

Mr. Woolliams: According to section 92(14) of the constitution, the administration of justice falls within the sole jurisdiction of the provinces.

I want to emphasize again that we agree with the bill in principle. There are many areas of Canada in which the two linguistic groups co-exist in great numbers. The provinces will also be concerned about the cost of implementing this program and therefore must have some say in it.

The federal government opposed the province of Quebec on certain aspects of an inquiry into organized crime in that province where various criminals and syndicates were being investigated. This government and this Minister of Justice (Mr. Basford) actually told the government of Quebec that it could not appoint a commission to investigate crime within its own borders!

As a result of that challenge the Supreme Court of Canada heard the appeal of Nicola Di Iorio and Gérard Fontaine and The Warden of the Common Jail of the City of Montreal and Rhéal Brunet, the Attorney General for Canada, the Attorney General for Quebec, the Attorney General for Ontario, the Attorney General for Alberta, the Attorney General for British Columbia and the Attorney General for New Brunswick. It is interesting to read the remarks of Mr. Justice Martland in the Canada Supreme Court Reports, Part 1, 1978 Vol. 1 at page 154 where, referring to the legislation to set up the commission in the province of Quebec, he said:

The legislation under attack is based solely on the province's jurisdiction in the "Administration of Justice". This is an independent source of provincial power which does not need to rely on some other head of power.

By "head of power" he means the federal government. In light of that judgment we will be asking for an amendment to clause 6 of this bill to ensure that, if it is to become the law of any province, such province has the right to proclaim it jointly with the federal government so that it can be declared the law of the land. That is what the decision says and that is the law. That is what every province has asked for in order to keep a united Canada and to save confederation from being endangered by the federal government running slipshod over provincial rights.

● (2112)

Let me quote from the Canada Supreme Court Reports at page 155 of the same case:

BEETZ J: . . . But subject to this provision and to the paramountcy of federal law enacted under primary or ancillary federal jurisdiction, the provinces were to remain responsible in principle for the enforcement of criminal law and to retain such power as they had before with respect to the administration of criminal justice.

Section 92(14) of the B.N.A. Act does not distinguish between civil and criminal justice the natural meaning of the expression the administration of justice is broad enough to encompass both.

It is broad enough to mean that this falls under the jurisdiction of the provinces.

Having said that—and I want to repeat it to make sure it is clear that our party agrees in principle with this bill. We say we will buy this legislation if this law comes into force only by joint proclamation of both levels of government or by a

Criminal Code

proclamation of the federal government, as a matter of procedure, with the consent of the provinces, not some wishy-washy consultation we do not know anything about. That is our position.

Now I come to the rights of the judiciary. This is something which is precious to all of us here in parliament, the highest court of the land. I want to set out something I think we should always keep in mind when we are dealing with the judiciary. What is the function of the judiciary? Everybody must have a fair trial. I might say in passing that in this great land of ours are people from all over the world. I can name many countries which are represented, not only in Toronto but in many parts of western Canada. These are people who speak many languages. Our courts have always been understanding of this. Whether a person speaks Ukrainian, Italian or whatever language, when he appears before the bench for trial, or even in a civil matter, if he does not understand English or French there is always an interpreter supplied to ensure that person gets a fair and equitable trial. That is a procedure I have seen. It certainly takes a long time but justice is never great if it is rushed. There is no justice when it is rushed justice.

What is the function of the judiciary? It enables the guarantee of security to the weak against the strong and to the individual against the community. It presents a shield against the tyranny of power and arrogance and against the irresponsibility and irrationality of popular action, whether of opinion or violence. It enables the voice of sanity to rise above the turbulence of passion; and it is to be preserved inviolate.

But what does the independence of judges imply? That can be nothing short of this: That the minister to whom such an authority is committed shall himself be the first to respect what has been entrusted to him, the administration of the rule of justice under law, including loyalty to its institutions. That sets out what our courts are really all about.

We have separation of powers. We have legislative powers, on the one hand, and we have the judiciary, on the other. Then there is the Crown. There is our separation of power. When the minister speaks of Quebec and Manitoba I would bring to the House's attention something in the Criminal Code which every member should appreciate tonight. This adds weight to the argument which I have presented. Section 555 of the Criminal Code deals with mixed juries in Quebec. For the record, because it is so important, I will read part of that section:

(1) In those districts in the Province of Quebec in which the sheriff is required by law to return a panel of Petit jurors composed one-half of persons who speak the English language and one-half of persons who speak the French language, he shall in his return specify in separate lists those jurors whom he returns as speaking the French language, and the names of the jurors summoned shall be called alternately from those lists.

What does that mean? For example, say a person is charged with murder. A jury panel is assembled composed of half French and half English jurors. If the accused happens to be French and wishes to be tried in the province of Quebec in French, then a French jury is picked, so there is nothing new. We have that now in the province of Quebec.