

which provide for those appeals are the Privy Council Appeals Act, revised statutes of Ontario 1937, chapter 98, and for Quebec, Article 68 of the Quebec Civil Code of Procedure.

Third, there are the appeals by special leave of His Majesty in Council, from any court in Canada, as in all British dominions. The instances where the special leave is granted may be defined as: (a) where no appeal lies by grant from the dominion or colonial court; (b) where the court below has no power to grant leave, and (c) where it has power but has refused to grant leave to appeal.

As far as the dominion is concerned, the Supreme Court of Canada was established in 1875 by 38 Victoria, chapter 11, with "an appellate, civil and criminal jurisdiction within and throughout the Dominion of Canada." Section 47 of this act enacted that the judgments of the Supreme Court of Canada should in all cases be final, and that no further appeal should be brought to "any court of appeal established by the parliament of Great Britain and Ireland, by which appeals or petitions to Her Majesty in Council may be ordered to be heard, saving any right which Her Majesty may be graciously pleased to exercise by virtue of Her Royal Prerogative."

Thereafter this act was transmitted, as the law provides, to England to the Secretary of State for the Colonies. Quite a number of letters were exchanged, there was voluminous correspondence and discussion between the Hon. Edward Blake, then Minister of Justice for Canada, and the Earl of Carnarvon, Colonial Secretary. The act was not disallowed. It was found that the preservation of the appeal by the exercise of the prerogative was sufficient to ensure its validity, and it could be left untouched and preserved. But the result is that there is no appeal of right from the Supreme Court of Canada; there must be special leave by the privy council in every instance.

I come now to our dominion legislation with regard to criminal appeals.

Mr. BENNETT: Before the minister leaves that, may I direct his attention to the fact that the king in council apparently has conferred upon provincial courts of last resort the right to grant appeals to the privy council. That is the practice with respect to appeals from Alberta and Saskatchewan, for instance; I am not quite sure about Manitoba. Perhaps the minister has something to say with respect to that order in council, which was a delegation of the power which the king in council exercised as a prerogative.

Mr. LAPOINTE (Quebec East): I think I shall touch on that matter later on.

In 1887 the parliament of Canada passed an act to amend the law respecting procedure in criminal cases, and a new section was substituted for section 265 containing the following subsections:

(3) The judgment of the supreme court shall in all cases be final and conclusive.

(5) Notwithstanding any royal prerogative, or anything contained in the Interpretation Act or in the Supreme and Exchequer Courts Act, no appeal shall be brought in any criminal case from any judgment or order of any court in Canada to any court of appeal established by the parliament of Great Britain and Ireland by which appeals or petitions to Her Majesty in Council may be ordered to be heard.

This became section 1025 of the criminal code. It remained in our statutes without being challenged at any time until 1927, when a famous case originating in the province of Alberta went to the privy council, in which the validity of section 1025, doing away with appeals in criminal matters, was successfully attacked. The privy council declared that this section was ineffective, first because whatever powers the dominion had under the British North America Act were confined to action to be taken in the dominion. In other words we in Canada did not possess the power of giving extraterritorial jurisdiction to our legislation; and, as the privy council was a court or tribunal in England, under the British North America Act we in Canada could not abolish appeals to that court.

Mr. BENNETT: Which arose under an imperial statute.

Mr. LAPOINTE (Quebec East): Yes. The other reason was that under the Colonial Laws Validity Act any legislation of a dominion which was repugnant to an imperial statute was ineffective and null, and that this section of the criminal code was repugnant to the imperial statute allowing appeals to the privy council. This, of course, as the house knows, gave rise to many comments in Canada. The next stage was the Statute of Westminster, in 1930.

Mr. BENNETT: 1931.

Mr. LAPOINTE (Quebec East): Yes, it was 1931, though something had been done about it in 1930. The Statute of Westminster removed the two disabilities I have mentioned. It recognized that the dominions had the power of giving extraterritorial jurisdiction to their legislation, so the argument that the appeals were heard in London could no longer stand. In the second place, the