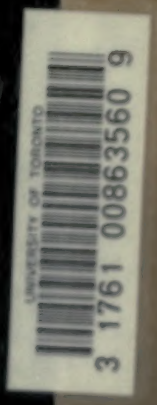

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The Constitution of Canada

ADDRESS

BEFORE THE

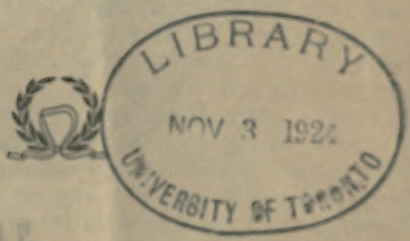
AMERICAN BAR ASSOCIATION

AT THE ANNUAL MEETING HELD ON OCTOBER 21, 1914, AT WASHINGTON, D. C.

By

SIR CHARLES FITZPATRICK

CHIEF JUSTICE OF THE DOMINION OF CANADA



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THE CONSTITUTION OF CANADA.

ADDRESS OF SIR CHARLES FITZPATRICK, *Chief Justice of the Dominion of Canada*, before the American Bar Association, Washington, D. C., October 21, 1914.

In selecting a topic on which to address you, the members of the American Bar Association, this evening, it has occurred to me that the close relationship which must always exist between Canada and the United States by reason of our geographical position upon this continent, as well as our identity in race and language, our intimate social relations, the fact that the common law of England affords a like foundation to our respective judicial systems, and the further fact that there is a substantial similarity between the representative institutions by which the public affairs in both countries are administered, I could not do better than refer, although in a very superficial way, to the development of the colonial system of self-government as it is now found in Canada.

I think it is Adam Smith, in his "Wealth of Nations," who says that the ideal of a self-governing, though dependent, State is one in which the colonists have liberty to completely manage their own affairs in their own way, except in their foreign relations; in other words, complete self-government in all that pertains to its domestic affairs, but as to its foreign relations subservient to the interests of the Empire.

The Phoenicians and the Greeks were the earliest of the ancient nations to plant colonies along the shores of the Mediterranean Sea, and the relations between these colonies and the mother cities were more analogous to those which now obtain between the most advanced colonies of the British Empire and the mother land than what subsequently existed between Rome and her dependencies. There seems to have been no political connection with the parent State; but each colony set up an independent government of its own, while remaining, however, attached to the parent country by a sentiment of loyalty which found expression in religion and in participating from time to time in her religious festivals; but the colony generally abstained from taking part in any hostilities in which the mother country was involved. Although the exiles in many instances had been compelled to leave their mother city, absence softened their feelings toward it and only the memories of their common ties remained.

Not so were the colonies established under the Roman Empire. In these cases Gibbons tells us—

> the public authority was everywhere exercised by ministers appointed directly by the senate or the Emperor, and their authority was absolute and without control. All the colonies were dependent upon the arbitrary will of the Emperor, who revoked or restored their privileges according to his own caprice.

In modern history Spain first introduced a colonial system. This was very similar to that which obtained during the days of the Roman Empire, with all its worst elements not only retained but developed. Between 1815 and 1898 Spain lost all her great South American colonies—Chile, Peru, Bolivia, Argentina, Venezuela, etc.—and a distinguished American has said that we now marvel not so much at the quantity of colonial possessions she has lost as at the fact that there remained, in 1898, any colony for her to lose. The history of French colonial government on this continent is known to every student of history. A modern French writer, speaking of French Guiana, says that out of a budget of one million dollars, fully nine hundred thousand went into the pockets of the officials; that there were no municipal or representative institutions, and not even a free press.

The German Government, which in recent years has made a special effort to further colonial expansion, has apparently not discovered that there can be no colonial enterprise where the colonist is checked at every turn by official limitations; and this may account for the fact that the German emigrant to-day selects the United States, Canada, or Australia as a field for his enterprise rather than the German colonies in South Africa, where freedom to work out his career to the best advantage is not yet permitted.

I think no one will question, having in view the prosperity and happiness of the people, that of all the nations of Europe to-day England is the only power that has worked out successfully the colonization problem, in which the largest and fullest measure of self-government is found consistent with any imperial control. The editor of the St. Louis Republic recently said:

> There is not at the present moment any more effective institution in the whole world of political fabrics than the British Empire. Whatever its machinery lacks appears to be supplied by its spirit. The defects of its body are made up for by the unity of its soul.

The steps by which this result has been achieved afford an interesting study.

At the date of your Declaration of Independence the English Parliament had already, for nearly 100 years, exercised the right of taxation in the colonies. The first tax appears to have been imposed by an Act (25 Charles II, c. 7) passed in the year 1672. This imposed an export duty on certain articles shipped from the colonies for consumption abroad. This was followed from time to time by other Acts imposing duties on importations into or exports from the plantations in America. In 1763, while continuing permanently these protective duties, Parliament directed that the net produce should be devoted toward defraying the necessary expenses of defending, protecting, and securing the British colonies in America.

In addition to this power of taxation the English Parliament claimed and exercised the right, by its navigation laws, to prohibit the exportation and importation of products from and to the plantations except in British ships.

The refusal of the American colonies to submit to taxation by the Imperial Parliament naturally led to a consideration in England of the legal status of the colonies, and, by a statute passed in the year

1766 by the Parliament of Great Britain, we find this declaration of the rights of sovereignty claimed by the Home Government:

Whereas several of the houses of representatives in His Majesty's colonies and plantations in America have of late, against law, claimed to themselves the sole and exclusive right of imposing duties and taxes upon His Majesty's subjects in the said colonies and plantations,

Be it declared, * * * That the colonies and plantations in America have been, are, and of right ought to be subordinate unto and dependent upon the Imperial Crown and Parliament of Great Britain; and the King's Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and the Commons of Great Britain in Parliament assembled, had, hath, and of right ought to have full power and authority to make laws and statutes of sufficient force and validity to bind the colonies and people of America, subjects of the Crown of Great Britain, in all cases whatsoever.

This view of colonial subordination to the Parliament of Great Britain was unquestioned, although the prudence and wisdom of enforcing it was opposed by the eloquence of Pitt and Burke and by the more far-seeing statesmen of that day. It is difficult for us to understand how English statesmen, conversant with the development of her constitution, and aware that no taxation without representation was and had been since the revolution of 1688 the foundation stone of her people's liberties, should have failed to admit the application of this principle in connection with the colonies in America. But to the Government of the day and to almost all Englishmen the colonies were considered as completely English soil as England itself, and the charter rights given to Massachusetts and other colonies were looked upon by them as municipal rather than as political rights. They viewed the colonies as having rights similar to other corporations, and they considered that any privileges given them could be taken away as readily as the corporate status of an English borough or of a trading company.

Their very existence, it was considered, in effect, rested on the will of the Crown, and, on a breach of the conditions under which they were granted, their charters were revocable and their privileges ceased; the rights of their legislatures came to an end as completely as the common council of a borough that had forfeited its franchise.

The refusal of the American Colonies to accept any such subordinate position and the clash of arms, with the subsequent grant of independence to the thirteen States, has been an object lesson to British statesmen in all succeeding years, and we will see that ever since there has been a cordial disposition on the part of the English Parliament to grant rights of self-government whenever the interests of the colonies require it.

The immediate result of the Declaration of Independence by the American Colonies was the passing of 18 Geo. III, c. 12, entitled—

An act for removing all doubts and apprehensions concerning taxation by the Parliament of Great Britain in any of the colonies, provinces, and plantations in North America and the West Indies.

And this Statute proceeded to declare that—

The King and Parliament of Great Britain would not impose any duties, tax, or assessment whatever, payable in any of His Majesty's colonies, etc., except only such duties as it might be expedient to impose for the regulation of commerce, the net produce of such duties to be always paid and applied to and for the use of the colony in which the same shall be levied.

In 1791 an Act was passed by the British Parliament providing for the government of the new colonies of Canada, which has been called "The Constitutional Act." It provided for a representative chamber in connection with the government of Upper and Lower Canada. Nevertheless, for 50 years, by reason of the system of control exercised by the governors general, no voice was given to the representative chamber in the admininstration and appropriation of a large part of the public revenues. Although The Constitutional Act was framed with the object of assimilating the constitution of Canada with that of Great Britain, yet the essential feature of the British constitution, whereby the governor was compelled to adopt the views of a cabinet having a majority in the representative chamber, was ignored, and the executive council was largely composed of prominent citizens having the confidence of the governor, and often having no seats either in the legislative assembly or in the legislative council. The disputes and antagonisms which thereby developed between the governor and the assembly culminated finally in a refusal to pass supplies; but there existed certain revenues, from the sale of lands and otherwise, which the governor could obtain possession of without the assistance of Parliament, and which he did not scruple to use without its consent. As a result public feeling at length became inflamed to such a point that arms were resorted to in both the Provinces. If ever rebellion can be justified, the causes which led a section of the people in both Provinces to have recourse to arms were sufficient in this instance, and we owe to their action the principles of government which have obtained in Canada since 1841.

Lord Durham, an English statesman of distinguished ability, was sent out as governor general with a special commission to investigate public affairs. Upon his report the Union Act of 1840 was passed by the Parliament of Great Britain, which provided for a legislative union of Upper and Lower Canada, the beneficent results of which we all recognize to-day. There is now in Canada a people, if not entirely homogeneous yet living in complete harmony, having all sectional and religious animosities buried in oblivion, and all loyally united in an effort to build up on this continent a great colonial empire under the ægis of the British flag.

It was not necessary that a new constitution should be provided different in principle from that which was granted by the Constitutional Act of 1791. To bring into effect all the reforms which the people of the two Canadas required only necessitated a change in the instructions given the governor general, who was required to administer the government through the executive council which possessed the confidence and support of the popular assembly.

In proposing the adoption in the colony of the English parliamentary system of requiring the ministers of the Crown to have the support of a majority in the popular assembly, Lord Durham says:

> Perfectly aware of the value of our colonial possessions and strongly impressed with the necessity of maintaining our connection with them, I know not in what respect it can be desirable that we should interfere with their internal legislation in matters which do not affect their relations with the mother country. The matters which so concern us are only few. The constitution of the form of government, the regulation of foreign relations and of trade with the mother country, the other British colonies and foreign nations, and the disposal of the public land are the only points on which the mother country requires control.

With respect to these all control has long since been relinquished, except in matters concerning our foreign relations.

In 1865 (by 28-9 Vic., c. 63), additional powers were conferred upon the colonial legislature. By the third section of that Act it was provided—

> No colonial law shall be, or be deemed to have been, void or inoperative on the ground of repugnancy to the law of England, unless the same shall be repugnant to the provisions of some such Act of Parliament, order, and regulation.

And by the fourth section it was further provided that—

> No colonial law shall be deemed void or inoperative by reason only of any instructions with reference to such law or the subject thereof which may have been given to the governor by or on behalf of Her Majesty by any instrument other than the letters patent or instrument authorizing such governor to concur in passing or to assent to laws for the peace, order, and good government of such colony, even though such instructions may be referred to in such letters patent or last-mentioned instrument.

And the fifth section declared that every colonial legislature had full power, within its jurisdiction, to establish courts of judicature and alter the constitution thereof, and make provision for the administration of justice.

The largest advance in self-government made by any colony or group of colonies in the history of the world was taken when the Parliament of Great Britain passed, in 1867, an Act for the future government of British North America. It has been well and truly said that to thoroughly understand that Act, known as "The British North America Act, 1867," we must be familiar with the whole range of British history. The colonies are, by the preamble, declared to be federally united into one Dominion under the Crown with a constitution similar in principle to that of the United Kingdom, and in the distribution of powers it is declared "that the executive government and authority of and over Canada continues to be and is vested in the Queen." To fully explain the powers and limitations involved in this enactment would impose a strain upon your time and patience which could not be justified. With the long strife between prerogative and privilege, from the dawn of English history down to very recent times, you are sufficiently familiar for present purposes. It will be enough for me to say that the British North America Act was based upon resolutions previously agreed upon by delegates from the various colonies. It defines the legislative powers of Parliament on the one hand and of the provincial legislatures on the other. To the Parliament of Canada was assigned the power to make laws for the "peace, order, and good government" of Canada in relation to all matters not coming within the classes of subjects by that Act assigned exclusively to the legislatures of the Provinces; and, amongst other things, legislative authority was conferred upon the Parliament of Canada with respect to the public debt and property; the regulation of trade and commerce; the raising of money by taxation; the borrowing money on the public credit; the postal service; the census and statistics; militia; military, and naval service and defense; salaries, etc., of civil and other officers of the Government of Canada; navigation and shipping; quarantine and marine hospitals; seacoast and inland fisheries; ferries between a Province and any British or foreign country or between two Provinces; currency

and coinage; banking; weights and measures; bills of exchange; bankruptcy and insolvency; patents; copyrights; Indians; naturalization; marriage and divorce; criminal law, and cognate subjects.

Upon the Provinces was conferred the power to legislate exclusively, amongst others, with respect to the following matters: Direct taxation within the Province for the raising of revenue for provincial purposes; borrowing money on the sole credit of the Province; management and sale of public lands; public and reformatory prisons in and for the Province; charities, hospitals, and asylums; municipal institutions; shops, saloon and tavern licenses; property and civil rights in the Provinces; local works; incorporation of companies with provincial objects; administration of justice in the Provinces; and generally all matters of a merely local or private nature.

With respect to education, each Province had exclusive power to make laws, subject to the provision that nothing in any such law should prejudicially affect any right or privilege, with respect to denominational schools, which any class of persons had by law in the Province at the time of the Union.

It will be apparent from the enumeration of the subject matters above mentioned that some of the subjects over which the Federal Parliament was authorized to legislate in some aspects fell within the classes of subjects over which the provincial legislatures had jurisdiction, and as a result the limits of Federal and provincial authority have during the last 30 years been the frequent subject of judicial determination; in most cases by way of appeal to the judicial committee of the Privy Council, the appellate tribunal in England to which appeal lies from the highest courts of the colonies.

The original resolutions upon which the British North America Act was framed provided for a supreme court in Canada which should be the ultimate appellate court in all colonial appeals; but the English Government was unwilling, when the Act was being framed, to take away the prerogative right of the Crown to hear, as an ultimate tribunal, the complaints of its subjects. In the constitution recently given to the Commonwealth of Australia, what was asked for by Canada in 1867 has largely been conceded; but the result of retaining this judicial tribunal has proved so eminently satisfactory that, were the opportunity afforded to-day, I do not believe the people of Canada would desire any amendment of their constitution in this regard.

Although, therefore, under the British North America Act the Provinces have power to legislate with respect to property and civil rights in the Provinces, yet no provincial law on the subject may be repugnant to any Act of the Dominion Parliament within the subject matter assigned to it by that Act; and although in the absence of legislation by the Federal Parliament on the subject the legislation of the provincial legislature is valid and binding, yet, if subsequently the Federal Government shall legislate upon a matter within its authority such legislation overrides provincial legislation upon the same subject. So that where there is concurrent power of legislation the legislation of the Federal Parliament must be, and always is, supreme.

Speaking generally, I may safely say that to-day the supremacy of the mother country over Canada, although complete, if the occasion should arise for its exercise, in truth and in fact, by virtue

of a long-established custom and usage which has obtained the force of law, interferes in no way with the power of self-government by the people themselves. There are three main features in which that supremacy may be exercised. The first and principal one of which is by statutes of the Imperial Parliament. Although such legislation, if brought into force, is legally binding to whatever extent it may go upon the colony, yet in point of fact for a very great length of time no legislation has been introduced in the Imperial Parliament affecting Canada, except at the instance of our Government and people, and it is safe to say that never in the future will there be such legislation. The nominal supremacy of the Imperial Parliament in actual practice in no way affects our exercise of the right of self-government. But you may ask: "Is not Canada governed by the home authorities in as much as they appoint a governor general?" Here again the nominal power, great indeed as it is, by changes in the commission and instructions given to the governor and by practice and usage, has been limited. The governor general is not by any means, as many think, what Queen Victoria scornfully called "a mere signing machine."

His ministers are responsible for the advice they give him, but they are bound fully, respectfully, and openly to place before him the grounds and reasons upon which their advice may be founded to enable him to judge whether he can give his assent to that advice or not.

As representing the Sovereign he is commander in chief of the land and naval militia and of all naval and military forces of and in Canada. (Sec. 15, B. N. A. Act.) In a word, he is the depositary of the King's prerogative, which is one of the final resources of the constitution.

PARDONING POWER.

The prerogative of mercy, it has been said, is a peculiar attribute of royalty and is vested by statute in the sovereign of England. As all criminal offenses are said to be against the King's peace or against his Crown or dignity, he is, therefore, the proper person to prosecute for all public offenses, and hence arises his prerogative of pardon, whereby he is empowered to remit or mitigate the sentence against a criminal. But this, like every other prerogative of the British Crown, is held in trust for the welfare of the people and is exercised only upon the advice of responsible ministers. Every colonial governor, in addition to his commission authorizing him to act as the representative of His Majesty, was at the same time always furnished with certain instructions, and amongst these is contained an authority to grant a pardon to any offender convicted of any crime in any court in the colony to which the governor is deputed. Until 1878, according to these instructions, a governor, although bound to consult his ministers in cases of application for mitigation or remission of sentences, was at liberty to disregard their advice and to exercise the royal prerogative according to his own judgment and upon his own personal responsibility. In 1873 Lord Carnarvon, the colonial secretary, communicated with the governor general of Canada asking for observations which, after consulting his ministers, the governor might think desirable to make regarding instructions thereafter to be given to colonial governors with respect to exercising the prerogative of pardon. In reply to this communi-

cation the Canadian Government suggested that, in view of the vastness of the Canadian territory, the number of her population, and the character of her representative institutions, special instructions with respect to the exercise of this prerogative should be given to the governor of this great colony. Therefore the instructions given to the governor directed him that in capital cases he should either extend or withhold a pardon or reprieve according to his own deliberate judgment, whether the members of the council concurred therein or not, but that in all cases not capital the action of the governor by way of pardon or commutation should be, as in other cases, under the advice of his ministry. It was suggested that there was no distinction in principle and should be no different rule of action between cases of greater or lesser gravity, and that the only tenable distinction between cases, whether capital or not, was the consideration of the question whether or not the case involved imperial interests; and if imperial interests were not involved, the matter was one pertaining solely to the internal administration of the affairs of the Dominion and should be determined upon the advice of his ministry.

The views of the Canadian Government were largely adopted by the colonial secretary, and in the new instructions given to the Marquis of Lorne, who came out as governor general in 1877, it was provided that the governor general should not pardon or reprieve any offender without first receiving, in capital cases, the advice of the privy council for Canada, and in other cases the advice of at least one of his ministers, but that in cases where the pardon or reprieve might directly affect the interests of the Empire the governor general should, before deciding as to either pardon or reprieve, take these interests specially into his own personal consideration in conjunction with the advice of his ministry.

The royal commission appointing the governor general is short and simple. It empowers and commands him to perform all the powers contained in the letters patent constituting the office of the governor general and in the royal instructions.

It has been said that in Canada the ministers govern while the governor looks on. There is no doubt that the office of governor general has been greatly shorn of the power which it once had; nevertheless, where the governor enjoys the confidence of his ministers his influence is still very great; not so much, however, through the exercise of the functions of his office as in the confidence which he inspires in giving his advice.

By the British North America Act it is provided that there should be a council to aid and advise in the government of Canada, to be styled "the Queen's privy council for Canada." Therefore, although the functions and authority of the governor general are only exercised by and with the advice and consent of the Queen's privy council, which in practice is limited to the cabinet—that is, the privy councillors having the support of the majority of the members in the representative chamber of Parliament—he has the very extensive negative power of refusing his assent to any act of his privy councillors which does not meet with his approval. In this event, which very rarely arises, the only recourse of his ministers is to resign office and afford the governor general an opportunity of obtaining other advisors who, having seats in one or the other chamber, would carry out his views

and be able at the same time to obtain the support of a majority in the representative chamber.

The result therefore, we may say, is that, whereas the governor general, who is the only official in Canada appointed by imperial authorities, by virtue of his office is a living tie which indicates the fact that Canada is a Dominion of His Majesty the King, and by force of his personal influence and in view of the fact that from his antecedents he is outside the field of party prejudices and animosities, he is able to exercise a quiet, though unperceived by the public, an all-important influence upon the actions of his ministers; on the other hand, a governor general who lacks the qualifications for his high office—and it is long since such a person has been His Majesty's representative in Canada—is practically unable to influence the administration of public affairs to the disadvantage of the people.

In matters of treaty rights in recent years there has been a distinct recognition by the imperial authorities of the right of the Government of Canada to be considered in all matters affecting the Dominion. In 1871, when the treaty of Washington was promulgated, which proposed to abrogate a clause of the treaty of 1818, whereby the American Government withdrew all claim or right to participate in the inshore fisheries of Canada, Lord Kimberley, the colonial secretary, wrote to Lord Lisgar, the governor general, as follows:

> In answer to your telegram received on the 10th instant, stating that in the opinion of your Government the Canadian fisheries can not be sold without the consent of the Dominion, I have already informed your lordship by telegraph that Her Majesty's Government never had any intention of advising Her Majesty to part with those fisheries without such consent. * * * The fishery rights of Canada are now under the protection of a Canadian Act of Parliament, the repeal of which would be necessary in case of a cession of those rights to any foreign power.

Again, in 1874, when Canada was negotiating a commercial treaty with the United States, in reply to a deputation from certain British chambers of commerce who waited upon the colonial secretary of state for foreign affairs, expressing their fears that the treaty might place the mother country in a worse position commercially in regard to the importation of British goods into Canada than would be the United States, Lord Derby assured the deputation that Her Majesty's Government would not allow such discrimination to be made; but in 1878, the Dominion Parliament was permitted to adopt whatever form of commercial legislation might be considered best suited to Canadian interests, wholly irrespective of the commercial policy of the mother country. It is now considered by all that Canada enjoys complete tariff autonomy.

Most of the difficulties which have arisen in our colonial relations have been the outcome of the two disadvantages which Sir George Cornwall Lewis has so ably pointed out as inherent in every system of colonial administration, namely, "the liability of the interests of the dependency to be sacrificed to the interests of parties at home," and, secondly, "the natural ignorance and indifference of the dominant country about the position and interests of the dependency."

Notwithstanding that occasionally matters arise which afford room for difference of opinion between the imperial and colonial Governments, it must be admitted by everyone that whereas other European nations have at the present time, as well as in all the past,

viewed their colonies with an eye solely to the harvest which might be reaped therefrom by the people of the mother country, for more than 100 years Great Britain has treated her colonies in a truly parental spirit; and if at times, through ignorance of the colonial situation or an overzealous desire to settle a diplomatic controversy, she has given away colonial territory or colonial rights, yet on the whole she has made as glorious a record in solving the colonial problem of complete political freedom, always dependent upon the British Crown, as she attained in working out for the benefit of all the world the principles of government through an executive responsible to the people's representatives in Parliament. And we may feel assured that the statesmen of England in the future will exhibit the same genius in strengthening the attachment of the colonies to the mother land by granting the fullest civil and political liberty as have her statesmen in the past in evolving out of chaos the magnificent system of responsible government which has become the model for all the civilized communities of the earth.

Let me quote for you the opinion of an American editor:

> The fact can not be gainsaid that England, who does not begin to be as logical as Germany or as systematic as France in matters of government, has nevertheless the knack of making men step out of their own free will to die in her defense. She has the gift of keeping alive, across tumbling seas, round half a world, the undying bond that unites the heart to home. She has shown herself indifferent to the possession of the taxing power over her colonies—but what matters it? Those colonies willingly tax themselves to send her warships and their sons seize their rifles in time of strife to go to her aid. She has the wisdom so to train and guide the swarthy children of alien races, and even the foes of yesteryear, that they put their living bodies between England and England's enemies. She has a fearfully muddled theory of government, but her practice of government lays hold on the deepest things in the soul of man.
>
> As we contemplate this wonder of an empire which is an empire of the spirit, an empire whose philosophy of politics is all wrong, but for which the costliest things within the gift of man are poured out without stint, we are moved to wonder whether this is a prophecy of the future. Will the States of the coming days make more of the spirit and less of the machine? Will they reck less of constitutions and bills of rights and fabrics of government and more of the invisible things which touch the soul?

Writers have frequently expressed surprise at the good results obtained under many British institutions which are so clearly unscientific and anomalous. This particularly applies to the administration of justice. The King, as the fountain of justice and the source of its administration in theory, is the last and final court of appeal. Many centuries ago this function was filched from him by the House of Lords, and to-day that body is the highest court of appeal for the British Isles. Theoretically every peer sitting in the House has the right to assist in the pronouncing of judgments upon all appeals, but it has been uniform practice for a great many years that all appeals are heard by the law lords alone, and their judgment is adopted by the house. Theoretically also there is a possibility of the judgment being pronounced by peers who are not qualified to decide questions of law, but in actual practice such a result never arises. The judicial committee of the privy council, which is the highest appellate court of the Empire for appeals coming from the dominions beyond the seas, is open to the same criticism. If we go back to the time of the Tudors and of the early Stuarts, we find the King, with councillors selected by himself, sitting under the

name of the "Court of star chamber," overruling decisions of the highest judicial tribunals of the realm; and, indeed, to such an extreme was this carried at one time that all the important cases were taken away from the ordinary tribunals of justice and determined by the "Court of star chamber," to the utter disorganization and almost destruction of the common-law courts. This court was finally destroyed by Act of Parliament. It formed an important factor in the grievances which cost the life of King Charles I.

It is a curious story how a tribunal which it was thought had been completely extirpated from the judicial system of the Kingdom should to-day have grown once more to be a power of the highest importance in holding together the scattered portions of the British Empire. We find that some of the Channel Islands, who rarely had a case of sufficient magnitude to warrant an appeal to any tribunal higher than the local courts, were allowed to retain—it being a matter of trifling importance—their former right of appeal to the King in council.

As colony after colony was added to the Empire, particularly on the North American Continent previous to the American Revolution, more and more cases arose in which litigants, dissatisfied with the colonial courts, carried their appeals to the foot of the throne, and even in some of the old American colonies this right of appeal was attempted to be repudiated, but without avail.

Since 1834, when this tribunal was reorganized by Lord Brougham and its functions more clearly established and the right of appeal limited and provision made that judges sitting upon such appeals should include the most distinguished jurists in England, not only has very little exception been taken throughout the Empire to the existence of such an appellate tribunal, but in most of the overseas dominions it is looked upon as a gift of the highest value from the Crown. In no part of the King's dominions has greater service been rendered by the judicial committee than in Canada, particularly since Confederation. By the British North America Act, passed by the Imperial Parliament entirely at the instance of the four Provinces of Upper and Lower Canada, Nova Scotia, and New Brunswick, a system of government up to that time unknown in the history of the world was provided. As I have already said, what the Act professed to do was to establish two systems of government for the four Provinces and for such other Provinces as might subsequently be taken into the Confederation. It was designed that all matters which more directly affected the common everyday life of the people should still be administered by a local parliament or legislative assembly, at the head of which, and representing His Majesty the King, should be a lieutenant governor, while matters of a larger and more general nature affecting the rights and privileges, not of the people of one Province, but of all or more than one of the Provinces, should be vested in a federal parliament presided over by a governor appointed by the King.

In distributing the subject matter over which the Provinces and the Dominion may respectively legislate it was bound to happen that many subjects which fell under the matters expressly relegated to the one body should, from another aspect, also fall under the matters relegated to the other. There was, therefore, always left a battle

field on which could be fought the issue of Federal and Provincial rights and powers.

Since 1867 the judicial committee has been called upon in scores of cases to trace out the line of demarcation between Federal and Provincial jurisdiction, and it must be truthfully said that the result has been eminently satisfactory. Removed, as the majority of the judges are, from all local strifes, desirous as they are to distribute the most impartial justice, it is not surprising that the right of appeal to the King in his privy council is one of the privileges most highly prized by the people of the Dominion. I do not mean to say that there has not been exception taken to the freedom with which appeals may be carried to the privy council in ordinary civil matters, but whatever view may obtain in other parts of the Empire, so far as Canada is concerned, I think I may safely say that, amongst lawyers and judges competent to speak on the subject, there is but one opinion, that where constitutional questions are concerned an appeal to the judicial committee must always be retained.

And so, in conclusion, we find that from a tiny rootlet of this deadly Upas, which, for the welfare of the English people, was thought to have been extirpated, root and branch, has sprung a wholesome tree which spreads its beneficent influence over not only the great dominions but also over every colony, dependency, and protectorate of Britain's world-wide Empire.

An English writer has said that Americans are profoundly convinced of the perfection of their Constitution and of their system of government. With such convictions it is easy to understand why some of you inquire how it is that a people of the same blood and lineage, and apparently of a manly and independent spirit, is content to remain in what you think a position of political inferiority and dependency, when, as you know, English statesmen have more than once said to Canada: "If you want independence you have only to ask for it." This inquiry arises, I think, from a misconception of our relationship to the British Crown. You would not, perhaps, say that the political status of an Englishman or Scotchman was less free and independent than your own, but our position, you think, is different. We, on the contrary, recognize no inferiority in ourselves nor in our political position from that of the Englishman or the Scotchman. We have, as I have attempted to show, the same free institutions and practically the same control of our own affairs. We do not worry because theoretically we are not independent, when in practice we enjoy perfect freedom of control in working out our own destiny. What little check the colonial relationship places upon us we consider to be far more than offset by the pride we have in the glorious history and traditions of the mother country.

That England has made mistakes no Irishman who loves his father's land can question. If we deplore the fact that she had not sooner granted to Ireland that local self-government which we enjoy in the colonies, we do not shut our eyes to the fact that England is the mother of free institutions. Prof. Eliot, of Harvard University, described Lord Dufferin as "the exponent of Great Britain's colonial system, which, next to human freedom, is her greatest gift to humanity." England first taught the world that the divine right of ruling is not vested in kings and princes but in the people, expressed

through their chosen representatives in Parliament assembled. We glory in her literature and her laws, in her poets, historians, artists, and statesmen. If in the zenith of its power and glory, when the Roman Empire included all the civilized and most of the uncivilized globe, the highest boast of a freeman was "Civis Romanus sum," so, without disparagement or offensive criticism of any nation, we, as Canadians, viewing ourselves as an integral part of the British Empire, are proud to declare our citizenship in the great mother of nations—in that nation which, to keep sacred its covenants, to maintain its plighted word, is ready to pour out its treasures and sacrifice the lives of the best and bravest of its children.

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