POLITICAL AND CONSTITUTIONAL IMPLICATIONS OF THE 1926 IMPERIAL CONFERENCE

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THE POLITICAL AND CONSTITUTIONAL IMPLICATIONS OF THE 1926 IMPERIAL CONFERENCE.

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by

William H. Troop,

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McGill University.

William H. Troop,

289 Metcalfe Street,

Ottawa.

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CHAPTER I

HOW THE CONFERENCE CAME TO MEET.

REVIEW OF PREVIOUS CONFERENCES.

The Imperial Conference of 1926 was one of the outstanding events in world politics since the war. It might equally well be said that it was one of the most misunderstood. Many claimed that it destroyed the British Empire and established a new status for Great Britain and the Dominions - a status of full international independence, in which the only unity was the crown. This alleged result was alarming to all who believed in the empire, and a source of pride to all who harbored desires for its destruction. Yet today, save in South Africa, it is doubtful whether any responsible statesman in the empire believes that the Conference accomplished quite all that, A sober second thought has taken possession, and we see that the Dominions enjoy few if any liberties

which they did not possess in full measure on the day when the Conference first met. Nevertheless, the gathering was one of great significance, in that it was the first one of its kind even to attempt a complete survey of the constitutional relationships between the self-governing parts of the empire.

The object of this study is twofold - to discover what the Conference really did, and to find, through the debates in the Canadian Houses of Parliament, how far public opinion grasps the significance thereof. It has been truly said that Canadian statesmen are not well-versed in international affairs. Politics, in Canada, have invariably been local in interest and scope. This position has been inevitable due to our place in the British Empire. The conduct of foreign policy has so far been exclusively in the hands of the British government, which alone has the power to declare war and make peace. Canada could, in fact, have no foreign policy separate from that of the Empire as a whole. She might conclude trade agreements, but not treaties of political alliance. This whole

situation.

situation was part and parcel of her membership in the Empire, and could be changed in only two ways, secession or a right to a voice in formulating foreign policy. The first was not desired, and the latter Canada repeatedly refused to consider. Hence the inevitability that Canada's political affairs should be almost exclusively national in scope.

The war to a large extent changed this. It saw the Canadian Prime Minister, along with those of the other Dominions, holding conclave in the British Cabinet and the British War Cabinet, which latter body had control of the most vital issues of the war. It was in the full heat of the enthusiasm engendered by this unity that the Imperial War Conference passed the resolution calling for a constitutional conference after the war to readjust the relations of the parts of the Empire in such a way as to ensure "the right of the Dominions and India to an adequate voice in foreign policy and in foreign relations."

This enthusiasm

This enthusiasm, however, failed to survive the making of peace. The first Conference to meet after the war, that of 1921, decided that no advantage was to be gained in holding a constitutional conference. Lloyd George, in the House of Commons, gave as the reason that "the general feeling was that it would be a mistake to lay down any rules, or to embark upon definitions as to what the British Empire meant. To do so would be to limit its utility. To do so, I think, would be to weaken its unity."(1) But the 1917 resolution did not intend that the conference would merely lay down rules or embark upon definitions. Lloyd-George's words, therefore, do not explain all.

The real reason was twofold. First, it was very difficult to define the political relations of the parts of the empire in a way to give satisfaction to all. General Smuts of South Africa had promulgated a theory in which there lurked much danger. The fact that the Dominions had been separately represented at the Peace Conference and in signing the Peace Treaty showed, according to him, "that in foreign relations

they were

they were to take a part and speak for themselves, and that they would no longer be bound by the voice and signature of the British Government. He looked to the Conference of next year to give some expression to the new position."(2) Briefly put, the idea of Smuts was that the Dominions emerged from the war independent nations, joined only by the personal union of the crown. He illustrated his view very ostentatiously by protesting when the American invitation to the Disarmament Conference in 1921 was sent to Great Britain alone instead of to each Dominion direct.(3) There was a natural reluctance on the part of Great Britain to call a constitutional conference which might have to make a compromise with the ideas of General Smuts.

Secondly, the Dominions at the time were far more interested in home than in foreign affairs. The question of co-operation was inevitable in war, but there was not felt the same need for it in peace. A conference, if called, could hardly confer on the Dominions any more control of their internal affairs than they already possessed; while in external affairs, there

was a

was a growing disposition, a reaction to the war, to withdraw and leave management to Great Britain, where by tradition and geography it belonged.

The constitutional conference did, however, come, although not under that name, in 1926. The reasons which brought it about in that year we shall see later. Before doing so, we shall review briefly the previous Conferences, placing our emphasis on their development from a constitutional standpoint.

The first Colonial Conference met in 1887. For our purposes, the main thing to note is that the despatch of the Colonial Secretary which summoned it made it clear that it was to be purely consultative, and that there was to be no discussion of any scheme to join the Empire by means of political federation.

The second Conference met at Ottawa in 1894. Its chief interest to us is that it brought forth the despatches of Lord Ripon, Colonial Secretary, on June 28th, 1895, which denied to the colonies that freedom in negotiating commercial treaties which they were later to obtain.

At the Conference of 1897, Chamberlain, the

Colonial Secretary, brought forward the question of Empire federation. He merely offered, but did not press, the idea of a "Council of Empire which might slowly grow to that Federal Council to which we must always look forward as our ultimate ideal." The Conference, however, expressed satisfaction with the existing political relations of the Empire.

At the Conference of 1902, Chamberlain again attacked the problem of federation. The aim, he said, was a Council of Empire, at first advisory, later legislative. Quoting a remark of Laurier, "If you want our aid call us to your Councils," he said, "Gentlemen, we do want your aid.....If you are prepared at any time to take any share, any proportionate share, in the burdens of the Empire, we are prepared to meet you with any proposal for giving to you a corresponding voice in the policy of the Empire."(4)

This Conference resolved "that so far as may be consistent with the confidential negotiation of treaties with Foreign Powers, the views of the Colonies affected should be obtained in order that they may be in a better position to give adhesion to such treaties."

Before the next

Before the next Conference met, the Colonial Secretary sent a despatch to the various self-governing colonies proposing to change the form of the Colonial Conferences into a body to be called the "Imperial Council," with a permanent commission to carry on its work between meetings. (5) As usual, Laurier was firm in dissenting from a scheme which suggested Empire government, and the matter was dropped.

The next Conference took place in 1907. The Imperial Council idea was brought up, but made little headway, and instead the gathering drew up a much more harmless constitution for future Imperial Conferences. (6) It was resolved "that it will be to the advantage of the Empire if a Conference, to be called the Imperial Conference, is held every four years," to discuss questions of common interest. "The Prime Minister of the United Kingdom will be 'ex officio' President and the Prime Ministers of the self-governing Dominions 'ex officio' members, of the Conference." The arrangements for holding such conferences were placed in the control of the Secretary of State for the Colonies." Such other Ministers

as the

as the respective governments may appoint will also be members of the Conference - it being understood that, except by special permission of the Conference, each discussion will be conducted by not more than two representatives from each Government, and that each Government will have only one vote." There was to be a permanent secretarial staff for routine matters, under the direction of the Colonial Secretary.

The Conference of 1911 (for the first time "Imperial" in name) is noteworthy as producing the first really carefully elaborated scheme for a closer union of the empire. It was proposed by Sir Joseph Ward of New Zealand and may be thus summarized: There was to be an Imperial Parliament of Defence for the Empire, to have control of matters of foreign policy, including peace and war. The Dominions and the Mother Country were to be represented in proportion to population. There should also be an Imperial Council of Defence, of a consultative and revisory nature, on which Great Britain and each Dominion would be represented by two members. The Parliament would elect an Executive Council of fifteen, to

correspond

correspond to the cabinet, with executive responsibility with regard to peace and war. After ten years, the Parliament would have the power of raising taxes. The scheme, in short, aimed to impose practically a federal system of government upon the Empire.

In the round of opposition which greeted this proposal, we need note only the dictum of the British Prime Minister, Mr. Asquith, that the control of the Imperial government over foreign affairs can not be shared.

At this Conference there was also discussed, in connection with the Declaration of London, the question of consultation of the Dominions before the negotiation of treaties. Laurier pointed out that the sphere of diplomacy is preëminently one for the Imperial government alone. "In my humble judgment," he said, "if you undertake to be consulted and to lay down a wish that your advice should be pursued as to the manner in which the war is to be carried on, it implies, of necessity, that you should take part in that war. How are you to

give advice and insist upon the manner in which war is to be carried on, unless you are prepared to take the responsibility of going into the war?"(7)

This profound remark of Laurier is the keynote of why the Imperial Conferences have not developed beyond the merely consultative stage, and why there is no enthusiasm for an Imperial Parliament in which the Dominions would be completely outvoted by the Mother Land.

The next Conference was in 1917, and was called the Imperial War Conference. Its meetings were complementary to those of the Imperial War Cabinet, consisting of the British War Cabinet and the Prime Ministers of the Dominions, an institution which it was thought at the time would become permanent. (8) The most important resolution of this Conference relates to constitutional affairs;

"The Imperial War Conference are of opinion that the readjustment of the constitutional relations of the component parts of the empire is too important and intricate a subject to be dealt with during the War, and that it should form the subject of a special Imperial

Conference to be summoned as soon as possible after the cessation of hostilities.

"They deem it their duty, however, to place on record their view that any such readjustment, while thoroughly preserving all existing powers of self-government and complete control of domestic affairs, should be based upon a full recognition of the Dominions as autonomous nations of an Imperial Commonwealth, and of India as an important portion of the same, should recognise the right of the Dominions and India to an adequate voice in foreign policy and in foreign relations, and should provide effective arrangements for continuous consultation in all important matters of common Imperial concern, and for such necessary concerted action, founded on consultation, as the several Governments may determine."(9)

Sir Robert Borden said that he hoped at the said Conference the Canadian representation would include all political parties, and he hoped the Conference would "approach its deliberations and frame its conclusions on the lessons of the past, so that the future structure of the Empire may be erected on the sure and firm foundations

<u>of freedom</u>

of freedom and co-operation, autonomy, and unity."

The British Prime Minister was not present during the discussion, and the Colonial Secretary was very cautious in his approval of the resolution, declaring that any suggestion for closer federation would have to come from the Dominions, not Great Britain, and that it was a very dangerous thing to attempt to impose anything like a rigid constitution on a system so heterogeneous as the British Empire.

The 1918 Conference like its predecessor, was called an Imperial War Conference. (10) Mr. Hughes, of Australia, attacked the method of communication between Great Britain and the Dominions through the Colonial Office, declaring it was an anachronism, and an outgrowth of the time when the Dominions were mere colonies. The question was referred to the Imperial War Cabinet, which passed a resolution granting direct communication, in cases of cabinet importance, between the Prime Ministers of the Dominions and the Prime Minister of the United Kingdom.

The 1921 Conference (which, like its two

predecessors,

predecessors, was not technically an Imperial Conference(11)) discussed the question of the proposed constitutional conference of 1917, and reached the following conclusions: (a) "Continuous consultation, to which the Prime Ministers attach no less importance than the Imperial War Conference of 1917, can only be secured by a substantial improvement in the communications between the component parts of the Empire. Having regard to the constitutional developments since 1917, no advantage is to be gained by holding a Constitutional Conference." (b) The Prime Ministers should meet annually, " or at such longer intervals as may prove feasible." "(c) The existing practice of direct communication between the Prime Ministers of the United Kingdom and the Dominions, as well as the right of the latter to nominate Cabinet Ministers to represent them in consultation with the Prime Minister of the United Kingdom, are maintained."(12)

The 1923 Conference (13) is chiefly noted for its resolution regarding the negotiation, signature and ratification of treaties, which will be discussed in the

chapter

chapter dealing with the subject,

Let us now turn to the circumstances surrounding the summoning of the Conference of 1926. On June 23rd., 1924, the Colonial Secretary transmitted to the Dominions a note, (14) asking for their advice on the question of improving the means of communication between Great Britain and the Dominions. The method of consultation at present in effect has, said the note, two main defects: first, it renders immediate action extremely difficult, more especially between Conferences, on occasions when such action is imperatively needed, particularly in the sphere of foreign policy; second, when matters under discussion are subjects of political controversy, economic or otherwise, conclusions reached at and between Imperial Conferences are liable to be reversed through changes of government. It then went on to suggest possible remedies: first, the 1923 resolution on treaties may need to be amended and also used as to other matters of foreign policy; second, "creation of some sort of workable machinery so that the public

opinion

opinion of the whole of our Commonwealth of States should influence the policy for which the Commonwealth must be responsible;" third, Imperial Conferences might include representatives of oppositions as well as governments; fourth, each government might obtain the approval of its parliament beforehand as to its attitude on questions coming before the Imperial Conference. The note also suggested a preliminary meeting to prepare a report as a basis for further discussion.

On August 7th, the Canadian government sent an answer, of which perhaps the following is the most significant part: "Proposal to have all parties represented in the Imperial Conferences with a view to preventing policy agreed upon thereat being rejected by existing or future Parliaments would seem to imply setting up a new body supreme over the several Parliaments. We regard the Imperial Conference as Conference of Governments of which each is responsible to its own Parliament and ultimately to its own electorate and in no sense as Imperial Council determining the policy of the Empire as a whole. We would deem it most inadvisable

to depart in

to depart in any particular from this conception which is based on well established principles of Ministerial responsibility and the supremacy of Parliament. We consider that with respect to all Imperial Conference resolutions or proposals each Government must accept responsibility for its attitude and the Opposition or Oppositions be free to criticise; with Parliaments and if occasion arises peoples deciding the issues." Nevertheless, Canada would be willing to take part in the suggested preliminary meeting.

Largely owing to a change of government in Great Britain, however, nothing further came of the matter.

In 1925, the Treaty of Locarno brought to the mind of the British Government again the whole question of the relationship between the different parts of the Empire in foreign affairs. The known opposition in some of the Dominions to military alliances forced the Government to expressly exempt the Dominions from the terms of the treaty. This seemed to some to deal a distinct blow to the solidarity of the Empire.

Since 1922,

Since 1922, moveover, there had been a certain amount of friction between the Canadian and British governments in relation to foreign affairs. The Chanak incident; the insistence of Canada on signing the Halibut Treaty of 1923 without even the formal co-operation of the British Ambassador at Washington; her refusal to ratify the Lausanne Treaty because she had had no part in negotiating it; her demand for separate representation at the Inter-Allied Conference of 1924; all disclosed a self-assertiveness on the part of the Canadian Government which, at least, had not made for harmony and good understanding. The Lord Byng episode served to add further fuel to the flames.

In South Africa there was a strong party which openly favored secession. The national flag controversy, and the statement of Premier Hertzog that the Dominions had attained international independence (15) showed how powerful the claims of the Dutch element had become.

We thus see why it was that when the Imperial Conference met in 1926, political and constitutional relations played so important a part. The task of the

Conference, in brief, was to discover a formula which, while preserving the full local autonomy of each Dominion, should create "some sort of workable machinery so that the publiccopinion of the whole of our Commonwealth of States should influence the policy for which the Commonwealth must be responsible."

The Conference assembled in London on October 19th, and continued until November 23rd. It held sixteen plenary sessions. Great Britain had normally five representatives; Australia, India and the Irish Free State three each; and Canada, New Zealand, South Africa and Newfoundland two each, although at particular meetings these numbers were increased. After the formal opening addresses, the various subjects of discussion, empire trade, colonies, defence, foreign relations, air communications, and various economic questions were taken up in turn. In addition to the general review which took place in full conference, there were more technical discussions at the Admiralty, the War Office, and the Air Ministry, the proceedings of which were not published. Many questions

Many questions besides were referred to committees and sub-committees; in particular, the inter-imperial relations committee of prime ministers and heads of delegations, of which Lord Balfour was chairman. The Report of this body constitutes the most important work done by the Conference and it will be with it that the following study will deal.

There is one most important fact to notice about this Report - it has no force as a legislative enactment. In this respect it is in precisely the same position as the work of all preceding Conferences. Whether in future it can be appealed to as part of that larger British Constitution which lies outside the range of strict law but is nevertheless made enforceable by custom, is another matter. Only confusion will come, however, by regarding it as other than a series of advisory resolutions.

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(1) British Commons Debates, 1921, Vol. 146-p.1702

(2) "Round Table,",1923-4, p.4; 1920-1,p.209

(3) Canadian Commons Debates, 1928, p. 3485

(4) Canada Sessional Papers, 1903, No. 29a.

(5) Sessional Papers, 1906-7; No. 144

(6) British Sessional Papers, 1907 - Cd. 3523

(7) Ibid, 1911 - Cmd. 5745 - p. 117

(8) "Round Table," June 1917 - p. 441

(9) British Sessional Papers, 1917-18, Cd. 8566 - p.61

(10) Ibid, 1918, Cd. 9177

(11) Canadian Commons Debates, 1921-p.2504

(12) British Sessional Papers, 1921, Cmd. 1474

(13) Ibid, 1923 - Cmd. 1987

(14) Ibid, 1925 - Cmd. 2301

(15) "The Times." London, May 18th, 1926, p. 7.

CHAPTER II

What Happened in Parliament.

There were three debates in our parliament definitely devoted to the Imperial Conference - in the House one on the statement of Mr. King, on March 29th, 1927, and another on the motion of Mr. Bourassa on May 28th, 1928; in the Senate, one on the inquiry of Senator Griesbach on April 6th, 1927. In this respect the course adopted was in striking contrast to that of the Imperial Parliament. No formal debate was held on the subject in the British Commons (*See footnote,) while in the Lords there was only a short(although within its limits, illuminating) discussion between Lords Parmoor and Balfour.(1).It is, therefore, much more possible in the case of Canada to obtain the sense of Parliament as a whole on the subject. Our task in this chapter is to show the form which the discussions took, leaving to the final chapter a more complete criticism of their merits.

Besides the three debates mentioned, there were many references, either to the Conference or to Canada's foreign relations as a whole throughout the two sessions.

*But it was referred to - See Commons,1927,Vol.208,p.497.

Some of these occurred in the debates on the Address; others during the discussion on particular measures, such as the Customs Act Amendment, the Budget, the bill to amend the Supreme Court Act, various treaties and conventions, and the estimates of the Department of External Affairs. There were, too, several motions by private members, such as Mr. Carmichael's re Dissolution of Parliament, the British North America Act Amendment of Mr. Woodsworth, and Miss Macphail's for a department of peace. In all we have a fairly complete expression of view from that part of parliament which can be called in any sense internationally-minded.

We shall now deal in outline with the debates of the House of Commons and Senate in turn. In the House, the first reference to the Conference was in the Speech from the Throne of December 10th, 1926, which gave a very formal statement of its results as conceived by the government. On the same day, the Summary of Proceedings was tabled by the Premier. This summary is the principal document of the Conference, and contains the report of the committee of inter-imperial relations.

In the debate on the address, which took place on December 13th and 14th, references were made to the Conference by seven members, including the leaders of the two major parties.

On February 10th, 1927, there was tabled the Appendices to the Summary of Proceedings, a document supplementary to the Summary mentioned above.

On February 16th, Mr. Church moved for a return of all correspondence and other official documents relating to the Conference, which motion was agreed to.

There were also a few brief references in the debate on the amendment of the British North America Act, on March 9th.

On March 24th, in response to a question by Mr. Cahan, the government announced the time and method of dealing with the work of the Conference. It was pointed out that it was not necessary, (nor was it thought so at Westminster) to formally ratify the Report; that a statement on the Conference by the government would be made on a motion to go into committee of supply, and that members could speak thereto before the Speaker left the chair. This procedure gave

rise to considerable criticism from the opposition. It was felt that parliament should have an opportunity to accept or reject the Report, in order that the country and Great Britain might know what Canada's official attitude was. Mr. King, on April 5th, made a lengthy answer to this complaint, mainly on these grounds: if a division were held on this subject, it would tend to suggest to the Empire that Canada was not united, which would be an undesirable impression to create; also, as the Report cannot have the force of law, there is no need to formally vote approval of it. It is but fair to add that the Opposition suggested that the government's real reason was political--a fear that Quebec might be alarmed by certain sections of the Report.

On March 25th, in the Supreme Court Act Amendment debate, Mr. Cahan mentioned briefly the question of appeals to the Privy Council in the light of the work of the Conference.

Much the most important debate, however, took place in accordance with the procedure mentioned above, when, on March 29th, Mr. Mackenzie King made a full report, from the government's point of view, of the proceedings

and

and conclusions of the Conference. This debate lasted until April 5th, and was participated in by fourteen speakers. Possibly the weightiest addresses, on the Government side, were those of Mr. King and Mr. Lapointe, and on the Opposition side, those of Mr. Cahan and Mr. Guthrie. The Opposition moved an amendment along the following lines:(2)

1. That it is not desirable that this House should be deemed to have tacitly acquiesced in the Report.

2. That the Report should not be binding on the Parliament of Canada until approved by a formal resolution of this House; that until such approval be given the government shall not be deemed authorized to take any steps to carry into effect the recommendations of the Report.

3. That no changes be made in the British North America Act to affect the rights of the provinces without the consent of the various provincial legislatures.

This amendment was defeated by 122 to 78.

There were also several references to the ambassadorship at Washington during this session, including

Mr. King's remarks on the Address, questions by Mr. Cahan on March 29th, and a debate in committee of supply on April 13th.

The 1928 Speech from the Throne declared that "as contemplated by the conclusion of the Imperial Conference of 1926, provision was made on July 1st for direct communication between His Majesty's government in Canada and His Majesty's other governments of the British Empire." Furthermore, plans are being made to have a representative of the British government in Canada, while Ministers plenipotentiary to France and Japan will be appointed.

These and other matters growing out of the Conference were further referred to in the debate on the Address, from January 27th to February 9th, by twenty-three speakers, of whom some four or five made quite significant contributions to the debate.

There were also several references during the debate on the budget. We may note particularly Mr. Lapointe's hint (3) that Imperial laws on merchant marine matters will be replaced by Canadian laws, and the answer

<u>thereto</u>.

thereto of Mr. Bennett(4).

On March 30th, Mr. King made a statement in which he took exception to remarks of Lord Salisbury in the House of Lords on the Anglo-Egyptian Treaty. This Statement brought forth further discussion in the Lords on April 26th.

There were also debates in the House in connection with particular treaties and conventions - The Geneva Slavery Convention, the Geneva Opium Convention, the International Sanitary Convention, The Treaty with Spain, the Treaty with Czechoslovakia and the International Copyright Convention--mainly in accordance with the practice (which has no legal sanction) that important treaties are submitted to parliament before ratification. The debates on the International Sanitary Convention and the Treaty with Spain were the most important of these.

In the debate on amendment of the Customs Act on April 12th and 13th, the question arose of the right of Canada to exercise extra-territorial power - a question

intimately bound up with her political and constitutional status.

On May 28th, Mr. Bourassa moved an amendment of want of confidence (subsequently withdrawn) on the motion to go into committee of supply, for the express purpose of giving the House an opportunity to discuss the imperial and foreign relations of Canada. He said that the House "should have a statement from the government with regard to our foreign relations and also an explanation of what has been done since the last Imperial Conference to implement its decisions;" and moved that "This house regrets that proper steps have not yet been taken to give full effect, both in domestic and external affairs, to the equality of status" acknowledged by the Imperial Conference, 1926, to be the "root-principle" of the relationship between the self-governing Britannic communities."(5).

Seven members took part in this debate, most of them leaders in the expression of their particular view-points.

There was also considerable discussion on June 11th on the

on the question of diplomatic representation at Tokyo, the Opposition putting forth that criticism of the whole principle which they had merely hinted at in the previous session.

These, together with a few questions and answers concerning the Kellogg peace pact on May 3rd, May 18th, May 22nd and June 6th, constituted the principal House of Commons discussions bearing on our subject in the session of 1928.

Turning now to the Senate, we find, as might be expected, that the debates were less comprehensive than in the House. The speeches were shorter and covered fewer aspects of the subjects involved. There was, perhaps, less said of a trivial or a self-contradictory nature than in the Commons, but on the other hand, there was no more of closely-reasoned argument or keenness of analysis.

The first reference to the Conference in the Senate (next to the Speech from the Throne, which is, of course, identical with that of the Commons) occurred in the debate on the Address, when four senators briefly discussed the subject.

On April 6th.

On April 6th, 1927, Senator Griesbach rose in accordance with the following notice: "That he will call the attention of the Senate to the Report of the Imperial Conference, 1926, and will enquire of the Government in what directions and to what extent it proposes to act upon the same." In the debate which followed, the Conference was discussed by six senators. This debate corresponded with that in the Commons in the same session, although the procedure was different, the Senate discussion being initiated by a private member.

Again, on April 13th, Senator Dandurand made an illumunating statement on the inquiry of Sir George Foster, the question being that of adhesion to section 36 of the Protocol of signature of the Permanent Court of International Justice - especially the relations between the parts of the Empire on the question.

In the 1928 Session, references to the Conference were confined to the Speech from the Throne and three speeches in the debate on the Address.

It would, of course, have been superficial to

confine

confine our study merely to what was said in parliament. There, much was omitted without which a real understanding would be impossible, just as much was said wh ch was not germane to the discussion. For example, in the chapter entitled "The Governor-General" there are many historical references which were mentioned by no speaker at all, yet which were needed to illustrate and amplify the parliamentary argument. Sessional papers and other official documents are also referred to. Our aim has never been to quote all the speakers on a subject, but only those members whose ideas contribute to the fullest understanding of it. At the same time, since our study is concerned with parliamentary opinion, we have not gone beyond the debates except to attain this end.

It must be noted, too, in the following chapters, that we have dealt with the problems involved in an essentially different way from that adopted in parliament. We are not concerned in a constitutional study primarily with the merits of questions "per se." For example, the speeches of Mr. Churchill and Senator Griesbach are to a

large extent

large extent a plea for Imperialism, just as those of Mr. Bourassa are a denunciation of it. And indeed all the speakers have, either consciously or not, a particular political viewpoint to express, which viewpoint colors their discussion of the legal and constitutional issues involved. In our study, on the other hand, the emphasis will lie in the opposite direction. We are not concerned, for example, with the question whether closer Imperial ties are good for Canada, but only whether the Conference did, as a matter of fact, promote such ties or not. It is quite possible, - indeed, it happened in parliament - that two men believing in full national autonomy might yet differ materially as to whether the Conference marked an advance or not in this direction. The two questions are in reality quite different, and it will be our task not to let them become confused, as they often were in the parliamentary debates.

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(1) December 8th, 1926

(2) House of Commons debates, Session 1926-7, page 1671

(3) Ibid, Session 1928, page 1057

(4) Ibid, page 1245

(5) Ibid page 3464

Chapter III

The Governor-General.

CHAPTER III

The Governor-General.

Section Iv(b) of the Report declares that the Governor-General "is the representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in Great Britain, and that he is not the representative or agent of His Majesty's Government in Great Britain or of any Department of that Government;" and that in accordance with this statement, the practice whereby all despatches between the British Government and the government of a Dominion are ssnt through the medium of the Governor-General should be replaced by direct communication between the governments themselves, in the case of any Dominion desiring the change.

The debates did not contain any very close

analysis

analysis of the meaning of this section. Mr. King said, (1) "The important point of that paragraph, the significant feature of it, is that which makes perfectly clear that the Governor-General in Canada is the personal representative of His Majesty; that he is in the truest sense of the word, a viceroy; that he is not the representative of the government or of any department of the government of Great Britain." And again, (2) "Notwithstanding the accepted constitutional position, governors general of Canada up until very recent times have, I think, felt themselves in many particulars largely the agents of the British government," whereas after this "it will be perfectly apparent that it is a wholly unconstitutional position." However, Mr. King admits (3) that as far as the appointment of the governor is concerned, the government of Canada has merely a consultative voice, and also "that there is a special relationship between the government of Great Britain and a governor-general who is sent out from England."(4).

Mr. Lapointe made the same argument, except that

he was

he was emphatic that the Report marks a constitutional change in this matter. (5)

Mr. Cahan, however, denied that the Governor-General has ever, at least since Edward Blake's time, been other than the representative of the king alone. His position is clearly set out in the British North America Act, and in his commission and instructions, and unless these are to be changed, the office will remain exactly as it was.(6)

None of the speakers, however, differentiate between the functions of the governor as head of the Canadian government and as an Imperial officer. Their remarks are confined to such general statements as the above. It will, therefore, be necessary to investigate the actual situation as it existed in Canada before the Conference met. We shall deal in turn with the Governor's position in domestic and in Imperial matters.

As far as purely domestic affairs are concerned, it had, indeed, become fairly well established that the Governor-General occupied the same position in Canada as the King does in England. Let us briefly review the cases

since

since Confederation which throw a light on this proposition.

In 1873, much pressure was put on Lord Dufferin to refuse the advice of his ministry for a prorogation of Parliament. Charges of corruption against the Macdonald government had been made, and the ministry, rather than face a vote of censure in the House, advised the Governor-General to prorogue parliament. A refusal of this advice would have been equivalent to dismissal of his ministers. Lord Dufferin, although he did not forego his right to do so, declined to intervene.

In 1896, however, a more difficult case arose. Sir Charles Tupper's government was defeated in the elections of that year, and before resigning, he requested the consent of the crown to various official appointments, including senatorships. Lord Aberdeen, the Governor-General, refused the request, on the ground that Tupper's government no longer had the confidence of the Canadian people. For

this

this, he became the centre of a virulent partisan attack. It is clear that his action was not in the strictest sense that of a constitutional monarch, relying solely on the advice of his ministry. Sir Wilfrid Laurier recognized the only possible defence of his course, when he said: "The Governor-General has committed no wrong against the people of Canada....he has made himself the custodian and the champion of the rights of the people of Canada."(7). It is interesting to note that later, in response to a question, he said that the action of the Governor-General was brought to the attention of the Imperial authorities, and the Colonial Office approved of the principles on which the Governor-General acted.(8)

Again, in 1904, much pressure was brought to bear on the Governor-General to refuse the advice of his ministry in connection with the dismissal of Lord Dundonald as commander of the Militia for a speech in which he attacked a member of the government. The question, although essentially one of internal administration, was

complicated

complicated by the fact that Lord Dundonald was an officer of the Imperial army. However, Lord Minto finally decided not to interpose his authority. This incident did much to clarify the nature of the Governor's position in internal affairs.

Indeed, at the Imperial War Conference of 1918, Sir Robert Borden said: "So far as the status of the Governor-General is concerned, while he is an Imperial officer, I venture the assertion that in Canada he regards his relation to the Government of Canada as of precisely the same character as the relation of the King to the Government of the United Kingdom. That has been my experience during the past seven years in which I have held the office of Prime Minister in Canada."(9)

In 1926, however, an incident occurred which seemed to cast doubt on the question. The King government, returned in the elections of 1925 without a clear majority, was able to hold office only through support of the third party. When, in June 1926, this support failed, Mr. King

advised

advised the Governor-General to dissolve parliament. Lord Byng, however, called upon Mr. Meighen, leader of the largest group in the House, to form a government. (10) For this action he was roundly criticized by the Liberals and as stoutly defended by the Conservatives, both in the House and in the country. Nothing could show better than this the lack of a clear grasp of constitutional procedure on the part of the Canadian people.

Two principles emerge from these incidents: first, the Governors in no case acted at the dictation of the Home Government; second, any uncertainty about the Governor's position arose largely because Canadian public opinion was not unanimous, and indeed grouped itself in each crisis according to party affiliation.

The Governor-General, however, has another function besides head of the government. H e is an Imperial officer, and it has always been recognized as his duty to take into his special consideration matters which may affect Imperial interests. The words of the Report seem to imply that this has been changed. As Mr. Cahan suggests,

however, it is difficult to reconcile that with the Governor's instructions. When Lord Dufferin used his personal discretion in commuting the sentence of Lepine, he acted under the Instructions of the time, which allowed him to use his own judgment "whether the Members of Our said Privy Council concur therein, or otherwise." (11) But even after Blake's famous consultation with the Home Government, the new Instructions of 1878 still allowed a personal discretion in pardon in cases affecting Empire interests or the interests of any country beyond Canadian jurisdiction, and the Instructions of 1905 which are at present in effect, still grant the Governor-General this right. (12) Nor is it anywhere suggested in the Report that this be changed. Edward Blake said that Empire interests would be safeguarded better by "proper consideration for Imperial interests on the part of Her Majesty's Canadian advisers" than by any action of the Governor-General. (13) Yet he recognized the latter as an Imperial officer. When Mr. King says, "It is now

perfectly

perfectly clear that the Governor-General is advised by the ministry of the Dominion to which he comes, and is no longer free to accept advice from His Majesty's government or from any department of that Government with reference to the Dominion of which he is Governor-General, "(14) he omits reference to what is really the obscure point in the new situation.

With refard to the change in the method of communication between governments, we have a distinct departure from present practice. The system whereby correspondence between the British and Dominion Governments is transmitted through the Governor-General and the Colonial Office was criticized in the Conference of 1918, (15) and led to the establishment of direct communication between prime ministers in questions of urgency. Otherwise, however, the old procedure still remained, and it suggested that the Governor-General was the representative of the British government, and so

the 1926 Report recommended direct communication in all matters between governments, the Governor to be merely supplied with copies of documents of importance.

During the 1928 session, Mr. King made an important statement on the new procedure: "On the first of July the communications between His Majesty's government in Canada and His Majesty's government in Great Britain began to be exchanged direct, and have continued from that moment to be so exchanged.....Many of the communications which now for nearly a year have been exchanged direct between the two governments are between prime minister and prime minister; some of them are sent direct to the Secretary of State for Foreign affairs in London; but for convenience sake, and also for the sake of record, all communications in the first instance come to our government through the office of the Secretary of State for External Affairs and communicationsto the British government go through the office of the Secretary of State for Dominion Affairs in London."(16)

Besides this

Besides this, we should note two further recent changes in the connection between the two governments. On June 11th, 1925, there was announced in the British House the establishment of a department of Dominion Affairs, distinct from the Colonial Office. (17)

Secondly, the Report recognizes that there is need in the Dominions for a representative of the British Government, now that the Governor-General is no longer free to assume that role. A High Commissioner has, indeed, been appointed to Canada. (18) It is possible that the office may become an important step towards solving the problem of consultation between Conferences.

Let us see if we can sum up the position of future governors-general in the light of the Report. In doing so, we shall leave out of consideration the possibility of the Canadian government using the threat of secession to influence the actions of the Governor. Such a case would be outside the range of normal constitutional working.

We now know two things about the Governor--

he is divorced

he is divorced from any connection with the British government, and he holds, in all essential respects, the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in Great Britain.

With regard to the first point, all we need to note is that the divorce is complete. It refers to both Imperial and domestic matters, and in neither can any future Governor, in the light of the Report, accept advice from the British government as to his course of action. It can hardly be said that this will make any practical difference in Canada, for the British government has long since ceased to use the Governor as its agent in this way.

With regard to the second point, there are grave difficulties, which neither the Report nor the debates attempt to solve. For a little consideration will show that the Governor cannot be exactly in the same position as the king. In the first place, he is bound by instructions which enjoin upon him the consideration of Empire interests in cases of pardon or reprieve. More important still,

he is empowered

he is empowered by the British North America Act to veto or reserve any bill for the crown's consent. Now, in the case of all legislation which is purely Canadian in its implication, these powers are, admittedly, obsolete. It is true, as the British Prime Minister states, (19) that the veto power has not been altered. This is legally correct, but no Governor-General would employ it to negative purely Canadian legislation. The difficulty arises where Imperial interests are involved. Let us assume an extreme case, in order to apprehend the principle the more clearly. Suppose a Canadian parliament passed an Act which provided that in the event of war entered into by the British Government, Canada might remain neutral. Granted that the Governor represents the king alone, and can not accept advice from the British Government, may he yet not take the matter into his own personal consideration, to the extent of vetoing or reserving the bill? The profound difference between him and the king is this, that the king is advised by ministers

who are responsible to a parliament fully sovereign, whereas he is advised by ministers the competency of whose advice does not extend beyond matters concerning the peace, order and good government of Canada. He represents the crown; he is bound to maintain the sovereignty of that crown; can he, then, sanction measures which limit or in any way nullify that sovereignty ?

The conclusion we reach, therefore, is that the only change effected by the Report is to separate the Governor-General from the British government. But this of itself does not prevent a wide exercise of personal discretion in Imperial matters.

The fact that this argument comprises factors which are unlikely to arise does not affect the constitutional position. The potential power of the governor might become actual, as the Lord Byng episode reveals.

References in Chapter III

(1) House of Commons Debates, Session 1926-7, page 35

(2) Ibid, page 1650

(3) Ibid, page 36

(4) Ibid, page 1652

(5) Ibid, page 1707

(6) Ibid, pages 48 and 1650

(7) Commons Debates, second Session, 1896,page 1662

(8) Ibid, Session 1898, page 7690

(9) British Sessional Papers, 1918, Cmd. 9177, p. 158

(10) Commons Debates, Session 1926, page 5224; Session 1926-7, page 1651

(11) Sessional Papers, 1867-8, No. 22

(12) Corbett and Smith, Appendix III. (See Bibliography)

(13) Sessional Papers, 1877, No. 13

(14) Commons Debates, Session 1926-7, page 1650

(15) British Sessional Papers, 1918, Cmd. 9177,p.156

(16) Commons Debates, Session 1928, page 3465

(17) British Commons Debates, 1924-25,Vol.184,p.2239, Vol. 187,p.65

(18) Ibid, Session 1928. Vol.217,p.1500

(19) See Chapter 4.

CHAPTER IV.

Operation of Dominion Legislation; Appeals.

Section IV of the Report says that "existing administrative, legislative, and judicial forms are admittedly not wholly in accord with the position" of equality of status.

In accordance with this statement, various facts which suggest this colonial subordination are dealt with - the position of the governor-general, disallowance, reservation, extra-territoriality, the Colonial Laws Validity Act, Merchant Shipping, and judicial appeals to the privy council.

With regard to some of these - disallowance, reservation, extra-territoriality, and the Colonial Laws Validity Act - the Report states that "the issues involved were so complex that there would be grave danger in attempting any immediate pronouncement other than a statement of certain principles which, in our opinion, underlie the

<u>whole question</u>

whole question of the operation of Dominion legislation." And while hinting that there should be equality of nationhood in these matters, the Report says it was deemed advisable to submit them to a special committee to be set up by the different governments. With respect to Merchant Shipping, the position is much the same, and it is to be submitted to a special Sub-Conference, to consider the principles which should govern, having regard to the change in constitutional status which has come about. With regard to Judicial Appeals, nothing is done, but it is suggested that it is for each Dominion to decide whether it desires such appeals to continue.

(a) Disallowance.

One paragraph of the Report it is well to quote here, as it probably includes disallowance: "On this point we propose that it should be placed on record that, apart from provisions embodied in constitutions or in specific statutes expressly providing for reservation, it is recognised that it is the right of the Government of

each Dominion

each Dominion to advise the Crown in all matters relating to its own affairs. Consequently, it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in Great Britain in any matter appertaining to the affairs of a Dominion against the views of the Government of that Dominion."

By the British North America Act, Section 56, it is provided that a copy of every Act of the Canadian Parliament must be sent to one of Her Majesty's ~~Council~~ Principal Secretaries of State, and that it may be disallowed within a period of two years from the time it is received. This power, as was well recognized in the debates, is practically obsolete so far as its use is concerned. It has been used but once since Confederation, namely, in the case of the Oaths Act of 1873. (1) But the power unquestionably remains, since it is part of the British North America Act. The only point at issue is whether the Report means that although legally valid it is constitutionally dead. Sir Robert Borden is quoted as having

<u>expressed this opinion</u>

expressed this opinion even before the Conference. Mr. Thorson, Liberal member for Winnipeg South Centre, agrees with this, (2) and declares that this section, in common with those dealing with reservation and veto, should be repealed. "If our legislation is ultra vires, the courts which are constituted for that purpose will so find," he said.

(b) Reservation.

The practice of reservation of bills has been much more frequently used than disallowance. By Section 55 of the British North America Act, when a bill which has passed the Senate and House is presented to the Governor-General, three courses are open to him; first, he may assent to it, in which case it becomes law, subject, however, to disallowance as explained above; secondly, he may veto it; thirdly, he may reserve it for the consideration of the Crown. The second course has never, since Confederation, been taken, and so we are concerned only with the third. If we examine the parliamentary Journals between

1867 and 1878

1867 and 1878, we will find many cases of its application. This was mainly due to the fact that the instructions of the Governor-General before 1878 authorized the reservation of eight classes of bills. Blake, to whom the revised instructions of that year were due, contended that no bills should be reserved, Imperial interests being safeguarded by the power of disallowance. (3) However, a further case occurred in 1886; an act regarding fishing by foreign vessels gave rise to international complications, and was reserved. (4)

There is also one form of reservation which is not obsolete. Certain legislation of the parliament of Canada requires a suspending clause declaring that it will not take effect until approved by His Majesty. Such Acts are signed by the Governor-General like any other, but the effect is the same as in the case of reservation. Under Sections 735 and 736 of the Imperial Merchant Shipping Act, 1894, the Dominions must insert a suspending clause in any act regarding the coasting trade and

registered vessels.

registered vessels. Similarly, by the Colonial Courts of Admiralty Act, 1890, Dominion laws respecting admiralty procedure require the previous sanction of the Admiralty, or must have a suspending clause, or be reserved. In connection with merchant shipping, an Act of 1891 to provide for the marking of deck and load lines, which contained a suspending clause, was not allowed to go into effect by the British government.

There have also been cases where the British government, while not actually disallowing legislation, has used its influence to effect changes. In 1875, a bill which would have prevented appeals to the Privy Council was altered at the instance of Great Britain. Similarly, in 1869, the Imperial government called attention to the extraterritorial nature of part of an Act, and while not disallowing it, intimated that it should be amended.(5)

The debates, in so far as they concerned reservation and disallowance, showed, some difference of view. Mr. Thorson declared boldly for the abolition of these

powers, as no

powers, as no longer conforming to the dignity of a Dominion, but Mr. King and Mr. Lapointe were much more cautious. And here we see the influence of politics on the argument. Mr. King started by inferring that disallowance is no longer constitutional. (6) When questioned more closely, however, he admitted that the British North America Act has been in no way changed, and that the words of the Report definitely exempt "provisions embodied in constitutions or in specific statutes expressly providing for reservation." The change was obviously made by Mr. King in order to reassure Quebec that the powers of reservation and disallowance can still be invoked to prevent legislation prejudicial to her interests. The truth is that this part of the Report is nothing but a palpable contradiction in terms.

Furthermore, to show how open the Report is to diverse interpretations, both Mr. Bourassa and Mr. Cahan quoted the following from the British House: (7)

Sir Clement Kinloch-Cooke asked the Prime Minister whether, in view

whether, in view of the Report, any change is contemplated in the right of a Governor to veto or reserve any Dominion measure.

The Prime Minister: "This aspect of the position of the Governors-General was not dealt with in the Report of the Committee on Inter-Imperial Relations, and I am not aware that any change is contemplated.

"Sir C. Kinloch-Cooke: Is there any change in the right of veto ?

"The Prime Minister: No change that I am aware of."

(c) Extra-Territoriality.

The jurisdiction of the Canadian parliament extends by Section 91 of the British North America Act to laws for the peace, order, and good government of Canada. The fact that it has no control over Canadian Citizens abroad or outside the three-mile limit on the seas springs from the fact that Canada is a dependency in international law.

A debate arose on April 12th, 1928, on the bill to amend the Customs Act. This bill purported to give the

Dominion

Dominion power to seize rum-laden ships, if registered in Canada, within twelve miles of the shore. Mr. Ernst pointed out that this was ultra vires, and would be held so in any court. Mr. Lapointe freely admitted the doubt, but argued that it would be better to enact it in any case, and leave to the courts the question of legality.

Twice within recent years Parliament has passed resolutions looking to the amendment of the British North America Act to give Canada extra-territorial power - in 1920 and 1924, but nothing has as yet been done. (8) The question arose originally in connection with aircraft, and the obvious limitations of the control thereof without further authority.

There was really little difference of view in parliament - nor could there be in reason - about the fact of limitation of Canada's extra-territorial powers. No prominent member denied that at least there is some legislative limitation in this regard. The case was well expressed by Mr. Cahan (9), who said: "The Canadian

<u>parliament has</u>

parliament has jurisdiction limited to its own territory, and to a boundary of three miles at sea along its coasts; its jurisdiction does not extend beyond that. This parliament has no jurisdiction over Canadian citizens once they pass beyond the three-mile limit, or beyond the boundary line to the south." And he gave as an example, if a Canadian citizen today commits a crime in Mexico and returns to Canada, he is not subject to our criminal law. This is based on clear pronouncements of the Privy Council.

(d) <u>British Laws Applying to Canada</u>.

The Report takes note of the fact that there is in existence British legislation which binds the Dominions. It mentions particularly the Colonial Laws Validity Act of 1865, and suggests that the special committee examine "the extent to which any provisions of that Act ought to be repealed, amended, or modified in the light of the existing relations between the various members of the British Commonwealth of Nations as described in this Report."

The Colonial Laws Validity Act, (Section 2)

<u>declares that</u>

declares that "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, or repugnant to any order or regulation made under authority of such Act of Parliament, or having in the colony the force and effect of such Act, shall be read subject to such Act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative."

There was in the debates very little understanding of the true nature of this law. Speaking of the Nadan judgment of the Privy Council, Mr. Lapointe said, (10) "I think that what must be done is to repeal the Colonial Laws Validity Act on which the judgment was based." The view was indeed quite common that if the Act were removed, the Dominions would have greater freedom in the matter of legislation. Mr. Cahan, however, clearly pointed out (11) that this is not so. Let us suppose the Act were repealed, and Canada passed legislation which conflicted

with that of the

with that of the Imperial Parliament. If a law case arose as a result, the courts would have to rule, based on general principles, that the Imperial Act had precedence over the Dominion Act. All, therefore, that the Colonial Laws Validity Act does is to make clear what would be merely implied without it. This, of course, is a technical argument, and is analogous to the statement that the Imperial Parliament can not limit its own powers. And it must not be held to mean that no system could be devised whereby the authority of the Canadian parliament would be complete and absolute in its sphere.

The Imperial laws which are still in force in the Dominions are not a few, and they apply to many ramifications of civil and commercial life. The general principle has come to be, however, that such laws will be passed only in consultation with the Dominions, and where uniformity within the Empire or some international or extra-territorial question is involved. And while they

imply a legal

imply a legal subordination of the Dominions, because the local acts depend for their validity on prior Imperial acts, there are few directions, save in the case of merchant shipping, where the practical control of the Dominions is not complete.

(e) Amendment of the Constitution.

Considerable discussion took place on the right of Canada to amend its constitution, which was not one of the matters referred to by the Report. It obviously, however, is one of the legal restrictions on Canadian Autonomy, and follows from the fact that the constitution is an Imperial Act of parliament, which can be changed only by the power which enacted it. The Act itself contains no provision for its amendment. The customary method is for a joint address to the King of the Senate and House to be forwarded to England on receipt of which the British government introduces the desired legislation in parliament. The idea was expressed in the debates that the consent of the provinces is also necessary to a change, in matters affecting their

affecting their vital interests. In practice, this would probably be true, although it has not yet been decided to what extent one province could negative the wishes of all the rest. (12)

The debates do not show any general demand for the power to change our own constitution. It was agreed that Great Britain would never refuse a unanimous request to make any change requested, while the British control is an effective means of preventing injustice to any province. It is well knownthat Quebec would be strongly opposed to any change in this position. That is why Mr. Bennett and Mr. King, the two leaders, are rather non-committal. (13) Senator Beaubien (14) says ninety-nine percent of the people of Quebec are unwilling that power should be placed in the hands of this parliament to amend the constitution. Mr. Thorson, Mr. Woodsworth, and Mr. Bourassa, all consistent autonomists, believe that Canada should have the power. Mr. Lapointe agrees that it is to ourselves that we must look for the protection of our rights, but he is unwilling to surrender the British

control -

control - showing in this a complete reversal of his attitude in the cases of the governor-general and the treaty-making power. (15)

(f) Judicial Appeals.

The Report states the policy of the British Government to be that each part of the empire should decide whether it desires to retain judicial appeals to the privy council; but suggests that where changes in the existing system are proposed, which, while primarily affecting one part, raise issues in which other parts are also concerned, such changes ought only to be carried out after consultation.

This is a clear reference to what happened a short time before the Conference met. The Government of the Irish Free State was known to be antagonistic to this prerogative, and were said to be seeking means to circumvent it. (16) By the Treaty between Great Britain and Ireland it was provided that the position of the Free State should be the same as the Dominion of Canada. Now, in 1888, Canada enacted Article 1025 of the Criminal Code,

which declared

which declared that no appeal should be brought in any criminal case from any judgment of any court in Canada to any court of appeal in the United Kingdom. This provision was not challenged until the Nadan case in 1926,(17) wherein the Judicial Committee ruled that the royal prerogative to grant appeal from any court in His Majesty's Dominions was regulated by a series of statutes, principally the Judicial Committee Acts of 1833 and 1844, and invoking the Colonial Laws Validity Act, the court ruled that the Canadian law was therefore void "ab initio." It was believed that the reason for deciding the issue at that particular time was to make clear the position of the Irish Free State.

The matter was not one which was made much of by Mr. King and Mr. Lapointe in their speeches on the Conference. Indeed, the subject has not been one to agitate greatly the public mind of Canada, although there have been other attempts to abolish appeals. In 1875, for instance, a bill was introduced in parliament

creating the

creating the Supreme Court, which had this aim. In this case, the government was notified by the British Government that the bill could not be sanctioned unless the royal prerogative were preserved. Accordingly, the bill was altered to safeguard this right.

It has been usually believed that Quebec is the main citadel of defence for the Privy Council. For if some future Canadian parliament defied by some law the express provisions of the British North America Act which guarantee the control of education, for example, to the provinces, and if we can imagine a Canadian Supreme Court upholding an act so passed, then there still remains a body which, being removed from the contending interests, would be more likely, in the opinion of Quebec, to enforce the British North America Act. This was substantially the argument of Mr. Guthrie in the debates. (18)

It is, then, of interest to note that Mr. Lapointe, recognized as the leader of French-Canadian interests in the government, declares that "the men in Quebec who represent really the aspirations of the French-Canadians

are applying to have the appeal to Privy Council done away with." (19)

It is probable, however, in spite of this that Quebec is the main bulwark of this prerogative. Certainly, Mr. Lapointe's statement conflicts with the generally accepted opinion. (20)

The opinion of the Conservatives, as far as expressed, was in favor of retaining the right, although Mr. Cahan said that he favored "very decided restrictions" in the right of appeal in criminal cases, commercial cases, and questions between province and province. But apparently he would leave the Judicial Committee as a last resort for the protection of the rights of the provinces as guaranteed by the constitution.

It is curious to note, in this question, as in that of the amendment of the constitution, that the government was not concerned about the autonomy of Canada, as it was in dealing with the governor-general and treaties. For Mr. Lapointe, although he made the remark quoted above, wavered in his viewpoint, and, in fact, made no more than

the somewhat

the somewhat platitudinous claim that "any citizen of this Dominion is free to proclaim whether or not be believes in the retention of appeals to the Privy C ouncil."

(g) Conclusion

It may be noted that there were three distinct views in parliament with regard to the legal limitations of Canadian sovereignty. The first view was that of Mr. King (21) - "Whatever we may say when we come to refining from technical and legal points of view, we no longer think of the dominions as being in a position of colonial subordination nor of the British Government as in a position of Imperial control in relation to other parts of the empire." Here, and throughout the debates generally, Mr. King dismisses the legal argument as being of no practical importance. At the same time, he agrees that many legal forms are not in accord with the constitutional position, and favors the removal of what he calls "this last anachronism, this trifling anomaly, this irritating remnant." (22) He is not quite consistent, however, as

we have seen,

we have seen, with regard to the questions of reservation, disallowance, and amendment of the constitution.

The second view was that of Mr. Thorson, that the Report, while it does not legally set out the actual state of affairs, contains two things (23) - "An implied agreement by Great Britain that she will not exercise the sovereign powers which she legally possesses except at the request and with the concurrence of the dominions," and "an implied promise by Great Britain that she will place the dominions in a position as near to equality as is consistent with the maintenance of the empire." Mr.Thorson, unlike Mr. King, recognized the legal argument.

The third view was that of Mr. Bennett and Mr. Cahan that these legal marks of subordination do in fact constitute a serious limitation of the freedom of the Dominions. In their opinion, they are far more than mere technicalities. Our shipping and admiralty legislation are still subject to control, our extra-territorial power is limited, and there remain many British statutes which bind the whole empire.

bind the whole empire. The fact that disallowance and veto have not been invoked for many years is rather, according to Mr. Cahan, due to the restraint of the parliament of Canada in passing legislation than to the power having become obsolete. (24)

It must be remembered that to effect these changes in our constitution would not of itself alter the theory onwhich the Empire is built. For example, the abolition of appeals to the Judicial Committee could only be done by an Imperial Act. In Australia, appeals are restricted, but the constitution of Australia is itself an Imperial Act. Similarly, the right of Canada to amend the Canadian constitution could be obtained only through the instrumentality of the Imperial parliament. Australia is legally just as subject to Great Britain as Canada, although there is a wide difference in the right of the two Dominions to amend their constitutions. If the claims of equality of status were true, our constitution would not derive its legality from Great Britain, in fact, we should have no connection with the Motherland save what

we chose to

we chose to prescribe by treaty. The logical corollary of equality of status, indeed, is a treaty between all the Dominions and Great Britain, stating the terms on which they agree to form an empire, and is not to be found in acts of a sovereign Imperial Parliament which grant fuller and wider powers to the Dominion parliaments.

References in Chapter IV

(1) House of Commons Journals, Oct. 23, 1873; Sessional Papers, 1876, No. 45

(2) Commons Debates, 1926-7; p. 1754

(3) Sessional Papers, 1877, No. 13

(4) Ibid., 1887 - No. 16

(5) Ibid., 1870 - No. 39

(6) Commons Debates, 1926-7; p. 1656

(7) British Commons Debates, 1926, Vol. 200, p. 534

(8) Can. House of Commons Journals, 1920, p. 443; 1924,p.651; Commons Debates, 1926-7, pp. 1710-11

(9) Commons Debates, 1928, p. 123

(10) Ibid., 1926-7, p. 1713.

(11) Ibid., 1928, p. 125

(12) British Columbia Sessional Papers, 1908, c. 1

(13) Commons Debates, 1928, pp. 54-5

(14) Senate Debates, 1926-7, p. 301

(15) Commons Debates, 1926-7, p. 1709

(16) House of Lords Debates, 1926 - Vol. 63 - p. 394

(17) See judgment in London Times, Feb. 26, 1926, p.5

(18) Commons Debates, 1926-7, p. 1666

(19) Ibid., 1926-7, p. 1713

(20) "Round Table," 1919-20. p. 654

(21) Commons Debates, 1926-7, p. 1649

(22) Ibid, 1928, p. 57

(23) Ibid, 1926-7, p. 1755

(24) Ibid, 1926-7, p. 1656

CHAPTER V

TREATIES.

Before we deal with the treaty section of the Report and the debates thereon, it will be well to give a very brief sketch of what the position of Canada has hitherto been with regard to treaties. We shall trace the history prior to the Conference of 1923.

Since Confederation, there has been a steady increase in Canada's power to negotiate her own commercial treaties. It was once the recognized function of Great Britain to form such agreements with foreign powers without consulting the self-governing colonies, even when their interests were involved. The advent of Confederation, however, soon marked a change. In 1871, we find Sir John Macdonald appointed as one of the British plenipotentiaries in negotiating the Treaty of Washington. This procedure was followed in several instances before 1888, and in that year, at Washington

Sir Charles Tupper not only aided in the drawing-up, but also signed the final document. Again, in 1893, a treaty with France was framed, Tupper for Canada and Lord Dufferin for Great Britain being the plenipotentiaries. This case marked a further advance in that it was Tupper, not Lord Dufferin, who predominated in the negotiations, and this method was followed in 1907, 1909, and 1922. In 1923, however, even the formality of a British co-plenipotentiary was dispensed with, and the Halibut Treaty with the United States was signed by Mr. Lapointe of Canada alone.

It should be added that for a long time, Great Britain has followed the practice of exempting the Dominions from her commercial treaties unless they should, within a definite time, agree to become parties to them. The first such treaty was made in 1882. But it must also be noted that the British Government, through a despatch of Lord Ripon, in 1895 and again in 1907, laid down certain general principles, the purport of which is that no Dominion may benefit itself at the expense of the Empire as a whole by

treaties

treaties made with foreign states.

Several times in Canada resolutions have been moved looking towards complete treaty-making power. For example, in 1882, Edward Blake moved that it was expedient that the government of Canada, with the approval of parliament, should have power to enter into direct communication with any British possession or foreign state for the purpose of negotiating commercial arrangements. (1) This motion aimed to dispense with even the nominal oversight of Great Britain.

The history of political treaties, shows much less in the way of independent action on the part of Canada, This arises from the obvious fact that, strictly speaking, a Dominion can have no distinct foreign policy of its own. The Treaty of Washington of 1871 comes partially under this head, and it is the only political treaty for which a Canadian was a plenipotentiary before 1919. In that year, the peace treaties terminating the Great War were signed both by the English delegates for

the British Empire and by the Dominions separately, and the same anomalous procedure was followed at Washington in 1922. The signatures in these cases, however, were grouped in such a way as to indicate the diplomatic unity of the Empire.

The important thing to note in this summary is that there was no legal, perhaps no constitutional, change. In commercial treaties, there was merely the substitution of a Canadian for a English plenipotentiary, but the manner of appointment, under the Great Seal of Great Britain, was the same. In the case of political treaties, it is difficult to define the separate signatures as anything more than an act of courtesy to the Dominions.

The 1923 resolutions are really an "ex post facto" justification of Canada's procedure in the Halibut Treaty case of that year. Canada refused the assistance of the British Ambassador at Washington,(2) and for the first time, under full powers from the King, a Canadian plenipotentiary negotiated and signed a

<u>treaty alone.</u>

treaty alone. The 1923 resolution, accordingly, says, "Bilateral treaties imposing obligations on one part of the Empire only should be signed by a representative of the government of that part." But it is careful to preserve Empire unity in Imperial matters: "Before negotiations are opened with the intention of concluding a treaty, steps should be taken to ensure that any of the other Governments of the Empire likely to be interested are informed, so that, if any such government considers that its interests would be affected, it may have an opportunity of expressing its views, or, when its interests are intimately involved, of participating in the negotiations."

On June 21st, 1926, the Canadian House of Commons (but not the Senate) (3) approved of the 1923 Resolution and also the principle that treaties affecting Canada should be submitted to parliament before ratification.

Prior to the 1926 Conference, some important

correspondence

correspondence took place between the British and Canadian governments, and as this doubtless lies behind the prominence given to this subject in the Report, it will be well to examine it in order to better understand the position.

Not long after the 1923 Imperial Conference, there was an exchange between the two governments on the question of signing the Treaty of Lausanne with Turkey. (4) The Canadian government made it clear that while it had no objection to Great Britain ratifying the treaty, still since Canada had had no voice in drawing it up, she could not see fit to become a party to it. The government based this decision on the Imperial Conference resolutions of 1923. The British government accordingly ratified it for the whole Empire. (5) The Treaty makes peace between the Empire (Canada included) and Turkey.

During June and July, 1924, there came up the further question of representation at the Inter-Allied Conference. (6) The British Government pointed out

that since

that since the great powers were to have three representatives each, there was great difficulty in following the plan adopted at Paris and Washington of separate Dominion representation. It therefore proposed the panel system, by which the Dominions were to be represented collectively by one delegate, the delegate so named to be chosen by each Dominion in turn. The Colonial Secretary said, "I should explain that I think my own prerogative will be essential throughout, and probably that of the Chancellor of the Exchequer." He added that this was an exceptional case, and, moreover, there was no intention of drawing up a treaty. The Canadian government insisted in answer that the Empire is quite capable of deciding its own constitution and as to how it shall be represented. Finally, however, it accepted the panel system, in order, as it said, not to embarrass the British government.

These incidents lie behind the treaty resolution

<u>of 1926,</u>

of 1926, and the Canadian government consider that the Report justifies them in their attitude on these various matters.

The 1926 Resolution goes farther than that of 1923, attempting to state specific rules of treaty procedure. In doing this, it is not a little vague and obscure, but it undoubtedly preserves the two principles of autonomy in local and unity in Imperial matters. One of the most debated passages is the following:-

"When a Government has received information of the intention of any other Government to conduct negotiations, it is incumbent upon it to indicate its attitude with reasonable promptitude. So long as the initiating Government receives no adverse comments and so long as its policy involves no active obligations on the part of the other Governments, it may proceed on the assumption that its policy is generally acceptable. It must, however, before taking any steps which might involve the other Governments in any active obligations, obtain their definite assent.

"Where by the nature

Where by the nature of the treaty it is desirable that it should be ratified on behalf of all the Governments of the Empire, the initiating Government may assume that a Government which has had full opportunity of indicating its attitude and has made no adverse comments will concur in the ratification of the treaty."

Turning now to the debates, on March 30th, 1927, Mr. Lapointe said:

"Hereafter treaties will be made and signed, not by and for the British Empire, but by and for Great Britain and such other portions of the empire as may be concerned in those treaties. Heretofore, even though we might be interested in any treaty of any description, if we were not represented during its negotiation and at the signing of it, the treaty was entered into nevertheless in the name of the British Empire as a whole. The change in the wording of the treaty in this regard is of the utmost importance. There will be no longer any need of the provision which has been known as the

<u>exclusion clause</u>,

exclusion clause, such for instance as was incorporated in the Locarno treaty. That clause was to the effect that the treaty in question could be enforced in any of the dominions only after they had agreed to come within its provisions. Such a clause, as I say, will no longer be necessary; it will serve no useful purpose for the reason that we shall be involved in any treaty only if we are a party thereto. Treaties will be made by the king in the name, not of the British Empire but on behalf of Great Britain and whatever other section of the empire may be a participant in and a signatory to the negotiations.

"Another important change concerns the appointment of plenipotentiaries representing the king in connection with negotiations leading up to treaties and the signing of those treaties. When a few years ago I was appointed plenipotentiary to negotiate a treaty with the United States it was stated by constitutional writers that no real change had been made inasmuch as my appointment by His Majesty the king was the outcome of

<u>an order</u>

an order in council passed by the Imperial government. The same with regard to the issuance of powers and the ratification that must take place after the signing of a treaty. That ratification was also made by His Majesty the king upon an order in council of the Imperial government and not of the Canadian government, even where Canada was concerned. Now treaties signed on behalf of Canada will be signed by a plenipotentiary appointed by His Majesty the king upon a recommendation of the Canadian government, and the issuance of powers will be made also upon the recommendation of the government of Canada. In the same way the ratification of treaties will be carried out upon the recommendation of the government of this Dominion. All the other formalities which, according to constitutional writers, have been adhered to as symbolic of the unity of the empire have been discarded as being no longer in harmony with the conditions now prevailing among the nations of the empire; for, as I have pointed out, the

one great symbol of unity now is His Majesty the King."(7)

We see very clearly that Mr. Lapointe's argument was that in matters which affect only herself, Canada may make her own treaties, subject to no oversight or control whatsoever on the part of the British government; and in matters which affect the whole Empire, no treaty can be made which in any way binds Canada without her own consent.

With regard to the first statement, we may notice a discussion which took place in the House on March 21st, 1924, (8) in the debate on the prohibition convention between His Majesty and the President of the United States. Mr. Meighen pointed out most clearly the difficulty involved in the argument that Canada may make a treaty without any oversight on the part of the British government. He said, "The function of the British government will consist in making a recommendation; the wording of the transmission to His Majesty will be a recommendation.....The British government having been first apprised of the terms of the treaty and having agreed that the matter is purely one that concerns

Canada, the recommendation will in every case be cheerfully given; but it will signify to His Majesty the approval by the British government of the treaty." No effective answer was made to Mr. Meighen, nor can one be made. For if each Dominion were allowed to advise the King direct regarding ratification of treaties, it would be equivalent to breaking the Empire up into a number of separate states. It is certain that the 1926 Resolution, vague as it is, does not intend this. It is certain, too, that the British government does not give up its general oversight over the foreign policy of the Empire. Indeed, the Report specifically states that in the conduct of foreign affairs, "the major share of responsibility rests now, and must for some time continue to rest, with His Majesty's Government in Great Britain."

So much for the first part of Mr. Lapointe's argument. But the Report shows that there are treaties which by their nature must be ratified on behalf of all the governments of the Empire, and says that in such cases, "the initiating Government may assume that a

Government which has had full opportunity of indicating its attitude and has made no adverse comments will concur in the ratification of the treaty."

In the debate on March 30th, 1927, Mr. Cahan clearly pointed out that the mere neglect of our government to express its attitude on a treaty would result in our being automatically bound by it. Mr. King interjected that there is a saving clause; namely, "It must, however, before taking any steps which might involve the other Governments in any active obligations, obtain their definite assent."

"Mr. Cahan: That is restricted solely to active obligations.

"Mr. Mackenzie King :That is the only obligation that means anything.

"Mr. Cahan: It is restricted solely to active obligations, whereas I stated that in the opinion of the Minister of Justice today active obligations imply military sanctions and the like. But those other treaties may infringe upon the natural rights or the nationality rights of

Canadian citizens

Canadian citizens throughout the world, and yet by the mere neglect of the department over which the Prime Minister presides, those treaties may be concluded without having ever been submitted to this parliament."

The difficulty here centres on the word "active". As is well known, Canada has never been obliged to lend military aid in the case of war. As Mr. Bennett pointed out (9), "It is perfectly true that when Great Britain goes to war this country is also at war. It is equally true that this country need not participate in any such war unless this parliament sanctions our participation." Therefore, if that be the connotation of the word "active", Mr. Cahan's interpretation is right, and Great Britain may still make treaties which bind the Dominions to everything but military aid.

A point of greater difficulty, however, is whether, in the case of treaties which by their nature should clearly be signed on behalf of the whole Empire, the Dominions are fulfilling the spirit of the Report by remaining aloof. We have seen that the treaty of

Lausanne, which made peace with Turkey, was signed for the Empire by Great Britain, and undoubtedly applies to Canada, even though she disclaimed any intention of being a party to it. Mr. Lapointe's argument implies that Great Britain, by adopting the Report, has constitutionally (surely not legally) lost this power.

We may instance first, in this connection, the abortive Anglo-Egyptian Treaty of 1927. (10) On November 11th, 1927, the British Government sent to the Dominions a copy of a draft treaty, declaring, "Subject to the concurrence of the Dominion Governments we are prepared to offer it to Egypt." The Canadian government, on November 22nd, answered in much the same way as in the Lausanne case, mentioned before, that the treaty was one of primary interest only to His Majesty's Government in Great Britain, and that Canada had no intention of entering into a military alliance with Egypt, and wished to preserve her right to consider her policy as circumstances decide. On December 2nd, the British Government answered that it would sign the treaty by a

plenipotentiary empowered to act "for Great Britain and Northern Ireland." Mr. King claimed in the House (11) that the significance of this incident is this, that the British Government intended first to form a treaty which should be binding on the whole Empire, but that, after Canada's protest, the treaty was made to apply only to one part of the Empire. He further refuted a statement of Lord Salisbury in the House of Lords, (12) that the Dominions had never been asked to become parties to the treaty. Mr. King is obviously right in his interpretation of the correspondence between the two governments, but the incident leaves very obscure all the really important questions. The treaty, as it turned out, was not accepted by Egypt, but if it had been, and war arose as a result of it, Canada could doubtless claim her non-adherence as a ground for not actively engaging in war, but could she claim that she was not at war at all ? Can the King declare war on behalf of Great Britain and Northern Ireland alone ? Mr. Garland, (13) of Bow River, asked Mr. Lapointe whether Canada will hold a neutral position in a war arising from a treaty

to which she was not a party, and no difinite answer was given.

This question of neutrality was mentioned by several speakers in the debates. Mr. Thorson, whose speeches were, on the whole, careful in the use of language, declared that Canada can remain neutral while Britain is at war. (14) Mr. Thorson and Mr. Bourassa (15) were the only two prominent speakers who expressed this view. The position was emphatically denied by many others. Mr. Bennett said, (16) "If Great Britain declares war against Egypt, it follows, of course, that war is thereby declared against Canada, although we may not have been a party to any treaty made between those two countries. Our commerce would be the prize of any opposing fleet by which it might be captured; Our cities might be bombarded and we might be driven from the world so far as commerce and trade are concerned. That, I think, is so obvious as not to require any observations on my part other than merely to state the fact."

We may conclude, therefore, that while the

Anglo-Egyptian Treaty on its face exempted the Dominions, Mr. King has not made it clear just what the exemption means.

The other important case which has arisen since the Conference is that of the Kellogg pact. In stating the British attitude to the American Ambassador at London, (17) the British Secretary of State for Foreign Affairs, on May 19th, 1928, wrote as follows: "It will however be approciated that the proposed treaty, from its very nature, is not one which concerns His Majesty's Government in Great Britain alone but is one in which they could not undertake to participate otherwise than jointly and simultaneously with His Majesty's Governments in the Dominions and the Government of India." He says further that the British government has been in consultation with those governments, and all are in agreement. Therefore, if the American government invites them to participate, "they, no less than His Majesty's Government in Great Britain,will be prepared to accept the invitation."

Questions with regard to this treaty were asked several times in the House, and in one of his replies,(18)

Mr. King made

Mr. King made what amounted to a denial of the British Foreign Secretary's contention that the treaty must be signed jointly and simultaneously. He said: "I would say first with respect to any alleged conflict of opinion between Sir Austen Chamberlain and myself, that I do not think there is any, I was speaking with respect to the policy of the Canadian government as to the signing of the treaty, and I indicated that, having regard to conditions of which we would wish to take account on the invitation being extended to us we would be quite prepared to sign. Sir Austen Chamberlain was speaking with respect to the position of the British government, and announcing its policy. The British government is free to pursue whatever course it wishes with respect to signing the treaty."

It is not too much to say that the Anglo-Egyptian and Kellogg pact incidents reveal that the British and Canadian governments hold entirely different interpretations of the 1926 Resolution regarding treaties. The former believe that there are treaties which must

be signed

~~must~~ be signed by the whole Empire or not at all; the latter hold that, as Mr. Lapointe says, "all the formalities which have been adhered to as symbolic of the unity of the empire have been discarded."

One thing is obvious, that no part of the Empire can indefinitely claim the right to pursue, in treaty matters, a policy separate from that of Great Britain, at leaat without first inaugurating an entirely new theory of international law. It has been claimed that this is already in force by virtue of the independent position of the Dominions in the League of Nations. The better explanation of that position is that it is an anomaly, and in opposition to international law. (19) Even in the League, the difficulty of regarding the British Empire as other than an entity has been recognized. (20) Certainly, the 1926 Conference did not intend that the Dominions should adopt a separate treaty-making policy from that of Great Britain. Its real intention, indeed, is that in matters relating solely to its own interests, each Dominion should have jurisdiction, while in matters of common concern, there

<u>should be</u>

should be a united foreign policy based upon consultation and agreement among them all.

References in Chapter V.

(1) Commons Debates, 1882, page 1075

(2) Sessional Papers, 1927, no. 111a

(3) The resolution was not forwarded to the Senate.

(4) Commons Debates, 1924,p.945;Sessional Papers,1924,No.232

(5) British Sessional Papers, 1923, Vol. XXV.

(6). Canada Sessional Papers, 1924, No. 309

(7) Commons Debates, 1926-27, p. 1705

(8) Ibid. 1924, pp. 550-2

(9) Ibid. 1928, p. 1968

(10) Sessional Papers, 1928, No. 293

(11) Commons Debates, 1928, pp. 1850-4

(12) Ses Lords Debates, 1928, March 29 & April 26.

(13) Can. Commons Debates, 1926-7; p. 1706

(14) Ibid. 1928, p. 3488

(15) Ibid. 1928, p. 239

(16) Ibid. 1928, pp. 3475-6

(17) British Sessional Papers, 1928, Cmd. 3109

(18) Can. Commons Debates, 1928, p. 3794

(19) Senate Debates, 1928, p. 74

(20) Ses Sir C. Hurst, in British Sessional Papers, 1926, Vol. 30, Cmd. 2576.

CHAPTER VI

Diplomatic Representation.

The Report (Section V(c) & (e)) mentions the growing interest of the Dominions in foreign affairs, giving as an instance the appointment of a Minister Plenipotentiary to represent Canada at Washington; and approves strongly of this, and of the similar action of the Irish Free State.

The proposal for separate Canadian representation at Washington is not new. The close proximity of the two countries, and the large number of commercial and political questions arising between them, have frequently caused the need for it as a practical measure to be realized. Lord Bryce, the British Ambassador, is reported to have said that between two-thirds and three-quarters of the questions dealt with by the embassy related to Canada. This being so, it was often felt that such affairs would be handled better by an envoy thoroughly familiar with Canadian problems and responsible to the government of Canada. And again, there has been

an impression that at various times British diplomacy has sacrificed the interests of the Dominion.

On several occasions, motions have been made for the separate treaty-making power. This question is closely related to that of the method of representation in foreign capitals. Accordingly, on May 2nd, 1892, a move was made for separate diplomatic representation at Washington. (1) Mr. D'Alton McCarthy's plan was for a representative attached to the staff of the British Ambassador. He said he realized the practical impossibility of making treaties irrespective of the Imperial power, and so the Canadian appointee should endeavor to act in association with the British Ambassador. Another speaker pointed out that the sovereignty of the crown may be represented by two agents as well as by one. As far as this continent was concerned, Canada was more interested in that sovereignty than England.

Since 1892, many negotiations between this country and the United States have taken place, in which

Canadians have

Canadians have been plenipotentiaries. It was the war, however, which hastened consideration of the question. The Canadian Prime Minister brought the matter to the attention of the British Government, and after discussion it was decided to postpone the consideration of so important a step until after the war. In the meantime, Canada appointed a special War Mission to the United States, but its functions were commercial in character, it being concerned mainly in securing a market for Canadian goods in response to the new demand created by American entrance into the war. The need for this Mission ceased with the end of the war, and the question of an Ambassador naturally arose again.

On April 2nd, 1919, it was officially announced in the House that it was the intention of the government to have a permanent representative at Washington, the exact form of the representation being a matter of consultation between the Prime Minister and the Imperial government.

On May 10th, 1920, it was announced simultaneously in the Canadian and British Houses of Commons (2)

that by arrangement

that by arrangement between the governments, it had been decided to appoint a Minister Plenipotentiary at Washington for the purpose of providing more complete representation of Canadian interests. The main reason given for the change was "the constantly increasing importance of Canadian interests in the United States." On two subsequent occasions in the session, May 17th, and June 30th., there were debates in Canada on the principle involved. The main objection of the Liberals was the provision that in the absence of the British Ambassador the Canadian minister was to represent the whole empire. This system of divided authority was strongly objected to. It was felt that the Canadian representative must be responsible only to the government which appointed him.

The scheme was not, however, fulfilled. Doubts about the wisdom of the step, the expense involved, and the difficulty of obtaining a suitable appointee doubtless all played a part in the delay. Besides, the Liberals came into power in 1921, and they were opposed to the particular form of representation suggested. As late as April 26th, 1926, the British government declared

in the Commons

in the Commons that there had been no word from the Canadian government as to their wishes.

The letter of credence appointing Vincent Massey, Envoy Extraordinary and Minister Plenipotentiary was finally issued on December 7th, 1926. (3)

On February 28th, 1927, in reply to a questinn in parliament, the Secretary of State for Dominion Affairs said that his position was similar to that of the Irish Free State Minister. In order, therefore, to understand the status, functions and duties of the Canadian representative, we must see first what they are in the case of the envoy of the Free State.

On June 24th, 1924, the British Ambassador at Washington, under instructions from the Secretary of State for Foreign Affairs, wrote to the Secretary of State of the United States, declaring the desire of Great Britain that matters at Washington exclusively relating to the Irish Free State should be confided to a Minister Plenipotentiary accredited to the United States government.(4)

States government.(4) The note says further: "Matters which are of Imperial concern or which affect other Dominions in the Commonwealth in common with the Irish Free State will continue to be handled as heretofore by this Embassy.

"The arrangements proposed by His Majesty's Government would not denote any departure from the principle of the diplomatic unity of the Empire. The Irish Minister would be at all times in the closest touch with His Majesty's Ambassador, and any question which may arise as to whether a matter comes within the category of those to be handled by the Irish Minister or not would be settled by consultation between them. In matters falling within his sphere the Irish Minister would not be subject to the control of His Majesty's Ambassador, nor would His Majesty's Ambassador be responsible for the Irish Minister's actions."

To this note the American Secretary of State replied on June 28th, declaring the willingness of his government to receive an Irish Minister on the footing indicated.

On June 26th, 1924,

On June 26th, 1924, there was made an important statement in the British House regarding the status of the new Minister. Since the Canadian representative has admittedly the same position, it is well to note the main ideas in that statement: First, by the agreement of 1921 with Great Britain, Ireland is specifically accorded the same relationship to the Crown and Imperial parliament as Canada. Great Britain granted a Canadian request for a plenipotentiary in 1920. Therefore she is bound by the Treaty to grant the present Irish request. Second; He will be the sole ambassador for exclusively Irish affairs. Third: The spirit of the 1923 Treaty resolution is to be applied - namely, that in all matters which may affect other parts of the Empire, the Free State Minister must consult with the British Ambassador before negotiating with the American government. Fourth: If there is any doubt as to whether a particular question is in that class, it will be decided by consultation between the representatives, or their two Home Governments.

Fifth: because

Fifth: Because a matter which starts as a purely Irish one may later become Imperial in its nature, the Minister should keep in close touch with the Ambassador. Sixth: The Ambassador is not responsible for the acts of the Minister, nor is the latter subordinate to the former.

On March 29th, 1927, in response to questions, Mr. King described the manner of appointment of the Canadian Minister. He said there was no Imperial Order-in-Council, nor instructions from the king; that there was a Dominion Order-in-Council, which was communicated by the Secretary of State for Dominion Affairs through the proper channel in Great Britain, and that it was this Order-in-Council upon which the King would act in making the appointment.

The letter of credence, addressed by the King to the President of the United States, contains the following paragraph:

"We have judged it expedient to confer the rank of Envoy Extraordinary and Minister Plenipotentiary upon our trusty and well-beloved the Honourable Charles Vincent Massey, member of our Privy Council of Canada,

<u>with the especial</u>

with the especial object of representing in the United States of America the interests of our Dominion of Canada."

The Speech from the Throne, 1928, declared that it was proposed to appoint Ministers Plenipotentiary to Japan and France, and receive similar representatives from them.

We are now in a position to deal with the Canadian debates on the question. References to it occurred several times in both Houses of Parliament. In the House of Commons, on April 13th, 1927, the Opposition moved to reduce the cost of the legation at Washington from five hundred thousand to twenty-five thousand dollars. Most of the discussion, too, took place around the expense of the undertaking, and the fact that twenty-five thousand dollars was untouched by the amendment would show that the Opposition were not wholly opposed to the principle of separate representation.

In the next session, however, in connection with representation at Tokyo, the Opposition attempted

to reduce

to reduce the item of supply from fifty thousand to one thousand dollars, and the discussion was essentially on the question of principle. Sir George Perley declared that whatever reasons there might be for representation in the United States and France, (trade and racial connection respectively,) there were none in this case that could not be as well served by commercial agents. Mr. Bennett went further, and declared himself opposed to any and all moves of this nature.

In the Senate, no attempt was made to reduce these supply items, but in the course of other debates several Senators voiced opposition to the principle involved.

The main disagreement on the question in parliament arises from the fact that in practice it will be obviously more difficult for the Empire to speak with one voice through several ambassadors than through one. Around this the main debate centres.

Mr. Bennett (5) argues the question as follows: "In dealing with our relations with other states it is essential to the maintenance of the commonwealth of

free communities

free commnnities known as the British Empire that there should be but one foreign policy." If Australia has one foreign policy, New Zealand another, and Canada another, it is obviously impossible to maintain unity among them. Therefore it follows "that independence of action in diplomatic matters is not compatible with the ideas of partnership and of a united empire." No real partnership can exist under those conditions. That brings us to the next step, namely, "The appointment of aminister by Canada implies by international law that the Dominion is a sovereign state. We are not, and that implication will create misunderstandings at home and abroad." He then quotes Oppenheim to the effect that a sovereign state must be characterized by four essentials, - first, a people living together as a community; secondly, a country in which the people have settled down; thirdly, a government; fourthly, a sovereign government. This fourth point definitely debars Canada from the scope of the definition, for, says Oppenheim, "Sovereignty is supreme authority,

an authority which is independent of any other earthly authority. Sovereignty in the strict and narrowest sense of the term includes, therefore, independence all round, within and without the borders of the country." Mr. Bennett then submits that we have not this independence, as is shown by the British North America Act, the Merchant Shipping Act, and others. If, however, Canada desires this sovereign position, the appointment of ministers abroad will surely lead to it. For at the first disagreement between our representative and Great Britain's, unless that disagreement can be composed, the unity of the Empire is shattered. "You cannot," says Mr. Bennett, "take weeks to decide a diplomatic matter, you can only take hours. The ambassador of Great Britain says, "I can speak for everybody but Canada." Can we then remain within the empire, remain a partner of the commonwealth of nations called the British Empire ? We cannot, There is no difficulty in understanding that."

The whole experiment

The whole experiment is being predicated upon the assumption that the different representatives will always agree, and Mr. Bennett considers this assumption to be totally unwarranted.

Sir George Perley (6) suggests one further step - that there should be a committee, representative of all the self-governing parts of the Empire, to administer the foreign affairs of the Empire. Among other things, this committee would appoint all ambassadors abroad. Thus, a Canadian or an Australian might be the envoy for the whole Empire. He does not elaborate his scheme, but he suggests it as the proper method of obtaining unity in diplomatic matters.

Mr. Mackenzie King (7) differs from those who say that the appointment of separate ministers will make for disunity. On the very contrary, he says that the consultation of those ministers will draw the different parts of the empire closer together. As to the possibility of differences among them, "they will be solved by collective opinions to which

individual opinions

individual opinions will give way." He instances the Peace Conference at Versailles and the League of Nations at Geneva, where common counsel of the Representatives was taken before the resultant action was agreed upon. The only alternative to joint control is centralized control, even as Sir George Perley suggested, and this plan is impracticable, mainly for two reasons: first, there is no likelihood of its getting any support in any part of the Empire: secondly, the affairs of each Dominion require to be dealt with by a representative who will be directly responsible to and subject to recall by the government of that Dominion. He says, besides, that the government's scheme has the full approval of the British government and the British Ambassador at Washington, which in itself is a proof that it will not make for disunion in the Empire. Furthermore, it is founded on the Report of the Conference, which declares that Great Britain and the Dominions "are autonomous Communities within the British Empire, equal in status,

equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations." The plan of associating a Canadian minister with other ministers of the Empire is giving effect to this pronoucement.

In order to decide which of these estimates is nearer the truth, several factors must be borne in mind. As far as the purely legal side is concerned, there is no departure from the principle of the diplomatic unity of the empire. The appointment comes from the king, and the envoy is accepted by the foreign state as an envoy, not of Canada or the Irish Free States, but of the king. Once more, the letter of credence defines the limits within which the minister is to act - namely, to represent the interests of the Dominion. Nor can this legal side of the matter be ignored. Even if there is no British Order-in-Council, and the appointment is made solely on the Dominion Order,

<u>this is a very different</u>

this is a very different thing from saying that the recommendation goes from the Dominion government to the king direct. It is sent through the official channels in Great Britain, and under the theory of cabinet government it is the Foreign Secretary who is ultimately responsible for the appointment. The idea that each government of the empire advises the king direct is simply not true. This would be the case if, as has been claimed, the Dominions were independent states, but such a theory is not borne out by fact.

On the other hand, the legal argument must not be pressed too far. In the first place, there is no likelihood of a Canadian recommendation for appointment being vetoed by ~~by~~ the British government, and so it may practically be said that the envoy is as completely under the control of Canada as though the theory were other than it is. In the second place, it will obviously be difficult in practice to assure that the Canadian minister will always act in harmony

<u>with the British</u>

with the British Ambassador. The question as to when a Canadian matter has become an Imperial issue will not be easy to decide, and the fact that there is to be consultation between the representatives does not of itself insure that there will be agreement.

The problem of avoiding conflict between the ambassadors is of course subordinate to the major problem of agreement between their two governments. It is the governments, not the envoys, who form national policies. And in the last analysis, it must be admitted that no kind of compulsion, but only a willingness to unite, can hold the empire together in its foreign policy. On the other hand, the appointment of a separate ambassador unquestionably increases the possibility of a differing foreign policy between the governments, because the machinery is provided by which the foreign power may be separately approached.

From the standpoint of Empire unity, Sir George Perley's plan of a single representative responsible

to all the

to all the governments of the Empire would be the logical scheme to adopt. But it would imply some measure of federation, for which as yet probably none of the Dominions are prepared. For the presnt, therefore, the system of divided representation must suffice, and it "will symbolize the recognized policy, the new "Divide et Impera," whereby local questions are settled for each part of the Empire by itself in order that the harmony, and so the strength, of the whole may be preserved for the larger occasions when common action is needed." (8)

<u>References in Chapter VI</u>

(1) See Commons Debates, 1921- page 2383

(2) Can. Commons Debates,1920,p.2177,British Commons, Vol. 129, p. 205

(3) Corbett and Smith; Appendix IV

(4) British Sessional Papers, 1924, Cmd. 2202

(5) Commons Debates, 1928, p. 4163

(6) Ibid., 1928, p. 4154

(7) Ibid., p. 4155

(8) London Times, editorial, Sept. 28th, 1926.

CHAPTER VII

The General Result of the Conference.

In this chapter we shall deal with the work of the Conference as a whole. Before doing so, however, we shall give a brief criticism of the parliamentary debates.

(a) The principal fault in this connection was a failure to distinguish the major issues clearly, and to state them with consistency to the end. To illustrate this, we may first deal with the government, and then with the opposition speakers. Mr. King, in many parts of his addresses, said that Canada is in a position of full equality with Great Britain, and yet he emphatically declared that the British North America Act remains exactly where it was in all particulars. And again, he denied that he claimed the Report to be a charter of liberty, and proceeded to quote approvingly from the London Spectator, which

<u>says that it is.</u>

says that it is. His arguments, and those of Mr. Lapointe, fluctuated between two contrary views- first, that Canada is an independent nation, as shown by her position in foreign policy; second, that the British control remains over amendments to the constitution and appeals to the Judicial Committee. Again, when the question of the right to amend the constitution arose, instead of stating his own view, he read quotations from Mr. Bennett to show that he had declared in favor of the right. (1)

On the opposition side, the amendment which was moved by Mr. Guthrie, and supported by his followers, (2) can hardly be called worthy of consideration when the importance of the debate is considered. A motion that the rights of the provinces be not jeopardized was surely irrelevant to the main issue. Once more, when Mr. Bennett was asked whether he favored repeal of the Colonial Laws Validity Act, he regarded the question as a trap, and said he could not be caught in that way.(3)

It is these tendencies towards vagueness and

<u>inconsistency</u>

inconsistency and the sidetracking of the large issues for the smaller, political ones, which constitute the principal weakness of the debates. Of course, we should not expect politicians to talk with the same accuracy and regard for logic as constitutional lawyers. Questions concern them, and perhaps rightly so, which do not concern the theorist. Yet even making all allowances, it must be granted that these characteristics weaken the debates. How much clearer and more forcible would they be if, even while preserving a partisan point of view, they dealt with the Canadian and Imperial interests involved in a spirit commensurate with their importance !

(b) Soon after the Conference closed, the London Spectator declared, "For years to come the report will be regarded as a Charter of Freedom for the British Commonwealth of Nations." (4) This view, echoed in Canada by The Manitoba Free Press (5) and other papers, has led to the impression that the Conference established a new order, in which the liberties of the Dominions will be much greater than they were before.

<u>On the other hand</u>

On the other hand, the London Times said of the Report, (6) "In all its various clauses there is hardly a statement or a definition which does not coincide with familiar practice. It is essentially a register of conditions as they exist already, rather than a programme for the future." Again - "The 'governing consideration' - that neither Great Britain nor the Dominions can be committed to the acceptance of active obligations except with the definite assent of their own Government - was an effective truism long before the present Conference met."

This divergence of view did not fail to find expression in the parliamentary debates. On the one hand, Mr. Morin, member for St. Hyacinthe - Rouville, (7) declared that the Report was of "momentous importance, as marking an epoch in the history of our country," and on the other, Senator Lynch -Staunton said, "We have come to realize now that the Imperial Conferences are a mere bonne entente....But their conclusions are of absolutely no importance whatsoever so far as the Empire is concerned."(8)

Empire is concerned." (8)

It must be noted, however, that the general opinion in parliament, on both sides, was rather that of the London Times, that the Report merely states well-known principles, and does not mark an actual advance in Dominion status. The Conservatives certainly inclined to that view, although fears were expressed that the very vagueness of the Report encourages the secessionists in Canada, South Africa, and Ireland. And while several of the Liberals favored the second view, it is very clear that neither Mr. King nor Mr. Lapointe did. In several places, they were most emphatic that the Report merely crystallizes views which have long been accepted. And this is certainly the opinion of Lord Balfour, who said, "I believe we have done nothing new." (9)

Mr. Mackenzie King's argument was briefly this: (10) The Conference first defined the relations between the parts of the Empire in terms of equality. "That

being set out

being set out as the basis of a common agreement, it became necessary to consider in relation thereto many forms which, if not entirely, at any rate to some extent, have become obsolete and which appear to be in conflict with the altered situation." Accordingly, the Report takes note of certain things in connection with the governor-general, the operation of Dominion legislation, and treaties, which still suggest a colonial status which has long since passed away. In some of these, it effects changes, while others it refers to special committees. In other words it is equality of status that is true, and the anachronisms which conflict with it which are false. The weakness of Mr. King's argument is that he fails to apply it to disallowance, reservation, and the amendment of the constitution.

Mr. Cahan, (11) who made much the weightiest contribution to the debate on the Opposition side,

frankly assumed that the government regarded the Report as a charter of freedom and that it was their intention to have the suggested reforms enacted, so that there would be legal, constitutional, and judicial equality between Great Britain and Canada. In that case, why do they not say what system is going to take the place of the present empire ? Canada is tied to Great Britain by a vast body of law which cannot be dismissed as of mere technical importance. And Mr. Cahan was very effective in showing how open the Report is to diverse interpretations. The statements about equality of status are platitudes, but there are other parts of the Report which bind the Empire together. It is to be noted that Mr. Cahan was in favor of equality of status, but to really attain it there must needs be a new constitution for the Empire.

It is difficult to see any sense in which the Report can be styled a charter of liberty. In the

<u>first place,</u>

first place, the definition it gives, of autonomous communities, equal in status, is merely a repetition of what both British and Dominion statesmen have said for many years, and, as the London Times declares, is saved only by its italics from being almost incidental. For example, at the 1918 Conference, the Premier of Australia said: "In effect, we are a League of Free Nations, every one of which is, notwithstanding theories, sovereign, or quasi-sovereign in its own sphere, and our relations should be those which those circumstances suggest." (12)

And at the Conference, of 1921, Mr. Lloyd-George, with greater exaggeration, said: "There was a time when Downing Street controlled the Empire; to-day the Empire is in charge of Downing Street."

In this respect, then, the Report merely agrees with statements which have long been current coin.

Once more, with regard to the Governor-General, there is little that is new. It is true that he is

now definitely

now definitely precluded from taking advice from the British government, and that there is no longer any question that in relation to the affairs of the Dominion, his position is that of a viceroy. But it is not clear that there is no personal discretion left in Imperial matters.

With regard to equality in legislative powers, it is perhaps better not to judge the Report until the special committee and sub-conference have done their work.

In the matter of treaties, we have seen that whatever the Report does, it certainly guarantees that there shall be unity in all questions of common concern, and it does not advance the independence of the Dominions beyond what was attained in 1923.

Then, again, the Report merely sanctioned what had already been done in the appointment of separate ambassadors.

There is one minor matter, not mentioned in this study,

this study, where there will be an increase of autonomy, (though even here, it was contemplated before the Conference), namely, the control of foreign consuls within the Dominions. Henceforth exequaturs will be countersigned by a Dominion minister, and consuls may be asked to be recalled by the Dominion government. (13)

Much of the doubt as to whether the Report is a charter of liberties arose from erroneous reports when it was issued. But much also arises from the manner in which the document is written. It is not too much to say that it is intentionally vague, and designed to please both the strongly nationalistic governments of Canada, South Africa, and the Free State, as well as the more "loyal" governments of Australia and New Zealand. On the one hand, it states that "every self-governing member of the Empire is now the master of its destiny," and on the other - "but the principles of equality and similarity,

appropriate to

appropriate to status, do not universally extend to function." And again we have the two conflicting ideas in the same sentence: "And though every Dominion is now, and must always remain, the sole judge of the nature and extent of its co-operation, no common cause will, in our opinion, be thereby imperilled."

In the subsection, "Operation of Dominion Legislation" we have the same situation. It says: "Consequently, it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in Great Britain in any matter appertaining to the affairs of a Dominion against the views of the Government of that Dominion." But there is the clear limitation, " apart from provisions embodied in constitutions or in specific statutes expressly providing for reservation."

Once again, in the subsection on treaties, we have seen, in the cases of the Anglo-Egyptian Treaty and the Kellogg Pact, the difficulties that

have arisen,

have arisen, largely owing to a difference of interpretation of the Report.

And under the heading, "general conduct of foreign policy," it is stated, "We went on to examine the possibility of applying the principles underlying the Treaty Resolution of the 1923 Conference to matters arising in the conduct of foreign affairs generally. It was frankly recognized that in this sphere, as in the sphere of defence, the major share of responsibility rests now, and must for some time continue to rest, with His Majesty's Government in Great Britain." It then approves of separate diplomatic representation for the Dominions, and says, "We felt that the governing consideration underlying all discussions of this problem must be that neither Great Britain nor the Dominions could be committed to the acceptance of active obligations except with the definite assent of their own Governments."

In fact, almost every statement in the Report

<u>suggesting</u>

suggesting Dominion autonomy is balanced by another suggesting Empire unity, and it is a purely one-sided view which sees the one without the other.

A large part of the discussion of the work of the Conference centred on the question of status. In this connection, we may notice the debate in the House of Lords, between Lords Parmoor and Balfour. (14)

Lord Parmoor first criticized as inaccurate the definition, "autonomous communities within the British Empire," and showed that it does not accord with legal facts. The Report recognized these legal facts, but made no attempt to solve them. Instead, it left the constitution of the empire in a most indeterminate condition - on the one hand giving a definition of equality which is contrary to fact, and on the other, postponing consideration of a solution without which equality can not really exist.

In answer, Lord Balfour said in part: "Does not the noble Lord see that it would be impracticable for the Conference

for the Conference of the Dominions and the Mother Country to meet at Westminster to say: "Well, on the whole we are inclined to think the idea of Empire is one to which we may all look forward and which will embody equality of status, but just think of how many questions we must decide before we get to that point. Here is this difficulty and there is another difficulty arising out of the Act of 1865. There are all these problems with regard to the Merchant Shipping Act. We must settle all those before we decide on what principle this collection of self-governing states is to work together." I boldly say to your Lordships' House that that is from beginning to end the wrong way of going to work." Again: "You are to set yourself every kind of problem, every sort of difficulty which may conceivably arise in the course of applying the broad principles of equality of status before you dare to announce that equality of status exists. Can anything be more legal or less statesmanlike.?"

The argument of Lord Balfour was quoted approvingly

approvingly by Mr. King, while that of Lord Parmoor is similar to Mr. Bennett's and Mr. Cahan's. The difficulty involved in the statement that there is equality of status is that it suggests literal constitutional equality between Canada and England. All that Lord Balfour really says, however, is that the legal limitations upon Dominion sovereignty are so slight as to be for the most part of little practical importance - something of entirely different import, a mere truism which was recognized long before the Imperial Conference. It is the failure to recognize this distinction which has given rise to much looseness in thought and in phrase.

The discussion of the Report gives rise to several considerations concerning the present and future constitution of the British Empire. There are only four main ways in which this group of states can remain together: - First, as six fully independent nations, joined under the personal union of one king;

second, as

second, as partners, with an equal or proportionate voice in all matters affecting the proup as a whole; third, as a group of nations, each fully autonomous in local affairs, but one of them predominant in foreign policy; fourth, as a group of five subordinate countries, and one sovereign country with authority in all matters, general and local.

It is plain that while the fourth basis is the existing one in law, (and to some extent in practice) the third approximates most closely to the constitutional position. Where the Report is vague and indefinite is that in some places it suggests that this third conception shall give way to the second, while in others it accepts the fourth as the existing condition and suggests that it shall be replaced by the third. In other words, does it aim merely to remove Imperial control in such matters as merchant shipping, while keeping it in foreign policy, or does it aim to destroy the theoretical supremacy of Great Britain altogether ? If the former is the case, the task is much more simple. The Imperial Parliament might quite easily, by legislation, give the Dominions control

<u>of their merchant</u>

of their merchant shipping; power to enact extra-territorial laws; andppwer to amend their constitutions. It might also abolish the rights of reservation and disallowance, and appeals to the Judicial Committee. But these things of themselves would leave untouched the whole theory of the supremacy of the Imperial Parliament, and the control of the British government over the important questions of peace and war.

But to establish, in any real sense, equality of status, means to place the Empire on either the first or second footing given above. Let us see the difficulties involved in each of them, and why the Conference did not and could not establish either.

As far as the "personal union" theory is concerned, it has been given expression to notably in South Africa. Mr. Hertzog declared that the Locarno Treaty marked the rejection by Great Britain of the "group unity" idea, and a return to the principle of the Versailles Treaty, where the Dominions had international independence. Furthermore,

he said, the only

he said, the only link between the Dominions and Great Britain is the crown. (15) In dealing with treaties, Mr. King suggested the same idea. But the fallacy of the argument is apparent. It would imply that each part of the empire can, of its own motion, go to war with any other part or a foreign state. The only sense in which the Dominions can possibly be called independent countries is that they could secede at will from the empire. But as this would be revolution, it lies outside the scope of a constitutional right. The "personal union" theory, in fact, is so opposed to the whole historical, legal, and constitutional structure of the empire that it hardly needs denial.

Why, then, cannot the second basis of union be fulfilled today ? The answer is as old as Laurier's dictum that a voice in the direction of foreign affairs implies corresponding obligations. The situation can be seen clearly by referring to our opening chapter.

Mr. King, in 1923,

Mr. King, in 1923, refused to commit Canada to the Lausanne Treaty because he was not consulted in its negotiation. In 1924, again, he asked that Canada should have equal representation with Great Britain at the Inter-Allied Conference. The British Government accordingly, sent a despatch to the Dominions, asking for suggestions to provide for more effective consultation, "so that the public opinion of the whole of our Commonwealth of States should influence the policy for which the Commonwealth must be responsible." This was, in truth, complying with the wishes of Mr. King. The Canadian Premier, however, made a most unhearty response to the offer, declaring that it seemed to imply setting up a supreme authority for the Empire. In effect, therefore, his claim is the right to be consulted without incurring obligations. It needs little agrument to show that this is a claim which the British Government can not grant. In a question of declaring war, for instance, no Dominion could expect to have its advice considered if it reserved

<u>for itself</u>

for itself the right to remain neutral.

To sum up: - to establish equality of status in the empire necessitates either the grant of full independence all round, with no bond of union save a common sovereign; or else, the right of the Dominions to a voice in foreign policy. As for the first, it is difficult to see how it could be done without destroying the empire; while the second implies corresponding obligations and duties, for which some of the Dominions seem unprepared.

In this connection, one section from the Report deserves quotation: "The tendencey towards equality of status was both right and inevitable. Geographical and other conditions made this impossible of attainment by the way of federation. The only alternative was by way of autonomy; and along this road it has been steadily sought."

The movement today is away from federation and towards independent action. And while it is difficult

to see

to see how the Empire can endure without the machinery for a united foreign policy, we must remember that it is not always by strict logic that British institutions evolve and develop.

References in Chapter VII

(1) Commons Debates, 1928, p. 54

(2) See Chapter 2

(3) Commons Debates, 1928, p. 26

(4) London Spectator, November 27, 1926

(5) See Canadian Annual Review, 1926-7

(6) Editorial, November 22, 1926

(7) Commons Debates, 1926-7, p. 1900

(8) Senate Debates, 1926-7, p. 297

(9) House of Lords Debates, 1926, Vol. 65, p. 1332

(10) Can. Commons Debates, 1926-7; p. 1648; p. 1904

(11) Ibid.,pages 52 and 1716. Also 1928 Session,p.122

(12) British Sessional Papers, 1918, Cmd.9177,p.156

(13) Can.Commons Debates, 1928, p. 3470

(14) House of Lords Debates, 1926, Vol. 65,p. 1315

(15) London Times, May 18, 1926, p. 7

Appendix I - To show the designation of plenipotentiaries.

Treaty of Peace between the Allied and Associated Powers and Germany. Signed at Versailles, June 28th., 1919.

The President of the United States of America, by: (Here follow the names of the plenipotentiaries.)

His Majesty the King of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, Emperor of India, by: Etc.,

and

for the Dominion of Canada, by: Etc.,

for the Commonwealth of Australia, by: Etc.

Etc., Etc.

Appendix II - to show the designation of plenipotentiaries

Treaty of Peace with Turkey signed at Lausanne
on July 24th, 1923
In consequence the delegates hereafter mentioned met
at Lausanne:
For the British Empire : Etc.
For France: Etc.
Etc. Etc.

Appendix III - to show the designation of plenipotentiaries Convention, Protocol and Agreement between Canada and the United States of America to regulate the Level of the Lake of the Woods. - Signed at Washington, February 24th,1925

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, in respect of the Dominion of Canada, and the United States of America, etc., etc.

Plenipotentiaries:-

His Britannic Majesty, in respect of the Dominion of Canada:

The Honourable Ernest Lapointe, K.C.,a member of His Majesty's Privy Council for Canada and Minister of Justice in the Government of that Dominion. etc., etc.

Appendix IV. - to show the designation of plenipotentiaries

The Kellogg Pact for the Renunciation of War.

Plenipotentiaries:-

The President of the United States of America, A.B.

The President of the French Republic, C.D.

Etc.

His Majesty the King(full title):-

For Great Britain and Northern Ireland and all parts of the British Empire which are not separate members of the League of Nations----------E.F.

For the Dominion of Canada,	G.H.
For the Commonwealth of Australia,	I.J.
For the Dominion of New Zealand	K.L.
For the Union of South Africa	M.N.
For the Irish Free State	O.P.
For India	Q.R.

The President of the German Reich S.T.

Etc.