

Supreme Court Act

enacted to settle the law, but parliament at times was not prepared to take any chance as to the interpretation that the courts would put upon a situation. The legislatures of the provinces have done the same thing times without number. We have in mind instances where enactments have been passed, either by this parliament or by the legislatures, out of what we call in the courts an abundance of caution, just to be perfectly sure that nothing is being left to the doubtful outcome of litigation in the courts. Whatever may be the view of the majority in this chamber today, we have no right to assume in a matter of such vast and momentous importance to this country that this principle will be applied by the Supreme Court of Canada with respect to past decisions of the privy council after this measure has been enacted. Let us not leave it in the realm of doubt. We have it in our power to dispel any doubt, to put this matter beyond all possibility of challenge in the courts. Let us do so.

There is one subject that the minister has raised by way of challenge of the point that I have just made. He questions whether it is within the legislative competence of parliament to enact a measure of this kind because he says it is going to create substantive law and the power of parliament with respect to the Supreme Court of Canada does not extend to substantive law. That is an extraordinary proposition for anyone wearing the mantle of the Minister of Justice to offer in this chamber. Parliament is enacting substantive law all the time, law which is bound to come before the Supreme Court of Canada.

My submission is that this amendment does not go beyond the legislative competence of parliament. If there is any field where parliament might say to the Supreme Court of Canada that it shall be bound by the decisions of the privy council hitherto rendered, then certainly parliament within its own field of legislative competence is entitled to say that. If there is anything at all in the argument of the Minister of Justice in that respect it would mean that parliament in connection with those matters concerning which it possesses legislative competence is entitled to say what is said in this amendment to the Supreme Court of Canada. It would mean also that the legislatures of the provinces could say the same thing to the Supreme Court of Canada in connection with questions with regard to those subject matters that are confided by the British North America Act to the legislative jurisdiction of the provinces.

With respect to that point my submission to this house, and I think it is a fair one, is that so far as the legislative competence of this parliament extends, that is to say

with regard to all those subject matters that are confided by the constitution of this country to parliament, as distinct from the legislatures of the provinces on the other hand, this measure is clearly within the legislative competence of this parliament.

I ask the house to consider the importance of this subject. If it is within our power to enact this measure, then surely it is within our power to say what the Supreme Court of Canada shall do with respect to applying the principle of *stare decisis* to that body of law laid down by the privy council.

Do not take my word for it. Apparently there is a difference of opinion among hon. members as to the necessity for it. In a situation of this kind, should we not have regard for the opinion expressed on this subject by the Canadian Bar Association? Should we not have regard for the statement by the president of the Canadian Bar Association which I read in the chamber this afternoon? That statement deals specifically with this very subject and was issued by him after the bill had been given second reading and this question had been raised in the house. There you have a clear expression of feeling by the Canadian Bar Association, which as I have said embraces judges as well as lawyers, that an amendment of this kind is needful and necessary and is within the legislative competence of parliament.

Mr. St. Laurent: Mr. Chairman, I should like to associate myself with the Minister of Justice in the opinion that the adoption of this amendment would be an expression of lack of confidence in the supreme court and share the opprobrium that flows from the strong language used by the hon. member for Eglinton. My reason for saying so may appear to him to be demagogic, but I shall submit it as briefly as I can for the consideration of hon. members.

I think he and I agree that the rule of *stare decisis* would make it the duty of the supreme court to follow the decisions that have hitherto been rendered and have become the law of this country. The judges of the supreme court have pledged their oaths to apply the law. If we are to express doubt that they will do so, we express a lack of confidence in their respect for their oaths. That seems to me to be elementary. If it deserves the strong language the hon. member for Eglinton used a few moments ago, I wish to share the opprobrium with the Minister of Justice.

The second point I should like to make is with respect to this resolution of the Canadian Bar Association. The hon. member has stated and repeated, in spite of the fact that I read the terms of the resolution, that it