

DEATH DUTIES BILLS PASSED BY ASSEMBLY

**Has Mandate to Get Every
Dollar Possible, Hepburn
Tells House**

PROTESTS OVERRIDDEN

Unmoved by the Opposition's protests that the amendments restricted the power of the courts and gave authority to civil servants to break the law with impunity, the Hepburn Government Thursday advanced its special legislation to the point where it now needs only the formal third reading and Royal Assent to become law. This will be done today, and prorogation will follow.

Premier Hepburn brushed aside the objections of the Opposition with the emphatic statement that "I have a mandate from the people to collect all succession duties, and we are going to get every last dollar due the Treasury."

The Prime Minister emphasized that it was not the intention or the function of the Government to persecute any individual, but the Crown proposed to see to it that the will of the people was not circumvented by estates "which have flagrantly and cold-bloodedly evaded paying their proper contributions under the act."

Liberal M.L.A. Joins Attack.

Second reading and committee stage were achieved by the amendments to the Judicature Act and the Succession Duty Act, though not before a strong attack from the Conservative group, led by Leopold Macaulay, House Leader, and Colonel Fraser Hunter, Liberal member for Toronto-St. Patrick, who protested against the members of the Legislature being made "rubber stamps."

Mr. Macaulay warmly criticized the Succession Duty Act amendment providing that penalties imposed under this act may be recovered under the Summary Convictions Act, "and shall be payable to the Treasurer." The Government's move, he argued, was just another example of tampering with a situation of long standing and of taking unto itself authority vested in the courts.

"If we are going to get this act above politics," he said, "we should abandon this amendment."

Premier Hepburn refused to entertain the suggestion.

Although the Government brought in an amendment to the Judicature Act amendment, restricting immunity from the courts to the Treasurer and those engaged in administering the Succession Duty Act, Mr. Macaulay and his followers still found plenty of room for improvement in the wording of the measures.

Chief among the objections of the Opposition Party was Subsection 2 of Section 32a, which provides that no remedy by way of injunction, mandamus or other legal process shall lie against the Treasurer or his appointees engaged in carrying out the provisions of the act, "whether in any such person's public or private capacity."

Amendment Is Beaten.

This clause drew sharp comment from Mr. Macaulay, who charged

that the section as it stood gave civil servants the right to break the law with impunity. In committee stage, he moved an amendment that the words "in private capacity" be struck out, and it was defeated on the Chairman's call for yeas and nays.

At second reading of the Judicature Act amendment, Mr. Macaulay noted that the Government had decided to amend the amendment restricting the scope of immunity to the succession duty officials.

"Why, if this act were passed as framed yesterday, it would mean that those who are bringing an action against the honorable the Minister of Lands and Forests (Mr. Heenan) would not be able to proceed with it," said Mr. Macaulay. "Also, it would prevent a similar action from going ahead against the Securities Commissioner (Mr. Godfrey), who is being sued in his private capacity. As the act stands, do you want to give 2,000 civil servants in the Province carte blanche? I am sure that is not the Government's intention. If there's anything the Government wants in the way of extended legal authority, put it in the Succession Duty Act and we will agree to it. But this is putting a noose around the necks of the people. I think even the ex-Attorney-General (Mr. Roebuck) will agree to this as a lawyer."

Macaulay "Disillusioned."

Mr. Macaulay further objected

that the courts, by reason of the amendments, would be prevented from interpreting the acts in any manner. The House Leader said he was "sadly disillusioned" by the fact that the present Attorney-General (Hon. Gordon Conant) was not "the safe and sound Attorney-General I thought he was going to be."

The Attorney-General was trying to "out-Roebuck Roebuck," observed Mr. Macaulay. When he made a jocular reference to Mr. Roebuck as the "root and branch man," the former Attorney-General commented that he had made "a good job of it."

"I don't know on whose doorstep that trouble will eventually be," retorted Mr. Macaulay, intimating that the Hydro legislation sponsored by Mr. Roebuck would again come to the fore at a later date.

Mr. Macaulay criticized the wording of a section which substituted the word "may" for "shall" in the matter of valuating estates. This should be made mandatory, he declared. In Section 6 of the Succession Duty Act amendment there was a very drastic change, Mr. Macaulay said. Here, too, the word "shall" had been lifted in favor of the word "may," and this was a dangerous procedure, he stressed.

Explained by Conant.

Attorney-General Conant, who is piloting the legislation through the House, did most of the replying for the Government. He denied that there was any interference with the functions of the court, declaring that the Province was supreme within its own sphere of jurisdiction, and that it was for the Province to make laws and for the courts to interpret them.

"The courts have no more right to tell the Province what laws it should pass than the Province has the right to tell the courts how to interpret the laws," said Mr. Conant.

In outlining the reasons leading up to the framing of the amendments, the Attorney-General said the necessity for these amendments had become apparent when an injunction was obtained restraining a Commissioner appointed by the Government from investigating a certain estate. Unless action was taken, the whole effect

of the acts would be nullified, he declared.

Colonel Fraser Hunter (Lib., St. Patrick), submitted that the bill was "too drastic a bit of business for any Legislature to pass." He would fight, as he had always fought, he said, against the efforts of any Government to usurp the powers of the courts.

"We mustn't be rubber-stamps here," he added. "If this isn't a fit bill to be passed we, as legislators, are not fit to hold the positions we hold if we pass it. It gives thousands of people powers which they shouldn't have."

Leslie M. Frost (Cons., Victoria) recalled the Raney legislation of 1922 which the Government, he said, claimed to be a precedent for its present action. At that time Hartley Dewart, Leader of the Liberal Opposition, had accused Mr. Raney of "abrogating to himself judicial functions." He admitted that frivolous vexatious actions should be "avoided," but he held that the Hepburn Cabinet in its stand against the estates was taking away the access to the courts of British subjects of a British Province, and in so doing, was "getting on dangerous ground."

There was, in his opinion, no real reason for the Government's hurry in the situation. A few months' delay did not matter, in the light of the "protection" available to the Province in penalties provided under the act, and in interest and costs usually charged against the appellant in any vexatious action. Quoting the quotation at the masthead of The Globe and Mail, Mr. Frost argued that that injunction should forever obtain, and that the Government should abandon its legislation and trust to the courts to determine what was right and what was not.

Amendment Is Moved.

In moving the words "or private capacity" be struck from the immunity section of the Judicature Act amendments, Mr. Macaulay claimed that the section as it stood "gives civil servants the right to break the law with impunity."

Were the words to be omitted, submitted Mr. Conant, opportunity for endless litigation over proper interpretation of an official's scope

of action would undoubtedly follow.

"It would be alleged," said he, "that officers were exceeding their authority."

"And if they weren't exceeding their authority," Mr. Macaulay returned, "actions against them would not succeed."

"They would succeed in tying up our proceedings," Mr. Conant said.

Premier Hepburn said that the position of Treasury officials in investigating these estates was "not an enviable one." In the recent Booth estate inquiry, said he, the solicitor for the estate had argued that the Commissioner appointed under the Succession Duties Act was acting "in a private capacity," and on the strength of that argument had succeeded in obtaining an injunction against the Government's proceedings.

Anticipates Attacks.

"The argument was pure fiction, of course," said he, "but it succeeded. It shows that we have to anticipate all sorts of attacks against the Treasury."

Attorney-General Conant would not agree for the moment that the section as drafted would permit any Treasury official to "do bodily harm" and get away with it.

"He can under this law," said Mr. Macaulay.

"The Criminal Code would take care of any such situation," put in Provincial Secretary Nixon.

"Perhaps," said Mr. Macaulay, "but as far as a civil action is concerned he would have no recourse to the courts."

"The Treasurer is not prosecuting any one," Mr. Hepburn said. "We intend to be fair and reasonable."

"Maybe you would be," said Mr. Macaulay, "but some of your officials might not be."