

Disallowance

the Hon. Mr. Mills said in relation to the British Columbia statute, Edward VII, page 45, we shall find the following:

It is alleged that the statute affects pending litigation and rights existing under previous legislation, and grants from the province. The undersigned considers that such legislation is objectionable in principle and not justified unless in very exceptional circumstances.

In other words, the Hon. Mr. Mills admitted that there were cases in which the exercise of the power of disallowance was justifiable.

Mr. MEIGHEN: Does not the hon. gentleman see, if he will read the sentence through, that the exceptional circumstances are not because of grossness of injustice but because of the infringing of other lines of policy?

Sir LOMER GOUIN (reading):

It is alleged that the statute affects pending litigation and rights existing under previous legislation and grants from the province. The undersigned considers that such legislation is objectionable in principle and not justified unless in very exceptional circumstances.

This was because the legislation was not of such an extraordinary character as to justify disallowance. Even Sir Oliver Mowat, who worked so heartily in this country as a political man to have the rights of the provinces recognised and respected, declared, as Minister of Justice in this House, that the power of disallowance might under special circumstances be exercised. I would refer the House to the very volume quoted by my hon. friend at page 402. Here is what Sir Oliver Mowat said at page 402:

There can be no doubt that the legislation complained of is exclusively within provincial authority either as matter of property and civil rights or private and local matters within the province, and although the provision is somewhat of an unusual one by which the city is compelled to submit to arbitration a claim of upwards of thirty years' standing upon conditions upon which the arbitrators are to decide apparently not upon legal grounds, but upon grounds of order and conscience, yet the undersigned does not consider the injustice complained of is such or so apparent as would justify Your Excellency in interfering to exercise the power of disallowance with a matter which is otherwise entirely under provincial authority.

We had the same view given by our courts, and I find that Chief Justice Draper in a case of Goodhue decided in Ontario, a decision which will be found in Grant's Chancery 19, page 384, where Judge Draper ruled:

Such bills are still subject to the consideration of the Governor General, who as the representative of the sovereign is entrusted with authority, to which a corresponding duty attaches, to disallow any law contrary to reason or to natural justice and equity.

Sir HENRY DRAYTON: Would not my hon. friend think that was entirely overruled by the later decisions of the House of Lords and also of our own Supreme Court? That would be much nearer in point.

[Sir Lomer Gouin.]

Sir LOMER GOUIN: There is no decision I know of which ever reversed that doctrine. Even my immediate predecessor in office, the Hon. Mr. Doherty, clearly said that the power of disallowance was still in existence. Here are his words:

The undersigned entertains no doubt, however, that the power is constitutionally capable of exercise and may on occasions be properly invoked for the purpose of preventing, not inconsistently with the public interest, irreparable injustice or undue interference with private rights or property through the operation of local statutes intra vires of the legislatures.

Sir HENRY DRAYTON: What case was that?

Sir LOMER GOUIN: The Alberta case, January, 1912.

Sir HENRY DRAYTON: Was any action taken on it?

Sir LOMER GOUIN: No special action was ever taken, but we have his views on that very important question.

Sir HENRY DRAYTON: Quite right, you have his obiter to the extent it goes.

Sir LOMER GOUIN: I should like to give to the House, Mr. Speaker, the opinion of Lord Hobhouse, expressed in the case of the Bank of Toronto vs. Lambe, which we find in Volume 12, Appeal Cases, at page 587. His Lordship said:

An act of parliament which makes an elaborate distribution of the whole field of legislative authority (is to be found in the British North America Act. It gives the authority) between the two legislative bodies, and at the same time provides for the federated provinces a carefully balanced constitution, under which no one of the parts can pass laws for itself except under the control of the whole acting through the Governor General.

Now, my hon. friend was telling us a few moments ago that since confederation we could not cite a case where the power of disallowance had been exercised in matters where the legislation dealt with civil rights exclusively. Well, on referring to the MacLaren case, dealing with rivers and streams, we find that under Sir John A. Macdonald's government, when Mr. James Macdonald—afterwards Chief Justice of Nova Scotia—was acting as Minister of Justice, a statute was disallowed, for the reasons which I find in the report, namely:

I think the power of the local legislature to take away the rights of one man and invest them in another, as is done in this act, is exceedingly doubtful, but assuming that such right does in strictness exist, I think it devolves upon this government to see that such power is not exercised if flagrant violation of private rights and natural justice, especially as in this case, interfere with private rights overrides a decision of