THE "STAR-CHAMBER ACT" AND THE IMPERIAL CONFERENCE OF 1926.

It is a far cry from 1641 to 1926 and from the Dominions of King Charles I. to those of King George V.; but the political conceptions of the race have not changed—*semper eadem* in State as in flag.

Early in the reign of the first Stuart King of England, the great case of *The Postnati* fixed the relation of subject to King. The Scottish laddie, the Postnatus, was the natural-born subject of him who was King of England but not the subject of him *quâ* King of England. The man of flesh and blood called James was the King of the boy, not a metaphysical entity, an abstract "King of England."

A modern has difficulty in getting into the atmosphere of those days, whether in Law, Medicine, Philosophy—what not. Matter composed of four elements, earth, air, fire and water; the animal world having the serpent which slew at a distance by its glance and the little fish which checked the course of a ship in full sail. The vegetable kingdom boasted its mandrake-root which shrieked when drawn from the earth—and there were the four "humors" of the body, Blood, Phlegm, Yellow Bile and Black Bile, whose predominance determined the "temperament." Even in Mathematics, Cardan is not always wholly intelligible if Cocker is—although we had to wait for Gauss and Bolyai for real transcendentalism.

It was no wonder then that the relation of subject to King was discussed in language scarcely intelligible to the modern lawyer. But there is no difficulty in understanding the decision: and it may be stated thus—anyone born in Scotland after James (who was and continued to be King of Scotland) became King of England, was a natural-born subject for all purposes of that King but not a subject of the Kingdom of England.

Every student of our or any other British Constitution must read and digest *Calvin's Case: the Case of the Postnati.*[1]

The historical result is the constitution of the British Empire—the Canadian is the subject of him who is the King of Great Britain and Ireland, but in no sense a subject of the United Kingdom or of the people of the United Kingdom and as a corollary thereto, *Civis Britannicus Sum, non Civis Canadensis.*

[1] (1608) 7 *Coke's Reports*, 6 *b*: 2 *Howell's State Trials*, 607.

When in 1640, the people of England determined to abolish the Court of Star-Chamber established in 1487 by the Act 3 Henry VII., cap. 1—the first "Judicial Committee of the Privy Council"—and also the Common Law appellate jurisdiction of the King-in-Council, the language of the repealing Act was carefully selected. The Court of Star Chamber was "clearly and absolutely dissolved" for all purposes; but not so the jurisdiction of the King and his Privy Council. What was taken away was their authority to determine as to the property "of any of the Subjects of this Kingdom"—that is the Kingdom of England.

This "Star-Chamber Act," (1640), 17 Car. I, c. 10, did not interfere with the existing right outside of England; whence it was that the appellate jurisdiction was exercised in the Channel Islands and later in the American Colonies including Canada. This has sometimes, absurdly enough, been represented as something tyranically imposed on the people of the Colonies, instead of what it really was, a continuance in favour of these people of their Common Law rights as British subjects in a British country.

When Canadian statesmen framed the written Constitution which they desired for the proposed Kingdom of Canada, they purposely omitted to take for Canada the power to change the Constitution. At that time the right to appeal to the Foot of the Throne existed, and the "Fathers of Confederation" did not take power for Canada to take it away. Consequently it has remained.

But there never has been a time, when Canada wished for a change in her Constitution, that the change was not made immediately and without question or discussion; and there never was a time when if Canada wished the right of appeal to the King-in-Council tc be abolished that it would not have been abolished immediately and without question or discussion.

At many times, the question of appeals to the Privy Council has been discussed in Canada, especially since she has sloughed off her "Colonial" status and taken her position as a self-governing State, one of the component parts of the New British Empire. No change has been agreed upon; but that it was a Canadian and not an Imperial question has long been obvious. As the English Star-Chamber Act of 1640 forbade appeals from England only without interfering with any other part of his Empire, so it came to be felt that any and every self-governing part of the Empire should decide for itself whether the King should be shorn of his Common Law

power, the subject should be deprived of his Common Law right, in that part of the Empire.

When the Imperial Conference met in 1926, it was thought well to express this in clear terms, and accordingly we find it said:

> "Another matter which we discussed, in which a general constitutional principle was raised, concerned the conditions governing appeals from judgments in the Dominions to the Judicial Committee of the Privy Council. From these discussions it became clear that it was no part of the policy of His Majesty's Government in Great Britain that questions affecting judicial appeals should be determined otherwise than in accordance with the wishes of the part of the Empire primarily affected."

Whether there ever will be an abolition of the right to appeal to the Privy Council from Canada is doubtful, but the question should be discussed upon its merits—it is to be hoped not in the heat of political controversy or as a test of loyalty.

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