

Supreme Court Act

ment for a six months' hoist of this bill. There are some portions of the last part of his speech with which I cannot agree, but may I say at once that I think we are all pursuing the same objective and have the same goal. We wish to maintain in Canada a federal system that will promote the further development of the Canadian nation.

The leader of the opposition has suggested that at this time there might be set up a constitutional committee to go into the question. I think he himself provided the answer to that suggestion because he said it had been done many times before and had got us nowhere.

Mr. Drew: Mr. Speaker, I do not want to interrupt, but I did not say it got us nowhere. I said it had been done many times before.

Mr. St. Laurent: It had been done many times, and, knowing the record, I add that it got us nowhere. The leader of the opposition says that whenever there has to be any kind of amendment whatsoever to any part of the constitution there should be consultation with the provinces. That is an opinion that is very frequently voiced, but it is one which we cannot accept. It would imply that the British North America Act is a contract, and that every clause thereof has the effect of a contract between the Canada that did not then exist and the provinces that did not then exist, but which would affect Canada as it now exists and as it came into being when the act was proclaimed, and the provinces which came into being at that time.

With that theory we are in diametric disagreement. We think the British North America Act is a statute which had the effect of distributing the sovereign powers of this young and growing nation between the central authority as to one part of them and the provincial authorities as to the other. We think that the central authority has no right whatsoever to deal with anything which was allocated to the provincial authorities; and on the other hand that the provincial authorities, legislatures and governments, in respect of matters which by the constitution were allocated to the federal parliament and the federal government, do not represent the people who inhabit their provinces. With respect to those matters allocated to the federal parliament and the federal government, the people inhabiting the provinces are represented by the members they elect to sit and vote for them in this House of Commons.

That is not only our theory. That has been the theory followed in practice since the earliest days of confederation. Not less than ten times from 1871 to 1949, amendments to the constitution have been proposed and made without consultation with the provincial gov-

[Mr. St. Laurent.]

ernments or the members of the provincial legislatures. That has been the practice, and in the responsible position we occupy we feel that we have no right to recognize that the provincial legislatures or provincial governments have any control whatsoever over those matters of public interest and national sovereignty allocated to the federal authority.

I do not wish to anticipate the debate which will arise when we propose the address respecting the amendment of the constitution foreshadowed in the speech from the throne, but in an effort to allay any anxieties which may exist in anyone's mind, that we are going to attempt to say where the dividing line is between federal and provincial jurisdiction, may I say that I tried to point out the other day, as reported at page 35 of *Hansard*, that that would be a function the legislative body would not undertake. The legislative body would merely use language which would leave it to the courts to say where the line of demarcation was drawn. The principle would be established that this parliament could deal with matters that had been allocated to it by the constitution, and could not deal with matters that had been allocated to the provinces, or with rights or privileges guaranteed to the provinces, or with rights or privileges in respect of schools, or in respect of the use of the English and French languages, as guaranteed by the constitution.

The language to be used would be language which would have to be construed by the courts in each individual case when a particular amendment was challenged. The courts would have to decide whether there had been an attempt to deal with a subject matter here which did not come within the class of subjects allocated to the federal authority. That is why I agree fully with the leader of the opposition (Mr. Drew) that the role, whether it be that of the privy council if this bill is not adopted, or that of the Supreme Court of Canada if it becomes the final tribunal for the decision of Canadian cases, will be a most important one. When there is a contest the Supreme Court of Canada will have the function of deciding which contestant is in the right and which contestant is in the wrong, not by creating new law but by applying the law as it exists.

That makes it extremely important to have the right kind of a court of justice to make that pronouncement, and the only purpose and effect of this bill is to assert that we can organize and have that kind of court in Canada. If there are hon. members, lawyers or laymen, who doubt that the Canadian nation can provide the kind of court that will be worthy of the respect of the nation, they should oppose this bill. But those of us who