

EMPIRE SHIPPING AND THE IMPERIAL CONFERENCE.

There has been for all time material to the consideration of this subject, and there is today, but one law for British ships on the seven seas, namely, the law of Great Britain; and there has been and is today but one dominant parliament having full legislative sanction and authority over the merchant shipping of the Empire and that is the parliament of Great Britain.

This principle has become so axiomatic that it comes as a distinct surprise, indeed, somewhat of a shock, to most of us, that the present-day trend of political events in the British Empire is such as to carry within it the germ of disintegration of this fundamental principle and to affect in a prejudicial manner the maintenance and dominance of Empire shipping on the seven seas.

Yet so evident is the danger that the associated Chambers of Commerce of the Commonwealth of Australia and the Canadian Chamber of Commerce, bodies representative of the commercial interests of their respective Dominions passed resolutions at their 1927 conventions, which have for their object a preservation of the integrity of the principle of our present shipping laws and a prevention of any serious divergence by the component parts of the Empire by reason of the recently enunciated policy of "self-determination" accorded to the Dominions.

By Acts of the parliament of Great Britain passed from time to time, certain authorities and sanctions have been vested in certain of the self-governing dominions to legislate in a most prescribed and limited fashion with respect to shipping carried on within the respective territorial limits of those Dominions but in no case extending beyond the three-mile limit of their respective shore lines. This, however, has given to the Dominions no jurisdiction to enact any legislation which is at variance with the legislation of the British Parliament or which purports to deal with British shipping beyond the strict confines of their own territorial jurisdictions.

The late Mr. Justice Clement of the Supreme Court of British Columbia in his work published in 1916, states:

. . . while Canadians may own ships, and ships may be registered in Canadian ports, there is no such thing in law as a Canadian ship. National character is one apparent aim of the Imperial legislation, and all ships registered within the Empire are British ships, some indeed with home ports in the colonies, but all recognized the world over as possessing national character and entitled to fly the British flag.

Some years before the war, these limitations and restrictions upon the right of Canada to legislate with regard to merchant shipping appeared to chafe and cause irritation between members of the governments of Canada and of Great Britain. In correspondence passing between Downing Street and Ottawa at that time, certain assertions of right were made by the Canadian ministers and rejected by Downing Street, and such rejection was eventually accepted by Canada upon the advice of the Canadian Minister of Justice.

The incident is of sufficient significance to warrant quoting extracts. In a letter written by the assistant Under-Secretary of State (Great Britain) to the Honourable L. P. Brodeur, Minister of Marines and Fisheries (Canada) in January, 1911, in answer to certain assertions which had been made previously by Mr. Brodeur in this matter, is contained in the following assertion:

The British North America Act, 1867, did not confer upon the Parliament of Canada any right as to shipping matters to repeal or alter an Imperial Act which extended to Canada. . . . It would be convenient, moreover, if a draft of such legislation regarding the coasting trade of registered vessels could be sent to us (semi-officially if you prefer it) before it was introduced into your parliament as it would tend to avoid delay and difficulty such as have occurred in connection with New Zealand and Australian legislation.

This apparent assumption of control by Downing Street over the legislation of the Parliament of Canada would seem to have given rise to considerable resentment on the part of the members of the government at that time, and the advice of the Minister of Justice was sought. In a memorandum written by Sir Allen Aylesworth, when Minister of Justice, delivered to the Privy Council (Canada) in 1914, he says:

I have very carefully considered Mr. Just's letter of January 21st, 1911 (from which the above quotations are extracts) and I must say that I agree in the view he expresses.

In regard to what should be done in respect of confirmatory legislation, I think it would not be advisable that there should be any general confirmation of the enactments at present on the Canadian Statute book.

Correspondence passing between Downing Street and the Government of Australia and New Zealand show even much greater irritation. In a communication between the Honourable Alfred Deakin, then Premier of Australia, dated June 15th, 1908, and directed to the then Governor-General for communication to London and in reference to a direction from Downing Street to Australia on a par with the above communication from Downing Street to Ottawa,

Mr. Deakin says:

Before doing so, however, I desire to call attention to two passages in the documents which accompany the Secretary of State's despatch phrased in a manner absolutely without precedent in all the correspondence which has taken place between the Imperial government and the government of the Commonwealth; there are the concluding words of Sir Walter Howell's memorandum. "No question can arise as to withholding assent when the measure is finally passed by the Commonwealth parliament." or rather the implication contained in that phrase, and the abrupt declaration contained in the note on Clause 369; "This is a limitation of a power expressly given by the Imperial Act, and cannot be agreed to."

As they occur in a memorandum forwarded by the Secretary of State, they are presumably endorsed by him, but ministers hope that the fact is that they were transmitted without being closely examined and that the natural presumption as to their endorsement is not well-founded. Their occurrence in this communication has aroused considerable feeling in Australia as they seem to indicate that the question of deciding whether or not the Federal Parliament has exceeded the powers conferred on it by the Constitution is to be determined by an official of a government department in Great Britain.

Notwithstanding this forceful language the controversy had to end at the time with an acknowledgment of the general principle by all concerned, that for the control of British shipping throughout the world, there could be but one dominant parliament, and but one governing Act.

In the turbulent years that followed, questions such as these were laid aside and forgotten. Now, however, the Empire is re-adjusting itself and these matters again come forward.

Before the war, the doctrine of the "Round Table" as voiced by the publications edited and issued by Mr. Lionel Curtis, to provide for a government for the Empire by a central forum for the self-governing Dominions had gained considerable standing and weight throughout the Empire. These doctrines and principles have now been abandoned and replaced by a new theory of the imperial structure.

The new principle of Empire enunciated by the Premiers of the Dominions at the Imperial Conference, 1926, was stated and crystallized in these words, which have received general acceptance throughout the length and breadth of the Empire, namely:

That they (the self-governing Dominions and Great Britain) are autonomous communities within the Empire, equal in status, in no way subordinate one to another in any respect 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.

Notwithstanding the general acceptance of those newly stated principles of Empire, it was amply demonstrated in the debate which

ensued in the Parliament at Ottawa at the session of 1927, that insofar at least as Canada is concerned, that this statement of Empire status can not be taken at its face value.

It is demonstrably clear for instance, that notwithstanding that statement, the Canadian Parliament can not amend its constitution, it has no power to enact extra-territorial legislation, and it has not legislative control of merchant shipping outside the three-mile limit.

It is also apparent, however, that where technical and legal impediments or obstacles stand in the way of the ultimate realization of the above status or development of Empire, such technical or legal impediments or obstacles will, step by step, and in good and regular order, be adjusted to meet the requirements of our people; and if not capable of adjustment, then they will be altogether discarded.

This probable development of legislation regulating the Empire introduces to us a very serious problem in the matter of our merchant shipping. It may well be inferred from the negotiations occurring in pre-war days above referred to, that should the doctrine of equal status be carried to its logical conclusion, the legislation of the self-governing dominions will rapidly diverge.

The members of the Imperial Conference, foreseeing the necessity for solving these problems, proposed that a sub-conference be held to study and report upon merchant shipping, and a committee be appointed to tackle the other points. No arrangements have, as yet, been made for either of these.

Giving attention to these matters, the Vancouver Board of Trade, about a year ago, decided to take action to secure the calling of the sub-conference referred to, in order that before any harm could be done to the shipping of the Empire by the breaking up of the existing conditions of affairs, a new and proper scheme of things should be devised to take its place.

It was therefore decided to present a resolution dealing with this matter at the annual meeting of the Canadian Chamber of Commerce, which was then being arranged to be held in Vancouver.

In the meantime, communication was had with Australia, where newspaper reports had it that action was being taken along similar lines. By a communication received from the Secretary of the Sydney Chamber of Commerce, the Vancouver Board of Trade was notified that at the annual conference of the Associated Chambers of Commerce of the Commonwealth of Australia, held in Perth in March last, the following resolution was passed:

That it be recommended to the Federal Government that a conference be held in London of representatives of the United Kingdom, the Dominions

and colonies of the British Empire, with a view to the introduction and enactment of one shipping law for the Empire.

Armed with this material the Vancouver Board of Trade presented its resolution to the Canadian Chamber of Commerce at its session held in Vancouver in September last, and it was passed unanimously by the Chamber in the following language:

That it be recommended to the Dominion Parliament that a conference be held in London of representatives of the United Kingdom, the Dominions and Colonies of the British Empire, with a view to the introduction and enactment of one shipping law for the Empire, and there be included in this conference, not only members of governments and government officials but also an equal representation of the business men connected with the active mercantile and shipping operation in each Dominion to be selected by the Associated Boards of Trade, Chambers of Commerce or like Boards thereof.

If and when such sub-conference is called it will be seen how difficult is the problem with which we are confronted; to design a plan which will be an improvement on, or will be equal in status to our present merchant shipping laws.

Doubts and apprehensions as to the future are today troubling the shipping and marine interests of the Empire. If these interests are to be protected from a serious set back, prompt and effective action is necessary.

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Vancouver.
