

*The Address—Mr. Boisvert*

will be looked upon as the statesman who, more than any other, saw to it that politics be conditioned by the historical and juridical evolution of the country.

With the Statute of Westminster, which goes back only to 1931, Canada received a charter of independence; with the legislation the government intends to introduce, she will obtain the charter of her complete and absolute independence.

The three aspects of the question are closely interlinked.

In the logical order in which they appear in the speech from the throne, the abolition of appeals to the privy council comes first in the form of a bill to be introduced to amend the Supreme Court Act so that the latter will have final and exclusive jurisdiction in all matters. At this point, a brief historical review is in order.

Before 1875 the supreme court did not exist although governments had attempted to create it.

In 1875 the Liberal administration of the Hon. Mr. Mackenzie brought in a bill instituting the Supreme Court of Canada.

The Hon. Mr. Fournier, the then Minister of Justice, indicated during the discussions that abolition of appeals to the privy council might be provided for:

He would very much like to have a clause inserted stating that the right of appeal to the privy council no longer exists. There were strong reasons in favour of the right of appeal to the privy council, but there were even stronger ones against that right. This right of appeal has been widely used, and he might add considerably abused, in the province of Quebec by wealthy people and corporations so as to force plaintiffs to compromise when they had won their case before the courts of the country. However, as he already stated, he made no mention of this in the bill now before the house, but left it aside for decision on some future occasion.

Sir John Macdonald followed the minister and, after congratulating the government, stated:

As to the matter of appeals to the Privy Council, he had always been of the opinion that, as long as we remained in a state of dependence, it was important to maintain the right of every Canadian, as of every other British subject, to appeal to the court of highest jurisdiction, although in his estimation such right of appeal was sometimes a means of oppression in the case of a rich man against a poor man, because of the considerable costs involved. It seemed to him that the ruthless abandonment of the right of appeal meant the severance of one of the ties binding this nation to the mother country.

Since that date, the abolition of appeals has been a subject of controversy and it has always been demanded by a large body of public opinion in this country. In 1904 a league organized in the province of Quebec ardently urged abolition of these appeals.

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The Hon. Rodolphe Lemieux, member for Nicolet and one of the movers of the address in reply to the speech from the throne in 1896, was an ardent advocate of abolition.

In 1916, the Canadian Senate collected opinions from several legal experts.

In 1938, a direct bill to abolish appeals to the privy council was introduced before the Canadian parliament by Hon. Mr. Cahan.

The Right Hon. Ernest Lapointe, then Minister of Justice, requested closer study of the constitutional and legal problems involved in this important legislation.

In 1939, the matter again came up before parliament in the form of a bill, No. 9, amending the Supreme Court of Canada Act which would give the latter exclusive, final and definite jurisdiction. On April 24, 1939, it was decided to adjourn the debate to refer the constitutional character of the act to the Supreme Court of Canada.

On January 19, 1940, the Supreme Court of Canada declared that the act was constitutional. An appeal was made to the privy council and the decision was confirmed by the latter on January 13, 1947.

During the last session a bill was introduced in parliament for the purpose of granting the public's wish to see Canada at last enjoy supreme authority in legal matters.

Three opinions now prevail among members of the legal profession: The first one is to the effect that the abolition of appeals to the privy council may place the provinces in a precarious position as regards their constitutional rights and powers and the government of Canada cannot give to the Supreme Court of Canada final and exclusive jurisdiction with respect to anything that relates to the matters exclusively attributed to the provinces by the British North America Act.

According to a second opinion, we should maintain appeals to the privy council for the following reasons: (a) the council's decisions are a useful contribution to our common jurisprudence; (b) those appeals are one of the last links which bind us to the empire and their continuance will help us foster better understanding and will help us achieve a higher concept of justice and of the high attributes we give to it.

It is even being suggested that the government absorb the costs when it pleads against a private individual and that certain talented jurists in Canada be made members of the privy council. A third avers that Canada should enjoy full and absolute sovereignty and that its appeals to a tribunal of Great Britain is a vestige of a form of independence which no longer suits our status as an independent nation.