

FOREIGN ENLISTMENT

The CHAIRMAN (Mr. Young): I did not see the hon. member; I am sorry.

Mr. HARRIS: Perhaps you, Mr. Chairman, have been in the house long enough to-night to know that I have been talking on a matter of great moment to Canada, a matter respecting oil. Perhaps, you, sir, realize that the item previous to the one now called is of a like nature, that you have declared it carried, and have tried to get on with the next one.

Mr. DUNNING: In all fairness to the chair, if the hon. member will permit me, may I say that I am at least equally guilty, because the discussion in the last two and a half hours has ranged completely over the oil items. The observations of the hon. member were not confined to one item, and if he is insisting upon a strict interpretation of the rules, his remarks should have been confined to cotton seed. No one attempted to confine him to cotton seed. He was permitted, and I believe properly, to deal with the general question. I was under the impression that the discussion which we have had covered, not to the exclusion of further discussion, but to the satisfaction of the committee, items 277 and 278, at all events. However, I shall not insist. The committee can do as it likes, but it is my duty to point out—the hon. member said he did not want to threaten, and of course I am not threatening—that at the present rate of progress it will take six weeks of steady sittings to pass the items in the agreement. I speak only of the rate of progress, and move that the committee rise, report progress and ask leave to sit again. Evidently it is not the intention to pass the oils items to-night.

Item stands.

Progress reported.

At eleven o'clock the house adjourned without question put, pursuant to standing order.

Friday, March 19, 1937

The house met at three o'clock.

WEBSTER DIVORCE BILL

Mr. S. W. JACOBS (Cartier) moved:

That the petition of Rosalie Annie Arathoon Webster presented on the 11th instant, praying for a bill of divorce from Harold Leslie Webster, together with the report of the clerk of petitions thereon, be referred to the standing committee on standing orders for the purpose of considering the suspension of standing orders 92 and 93(3)(a), (b) and (c) in relation thereto.

Motion agreed to.

Hon. ERNEST LAPOINTE (Minister of Justice) moved the second reading of Bill No. 23, respecting foreign enlistment.

He said: Mr. Speaker, the second reading of the bill does not call for any discussion because the principle of the measure is already the law of Canada. The terms of the British Foreign Enlistment Act have always applied to Canada, therefore the principle is already accepted in this country. The purpose of the bill is to have a Canadian act, because under the Statute of Westminster any dominion, including the Dominion of Canada, may reenact, repeal or amend any statute already applying to it. It has been thought advisable and proper to have a Canadian act, known as the Foreign Enlistment Act, 1937, and to make the very few changes adapting it to Canadian conditions, especially changes which will make it applicable to modern air and land conveyances, as well as to sea conveyances, to which the original measure was limited. I suggest that the bill be read a second time and that any suggestions with reference to its provisions be made in committee.

Hon. C. H. CAHAN (St. Lawrence-St. George): Mr. Speaker, the Minister of Justice (Mr. Lapointe) has said that the principle of this bill has been accepted by Canada. I think that principle was imposed upon Canada by imperial statute without any reference whatever to the will or opinion of Canada.

Mr. LAPOINTE (Quebec East): But it applies to Canada.

Mr. CAHAN: Yes, it applies to Canada, but it was imposed rather than accepted. Although the British North America Act of 1867 purported to declare that the exclusive legislative authority of the parliament of Canada extends to all matters coming within certain classes of subjects mentioned in section 91 of that act, it was nevertheless soon ascertained that the Colonial Laws Validity Act, enacted two years previously by the parliament of the United Kingdom without any reference to the legislatures of Canada or of the maritime provinces, effectively restricted the field of Canadian legislation. Section 2 of that act of 1865—leaving out the unimportant words—reads:

Any colonial law which is or shall be in any respect repugnant to the provisions of any act of parliament extending to the colony to which such law may relate . . . shall be read subject to such act . . . and shall to the extent of such repugnancy but not otherwise be and remain absolutely void and inoperative.

A few years ago I asked for a return from the Department of External Affairs showing the existing statutes of the parliament of the United Kingdom which extend to this dominion. This return was only partly prepared and for that reason was not laid upon the table of the house. From personal research I tabulated scores of such statutes which then and still apply to Canada, although under the act of 1867 they are now within the legislative jurisdiction of the parliament of Canada. The Statute of Westminster, 1931, provides as follows in section 2:

(1) The Colonial Laws Validity Act, 1865, shall not apply to any law made after the commencement of this act by the parliament of a dominion.

That is after 1931.

(2) No law and no provision of any law made after the commencement of this act by the parliament of a dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future act of parliament of the United Kingdom, or to any order, rule or regulation made under any such act, and the powers of the parliament of a dominion shall include the power to repeal or amend any such act, order, rule or regulation in so far as the same is part of the law of the dominion.

After the enactment in 1931 of the Statute of Westminster this parliament proceeded to revise the Canada Shipping Act. This monumental work was the first step by way of amending or revising imperial statutes which had hitherto restricted the operation of statutes passed by this parliament, and which had also restricted the effective expression in legislation of the will of this parliament. There are certain of these imperial acts which are and always have been assumed to be within the sphere of the parliament of the United Kingdom and with respect to which the parliament of the United Kingdom has assumed exclusive jurisdiction up to the present year. The parliament of the United Kingdom has assumed exclusive jurisdiction to regulate the succession to the throne, the titles of the crown, the royal declarations on accession and the regency in certain cases, as shown by the Demise of the Crown Act, 1901, the Regency Act of 1910 and the Royal and Parliamentary Titles Act, 1927, which concern the whole empire.

I do not intend to refer particularly to these statutes at the present time. I wish only to express for myself and on behalf of the leader of the opposition (Mr. Bennett), who is unavoidably absent, approval of the action of the government in revising the Foreign Enlistment Act, 1870. That English act extends to all the dominions and hitherto

(Mr. Cahan.)

has regulated the conduct of all of His Majesty's subjects during the existence of hostilities between foreign states with which His Majesty has been at peace. Therefore we commend this action, not with particular reference to the special clauses of this bill, but with reference to the purpose and intent of the bill to take additional measures to exercise the rights of nationality and sovereignty which we believe are now inherent in the parliament of Canada. Times have changed and are changing and I think it is necessary that this parliament should endeavour to express itself with regard to all these matters as an assertion of its sovereignty in all matters which are normally within its jurisdiction.

There are other acts of a like character. There is the Army Act and the Naval Discipline Act of the United Kingdom, both of which extend to the whole empire. All dominion forces serving outside of the dominion are subject to the provisions of the Army Act and the regulations issued thereunder. The parliament of the United Kingdom has also provided for the extradition of accused persons from one part of the empire to another for trial. There is, for instance, the Fugitive Offenders Act, 1881, which provides for the arrest in any dominion of any person who is accused of the commission of an offence in any other of the dominions. We have dealt partially with this matter in the Canadian act, which is chapter 81 of the revised statutes of Canada. I suggest that that act should be extended still further by the assertion by this parliament of its legislative competence to deal with these matters.

Then there is the Admiralty Offences (Colonial) Act, 1849, which conferred on dominion or colonial courts the power to deal with crimes committed in the territorial waters of the dominion or colony. The Territorial Waters Jurisdiction Act of 1878 makes provision with respect to offences committed by foreigners on foreign ships within the territorial waters of any dominion. The Naval Prize Act, 1864, and the Prize Court Act, 1894, provide for the constitution of prize courts in British dominions, colonies and possessions. The Slave Trade Act, 1873, for the suppression of the slave trade, extends to the whole empire and confers jurisdiction upon the vice-admiralty courts of the dominion.

There are other classes of cases which have the same special application to Canada and which restrict to a certain extent the legislative jurisdiction of the parliament of Canada. Such are the International Copyright Act, 1886, and the Geneva Convention Act,

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1911. A large number of these acts, which were passed by the parliament of the United Kingdom and with respect to which Canada has had up to the present no legislative jurisdiction by way of repeal or amendment, are not generally known. In the course of my professional practice I have had on one or two occasions to quote one or more of these acts of the parliament of the United Kingdom which are in force in this country, and I was astonished to find that the judges presiding in the courts had no idea that any such acts were in existence extending to and applicable to Canada.

Now that parliament has commenced the consideration of acts of the parliament of the United Kingdom which extend to and are applicable to Canada, I suggest that the Department of External Affairs or the Department of Justice or both should proceed at once to make a complete survey of all such acts and determine which should be retained either in their present or in an amended form. If they are not amended and thereby included in the statutes of Canada they should be repealed by act of the parliament of Canada. Those not repealed should then be compiled and published in a special volume for ready reference, so that all concerned with the administration of the law may be fully informed as to what the law is. I suggest with deference that in a number of our courts, both in Quebec and other provinces, the judges are not fully aware of the extent to which the laws of the parliament of the United Kingdom apply to Canada and are to be enforced by our courts, both in civil and in criminal matters. I suggest also that if this work is too onerous and too extensive for the Department of External Affairs—which has one or two officials whom I know to be thoroughly competent for work of this kind—and if the Department of Justice has so much work in hand that its officials cannot devote the time necessary to a compilation of these enactments and to the preparation of amending statutes, it would be proper for the Department of Justice to employ some competent lawyer—I would not object if he were of the Liberal faith and persuasion so long as he is capable—to make a compilation of these laws and place them before parliament in a way in which they can be effectively dealt with. In an address I made to this house some time about 1928, dealing with this matter, I stated, if I remember correctly, that I had found over a hundred statutes of the United Kingdom which dealt with matters of this kind.

Mr. LAPOINTE (Quebec East): I have a list of about one hundred and fifty.

Mr. CAHAN: Well, I remember that in the former discussion I said one hundred and fifteen, and my leader at the time remarked that on the previous occasion I had referred to the number as being about one hundred and fifty; but on this occasion, not having had the opportunity of reviewing the list, I referred to the smaller figure. I have no doubt that the number is over a hundred.

Mr. LAPOINTE (Quebec East): Of course many of them are the same measures, revised. For instance, there are many laws on the slave trade.

Mr. CAHAN: Quite so. The original act as amended is still in force. I suggest, therefore, very earnestly, that this matter be taken up. In expressing this opinion I think I may say that the leader of the opposition (Mr. Bennett)—

Mr. LAPOINTE (Quebec East): It is a good suggestion.

Mr. CAHAN: —is entirely in favour of the suggestion which I have made. In my opinion this parliament should again and again, at every opportunity, assert its sovereignty in regard to matters affecting the peace, order and good government of Canada which are within its legislative jurisdiction. We have emerged from the colonial status, whether the judicial committee of the privy council recognize the fact or not; and, when they decline to recognize it, it is absolutely necessary in the present temper of this country that they be brought to a condition of mind in which they cannot avoid cognizance of certain fundamental facts. One way of doing that is to proceed as I have suggested, although there are cumulative remedies which on an appropriate occasion I shall take pleasure in expounding in this house from my point of view. I have simply to say that I approve the principle of this bill.

There is one matter which I might mention now, and which I think will require further consideration. This bill is a criminal statute. It provides penalties for certain crimes. It also proceeds to deal with nationals of Canada who commit these breaches of the law. To mention that fact is to revert to a consideration which I have very much at heart, and that is the necessity and the advisability of an amendment and consolidation of the laws of Canada relating to Canadian nationality. In the consideration of the provisions of the treaty of peace at Versailles dealing with reparations and other matters I was brought face to face, week after week and month after month, with the fact that this parliament has never clearly expressed the meaning of Canadian nationality nor decided