

EXPLANATORY NOTES.

1. The purpose of this clause is to provide that judges be not allowed to serve on commissions outside their judicial duties. At present the judges may act as commissioners or arbitrators or on any commission or inquiry if nominated for that purpose by the Governor in Council. It is estimated that the administration of justice should not be interfered with by appointing to commissions judges whose services are required in the courts.

The only change in the section is made by leaving out certain words which are underlined below.

Section 37 at present reads as follows:—

"37. Unless nominated by the Governor in Council, no judge mentioned in this Act shall act as commissioner or arbitrator on any commission or inquiry.

2. This section shall not extend, nor be deemed to have extended, to judges acting as arbitrators or assessors of compensation or damages under the Railway Act, or any public Act, whether of general or local application, of the Dominion or any province, whereby a judge is required or authorized, without authority from the executive, to assess or ascertain compensation or damages."

The frequency, of recent years, with which judges are drafted for all kinds of such work impairs the efficient administration of justice and causes congestion in the law courts, and, as they are largely only fact finding commissions when appointed, they duplicate, the efficient powers and functions of Parliament, of the Committees thereof, and of the many outside Boards of recent innovation in war work, and furthermore they are a costly adjunct to good Parliamentary Government of the people, by the people and for the people, cause delays and interfere with Parliament's right to immediate solution of social and economic problems of urgency to good government, thus a system of "judicial commission government" is slowly being built up in Canada.

2. (1) R.S.C. 1927, chap. 105, is known as "an Act respecting the Judges of the Dominion and Provincial Courts" which includes County Courts. Judges must have been 10 years standing at the Bar when appointed. The Act constitutes or sets up:

- (1) The Supreme Court of Canada.
- (2) The Exchequer Court.
- (3) Local Judges in the Admiralty.
- (4) Provincial Superior Courts (organization for provinces).

- (2) All judges appointed under this Act, chap. 105, are federal officers. They are also under federal authority, and are paid by the Dominion, and under the authority of Parliament whose authority has been increased by the statute commonly known as the Statute of Westminster and can be removed for cause by an address of both Houses of Parliament.
- (3) Under chap. 105 "restrictions and regulations" are placed on Federal Judges regarding residence, travelling allowances, powers, eligibility, retirement, superannuation, removal for cause, and many other regulations. They are sworn to administer the law as they find it, although once appointed they have provincial jurisdiction as well as federal under Section 92 of the British North America Act.
- (4) They are subject to all the federal statutes, they are required to interpret all acts passed by the high court of Parliament known as the Parliament and Government of Canada. Some are found not doing this in several cases at present.
- (5) Commissioners of Assizes, County Court Judges may act in another county, and the Governor in Council in certain cases can make orders within this Act *re* judicial employment as set out in Section 36, but they are not to act on Commissions, except by Order-in-Council.
- (6) It will be seen that while judges when interpreting Section 92 are: provincial officers when appointed, still they are federal officers purely and simply and subject to any enactment of this Parliament and any enactment of the Parliament of Canada, and sworn to enforce it, and the Criminal Code gives them Jurisdiction in Criminal Cases, and Marriage and Divorce are federal except solemnization of marriage.
- (7) This proposed Bill adds another clause to the Act namely 39, by which Judges are to be bound by the decision of the Court of Final Appeal, in respect to any question of law competent for such judges to decide, and shall take notice and be bound by the then last decision or judgment of the judicial committee of the provincial, or other Court of Final Appeal rendered by such Court upon or with respect to such application of law.
This amendment is to apply to all the provinces of Canada. Federal authority should be paramount and supreme. One of the cardinal principles of the British constitution is that the Courts are subservient to the Legislature.
- (8) The legal maxim or doctrine known as "*stare decisis*" is overruled where inconsistent to this amendment and this bill will be law for all Canada, notwithstanding the provisions of any law, statute, usage, custom, or doctrine of law to the contrary.