

*Supreme Court Act*

fact is, however, that unless we have some qualifying restriction it is open to that court to throw out all the decisions of the privy council which are today a part of our constitution and, in that way, permit that court to write a constitution which should be written in this House of Commons.

When the provinces of Alberta and Saskatchewan were created, about 1905, there was a clause written in to the effect that the law of the provinces should be the law as it was on July 1, 1870 or 1871. That simple provision has never been found to hamper our courts in any way. At the moment I am inclined to think that a simple declaration of that character should be inserted in this court statute. This could be done easily without hurting anyone's feelings, and yet this simple provision would ensure that our constitution would not be changed by a court. The constitution would remain the same as it was on the day the statute came into effect. If there is anything wrong with that, I hope the minister will tell me about it in his reply. My examination, sir, leaves me in a position where I cannot find much wrong with it.

I turn now to one other feature, and with that I shall conclude. A few weeks ago I was in Banff with the Prime Minister (Mr. St. Laurent) and the Minister of Justice (Mr. Garson). We were all old members, perhaps too old, of the Canadian Bar Association. I am happy to remember that when the convention was held in Calgary some time during the thirties I had the honour of entertaining the president of the bar association in my home, the president being the Prime Minister of Canada at the moment. We have been very close to this question for a long time. It never received the attention it should have received from that body until recently. As we all remember, a private bill covering the matter was introduced by Mr. Jaenicke, who was then with us. I am inclined to think it was not introduced with sufficient consideration. I do not think there was any discussion on the matter in this house prior to the introduction of the bill by the late Mr. Cahan. I observe that the bill before us is practically in the same language as that used by Mr. Cahan.

At the moment, I am pleading for deliberation. I know the resolution of the Canadian Bar Association was brought forth because that organization felt it owed to the public a duty which had not yet been discharged—whether it be because of lack of opportunity or for any other reason does not matter. The bar association had not given the matter sufficient study. I look at the situation now and I say to myself, "Why is the matter so

[Mr. Smith (Calgary West).]

urgent?" At the moment, I am aware of no appeals extant to the privy council concerning jurisdiction. There is one, I recall, carried by the Canadian Federation of Agriculture with respect to something called margarine. By the way, I had some margarine the other day in my home and I did not know it was margarine. This is the only outstanding case of which I am aware.

This parliament is going to meet next year. The Canadian Bar Association has a large council and, if I remember correctly—the minister will correct me if I am wrong—that council was to give further study to the matter. The council meets half-yearly. I realize that this six months hoist is attached to an effort to kill something. It is regarded by many of us in this room, and by a large section of the public, as a smart political trick in killing legislation one does not like.

Now, having said what I have as to my views, and I will at least be here for a year or two barring an act of God, because it would take an act of God to put me out of Calgary West as the minister knows, it will be seen that I am generally in favour of abolition. I am not satisfied, however, but I am open to conviction if you like, on this question of jurisdictional appeals, involving as it does the interpretation of our constitution.

Let me agree with many hon. members who have spoken. It is easy to say that we have just as good lawyers in Canada as there are anywhere in the world. We can get desk pounding without any trouble by assertions of that kind which are generalities and really mean nothing. But I think we have just as good lawyers in Canada as there are anywhere. I have no doubt that we have. But over there in England at the moment there is a court which has been creating precedents and dealing with these matters not only from the Dominion of Canada but from other dominions, colonies and dependencies throughout the British commonwealth; it is a court which has had much experience. Without casting any aspersions at all on our judges of the Supreme Court of Canada, I would say that they are human. I may appear there myself some day, and I know they are human enough that I should not say anything against them here, and I do not intend to do so. Let us have no doubt about that. But the judges in these courts are human beings.

This court is in a sense a dominion court. Its members live in Ottawa; they stay in Ottawa. While I will admit that they have all the attributes of Caesar's wife, they are nevertheless an Ottawa court. There is not