. Laurent) together with the present chief justice of the supreme court of Ontario, and I all argued in the same direction. We endeavoured to save the Unemployment Insurance Act from a decision of unconstitutionality. Realizing the value of the legislation and the desirability of its immediate enforcement, we put up every argument we knew in order to save the legislation

[Mr. Roebuck.]

for the people. The fact that we failed resulted in the legislation being deferred for quite a number of years. Our purpose was good, but we were not successful in law. In due season I shall state why we were not successful.

There is nothing mysterious about constitutional questions. They are problems which the ordinary man, untrained in law, can understand. Let it be understood that jurisdiction to pass laws of this or any type lies in one or other of our legislatures, either in the dominion parliament or the provincial legislatures. The authority of these two legislatures in their respective fields is plenary and complete. There is nothing that we cannot pass. The British North America Act exhausts the legislative powers that are possible. Anything that is humanly possible is legally possible in one or other of these legislatures. Lefroy in his "Canada's Federal System", at page 94, said:

The clauses of the B.N.A. Act relating to the distribution of legislative powers exhaust the whole range of legislative authority, so far, at any rate, as the internal affairs of Canada are concerned, and whatever is not thereby given to the provincial legislatures rests with the dominion parliament.

The inquiry is fairly simple as to whether legislation is within the jurisdictional competence of this house. The first thing that one does is to inquire whether it has been given to the provincial legislatures. If not, then it is within dominion jurisdiction, because of the overriding power of the dominion under the residuary clauses of the British North America Act. It has been argued by my hon. friend that the provisions of this bill may fall within section 92 of the British North America Act, and are therefore within the legislative competence of the provinces. There are only three clauses in the British North America Act which even suggests the possibility that this legislation belongs to the provinces. Subsection 7 of section 92 reads:

The establishment, maintenance and management of hospitals, asylums, charities, and eleemosynary institutions in and for the province, other than marine hospitals.

The second one is subsection 13:

Property and civil rights in the province.

The third is subsection 16:

Generally all matters of a merely local or private nature in the province.

Obviously this legislation is not charity. An eleemosynary institution is defined by Webster as an institution "relating or devoted to charity, to alms, to almsgiving." This legislation is not charity because the payments are of right. Look at section 4 of the bill,